

**CABLE & WIRELESS LIMITED, dba FLOW
COMMENTS ON**

**THE CONSULTATION DOCUMENT “MARKET ASSESSMENT OF
REGULATED AND UNREGULATED RETAIL SERVICES AND PROPOSED
RECOMMENDED REGULATORY MEASURES”**

**ISSUED BY THE EASTERN CARIBBEAN TELECOMMUNICATIONS
AUTHORITY ON 28 AUGUST 2020**

30 October 2020

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I. Introduction

1. Cable & Wireless Ltd, trading as FLOW (“**FLOW**”) appreciates the opportunity to submit comments on the Consultation Document “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Regulatory Measures” (the “**Consultation Document**”), issued by the Eastern Caribbean Telecommunications Authority (“**ECTEL**”) on 28 August 2020.
2. Failure to address an issue raised by ECTEL in the Consultation Document should not necessarily be construed as FLOW’s agreement with the position taken by ECTEL on that issue.
3. In this document, we wish to make six basic points:
 - i. ECTEL’s market assessment of competition is incomplete and flawed. Its conclusions, as they were in the previous price cap review, continue to hinge on the logically strained and now-outdated contention that mobile telephony is an ineffective substitute for fixed access and fixed calling services. Furthermore, while ECTEL’s assessment finds robust competition for a myriad of business broadband services, such as high-speed private least circuits (domestic and international) and high-speed data services, it does not consider how this competition influences, constrains or contests competition in the related (arguably functional equivalent) market for broadband Internet access.
 - ii. FLOW appreciates that ECTEL has legitimate concerns about protecting the small subset of consumers who may be less able to access or benefit from the radically

changing broadband landscape and myriad of mobile and OTT alternatives on offer. However, the regime ECTEL proposes for these safeguarding consumer interests are unnecessarily broad, heavy handed and inefficient. Therefore, FLOW sets out an alternative to ECTEL's proposals where improvement is possible that is targeted and achieve ECTEL's objectives more efficiently.

- iii. The Basic Broadband Offer obligation is unfairly asymmetrically imposed. FLOW believes that should Digicel enter the market in a significant degree as measure by the Automatic Adjustment Mechanism, then either the obligation should be lifted from FLOW or imposed symmetrically on Digicel.
- iv. If ECTEL chooses to persist with over-broad retail price regulations at this time, then there are two procedural proposals we believe should be modified:
 - a. The start of the price cap regime should be 1 April 2020, rather than 1 January 2019 to simplify administration; and
 - b. The length of the price cap period should be reduced from four years to three years (with an option for a maximum one-year extension), as much is likely to change in the near term with the advent of 5G, Digicel's subsidized roll-out of broadband infrastructure in the overlap markets, and the relentless march of OTT alternatives in a wide range of service markets.

- v. FLOW appreciates ECTEL's acknowledgement that the additional guidelines it is proposing are not *ex ante* regulations *per se*, but consumer safeguards applicable to any mobile operator irrespective of its market power or lack thereof. There are some practical issues that FLOW faces in the implementation of these safeguards, so we propose the following modifications:
 - a. if, for technical reasons, a licensee cannot notify a retail customer in real time that they are approaching the end a bundle limit for roaming or using a mobile service or roaming out-of-bundle and associated rates of the service, then licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the he or she signs up for a new allotment, i.e., another service bundle; and
 - b. The licensee should have flexibility regarding threshold levels for notification of approaching bundle limits.
 - vi. FLOW urges ECTEL to discuss further modifications to its mobile consumer safeguards with the industry before it makes a determination. Without further consultation, ECTEL risks imposing suboptimal and infeasible requirements on service providers.
4. The remainder of this document is organized as follows. In Section II, we comment on certain procedural aspects of the Consultation; in Section III, we explain why ECTEL's

market power analysis is substantially flawed; in Section IV we respond to ECTEL's proposals on the New Retail Price Regulation Regime (New RPRR); and in Section V, we respond to ECTEL's proposals for the guidelines for the reviewable unregulated services.

5. Please direct any questions you may have on these comments to:

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II. Comments on the Consultation Process

6. C&W has two introductory comments regarding the process of the current proceeding. The first concerns the approach ECTEL has undertaken in its review of regulated services; the second concerns the nature of the agreement that ECTEL has sought in relation to the price regime for regulated services.
7. With respect to the nature of ECTEL's review of regulated service markets, ECTEL has explicitly stated that its review of the markets undertaken as part of this proceeding is NOT meant "to review existing dominance designations in Regulated Service markets or establish any new dominance designations in the Reviewable Unregulated Service markets, but rather to determine whether existing PCP regulations in the former case should be modified or eliminated in whole or part and whether any specific consumer safeguards are necessary in the latter case" (page 5, second paragraph under chapter 3 of the Consultation Document).
8. A typical review of a regulatory regime, as, for example, found in Europe, would include: (1) a review of the definition of markets, (2) a consideration of whether the markets are susceptible to ex ante regulation¹, (3) a measurement of dominance (or significant market

¹ In the EU context "susceptibility" is determined on the basis of the "Three Criteria Test" (See Article 7 and Article 7a of the Electronic Communications Framework Directive - 2002/21/EC). A market is "susceptible" to ex ante regulation, if

power) in each of those markets, and finally (4) a determination of the appropriate ex ante regulation for those markets that exhibit a susceptibility to ex ante regulation and dominance. A reader would be excused for thinking that ECTEL's statement of its intention NOT to review the designations would mean that, for this proceeding, ECTEL is saying that it is taking steps (1) through (3) as given and is only focusing on step (4). That is to say, ECTEL is taking the market designations of dominance for regulated services, which involves a definition of what those markets are, a decision that they are susceptible to regulation and a measure of market power, as given and focusing the appropriate ex ante regulation.

9. Although procedurally awkward, C&W understands why ECTEL would take this approach of leaving the designations as they are and would not disagree with the approach in and of itself.
10. However, this is NOT in fact what ECTEL does in this proceeding. ECTEL IS going through the exercise of defining markets (1), reviewing susceptibility (2) and assessing dominance (3). Chapter 3 is devoted exclusively to this purpose.

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- 1) High and non-transitory structural, legal or regulatory barriers to entry are present;
 - 2) Market structure does not tend towards effective competition within the relevant time horizon, having regard to the state of competition behind the barriers to entry;
 - 3) Competition law alone is insufficient to adequately address market failure(s) concerned.

11. A confused reader might then pose the question, but what happens if, when conducting its review of markets, ECTEL determines that dominance does not exist in any of these markets? How will it square that with the existing designations?
12. Happily for ECTEL, it avoids this potential inconsistency and concludes that the existing designations of dominance are in fact correct.
13. Indeed, despite the evolution in markets over the past 16 years, in every price cap proceeding ECTEL makes that same statement, i.e., that it is not reviewing the unchanged dominance designations, yet conducts an assessment and arrives at the same conclusion that the designations are correct. The reader would be excused (a third time) for wondering if there was something amiss here: aren't the conclusions of the market assessment pre-determined by the premise that the designations must remain unchanged?
14. C&W believes that the ECTEL must change its approach. It must explicitly acknowledge that the existing designations are almost two decades old and may not accurately describe the situation today. Then, ECTEL must drop its insistence that it is NOT undertaking a review of those designations and undertake a proper review of the existing designations. If ECTEL does not do so, how and when would these designations be adjusted to reflect actual market considerations?
15. With respect the C&W's role in discussing the regulatory regime, as ECTEL sets out in paragraph 3 of the Introduction, "[p]ursuant to the legal requirements set out in Section 2, ECTEL undertook a process to reach an agreement with C&W on ECTEL's draft market

assessment and proposed New RPPR [new retail price regulation regime] for C&W's Regulated Services.” This is true; however, although the proposed new RPPR does have some improvements, C&W does not agree that this regime is optimal. It is still flawed and overly burdensome. Our comments in the next section detail our view on the New RPPR.

III. ECTEL'S Flawed Market Analysis

16. ECTEL's analysis of competition is heavily reliant on its assertion that mobile services are not a substitute for C&W's fixed services. This conclusion is the basis for ECTEL's decision to apply regulation on FLOW's fixed access, fixed domestic calling and fixed broadband services. ECTEL gives four arguments as to why it cannot accept this substitutability. We comment on each of these in turn:

(1) *“fixed access services do not provide the capability of mobility, which is the primary distinguishing feature of mobile access services.”*

17. This argument is irrelevant. ECTEL's statement confuses the focal product and direction of substitution. The question is whether mobile telephony can substitute for fixed telephony, not the other way round. The nature of asymmetric substitution was discussed extensively a decade ago², and means that this argument is relevant only if one is

² See, for example, BEREC report on Impact of Fixed-Mobile Substitution in Market Definition (2011)

considering substitutes for mobile access. Since we are evaluating fixed-location access, the fact that fixed access does not provide mobility is by definition irrelevant.

(2) *“mobile service plan prices generally tend to be higher than fixed service prices and, as result, limit their substitutability with fixed access and calling services.”*

18. These relative price levels are not dispositive as mobile access includes more features and function than fixed access. By analogy: a smartphone is more expensive than an mp3 player (or digital camera or calculator). However, it is incontrovertible that smartphones substitute for mp3 players and explain the decline of the stand-alone mp3 market.

19. Furthermore, with respect to both telephony and broadband, mobile service can be less expensive than fixed. This is especially the case for low-usage consumers who should be the customer segment of most concern to ECTEL.

(3) *“while mobile penetration has increased significantly in the MS (as elsewhere), fixed penetration has remained relatively stable.”*

20. This argument would be relevant to access only, not calling from a fixed line, but note this statement is contradicted elsewhere in the document where ECTEL concludes that the fixed access market is “in a state of gradual long-term decline” (Section 4.1, p. 12).

(4) *“survey evidence in the Caribbean region suggests that consumers tend to consider fixed and mobile services as complements rather than substitutes.”*

21. This statement is based on a C&W survey of fixed to mobile substitution in Turks and Caicos from December 2012. While we do not agree with ECTEL’s reading of the results of that survey, the results are clearly now stale.

22. More generally, we believe that, in its attempt to maintain a narrow definition of markets for fixed services, ECTEL denies the obvious direct influence of mobile telephony on fixed services, especially in the ECTEL member states where mobile penetration exceeds 100 percent and is, by far, the predominant mode of communication.

23. Beyond the flaws in these arguments that it puts forth to deny substitutability, ECTEL analysis:

- **Ignores the fact that no company-specific data it presents backs up the assertion of market power.** In all markets but fixed broadband, service revenues, volumes or prices are flat or decreasing. ARPU is either declining or unavailable. Profitability data is not provided.
- **Relies on an artificial distinction between “direct” and “indirect” substitutes.** In particular, ECTEL admits that so-called “indirect” competitive pressures from outside the market constrain market power. From an economic point of view it is not clear what the distinction is between “direct” and “indirect” pressures. This distinction between direct and indirect rivalry is artificial and appears fabricated only to allow

ECTEL to narrow the definition of market. Thus, apparently in each fixed service market only identical services can act as “direct” substitutes. In ECTEL’s paradigm, mobile or OTT VOIP services are, necessarily, “indirect” substitutes and, therefore, implicitly exert less competitive constraint. The distinction between “direct” and “indirect” are ultimately, not based on economic principles, but appear to arise from the need to conform to existing regulatory designations. The distinction is therefore contrived and should be done away with.

- **Ignores contestability in markets**, where entry can be low-cost due to existing alternative networks that need only “light up” offerings to compete. Thus, ECTEL, for example, ignores the contestability of pre-existing mobile networks capable of rapidly rolling out fixed wireless products. Similarly, this lack of consideration of contestability appears within the fixed services markets. So, In the markets for DPLCs, IPLCs and data (#6-8) ECTEL concludes that C&W faces competition across all MSs. In fact, in the data market, ECTEL concludes there is significant competition with Digicel’s market share exceeding C&W’s in each MS. However, in the broadband market #4, ECTEL concludes that C&W holds a monopoly in the three overlap markets. As the facilities to provide the former services are sufficient and effectively the same as the facilities required to provide the latter service, at minimum ECTEL should have found the latter market contestable. That is, were C&W to exploit its alleged market power in market #4, competitors in markets #6-8 could easily deploy there facilities to contain undercut excessive pricing.

- **Disregards relevant recent and imminent trends in ECTEL markets.** Although it has captured the imminent, government-subsidized entry of Digicel into the fixed markets in the overlap markets of Grenada, St. Lucia and St. Vincent & the Grenadines under the auspices of the World Bank’s CARCIP project, it misses others. For example, OTT VOIP has expanded beyond international services. OTT offerings have also become effectively turn-key solutions for the consumer, designed as device-neutral and device-converged, so much of the OTT functionality is available on both fixed and mobile platforms. This has contributed to the increased irrelevance of the mobile vs. fixed market distinction. Platform design has also meant that it can be easier and more convenient to use OTT applications for domestic voice as well as international voice. The breadth of functionality within the WhatsApp application, for example, means a user can accomplish communications tasks more effectively than using traditional separate calling, SMS, emailing and content applications. In this context, it is unclear how, as ECTEL implies, VoIP apps (which are agnostic to the geography or distance of a call) can provide competitive constraint in international but not domestic.

IV. ECTEL'S Proposed Retail Price Regulation Regime

A. It is time to replace the price cap regime for something more appropriate

24. It is time for ECTEL to acknowledge that prices for the services it has deemed non-competitive a) have not been raised to anything close to the allowable price increase specified in the previous Price Cap Plan and, indeed, b) are below the aggregate inflation over the period, i.e., they decreased in real terms. In other words, it is time to conclude that the price control is not act a binding constraint on prices of these regulated services.
25. Given this, ECTEL should then ask itself, if the price cap has not been the binding constraint on these services, what was? The obvious and correct answer is competition. In particular that fixed voice services are actually not provided in a “non-competitive” market, they belong to a larger, competitive market.
26. But beyond this, ECTEL should recognize a different approach is necessary. FLOW acknowledges there may be a number of customers who continue to rely on these fixed telephony services, but for whom mobile services are not a realistic practical alternative. However, the use of a price cap for all fixed voice services is and over-broad tool to protect these consumers. A targeted requirement to provide fixed line access to the homes of low-income elderly would be far more effective at dealing with this concern and spare the industry the expense of these price cap proceedings and the associated implementation.

B. Interconnection Pass-Through Proposal

27. FLOW believes that the specific interconnection pass-through proposal is flawed in numerous ways. Firstly, competitive pressure exists on fixed calling. Fixed and mobile broadband OTT VOIP applications and traditional mobile calling services in general are used as substitutes for this service. Because of this competitive pressure, prices will be reduced to their cost level by the market. Any cost benefit arising from the termination rate proceeding will be utilized to lower prices and/or offer more promotions and discounts to address the relative lack of attractiveness of the fixed calling service vis-à-vis mobile substitutes.
28. Secondly, even if ECTEL does not believe that competition will produce a pass-through effect, ECTEL has not demonstrated that the reduction in termination rates will lead to above normal profits for this service. As we have noted the fixed telephony service is low-profit, if not loss-making, and volumes are in decline. It would be simply bad regulatory policy to impose a reduction of retail revenues without understanding the profitability of the overall service.
29. Thirdly, and relatedly, prices for fixed telephony services – access and calling – are set jointly. The traditional two-part pricing model, for example, has access sold at something of a loss to encourage customers to join the network and calling services earning above normal profits. Thus, fixed calling is not actually provided as a self-standing service, it is provided together with fixed access, so any profitability analysis would have to be

conducted over the fixed telephony bundle to be lead to informed regulatory decisions. A forced reduction in retail fixed originated calling rates without consideration of the impact on the profitability of fixed services overall would be bad policy.

30. The best policy option for ECTEL is simply to acknowledge that fixed calling like mobile calling is subject to competitive pressures and drop the entire notion of pass-through.

C. An Affordable Fixed Broadband Offer

31. Another objectionable proposal that ECTEL is adding to its traditional plan is that of mandating and capping the price of FLOW's "basic" residential broadband service in the overlap markets of Grenada, St. Lucia and St. Vincent & the Grenadines. We believe that this proposal is unnecessary due to the existing competitive pressure of mobile broadband, the related competition for broadband services, such as data, DPLC and IPLC, and the impending deployment of Digicel's subsidized fixed network in these markets. There is sufficient competition and contestability to prevent excessive pricing.

32. However, the very minimum ECTEL should acknowledge that this regulation imposed on FLOW would be unfair in light of significant market entry into this space by Digicel. FLOW believes that should Digicel enter the market in a significant degree as measure by the Automatic Adjustment Mechanism, then either the obligation should be lifted from FLOW or imposed symmetrically on Digicel.

D. Procedural Proposals

33. Of the procedural proposals ECTEL sets out in Section 5 of its Restricted Consultation Document, there are two with which FLOW takes issue.

- a) ECTEL proposes a three-month bridge period for the price cap regime starting from 1 January to get us to a yearly price cap period of 1 April to 31 March. ECTEL has employed bridge periods before, which resulted in confusion about application and unnecessary additional reporting. We therefore propose that we simply start the price cap regime from 1st April of 2020. We note that the change of regime has been delayed for more than a year already with no ill effects on the market. Delaying the implementation for an additional quarter will not result in any detrimental effect and will make administration much more straight-forward.
- b) The length of the price cap period should be reduced as much is likely to change of the next few years in the telecommunications market with the advent of 5G, Digicel's subsidized roll-out of broadband infrastructure in a number of the ECTEL markets and the relentless march of OTT players in a wide range of service markets.
- c) We agree and welcome the elimination of the Enhanced Allocation Model results and reports.

V. ECTEL's Proposed Mobile Safeguards

34. ECTEL is proposing four mandatory mobile consumer safeguards to be implemented by service providers.³ These are safeguards that C&W generally supports, and indeed, would have implemented before except that, as described, most are not technically possible at this time.

35. We will briefly discuss each of the safeguards, their technical feasibility and C&W's alternative safeguards that differ from ECTEL's proposal, but, we believe, achieve ECTEL's objectives of consumer protection. Having done this for the four safeguards, we provide specific language changes to ECTEL's proposed guidelines.

36. Safeguard 1. In-bundle National Usage Limit Notification

- ECTEL Proposal: Users are to be notified by their service provider as they approach 80% and at 100% of their national usage allotment limits, i.e., the specific voice, SMS and/or data national usage allotments and plan durations included in their national prepaid and postpaid plans.
- Status and Feasibility: C&W generally⁴ provides such notices to their subscribers already at the 75%, 95% and 100% levels. C&W is already meeting the notification requirement.
- C&W Proposal: C&W will continue its existing practice of notification at the 75%, 95% and 100% levels.
- Implication for ECTEL's specification of Safeguard: None, except to change the specified notification levels.

³ We note that in the Consultation Document ECTEL describes these as six safeguards but, practically speaking, they boil down to four.

⁴ For post-paid subscribers, credit limit must be in place for notifications to be made.

37. Safeguard 2. In-bundle Roaming Usage Limit Notification (same as Safeguard 1, but for Roaming)

- ECTEL Proposal: Users are to be notified by their service provider as they approach at 80% and at 100% of their roaming usage allotment limits (if any)
- Status and Feasibility: C&W generally does not provide such notices to their subscribers. In many cases, C&W is reliant on third party input to calculate such roaming usage, which does not allow for real-time notifications. In such instances, it is not technically feasible to notify, so C&W cannot comply with this requirement as written.
- C&W Proposal: In order to prevent subscribers from roaming rate shock, C&W will no longer default consumer usage to an out-of-bundle plan, but rather discontinue offering the service until and unless the user purchases a bolt-on product for additional roaming. Thus, the user will be notified *at the time of taking the service, and as part of the user agreement*, that he or she will have the responsibility to make a choice between 1) no roaming service or 2) purchasing an add-on after the bundle is exhausted.
- Implication for ECTEL's specification of Safeguard: Safeguard should specify that if the service provider cannot notify the user as they approach or reach their roaming usage allotment limits, the service provider may discontinue service until and unless the user signs up for a new allotment.

38. Safeguard 3. Out-of-bundle National Usage Limit Notification and Access Options

- ECTEL Proposal: Users are to be notified if they are about to use a mobile service out-of-bundle and, if so, the service provider shall notify the retail customer of the available options for continuing service⁵ and applicable rates under each option.
- Status and Feasibility: C&W does not provide such notices to all its subscribers using service out of bundle. Technically it is not feasible to do so at this time, so C&W cannot comply with such a requirement as specified.
- C&W Proposal: In order to prevent subscribers from rate shock, C&W will no longer default consumer usage to an out-of-bundle plan, but rather discontinue

⁵ Options are: i. discontinue the use of the mobile service; ii. purchase an add-on for the mobile service; iii. purchase another mobile service bundle; iv. use an out-of-bundle service; v. use a credit advance to continue using a mobile service; or vi. any other option available to the retail customer.

offering the service until and unless the user purchases a bolt-on product for additional national usage. Thus, the user will be notified *at the time of taking the service, and as part of the user agreement*, that he or she will have the responsibility to make a choice between 1) no national usage service or 2) purchasing an add-on after the bundle is exhausted.

- Implication for ECTEL's specification of Safeguard: Safeguard should specify that if the service provider cannot notify the user as they approach or reach their national usage allotment limits of their option to continue their service, the service provider may tell customers in advance (at the time the customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the user signs up for a new allotment, i.e., another service bundle.

39. Safeguard 4. Out-of-bundle Roaming Usage Limit Notification and Access Options

(same as Safeguard 3, but for Roaming)

- ECTEL Proposal: Users are to be notified if they are about to use a mobile service out-of-bundle and, if so, the service provider shall notify the retail customer of the available options for continuing service⁶ and applicable rates under each option.
- Status and Feasibility: C&W does not generally provide such notices to their subscribers. In many cases, C&W is reliant on third party input to calculate roaming usage, which does not allow for real-time notifications and access options. In such instances, it is not technically feasible to notify, so C&W cannot comply with such a requirement.
- C&W Proposal: In order to prevent subscribers from roaming rate shock, C&W will no longer default consumer usage to an out-of-bundle roaming plan, but rather discontinue offering the service until and unless the user purchases a bolt-on product for additional roaming. Thus, the user will be notified *at the time of taking the service, and as part of the user agreement*, that he or she will have the responsibility to make a choice between 1) no roaming service or 2) purchasing an add-on after the bundle is exhausted.
- Implication for ECTEL's specification of Safeguard: Safeguard should specify that if the service provider cannot notify the user as they approach or reach their roaming usage allotment limits or notify them of options for continued service,

⁶ Options are: i. discontinue the use of the roaming mobile service; ii. purchase an add-on for the roaming mobile service; iii. purchase another roaming mobile service bundle; iv. use an out-of-bundle roaming service; v. use a credit advance to continue using a roaming mobile service; or vi. any other option available to the retail customer.

the service provider may tell customers in advance (at the time the customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the user signs up for a new allotment, i.e., another service bundle.

FLAWS PROPOSED AMENDMENTS TO DRAFT GUIDELINES

No. 1 of 2020

Telecommunications (Mobile Consumer Safeguards) Guidelines [..]

Gazetted - - - - Coming into force - -

Date [..] Date [..]

The National Telecommunications Regulatory Authority hereby issues the following Guidelines on Mobile Consumer Safeguards in accordance with the applicable Telecommunications Act⁷ and Retail Tariff Regulations⁸ in [ECTEL Contracting State]:

1.Citation. These Guidelines may be cited as the Telecommunications (Mobile Consumer Safeguards) Guidelines 2020

2. Commencement. The Telecommunications (Mobile Consumer Safeguards) Guidelines is deemed to come onto force on [date]

3. Customer Notification for National Usage

⁷ Telecommunications Act in all Contracting States: Commonwealth of Dominica-Telecommunications Act, No. 8 of 2000 (as amended), Grenada- Telecommunications Act, Cap. 315C (as revised), St. Kitts and Nevis-Telecommunications Act, Cap. 16.05 (as revised), Saint Lucia- Telecommunications Act, Cap. 19.09 (as revised), St. Vincent and the Grenadines-Telecommunications Act, Cap. 418 (as revised)

⁸ Each Contracting State has approved its Telecommunication (Retail Tariff) Regulations by various dates: Commonwealth of Dominica S.R.O. No. 40 of 2012, Grenada S.R.O. No. 54 of 2014, St. Kitts and Nevis S.R.O. No. 21 of 2015, Saint Lucia SI. No. 110 of 2015 and St. Vincent and the Grenadines S.R.O. No. 23 of 2004

Cable and Wireless Limited (“Flow”)

Comments on ECTEL’s Consultation Document “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Regulatory Measures”

30 October 2020

a. A licensee shall notify a retail customer whether he or she is using a mobile service within a bundle or out-of-bundle.

b. If a retail customer is using a mobile service out-of-bundle with a licensee, the licensee shall notify the retail customer of the rate of the service.

c. Notwithstanding sub-clause (b), if, for technical reasons, the licensee cannot notify a retail customer that they are using a mobile service out-of-bundle and associated rate of the service, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the he or she signs up for a new allotment, i.e., another service bundle.

c. If a retail customer is using a mobile service within a bundle with a licensee, the licensee shall notify the retail customer when he or she reaches at least three (3) levels of the usage measure or service allowance permitted for that service. One level should be at no less than 75% and another at 100%, with a third at some intermediate level between the two. The licensee may notify the retail customer at any other levels of usage as it deems appropriate.

d. If a retail customer has exhausted the allowance for a mobile service in a bundle with a licensee, the licensee shall notify the retail customer of the available options and the rate of each option.

e. The options referred to under sub-clause (d) may include the option to—

i. discontinue the use of the mobile service;

ii. purchase an add-on for the mobile service;

iii. purchase another mobile service bundle;

iv. use an out-of-bundle service;

v. use a credit advance to continue using a mobile service; or vi. any other option available to the retail customer.

f. If a retail customer does not select any option under sub-clause (e) then the retail customer should be notified that they will no longer be able to use the service.

g. Notwithstanding sub-clauses (d), (e) and (f), if, for technical reasons, the licensee cannot notify the retail customer as they approach or reach their national usage allowance

of their options to continue their service, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the retail customer signs up for an add-on for the mobile service.

4. Customer Notification for Roaming Usage

a. A licensee shall notify a retail customer who is roaming, whether he or she is using a roaming mobile service within a roaming bundle or out-of-bundle roaming.

b. If a retail customer is using a mobile roaming service out-of- bundle with a licensee, the licensee shall notify the retail customer of the rate of the service.

c. If a retail customer is using a roaming mobile service within a roaming bundle with a licensee, the licensee shall notify the retail customer when he or she reaches 80% and 100% of the usage measure or service allowance permitted for that service.

d. If a retail customer has exhausted the allowance for a service in his or her roaming bundle with a licensee, the licensee shall notify the retail customer of the available options and the rate of each option.

e. The options referred to under sub-clause (4), may include the option to—

i. discontinue the use of the roaming mobile service;

ii. purchase an add-on for the roaming mobile service;

iii. purchase another roaming mobile service bundle;

iv. use an out-of-bundle roaming service;

v. use a credit advance to continue using a roaming mobile service; or

vi. any other option available to the retail customer.

f. If a retail customer does not select any option under sub-clause (e) then the customer should be notified that they will no longer be able to use the service.

g. Notwithstanding sub-clauses (a)-(f), if, for technical reasons, the licensee cannot notify the retail customer as he or she approach or reach their roaming bundle limits, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue roaming

service until and unless the he or she signs up for an add-on to for roaming mobile service.

40. If ECTEL does not agree with these proposed changes, FLOW urges it to discuss further modifications to its mobile consumer safeguards with the industry before it makes a determination. Without further consultation, ECTEL risks imposing suboptimal and infeasible requirements on service providers.

END OF DOCUMENT