Zimbra **consultation@ectel.int**

Comments on Recommendations of ECTEL to the NTRC on Revised Draft Electronic Communications Bill

From : BBartlette <bbartlette@winnerstv.com> Mon, Nov 30, 2015 01:08 PM

Subject : Comments on Recommendations of ECTEL to the NTRC on Revised Draft Electronic Communications Bill

To : consultation@ectel.int

Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
Castries, St. Lucia

Re: Comments on Recommendations of ECTEL to the NTRC on Revised Draft Electronic Communications Bill

Dear Sir,

I write in response to your request for comments on the Recommendations of ECTEL to the NTRC on Revised Draft Electronic Communications Bill.

Upon review, it appears that the bill has failed to address a few issues of great importance to the cable television industry. Find below my submitted recommendations below:

1. **Retransmission Consent:**

Regulators must include a retransmission consent framework in Revised Draft Electronic Communications Bill, which will require that a television station gives its consent to a cable system or other multichannel video programming distributor (MVPD) to carry its broadcast signal. Under this framework television stations and cable systems, as well as satellite carriers, will negotiate for this "retransmission consent." Money should generally be exchanged between the parties in these negotiations to allow cable networks to be compensated for their products. Regulators must ensure that cable operators do not interpret "must carry" as "carry free." Cable networks across the region spend millions of dollars developing programming and acquiring media rights. Under the current "must carry" framework cable operators are encouraged to deny cable television networks remuneration for the content while benefitting from the relevant content delivered by these same cable networks.

The content buyer side of the regional cable industry is concentrated in the hands of a few players. The existence of this monopsony leaves broadcasters vulnerable in negotiations with cable operators and unable to extract excessive carriage fees from cable operators. With programming costs accounting for a small portion of the total revenue that cable operators generate from subscribers fees, cable operators can no longer cite retransmission as prohibitive to their survival. In fact, industry analysts forecast that retransmission fees will never rise above one percent of cable revenues. As such, regulators must introduce this regulation to ensure reasonable compensation to broadcasters for their programming.

2. Enforcement of Net Neutrality Rules:

Technological advancement has resulted in the use of IP based networks as the underlying delivery method for most cable operators today. While this advancement brings many operational improvements to the business, it also allows cable operators to mete out preferential and unequal treatment to traffic on its network. In order to ensure that equal treatment of data obtains for all data flowing across these networks, and safeguard against the existence of two-tier discriminatory regimes benefiting cable operators and their affiliated businesses at the expense of competitors, ECTEL must demand that net neutrality rules be enforced at all cable operators.

This approach would require cable operators to be transparent and offer specifics about how they manage and run their networks. Cable operators must be forced to ensure that reasonable network management obtains across its network and that as per Net Neutrality Rules, mandate that all traffic on a network is treated equally. Under no circumstances must cable operators be allowed to treat content from Caribbean content providers as less important than that of extra-regional content providers. ECTEL must ensure that the practice of "network management" cannot be used to promote the cable operators' own commercial efforts.

3. Diffusion of Technology:

The Electronic Communications Bill must require that the dominant cable operators diffuse new technology equally and simultaneously to all broadcasters on their networks. Cable operators cannot be allowed to rollout new technological advances to a chosen few affiliated partners, arming these selected few with a competitive advantage in the marketplace while withholding access to these same capabilities from others. For example, the dominant cable operator in St. Lucia has rolled out HD technology to viewers and affiliated cable TV networks but has not provided St. Lucia based cable TV networks with HD modulators that would allow them to broadcast in HD.

4. Limiting Vertical Integration in the Cable TV Industry:

The Electronic Communications Bill must address vertical integration more effectively as vertically integrated dominant cable operators present significant problems to the market as they stifle competition and create significant imbalances in the cable industry. Vertical integration can be described as an economic term that can be applied to situations where one company controls both cable systems with millions of customers and valuable cable programming with large viewership appeal. Due to the gravity of the issues this particular firm structure presents in "platform" industries, they must be addressed by regulators.

Historically, vertical integration in platform industries like the cable television industry has resulted in the erection of significant barriers to entry. This is because as the owner of the broadcast platform, a cable operator can simply create channels at whim to replace existing channels in which it does not have a financial interest and block the access of competing channels to the platform. Such action denies consumers the benefits of competition and the right to due programming from diverse sources.

Cable operators should not be allowed to own television channels that directly compete with established Caribbean owned channels. Regulators must create conditions that force cable operators to divest certain assets which prove duplicative in the marketplace and direct them to provide platforms as a condition for approval of M&A transactions which change operator structure.

For example, if an existing Caribbean owned niche channel seeks access to a cable operator's regional platform but is being refused access by that cable operator for a myriad of anti-competitive reasons, regulators should prevent the cable operator from creating a new niche channel and stipulate that the cable operator must provide the competitor with access to its regional cable platform. If the regulator were to sit idly by and let the cable operator create an existing duplicative or competing niche channel, the cable operator would simply become more vertically integrated and create barriers to entry which would prevent the success of competing products in the marketplace, and further a dominant cable operator's monopolistic agenda.

5. Remedies to Anti-competitive Behaviour:

In order to combat anti-competitive behaviour in the regional telecommunications industry, ECTEL must attach a consent decree to all cable operator licenses. The consent decree should require cable operators to make available at least 75% of their cable subscribers to cable television networks from the region in which the cable operators seeking approval have no financial interest.

In the case of the region's dominant cable operator, the company should be forced to make available at least 75% of its cable subscribers to Caribbean owned cable television networks in which the dominant cable operator has no financial interest. This approach is necessary to combat the demands for equity and exclusivity that the dominant cable operator has enforced on some Caribbean cable networks seeking distribution and carriage agreements. A consent decree with the above terms attached can level the playing field and manage the dominant cable operator's monopolistic "bargaining" from a dominant distribution incumbent position which involves take-it-or-leave-it-threats of inferior placement, non-payment for exclusive events content, discriminatory practices and exclusion from carriage.

Sir, there is grave danger in allowing the dominant cable operators to have such great control over the creation and dissemination of the content that we see. Continuing to allow dominant cable operators to grant preferential treatment only to content providers with which they are affiliated is a form of digital apartheid with dire economic and social consequences for the region. The region's telecom industry stands at important crossroads which requires that ECTEL must mitigate this risk with an effective Electronic Communications Bill coupled with decisive action now.

Thank you for the opportunity to submit comments on Recommendations of ECTEL to the NTRC on Revised Draft Electronic Communications Bill. I trust that my submissions will be given due consideration for inclusion in the final Electronic Communications Bill.

Sincerely,
Brian Bartlette
Managing Director
Winners TV