National Telecommunications
Regulatory Commission
St. Vincent and the Grenadines

Ref No.: *COR/ECTEL*

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Dear Mr. Charles

Comments on the draft EC Bill, New Licence template, New Licence Application Form and New Licencing Regime

Having reviewed the Consultation document the NTRC wishes to make the following comments:

1. The bill seems to be called "electronic communications act" instead of "telecommunications act" which is the name of the current Act it plans to replace. Our NTRC would like an explanation on the reason for changing the name. One will assume a name change would be required if the new name signifies some change in what this proposed act now covers compared to the existing Act. However, in examining the definition of "electronic communications" which is listed on page 18 of the new bill it is very much the same as the definition for "telecommunications" found on page 9 of the existing Telecommunications Act.

2. The draft bill also has new names for ECTEL being "ECA" and for the NTRC being "NERC". It seems the reason for this is because the new act is now called "electronic communications act" as compared with "telecommunications" in the last Act. However, as pointed out above the definitions for "electronic communications" and "telecommunications" in both acts are the same. Apart from this issue we have spent the last 15 years building up the awareness of both ECTEL and the NTRCs with the public. This is especially relevant with the NTRCs who has to interact more directly with the public at the national level. Our NTRC see no need why the

existing names cannot remain even with the new definition. While it can be argued that organizations do change their names we must ask, is there a need to change the current names and if yes why? Such name change will also require new public awareness initiatives which comes at a cost.

If we get to a point of agreement that the existing names do need to change we do not support the methodology being proposed to change the name of the NTRC. How can a third party propose a name change for a national entity without first consulting with the national entity? The name of an entity is something very important even for non-profit organizations but even more so for a national organisation that needs to reach out to almost all demographics. Every user of a communication device is a potential user of the services of the NTRC. The propose name of "NERC" falls very short of being an appropriate name for a regulatory agency (or any other agency for that matter). How does "I work at the 'NERC' sounds"? Or "you will need to file a complaint at the 'NERC'. Will such a name fit well in public awareness material, etc.?

As it relates to "ECA" this sounds very similar to "ECCAA" which is the regulatory agency for civil aviation within the OECS. When the existing ECTEL Treaty was being developed in the late 1990s such issues were considered by the Project Implementation Committee (PIC) in arriving at the acronym "ECTEL". It should be noted that "ECTEL" was not the first choice. The first choice was similar to an existing regional institution at the time and was changed. In summary our NTRC do not support a name change of our organisation.

3. Our NTRC is not seeing a definition of what is a "network" in the draft bill. This is very critical noting the reference to "network" licence. If it is the intention that "network" is captured in "electronic communications network" this can be somewhat confusing. In short any "computer system" will fit this definition. Even just having one computer with an internet connection can fit the definition of a network. The point we wish to make is that it will be left to a person's discretion in our regulatory system to decide what a "network" is and what is considered a "service" noting that the plan is to have network and service licences. This issue was raised previously. We have not had problems in the past with our individual and class licence

structure. Noting this, what are the benefits for changing to this new system of "networks" and "services" where base on the definition given for network it covers everything from a single computer upwards?

4. The definition for "Universal Service and Access" does not fully capture the new scope that the NTRCs and ECTEL had agreed on for the USF and which was outline in the recent draft USF consultation document prepared by ECTEL.

5. Could ECTEL clarify what will be considered "local loop" within a Cable tv network such as those operated by FLOW in the sub region and which would most likely be the common type of networks going forward?

6. Noting the bill does not apply to "broadcasting content" what is the difference in the scope of this proposed act and the existing telecom act and reason for changing the name? Was the old act dealing with analog communications and this one digital communications? Is telecommunications different to electronic communications? If yes in what way?

7. The definition for "application fee" on page 17 may need to be expanded. Items such as type approval are not considered licences or frequency authorization but have application fees associated with them.

8. Is it best practice to have the title of "CEO" for regulatory bodies such as the NTRC? Page 17.

9. It is not clear what a "service" is and what is a "network" from the definitions on page 18. It will seem that from this definition the person with a service licence cannot have any equipment even a single router. Is this possible practically? In short if one has at least a router it will seem that you have a "network" base on the definition of "network". It is an issue our NTRC has raised for years since this new methodology for licencing has been put forward by ECTEL when the first draft of the new bill was done some years ago. What

are the problems that we are encountering with the existing system that requires us to change it? If we still want to change it our NTRC suggest that we only have a "service" licence since it will be difficult to differentiate between a network and a service. We would only have more problems going forward and not less.

10. The definition for "interconnection" on page 18 is not forward looking. It seems that it only refers to physical interconnection. With all networks moving to IP is it not now possible to interconnect "systems" or "applications" just by having an internet connection?

11. It will seem that the definition for "local loop" on page 19 does not apply to networks other than a PSTN. Such networks are legacy networks and are no longer being built. It is not applicable to fiber networks or Docsis networks used for cable TV and other services.

12. What are the differences in the definitions between a "park" and a "public ground" found on page 19?

13. Why is the term "telecommunications" used in the definition of "spectrum" on page 20? What is the difference between the definition of "electronic communication" found on page 18 and the definition of "telecommunications listed on page 21? This is critical as it may explain the rational for the new bill to be called "electronic communications bill" compared being called "telecommunications bill".

14. Definition for "universal service and access" needs to reflect our recent work on redefining what we want to do with this fund. Page 21.

15. Is section 3 (2) (d) not dealing with content issues? Page 22.

16. If we want to achieve the objective outlined in section 3 (2) (l) on page 23 then we cannot place certain provisions and sections in this bill as drafted since it will require Parliament to amend it which takes time. Such provisions will need to be put in Regulations or other instruments that can be enacted by the Minister via the Gazette process.

17. Why is the term "improve" listed in section 3 (2) (n)? As compared to "ensure "or a similar term?

18. Section 5 refers to the Act not being applicable to "broadcasting content". Can it then be assumed that it applies to "other" content handled by licencees?

19. Is the powers given to the Minister under section 6 (1) legal noting that the licencing classes and types are now included with the draft bill and not in other instruments as was done with the existing telecommunications act? If Parliament now outlines what are required to be licenced how can the Minister now exempt from this list? Page 23.

20. What kind of recommendation is foreseen being made by the Commission under section 6 (4) and to whom? Page 24.

21. Provision outline in section 11 (k) needs some clarifications. Is it saying that once ECTEL recommends that an interconnection agreement be approved that the Commission cannot disapprove it? If yes then this should be an ECTEL function and not listed under functions of the Commission as it would be in reality a rubber stamping function. Page 28.

22. Section 11 (1) (m) on page 28 should be amended to read "...national **and regional** authorities established..." This we believe will cater for entities such as the CARICOM Competition Commission (CCC).

23. Need to have the proposed bill allow for handing over of competition issues to the CCC. This will require provisions that are in sync with the revised Treaty of Chagaruamas which outlines how the CCC can intercede at the national level.

24. Isn't section 11 (3) on page 29 not conflicting with section 5 of the bill?

25. Section 3 (b) seems to be taking us on the same route as we are currently experiencing with competition issues. There is no national body authorized to regulate broadcast content or will likely be in place any time in the medium term. We cannot continue to ignore

the content issue. It is part and parcel of the new paradigm of convergence. We cannot continue to stick our heads in the sand and hope that somebody else (that do not exist) will deal with it. Our citizens are being affected by it and will be affected even more in the short term.

26. Section 13 (f) seems to need some clarifying. Page 30. It is not clear as worded.

27. Section 14 (2) is not a practical provision as worded. The current provisions in the telecommunications act on this subject matter has worked well over the years and should not be amended and is also similar to what is outlined in section 19 (5) (c) . What happens if both the Chairman and Deputy Chair are absent? Page 31.

28. Does the original vote outlined in section 19 (8) that belongs to the Chairperson also applicable to the Deputy Chairperson or another Commissioner who is presiding over a meeting? Page 34. How does this provision fit with section 14 (3) on page 31? Section 14 (3) does not seem to allow the powers of the Chairperson to be handed down to a presiding Commissioner other than the deputy

29. Why would the Commission require approval from ECA/ECTEL under section 26(3) on page 37 to set up a reserve fund? Would the Commission require ECA/ECTEL approval to obtain loans, grants and funds from Parliament as the section allows for? Would the Commission be a corporate body as outline by section 8 with its own standing if this is required?

30. Section 28 page 37 seems to be indicating that ECA will have responsibility for approving the budget of the Commission. This seems to contradict other provisions within the said bill. Unless the NTRC is a department within ECTEL/ECA then it cannot have the responsibility for approving its budget. All bodies corporate are responsible for approving their own budgets otherwise they cannot be called a body corporate. The budget of the NTRC will comprise other funding (other than what will be obtained from ECTEL/ECA) as is currently the case and as such the responsibility of approving its annual budget has to be with the Commission. What

ECA can approve is how much funding it will provide to the budget of the NTRC on an annual basis and will require the NTRC submitting a propose budget and work plan to facilitate this process just as any other funding agency/institution will require.

Section 26 clearly outlines that the NTRC can obtain funding from the Parliament, grants and loans. Will such funding not be a part of the NTRC budget? Further, this section as worded does not cater for the Universal Service fund. The USF is a department within the NTRC and forms part of its annual budget. Its finances are also reflected in the annual financial audit of the NTRC notwithstanding separate annual financial audits are also done on the USF.

31. Is there a reason why the staff remuneration of the Commission is not covered under section 32, noting that the funding of such recurrent expenditure would be predominantly covered by funding from a regional pool of funds at ECA? It is the norm we believe that staff who are paid via funds supplied by an international or regional organisation their salaries are exempt from income taxes. Further the staff at ECTEL whose funds come from the same ECA fund are exempted from income taxes. This is an area that needs to be harmonized and would help in further attracting and keeping skilled talent in all sections of the regulatory system.

32. Section 33 (7) on page 40 requires the Commission to publish "names and addresses" of licencees. As it relates to individual persons who are holders of licences for example "amateur radio" etc. Is it not an invasion of privacy to publish the addresses of such persons which are most likely their home address?

33. Does the entities listed under section 34 (4) require to pay fees in relation to the frequency authorizations they may require? Page 40.

34. The NTRC is not clear how the provisions in section 41 will address the recent issues we have had in the market where the holding company shares were sold. Page 46.

35. Same issue holds for section 42. Page 47.

36. Does networking switches (cisco, etc.) and routers captured under section 50? If no, why not? Page 55.

37. Section 59 should be reworded. Universal Service fee should be applicable to all licencees. Page 63. The provision as worded could cause issues going forward. Someone offering value added services would most likely not be required to provide universal service. Our new thinking on universal service is any entity can provide the services required which could also include training and supplying of ICT equipment. Page 63.

38. Section 37 on page 42 can be termed an increased regulatory burden. Unnecessary regulatory provisions that will only make the application process more burdensome on applicants. Our NTRC is of the view that this provision was amended with input from the legal drafters in the absence of any NTRC officials. This provision is an operational one and is one that is currently done by the NTRC. How can it be changed substantially without any consultation from the NTRCs? We will now outline how this new provision is more burdensome on the applicant. It will now require the applicant to submit applications to two entities simultaneously (indicating that it can be done electronically still requires additional time and resources), to the NTRC and the Minister. Currently it is to the NTRC only. In many applications based on our experience more information is usually needed from the applicants. Under this new provision such information will have to be also sent to the Minister and the NTRC (two entities). Do ECTEL hold the view that the Minister is going to read all of this information and even if he/she does what gains will come from it? All it is doing is adding more regulatory burden on the applicant. If the argument is being made that the Minister who is granting the licence needs to see the application then all that needs to be done is to add a provision that will require the NTRC or ECTEL to include a copy of the application when submitting their recommendations to the Minister to grant a licence.

Section 37 (11) seems to be indicating that the Minister after getting a recommendation from the Commission or ECTEL on a licence will then notify the applicant within 14 days of receiving the application whether he will grant or refuse the licence. The first issue with this provision is that 14 days is neither practical nor logical. Our NTRC is not clear how other ECTEL states process licences under the Telecom act however in the case of St. Vincent and the Grenadines licence applications normally goes to Cabinet. To go to Cabinet requires a Cabinet memo to be prepared. The second issue is the grant of licences. The provision wants the Minister to notify the applicant. This is additional work for the Minister. Currently this is done by the NTRC which also prepares the relevant invoices for the licence/frequency Authorisation that are normally done at the same time the licence is issued and applicant notified. So we will now have two entities notifying the applicant the Minister and the NTRC. Is the Minister not busy enough that we have to add new tasks to his/her portfolio? We should not be making these changes to provisions without consulting the entity that normally handles the processes and procedures within the provision. This is an operational issue and not a drafting matter. Our NTRC has never raised an issue with the existing process.

39. Our comments under section 37 also applies to section 39.

40. On the matter of issuing a frequency Authorisation this is something that needs to be changed under the new legislation. It is an issue our NTRC has raised since work commenced on revising the existing telecom act. The current framework and proposed framework requires the Minister to grant frequencies within a similar process as a licence. Issuing frequencies cannot be regarded as a policy issue as one can relate to the granting of a licence. Further a frequency cannot be granted to an entity without a licence. Noting this there is no real need to have the Minister grant a frequency Authorisation. Prior to the Telecom act of 2001 all frequencies were issued/assigned by the Telecommunications Officer, a post within the then Ministry responsible for Telecommunications. It will be much more efficient for frequencies to be granted by the Commission following the same process that involves ECTEL currently but without the extra step involving the Minister. This is especially important when companies require additional frequencies after being granted the first frequency authorization when their

licence was issued. We have seen this occur repeatedly over the last 15 years where new frequencies has to be issued to existing service providers as they expand or reconfigure their networks. Making this change can reduce the timeframe in issuing frequency authorizations and also reduce the workload of our Minister. It is a win-win for everyone. Again our NTRC wish to state that frequency authorizations can only be granted to licencees that already holds a licence granted by the Minister.

41. Section 71 (4) needs more clarity. When is the customer expected to receive the written notice? Before or after service is interrupted? Page 69.

42. We need a provision in the new bill to ensure that customers that have postpaid accounts for telecommunication services be notified by phone (real person and not a machine) that service will be interrupted for nonpayment.

43. Should section 72 refer to "Head of State" or "Head of Government"? Page 69.

44. Section 83 (2) may need to be reworded to allow for different fees per different types of licences. We agree that the same rate should apply to all licencees of a specific type of licences but not the same for all licencees regardless of type. As an example one of the major objectives of the USF to date has been to increase penetration of internet service. As such it would not be prudent to levy the same fee on internet licencees compared to other types of licencees. Page 78.

45. Section 83 (8). See notes on first draft. Page 79.

46. Section 83 (2) may need some rewording for clarity. This relates to the requirement that *"...the percentage to be contributed shall be the same for all licensees."* Is the section trying to communicate that all licencees in the same category of licences should have the same fee or is it that there can be only one fee for all types of licences? Our NTRC has a position that a new USF regime should cater for different level of fees for different categories of licences. However, it should be the same for all licencees in the same category.

47. It seems that a lot of provisions under section 83 was taken from the existing Universal Service Regulations. Is there a reason why provisions that were in secondary legislation are now being moved to the primary legislation? Why are there functions for the position of Universal Service Fund Administrator within the bill and there are not similar functions in the bill for the post of CEO? One must also keep in mind that the regulations made under the act can be made and amended by the Minister while the Act can only be amended by Parliament. As such it is usually the norm to put the detail provisions (operational issues) and which may change from time to time in regulations and not in the Act. This same issue is also seen in other sections of the proposed bill.

48. Section 83 (8) on page 79 as worded will lead to governance issues. This was something previously proposed in the USF regulations but which our Government and our NTRC was not in support of and as such our existing USF regulations has a different wording for this provision. As worded it is not clear who the USF Administrator reports to.

49. Section 84(2) page 80 as worded is conflicting with the intention to have non-licencees receive funds from the USF. This is due to the provision referring *to "...and the conditions attached to the licence..."* if one has a licence then one is a licencee.

50. Section 49 page 55 seems to have been drafted without proper research on the existing process for assigning cctld domain names. What will exist in a regional plan for domain names? The .vc domain is a national resource which already has clear international guidelines established by ICANN/IANA, etc. for its management. Why does ECTEL have the view that it needs to have the authority to have oversight on the VC domain as it relates to delegating, etc.? Is this an authority for ECTEL instead of our Minister?

51. Our NTRC would like to have some clarification on the purpose of section 100 on page 86. How does this section fits in with our existing dispute resolution regulations? The section seems to be indicating that customers are to use the compliant process of the licencee. It also seems

to indicate that if the matter is not resolved then it should be referred to the Commission. The very important issue of timeframes is missing from this section. Timeframes are very important when dealing with complaints and is very much a part of our existing dispute resolution regulations.

52. It seems that the new tribunal is separate from the NTRC. As configured it will not work. To create this separate from the NTRC will require a complete organisation to be set up. It seems that section 121 caters for remuneration to be paid to its members if needed. They will require payment but the bill is silent on who will pay them. We have to be practical when we create new provisions. We cannot create paper tribunals. What is wrong with the current provisions in the Telecommunications act relating to tribunals?

53. What is the reasoning behind the provision found in section 127 (4) on page 94? Is this the current process under the existing Telecom Act? Has there been problems with the existing process? What was the process in place prior to the enactment of the existing telecom act? Were there issues with the system in place prior the enacting of the existing telecom act? Who will be responsible for monitoring the payments as being proposed by section 111(2)? There is a very good reason why the provision on this issue in our current telecommunications act were enacted as is.

54. Why is ECTEL including the contents found in schedule 2 and 3 within the propose bill? Such content has been done in the past under regulations and has been changed twice since the existing Telecom Act came into effect in 2001. This is something that can change easily with technology and should not form part of an Act that is difficult to amend. As outlined earlier it requires the Parliament to amend which is neither an easy or quick process.

55. We have to make a serious policy decision on what we want the new bill to cover. We cannot move forward with a bill that we are saying does not address "content". There is

no escaping content with our converged technologies. The providers are already "regulating" it as they see fit but not in the interest of the consumer. We are supposed to be the regulators not the providers. They are deciding what type of channels to add, block or remove on their subscriber TV networks. They are blocking functionalities in apps such as WatsApp. They are blocking certain mobile ads. They decide how much SMS ads we get or don't get.

56. Our NTRC is not seeing any reference to the ability of the Commission to implement fines or penalties. This was something that has been raised on many occasions over the last 15 years and is something very lacking in the current framework. It the past we were advised that our national constitutions did not allow such provisions. However, in recent times we have seen another regulatory body in the OECS "ECCAA" handing out fines to entities that come under its regulatory oversight.

57. The draft bill does not seem to have any provisions dealing with non-iodizing radiation. Our NTRC would have done a lot of work on this issue recently. It is also an issue of concern to our citizens.

58. On Pg. 17: Applicant, application, application fee do not refer to numbering & type approvals.

59. On Pg. 31: the qualifications or technical expertise of the CEO needs to be outlined.

60. On Pg. 37:

    a. Numbering fees and applications fee are now not listed as funds for use by the Commission.

b. The Council of Minister's meeting is normally held in October. As such, the time frame of Oct 31 for the Commission to submit its budget would be too late. Is it that ECTEL plans to change the budget cycle?

61. Pg. 41: It states that the person who hold a network licence may provide the electronic communications network **[and service]** in accordance with the licence. However, this is the same definition for the person who has a network-service licence.

62. Pg. 50 (1): if a licensee intends to terminate their licence or FA, then they should write to the Commission and not the Minister. The Commission on receiving this notice should advise the Minister.

63. Pg. 57: We believe there is a typo as the provision refer to "St. Lucia". It should have the name of the contracting state in brackets.

64. Pg. 71: Our NTRC is not clear on why loyalty discounts are seen as anti-competitive.

65. Pg. 75, sec 78(2e): "the" is duplicated.

66. It has been an occurrence in the past that the Minister is unable to sign Licences and Frequency authorizations because of his unavailability, there are also references in various clauses that the Minister is responsible for certain actions, our NTRC is recommending that provision be made for the Minister to delegate this function. The draft bill allows the Commissioners to delegate functions and a similar thing can be done for the Minister for the same reasons.

67. As it relates to roaming in clause 66 on page 65, the specific laws should be identified as it relates to International rules as we assume the regional rules would be regulations/rules developed under the act.

68. As it relates to billing, section 71 located on page 68, our NTRC believe that some mention of the billing period should be made as it relates to when the billing period should commence and end.

Sincerely yours,

Apollo Knights
Secretary / Director