

# Digicel

The Bigger, Better Network.

**Digicel's reply to ECTEL's Consultation on New Licence Templates  
and Revised Fee Schedule in ECTEL States**

**February 3, 2012**

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Any questions or remarks that may arise as a result of these comments by Digicel may be addressed to: -

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## Introduction

Digicel welcomes the opportunity to respond to ECTEL's consultation on New Licence Templates and Revised Fee Schedule in ECTEL States.

## Comments

Our greatest concerns with respect to the licensing proposals relate to the potential impact they have when combined with the Telecommunications (Wholesale) Regulations 2007 which provide in section 4 that:

*"A public network operator shall make available **all** [our emphasis] of its retail services as wholesale services to a telecommunications provider on a non-discriminatory basis and without discriminatory conditions or limitations."*

This appears to open the door to regulated access to all new broadband networks developed by operators. Issuing licences is the final trigger which could lead to that outcome and which could therefore be extremely damaging to incentives to invest in broadband. At worst it may result in investments being directed at other countries for the time being, and at best it may delay the rollout of more advanced services in ECTEL countries given the additional regulatory risks that will be associated with any such investment.

Put simply, there must be absolutely no obligation to provide access to new mobile broadband network services (or new services in general) on a wholesale basis. We believe that many and perhaps most regulators and persons involved in telecommunications policy around the world would accept that premise. Regulated access to such networks and services, if introduced at any stage, must provide risk taking investors with a reasonable opportunity to make a return on those investments free of regulatory access obligations.

The regulations should therefore be amended so that new networks and services are treated as 'exceptions' which would be subject to commercial negotiation alone as opposed to being part of elements which are simply required to be provided on a wholesale basis.

## Licence Templates

The Commission indicates that the new licence categories are being introduced partly with the aim of facilitating competition.

We believe that the best practice regulatory approach is, generally speaking, to avoid regulatory intervention, especially of the more aggressive variety such as access regulation unless there is some demonstrable significant market failure which regulation has a reasonable chance of ameliorating.

## MVNO Licence

When UK regulator Oftel (now part of Ofcom), which coined the term “MVNO” originally, consulted on the possible introduction of MVNOs in to the UK market it stated:

*" Oftel will consider both the benefits to consumers of mobile services that might result from MVNOs and the effect on existing operators and their customers. Oftel will follow the same process as it has adopted in its consideration of other mobile issues. It will define the market; review the competitiveness of the market; assess how far and in what ways MVNOs could be expected to add to competition at either the network or the service level, or both; how they might reduce any barriers to effective competition; and what competition there might be between MVNOs. If Oftel were to decide that regulatory action is justified, then, consistent with its approach to indirect access for mobile networks, Oftel would expect the appropriate cost basis to be retail-minus (that is: the MVNO charge would be the retail price after deducting the costs of elements of the service that are now to be supplied by the MVNO and no longer by the network operator).<sup>1</sup>"*

As can be seen, Oftel carefully assessed first whether or not it made sense to implement MVNO access. This is a critical part of the process which should not be skipped.

The formation of a specific licence category of MVNOs inevitably holds out the prospect that mobile network operators in ECTEL member states could receive requests for MVNO access. These may be serious or speculative, but in any event they would, if there are sufficient legislative requirements to require such access (which may not be the case), require the devotion of significant resources to process and/or negotiate and/or implement and/or administer and manage.

Furthermore forced MVNO access degrades a key competitive differentiator within the market place. As is well known, Digicel prides itself on the extensiveness and quality of its network, and the skills of its engineers and network designers as key competitive advantages, but forced MVNO access would require Digicel to handover those competitive advantages to third parties. It would force Digicel to treat with those valuable differentiators as if they had no intrinsic intellectual value and were instead mere commodities (commodities are of course by definition undifferentiated) that would normally be sold to anyone. However, these advantages are not commodities. They are key elements used to compete and they should not lightly be handed to competitors through regulatory intervention.

In contrast, if network operators were under no obligation to provide MVNO access but were free to negotiate on an entirely commercial basis; that would be of less concern. ECTEL may consider that mobile network operators would never agree to MVNO access voluntarily. However it must be noted that in the UK for example, the first MVNO agreement between mobile network operator One2One and Virgin Mobile was entirely commercially agreed. Thus, if there is a market gap available which can be better served via an MVNO arrangement, such things are possible without imposed access.

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<sup>1</sup> [www.ofcom.com](http://www.ofcom.com)

In the light of the above, before imposing an MVNO access burden on network operators, we would expect ECTEL to consider whether there has been any market failure that justified licensing MVNO operators. We do not for example see any apparent failure based on mobile retail rates. Retail rates in ECTEL countries are competitive for the region, so the markets are working effectively and efficiently already.

We are of the view that the specific licensing of MVNOs and especially forced MVNO access is therefore not justifiable at this time.

Digicel would be particularly horrified, as indicated previously, if there was any prospect that it might be forced to provide third party access to brand new HSPA+ or LTE networks, instead of being free to make our decisions in this respect on an entirely commercial basis.

### **VAS Licences**

Again, with respect to VAS services, these should be an exception from the requirement to provide a wholesale product in the absence of any market failure; especially for new VAS services. If VAS licences are issued they should be issued on the basis that they entitle a licensee to negotiate but do not afford a right to access.

### **IP Telephony**

There may be some challenges faced when attempting to level the telephony playing field. Nonetheless it should be recognised that IP telephony:

- 1/ exerts a traffic load on telecommunications networks and therefore affects network costs;
- 2/ competes with circuit switched telephony;
- 3/ has a competitive advantage over circuit switched traffic as a result of the fact that circuit switched voice traffic is subjected to regulatory obligations and therefore additional costs such as emergency access, whereas IP telephony is currently not subject to those obligations and costs; and
- 4/ that circuit switched carriers could lose traffic and therefore revenues to IP telephony providers.

Furthermore, we do not believe that it is sustainable policy to suggest that it is satisfactory that consumers merely be informed about whether a telecommunications provider of any sort does or does not offer access to the emergency services.<sup>2</sup> Consumers do not focus primarily on IP telephony versus

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<sup>2</sup> Perhaps there was more of a case in the early days of IP telephony but nobody is suggesting in this day and age that it cannot be achieved technically.

circuit switched telephony as mental concepts when deciding to make a call. They are most focused on price and call quality. Furthermore, companies will market themselves under generic names not linked to the term IP telephony so consumers will not have a specific association in their minds with a particular technology and its capabilities when deciding to make a call. Many consumers will not read terms and conditions about service limitations and if they do, they soon forget them even if read. In addition, only one person within a household may know about service limitations, as it is likely to be one person only (or two at most), who deals with obtaining telecommunications services for that household. Therefore some or many people will forget, or simply be unaware, that they cannot make emergency calls via a particular provider's service, especially in the heat of the moment of an emergency situation.

In this light we believe that the Commission is required to require any provider of IP telephony services to enable calls to be made to the emergency services for the reasons above, and because to do otherwise would unfairly discriminate in favour of those providers at the expense of circuit switched providers.

It is possible of course for the authorities to equip emergency call centres with equipment to handle emergency calls so that they can receive IP calls. That is an alternative approach which would keep consumers safe and the playing field level.

Finally, we underline that circuit switched providers will still require conversion of IP calls to circuit switched calls at the point of interconnection with circuit switched call providers.

### **Fees Schedule**

Digicel feels compelled to voice its objections at this time to the level of telecommunications licence fees prevailing in ECTEL member states generally.

In order to attract investment and to create the most vibrant telecommunications market place possible operators should be treated no less favourably than other industry sectors. Operators already contribute very significantly to the exchequer through payment of corporation and value added taxes. But in spite of this operators are subjected to very large additional charges. Fully 4% of gross revenues (not 4% of profits – which would be far less) in total (taking account fees and universal service fund payments) have to be paid over each year in addition to those other taxes.

Put another way we estimate for example that a nationwide LTE broadband wireless network could be built to serve virtually the entire population of St Lucia using just two and half times the additional 4% of revenues that are extracted from the operators annually.

We believe that the policy that should be adopted is to levy on operators only the costs of regulatory administration. The industry should not be seen as a cash cow from which the maximum possible monies should be extracted. The industry is a major enabler of economic growth especially. Governments across the region have made the case for how much benefit broadband networks could provide as the highways for the 21<sup>st</sup> century. Yet at the same time heavy charges are being levied over

and above what other businesses must pay, thus weakening operators' ability to finance broadband rollout.

An alternative and radical approach would be to cancel all fee and universal fund payments that must be made subject to delivery by a set date of particular broadband networks and services.

### **700 MHz and other mobile broadband licence fees**

As technology advances mobile services will move through a range of technologies and spectrum ranges. That is what is happening now in ECTEL states. Currently GSM spectrum is being used. Operators will eventually move in to the provision of HSPA+ and/or LTE services. They will have to do this for competitive reasons or exit the market place. Mobile operators will be compelled to retain their GSM networks for years to come as currently LTE services for example do not support voice services. Further even when LTE services do support voice, many customers will probably still have handsets that work using only GSM spectrum. GSM spectrum will also have to be retained to enable roaming between countries both for people from ECTEL countries travelling abroad, and for people visiting ECTEL member states.

HSPA+ and LTE are therefore mainly ways of replacing existing revenues and sustaining them close to existing levels, and are not a way of dramatically increasing them. That means that the quantity of spectrum required by mobile operators will increase significantly while, at the same time, revenues may not rise at all or only modestly, since competition will limit what can be charged. The building of HSPA+ and LTE networks should not and cannot sensibly be treated as a one way bet leading to additional revenues. The future is unpredictable.

In this light it is not appropriate simply to charge mobile operators the same cost per MHz for all spectrum that they use. This could only be a viable solution if there was a reasonable expectation that profits would rise in proportion to the amount of spectrum used. As stated, we (and we are sure the majority of other providers) do not believe that will happen or anything close to it. Consequently, no policy can in our view reasonably be imposed based on such an assumption given the detrimental impact on investors.

Our counter suggestion therefore is that one of the following approaches be adopted:

1/ **Preferably no additional fees for "transition" spectrum up to a cutover date.** This is to say that where two or more sets of spectrum are required to allow for a transition from one form of network to another, then during the permitted transition period the total cost remains the same. This will mean that operators are not starved of the cash flow needed to invest in broadband;

OR

2/ **Graduated fees.** By this we mean that that fees for HSPA+ and/or LTE services should be introduced on a rising scale over time and reach the maximum at the end of the allotted period. Again this will help to limit operator costs and encourage investment.

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