

*Telecommunications (Retail Tariff) Regulations***SAINTLUCIA**

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SAINT LUCIA

STATUTORY INSTRUMENT, 2005, No. 69

[23rd May, 2005]

In exercise of the powers conferred by section 74 of the Telecommunications Act 2000, No.27 of 2000, the Minister responsible for Telecommunications makes the following Regulations:

PART I
PRELIMINARY**Citation**

1. These Regulations may be cited as the Telecommunications (Retail Tariff) Regulations 2005.

Commencement

2. These Regulations shall come into force on the date of its publication in the *Gazette*.

Interpretation

3. In these Regulations —

“business day” means a day that falls on a Monday, Tuesday, Wednesday, Thursday or Friday, except where such day is a public holiday in Saint Lucia;

“combination service” means a combination of telecommunications services provided by a telecommunications provider under a combined rate or rate formula where the offering of one or more services within the combination is contingent on acceptance of the entire combination and comprising-

- (i) one or more regulated services and one or more unregulated services; or
- (ii) two or more regulated services;

“major supplier” means a telecommunications provider that is designated as a major supplier under regulation 6(5);

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“price cap plan” means an incentive-based method for regulation of the rates charged by a telecommunications provider for one or more regulated services, and may include other provisions as to the rates, or the maximum or minimum rates, terms and conditions for any such regulated service;

“regulated service” means a telecommunications service that is designated by the Commission as a regulated service under regulation 6 or deemed to be a regulated service under regulation 43;

“tariff” means the rates, terms and conditions applicable to a regulated service;

“unregulated service” means a telecommunications service that is not a regulated service.

PART II
GENERAL

Application

4.—(1) These Regulations apply to telecommunications services that a telecommunications provider provides or offers to provide to one or more customers that are members of the general public.

(2) These Regulations do not apply to interconnection services or wholesale telecommunications services that a telecommunications provider provides or offers to provide to another telecommunications provider as contemplated by the Telecommunications (Interconnection) Regulations 2002.

(3) Except in relation to rates, nothing in these Regulations shall be interpreted to override the provisions in a telecommunications provider’s licence relating to terms and conditions for specified telecommunications services.

Objectives

5. The following objectives shall guide the Commission, ECTEL and telecommunications providers in the application of these Regulations—

(a) the availability of reliable, affordable and high quality telecommunications services throughout the country should be fostered;

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- (b) the interests of consumers, particularly low income consumers, should be safeguarded;
- (c) wherever practical, reliance on market forces in the provision of telecommunications services should be encouraged;
- (d) regulation, where required, should be efficient and effective;
- (e) the rates, terms and conditions for regulated services should be just and reasonable, not unreasonably discriminatory and not anti-competitive;
- (f) price regulation for regulated services should take account of the interest of telecommunications providers in earning a fair return on prudently made investment; and
- (g) telecommunications providers should be encouraged to operate efficiently.

PART III

DESIGNATING REGULATED AND UNREGULATED SERVICES

Designating regulated services

6.—(1) Subject to the following sub-regulations, where the Commission determines that a telecommunications service provided by a telecommunications provider is not subject to a degree of competition that is sufficient to protect the interests of customers, the Commission may designate the telecommunications service as a regulated service.

(2) No designation under sub-regulation (1) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

(3) A telecommunications service shall be deemed to have been designated by the Commission as a regulated service where the telecommunications provider consents in writing to the designation, and files a copy of the consent with the Commission.

(4) A consent under sub-regulation (3) may contain conditions as to its application, and where it does, such consent shall not be effective until the Commission accepts those conditions.

(5) A telecommunications provider that provides a regulated service shall be designated as a major supplier for the purposes of these Regulations, unless the Commission exempts a telecommunications provider from such a designation.

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(6) Within 30 days of the designation by the Commission that a telecommunications service is a regulated service, or such other time period as the Commission may specify, the telecommunications provider shall file a tariff applicable thereto with the Commission for approval and provide a copy to ECTEL.

(7) A proceeding for a determination under sub-regulation (1) may be initiated by any person or by the Commission of its own motion.

Designating unregulated services

7.—(1) Subject to the following sub-regulations, where the Commission determines that a regulated service provided by a telecommunications provider is or will be subject to a degree of competition sufficient to protect the interests of customers, the Commission shall designate that telecommunications service as an unregulated service.

(2) Subject to sub-regulation (3), the Commission may make a determination that a telecommunications service is an unregulated service where the Commission finds as a question of fact that to do so is consistent with the objectives in regulation 5.

(3) No determination under sub-regulation (1) or (2) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

(4) A determination under sub-regulation (1) may be initiated by any person or by the Commission of its own motion.

Change of designation not precluded

8.—(1) A designation of a telecommunication service as a regulated service under regulation 6 does not preclude the subsequent determination by the Commission under regulation 7 with respect to the same telecommunication service.

(2) A determination by the Commission under regulation 7 does not preclude subsequent designation under regulation 6 with respect to the same telecommunication service.

Treatment of unregulated services under a price cap plan

9. Where the Commission makes a determination under regulation 7 that a telecommunications service included in a price cap plan is an unregulated service, the Commission shall remove that

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telecommunications service from the price cap plan as soon as practicable and on such terms as may be specified in the price cap plan, or in the absence of any such terms, as the Commission may decide.

New telecommunications services

10.— (1) For the purposes of this regulation, a “new telecommunications service” means a telecommunications service or combination service that a major supplier does not presently provide or offer to provide.

(2) A major supplier that proposes to make available a new telecommunications service shall, at least 10 business days before providing the new telecommunications service —

(a) file with the Commission a description of the new telecommunications service, including the rates, terms and conditions applicable thereto, and the major supplier’s assessment as to the categorization of the new telecommunications service as a regulated service or an unregulated service; and

(b) provide a copy of the description to ECTEL.

(3) In making its assessment in sub-regulation (2) —

(a) the major supplier shall categorize a new telecommunication service consistent with the categorization of its existing telecommunications services; and

(b) the major supplier shall categorize as a regulated service, a new telecommunications service that is a combination service comprising predominantly or exclusively regulated services.

(4) Without prejudice to any subsequent designation under regulation 6, or subsequent determination under regulation 7, the Commission shall be deemed to have accepted the categorization of the new telecommunications service, as assessed by the major supplier, unless, prior to the end of the 10 business day period referred to in sub-regulation (2), the Commission, subject to subsection (6), determines an alternative categorization.

(5) The major supplier may file the information required to be filed pursuant to this regulation on an ex parte basis, and the Commission and

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ECTEL shall not disclose such information until such time as the Commission has made a determination of the categorization of the new telecommunications service.

(6) No determination of an alternative categorization under sub-regulation (4) shall be made unless ECTEL makes a recommendation to the Commission to that effect.

PART IV
REGULATED SERVICES

General

11. No telecommunications provider shall provide a regulated service except in accordance with a tariff filed with and approved by the Commission.

Substitution of rates, etc

12. For the purposes of this Part, the Commission may determine any matter and make any order relating to tariffs and the Commission may substitute rates, terms and conditions for those in effect or applied for.

Rates for regulated services to be just and reasonable

13. Every rate charged by a major supplier for a regulated service shall be just and reasonable.

Tariffs not to be anti-competitive

14. No provision of a major supplier's tariff shall be anti-competitive.

Discontinuation of regulated service

15.— (1) A major supplier shall not discontinue the provision of a regulated service unless the major supplier has applied for and has received the prior approval of the Commission where that regulated service is specified in a price cap plan as requiring the Commission's approval for discontinuation.

(2) An application to discontinue a regulated service in accordance with sub-regulation (1) shall be deemed to be approved if the Commission neither approves nor denies such application within 60 days of the application being filed and a copy provided to ECTEL.

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(3) A major supplier shall give the Commission and customers of the service 60 days notice of its decision to discontinue the provision of a regulated service which is not specified in a price cap plan as requiring the Commission approval for discontinuation.

(4) Subject to sub-regulation (1), a major supplier shall give the Commission 15 days notice of its decision to no longer offer an existing regulated service to new customers.

Applications related to tariffs for regulated services

16. Except as provided under regulation 22 or 25, a telecommunications provider that proposes to establish or change the tariff for a regulated service shall, at least 30 days before the tariff or change in tariff is to come into effect;

- (a) file an application with the Commission;
- (b) provide a copy of the application to ECTEL; and
- (c) in accordance with regulation 29 provide notice of the application, and a summary of its contents, to customers.

Applicant to file further information

17. The Commission or ECTEL, or both, may, require that the telecommunications provider to file further information relating to its application.

ECTEL recommendation to Commission

18. ECTEL may, within 30 days of receipt of the application under regulation 16 or within 10 days of receipt of the further information required under regulation 17, whichever is later, make recommendation to the Commission, and the Commission shall, as soon as practicable, provide a copy of such recommendation to the telecommunications provider.

Commission approval of r.16 application

19.— (1) Subject to sub-regulation (2), the Commission may approve or disapprove an application made pursuant to regulation 16 and shall give notice in writing to the telecommunications provider of its approval or disapproval.

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(2) Where the Commission approves an application under regulation 16, and the Commission substitutes one or more rates, terms and conditions for those in the telecommunications provider's application, such approval is conditional on the telecommunications provider filing its acceptance to the substitution with the Commission within 3 business days after the Commission's approval.

Application for change in rate for regulated service

20. Notwithstanding regulation 13, but subject to regulation 26, the Commission shall approve as filed an application under regulation 16 to change the rate to be charged for a regulated service, where the proposed change complies with a price cap plan approved by the Commission.

Deemed approval of increase in rate for service

21. The Commission shall be deemed to have approved an application to increase the rate charged for a service subject to a price cap plan, where it neither approves nor denies the application within 45 days of filing.

Application to decrease regulated service rate

22. A telecommunications provider that proposes to only decrease the rate charged for a regulated service shall, at least 3 business days before the reduced rate is to come into effect —

- (a) file an application with the Commission; and
- (b) provide a copy of the application to ECTEL.

Deemed approval of decrease in rate for regulated service

23. The Commission shall be deemed to have approved an application under regulation 22 if the Commission does not approve or disapprove the application within 3 business days after the application is filed with the Commission and a copy provided to ECTEL.

ECTEL recommendation for change in tariff

24.— (1) Where ECTEL considers that a major supplier's tariff is not just and reasonable, ECTEL may recommend to the Commission that the major supplier's tariff be changed, and the Commission shall, as soon as practicable, provide a copy of such recommendation to the telecommunications provider.

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(2) Subject to subregulation 26, the Commission shall not change the rate charged for an existing regulated service, where the existing rate complies with a price cap plan approved by the Commission.

Market trials

25.— (1) A telecommunications provider may conduct a market trial or short term promotion for a regulated service or a combination service without prior approval of the Commission, provided that —

- (a) the market trial or short term promotion does not exceed 90 days in duration;
- (b) the market trial or short term promotion is not similar to a market trial or short term promotion that concluded less than 120 days earlier; and
- (c) the telecommunications provider files a description of the market trial or short term promotion, and the rates, terms and conditions applicable thereto, with the Commission, and provides a copy to ECTEL, at least 10 days before the beginning of the market trial or short term promotion.

(2) The major supplier may file the information required to be filed pursuant to this regulation on an ex parte basis, and the Commission and ECTEL shall not disclose such information until at least such time as the telecommunications provider has commenced the market trial or short term promotion.

(3) The Commission may, on application or on its own motion, order a telecommunications provider not to conduct a market trial or short term promotion for a regulated service or a combination service, or may require a telecommunications provider to suspend or discontinue a market trial or short term promotion in progress where such market trial or short term promotion would be contrary to sub-regulation (1) or where the Commission determines that the market trial or short term promotion is anti-competitive.

Minimum rates for regulated services

26.— (1) A telecommunications provider shall not charge a rate for a regulated service or a combination service that is less than the long run incremental cost of providing the service, except —

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- (a) where the telecommunications provider is conducting a market trial or short term promotion where such market trial or short-term promotion is not anti-competitive; or
- (b) where the Commission determines that it is in the public interest to do so.

(2) The Commission may, upon application by ECTEL or any other person, require a telecommunications provider to demonstrate that the rate charged for a regulated service or the combination service satisfies the requirements of sub-regulation (1).

(3) Where the Commission requires a telecommunications provider to demonstrate that the rates charged for a regulated service or combination service satisfies the requirements of sub-regulation (1) —

- (a) the telecommunications provider shall file with the Commission a report demonstrating such compliance within 30 days; and
- (b) the Commission shall approve or disapprove the rates charged for the regulated service or the combination service within 30 days of the filing of the telecommunication provider's report.

(4) Where the Commission disapproves the rates charged for a regulated service or a combination service pursuant to sub-regulation (3), the telecommunications provider shall forthwith increase the rates in the manner specified by the Commission.

Price cap plan

27.— (1) ECTEL or a major supplier may develop a price cap plan applicable to the major supplier.

(2) Prior to finalizing a price cap plan for filing with the Commission, ECTEL or the major supplier, as the case may be, shall provide the other with a copy of the proposed price cap plan, and allow at least 30 days during which ECTEL and the major supplier may exchange comments on the proposed price cap plan.

(3) During the period referred to in sub-regulation (2), ECTEL and the major supplier shall make reasonable efforts to reach an agreement on the terms of the price cap plan for filing with the Commission.

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28.— (1) Following the 30 day period in regulation 27(3), ECTEL or the major supplier may file the price cap plan with the Commission for approval.

(2) Within 30 days of the filing under sub-regulation (1), the Commission shall initiate a public consultation process on the proposed price cap plan.

(3) Within 60 days of the completion of the public consultation process under sub-regulation (2), the Commission shall either approve or disapprove the price cap plan.

(4) Where ECTEL and a major supplier agree on the provisions of the price cap plan filed with the Commission —

(a) the Commission shall approve or disapprove the price cap plan within 120 days after the price cap plan is filed with the Commission, failing which the Commission shall be deemed to have approved the price cap plan; and

(b) the Commission shall not amend the price cap plan except pursuant to an application filed by ECTEL or the major supplier, where the provisions of the amendment are agreed by ECTEL and the major supplier.

(5) Where the Commission approves a price cap plan, it shall come into effect on the date established in the price cap plan, or such other date as ECTEL and the major supplier may agree, and subject to compliance with such conditions as may be specified in the price cap plan.

(6) A major supplier shall comply with all reporting, monitoring and compliance requirements specified in an approved price cap plan, or as the Commission may direct.

Notice to customers

29.— (1) Where a major supplier gives notice to its customers of an application filed with the Commission under regulation 16, the notice shall, unless the Commission directs otherwise—

(a) be published on the major supplier's website, and in a local newspaper in widespread circulation in Saint Lucia;

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- (b) briefly describe the subject matter of the application in plain language;
- (c) set out the proposed effective date of the matters described in the application;
- (d) indicate that the complete application is available for examination on the major supplier's website, and at its main office in Saint Lucia at the address stated in the notice, and at the Commission's office at the address stated in the notice;
- (e) inform customers that they may make submissions to the Commission within 15 days of the filing date, and setting out the postal, facsimile transmission and email addresses of the Commission for the filing of such submissions; and
- (f) request customers that make submissions to the Commission to provide a copy of the submissions to both the major supplier and ECTEL, and setting out the postal, facsimile transmission and email addresses of the major supplier and ECTEL.

PART V

UNREGULATED SERVICES

Changes in rates, terms and conditions

30. Subject to any specific commitment in its licence, a telecommunications provider may change the rates, terms and conditions applicable to an unregulated service without the Commission's approval.

Notice for certain unregulated services

31. Where a telecommunications provider is subject to conditions of a licence that restrict or limit the rates that may be charged for an unregulated service, the telecommunications provider shall give notice to the Commission, ECTEL and affected customers of any change in the rates, or change in the terms and conditions, applicable to the unregulated service at least 15 days before the new rates, terms and conditions come into effect.

PART VI

PETITIONS IN RELATION TO RATES, TERMS AND CONDITIONS

Filing of petition

32.— (1) Any person may file a petition with the Commission for the purpose of initiating an investigation into the rates, terms and conditions for regulated services provided by a telecommunications provider.

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(2) A petition filed pursuant to sub-regulation (1), shall —

- (a) be in writing;
- (b) state the interest of the petitioner;
- (c) specify the name of the telecommunications provider; and
- (d) specify the reasons for instituting the investigation.

(3) The Commission may reject, without further process, a petition that is frivolous, vexatious or that raises issues previously decided by the Commission.

Steps prior to issuing order

33. In response to a petition under regulation 32, the Commission may make an order suspending, cancelling, or changing the rates, terms and conditions applicable to a regulated service, but before so doing, the Commission shall —

- (a) seek the recommendation of ECTEL; and
- (b) provide the telecommunications provider with an opportunity to make submissions to the Commission in response to the petition, and to ECTEL's recommendation.

No change to rates etc approved in price cap plan

34. Subject to regulation 26, the Commission shall not suspend, cancel or change a rate, term or condition that complies with an approved price cap plan, where the provisions of the price cap plan have been agreed by ECTEL and the telecommunications provider to which the price cap plan applies.

PART VII
AVAILABILITY OF INFORMATION

Requirement to publish rates, terms and conditions

35. Unless the Commission otherwise permits, a telecommunications provider shall make the rates, terms and conditions for its telecommunications services available to the public by —

- (a) publishing in its white pages directory, if any, the rates for its regulated services and for its generally available unregulated services that are currently available at the time of publication; and

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- (b) publishing current rates, terms and conditions on its internet website for its regulated services and generally available unregulated services.

Compliance with request for information

36. A telecommunications provider shall comply with a request for information from the Commission or ECTEL including a request for information in respect of an audit.

Appointment of independent auditor

37. The Commission may appoint an independent auditor to conduct audits into information provided by a telecommunications provider, in order to verify the accuracy of the information so provided.

Auditor to submit report

38. An auditor who is appointed pursuant to regulation 37 shall provide the Commission and the telecommunications provider with a report containing the conclusions and reasons for its findings.

Notification of reports

39. Where the Commission is in receipt of an audit report which discloses that certain information provided by the telecommunications provider is inaccurate or incomplete, the Commission shall provide to the telecommunications provider —

- (a) a copy of the report, including the findings of the auditor and the reasons for those findings;
- (b) notice of the action which the Commission proposes the telecommunications provider must take to remedy the inaccuracy or incompleteness;
- (c) notice of any additional action that the Commission intends to take; and
- (d) an opportunity to respond to the notice and the required time frame for such response.

PART VIII
ADMINISTRATION

Orders

40. The Commission may order a telecommunications provider, at or within any time and subject to any conditions that it determines, to do

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anything the telecommunications provider is required to do under these Regulations, and may forbid a telecommunications provider from doing anything the telecommunications provider is prohibited from doing under these Regulations.

Timing

41. The Commission may extend the period of time, whether fixed by these Regulations or otherwise, for doing anything required or permitted to be done pursuant to these Regulations, or in proceedings before the Commission or under its decisions.

Disapproval of application

42. Where the Commission makes an order disapproving an application filed under these Regulations, except pursuant to a petition filed under regulation 32, it shall —

- (a) issue the order in writing;
- (b) state the reasons for the disapproval;
- (c) endeavour to issue the reasons at the time of the order, but in no event later than 21 days thereafter;
- (d) send the order to the applicant on the date of issue;
- (e) send the reasons as soon as they are issued; and
- (f) publish the order and reasons on the Commission's website and in the *Gazette*.

Services deemed regulated

43. Where, as of the date of these Regulations coming into force, a major supplier and ECTEL have agreed on a price cap plan, all services designated as regulated in that price cap plan shall be deemed to be regulated services for the purposes of these Regulations, and all services designated as unregulated in that price cap plan shall be deemed to be unregulated services for the purposes of these Regulations.

Services deemed approved

44.— (1) As of the date of these Regulations coming into force, the regulated services referred to in regulation 43 shall be deemed approved hereunder, shall continue as regulated services under these Regulations at the rates, and subject to the terms and conditions, in effect at the date that these Regulations come into force.

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(2) Nothing in this regulation 44 shall derogate from a major supplier's obligations to make price changes in accordance with a previously approved price cap plan.

Approved price cap plan saved

45. A price cap plan that is approved by the Commission before these Regulations come into force shall continue as an approved price cap plan under these Regulations.

Price cap plan application saved

46. Where an application for approval of a price cap plan is filed with the Commission before these Regulations come into force, the Commission shall remain seized of the application under these Regulations at the date that these Regulations come into force and as if filed under these Regulations.

Filed price cap plan saved

47. Where ECTEL and a telecommunications provider agree on the provisions of a price cap plan that is filed with the Commission before these Regulations come into force, the provisions of the price cap plan shall be considered as agreed by ECTEL and the telecommunications provider under these Regulations.

Revocation

48. The Telecommunications (Tariff) Regulations 2002, Statutory Instrument No. 16 of 2002 is revoked.

Made this 10th day of May, 2005.

FELIX FINISTERRE,
Minister responsible for Telecommunications.