

# **Draft Regulations on Access to Network Infrastructure and Wholesale Services**

## *Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)*

*This summary is intended to provide a brief, readable overview of the selected regulations of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” is used instead “telecommunications services”.*

### **Scope and purpose (See regulation 3)**

- ▶ The purpose of the Wholesale Access Regulations is to foster the competition on electronic communications market by defining specific components of Wholesale Network Infrastructure and Services, access to which may be imposed on Licensees holding Significant Market Power (SMP)
- ▶ For sake of clarity, this regulation addresses only the wholesale level while regulatory controls on retail services are addressed by the Retail Pricing Regulations or any other Regulations with the same purpose.

With these objectives, the Wholesale Access Regulations:

- ▶ First define the categories of network infrastructure and wholesale services which may be subject to access obligations (PART II, regulations 4 to 8))
- ▶ Secondly, define the obligations that may be imposed on SMP operators to provide access to network infrastructure and wholesale services (PART III, regulations 9 to 14);
- ▶ Finally, repeal the current Telecommunication (Wholesale) Regulations in Grenada and ST Lucia <sup>1</sup> (PART IV, regulation 18)

### **Identification of Network Infrastructure and Wholesale Services, access to which may be imposed on Licensees holding Significant Market Power (See regulation 4)**

- ▶ The Wholesale Access Regulations define 4 categories of network infrastructure and wholesale services to which certain Licensees holding SMP may be required to provide access , namely:
  - 1) wholesale access provided at a fixed location;
  - 2) passive backhaul infrastructure;
  - 3) special wholesale service;
  - 4) dedicated connections and capacity (wholesale leased lines)

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<sup>1</sup>In Grenada: SR&O #17 , 17/4/09, in ST Lucia SR&O #168, 06/08/2008

- ▶ The regulations 5 to 8 describe in more detail each one of these 4 categories of access.

### **Provisions relating to Wholesale Access provided at a fixed location (See regulation 5)**

- ▶ Within the first category, the Commission, upon ECTEL's recommendation, may impose on SMP Licensees the obligation to provide the following types of access:
  - 1) wholesale (physical) network infrastructure access, including shared or fully unbundled access at a fixed location (often called local loop unbundling);
  - 2) virtual unbundling of local access (VULA); and
  - 3) wholesale broadband access.

Where:

- **“fully unbundled local loop”** or **“metallic path facility”** or **"MPF"** means the provision of a two-wire metallic transmission path between the network terminating equipment at a customer's premises (to which a competitive operator seeks access) and a main distribution or jumper frame at the exchange of the access provider which enables the operator seeking access to offer both voice and broadband services;
- **local loop unbundling”, “shared metallic path facility” or "SMPF"** means the provision of a two-wire metallic transmission path between the network terminating equipment at a customer's premises (to which a competitive operator seeks access) and a main distribution or jumper frame at the exchange of the access provider, which enables the access seeker to offer broadband services over the copper network, thereby allowing the access seeker to provide a broadband service to its customer while another electronic communications provider supplies voice services on the same line, which is therefore being “shared”;
- **“virtual unbundling of local access” or "VULA"** means the provision of an active access line by terminating the subscriber line on the optical line termination (OLT) equipment of the access provider, with the access seeker able to connect directly to this equipment at local exchange level where, similar to LLU, the handover will take place and therefore avoid the access provider's aggregation network.

- **“bitstream access”** means a wholesale product consisting of the DSL part (access link) and “backhaul” services of the (data) backbone network (ATM, IP backbone) enabling access seeker to offer their own value-added services to end users with the capability to differentiate their services by altering (directly or indirectly) technical characteristics and/or the use of their own network;

**Provisions relating to Passive Backhaul Infrastructure (See regulation 6)**

- ▶ The Commission upon ECTEL’s recommendation, may require a SMP Licensee to make available passive backhaul infrastructure to other Licensees.
- ▶ There were three grounds for introducing this new obligation:
  - The expected growth in data traffic and required data speeds significantly increase the need for high speed backhaul solutions given
  - Only vertically integrated operators in fixed and mobile markets are able to economically provide backhaul solutions; and,
  - The potential Significant Market Power of a specific Licensee in a wholesale market for backhaul access to underground facilities such as ducts, as well as to dark fiber.

**Provisions relating to Special Wholesale Service (See regulation 7)**

- ▶ Special wholesale services shall consist of of the components and functions of a total retail service offered by a SMP Licensee, and any related services necessary for other Licensees to economically provide an equivalent retail service to end-users that is competitive with the total retail service of the SMP Licensee, and which the other Licensees cannot economically supply themselves or obtain from a public network operator other than the Significant Market Power Licensee.
- ▶ Pursuant this regulation, the Commission, acting upon ECTEL's recommendation, may require a SMP Licensee to make available special wholesale services at discounted prices from the retail prices at which it offers the retail service.
- ▶ It is worth noting that this obligation already exists in the current Telecommunication (Wholesale) Regulations enacted in Grenada and ST Lucia.

**Dedicated Connections and Capacity (wholesale leased lines) (See regulation 8)**

The provision of wholesale dedicated connections and capacity correspond to leased lines provision. These leased lines are generally used for the development of operators’ own internal networks,

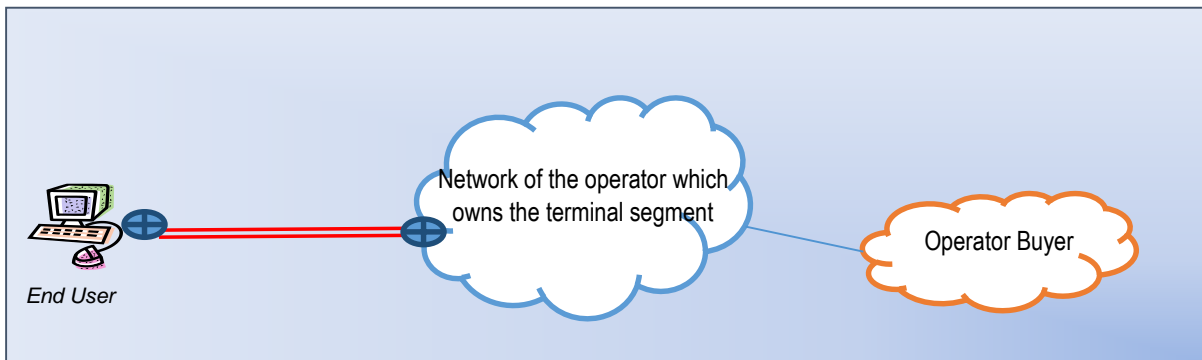
including connections between elements of mobile access networks, and for support to provide competitive leased lines or other services in wholesale and retail markets.

The Commission, acting upon ECTEL's recommendation, may require a SMP Licensee to make available leased lines provided at the wholesale level on the following two segments of their network:

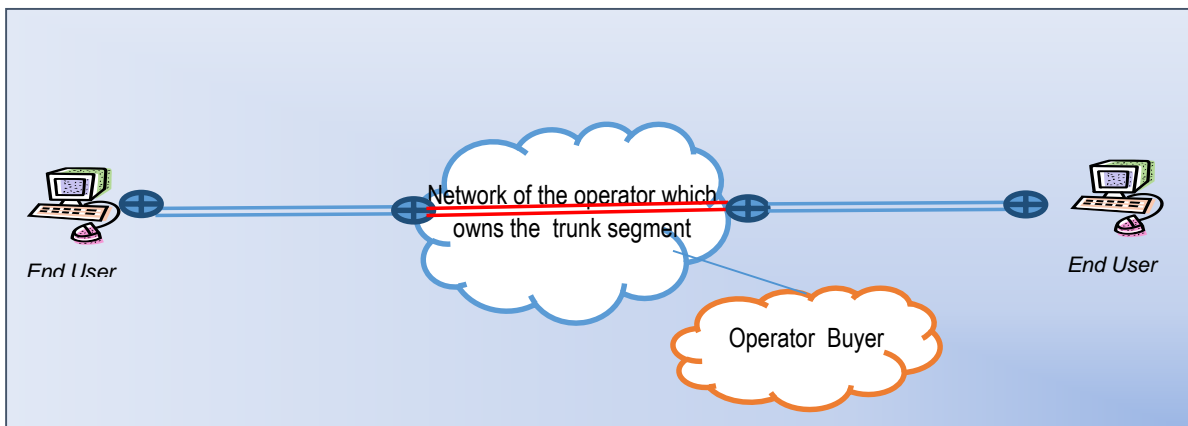
- a) terminal segments; and
- b) trunk segments.

Those wholesale services are usually represented as follows:

### Terminal segment of a leased line



### Trunk segment of a leased line



**Obligations on Licensees may be required to provide access to infrastructure and/or wholesale services (See regulations 9 to 13)**

- ▶ Where, following a market analysis, one or several Licensees are designated as having SMP in any of the markets related to the above network infrastructure and wholesale services the Commission may impose the following obligations:
  - **Transparency obligations** – a SMP Licensee may be required to publish a Reference Access Offer providing the terms and conditions on which the Licensee subject to the access obligation proposes to enter into an agreement to provide access including price information, technical specifications and network characteristics;
  - **Non-discrimination obligations** a SMP Licensee may be required to apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services to other Licensees' services and information under the same conditions and with the same quality as those that they provide for their own services or those of their subsidiaries or partners;
  - **Accounting separation obligations** in relation to specified activities related to access;
  - **Access obligations**, such as the obligation to -
    - give third parties access to specified elements or specific network resources, including all associated elements or network resources required to ensure that such specified access is effective;
    - negotiate in good faith with undertakings requesting access;
    - not withdraw access to facilities already granted;
    - grant open access to technical interfaces, protocols or other technologies that have a vital importance for the interoperability of services;
    - provide for mandatory co-location or other forms of associated access to passive infrastructure such as underground ducts, dark fiber, towers, supporting structures and facilities at base stations, central offices, or network distribution points, which shall be provided on a transparent and non-discriminatory basis at cost-oriented rates;
  - **obligations relating to price controls**, including obligations for cost-oriented prices or rates;
  - Any other terms that the Commission upon ECTEL's recommendation determines.
- ▶ Regulations 10 to 13 describe in more detail each one of the above obligations and the conditions of their implementation.

**Disputes regarding Access (See regulation 14)**

- ▶ Where, there is a dispute relating the conclusion or the execution of an access agreement, one or both of the parties may submit a dispute to the Commission.
- ▶ The Commission may refer the matter to ECTEL for an opinion; or with the consent of the parties, refer the matter to ECTEL for mediation.
- ▶ If the ECTEL led mediation fails, any of the parties to the dispute may lodge a petition with the Commission to resolve the dispute under the rules set out in the Dispute Regulations, the Interconnection Regulations and in any other relevant law shall be applicable.

**Repeal of the existing regulations (See regulation 18)**

- ▶ The Telecommunication (Wholesale) Regulations 200[●] enacted in Grenada and ST Lucia are repealed.