

C O N S U L T A T I O N D O C U M E N T

Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL") To the National Telecommunications Regulatory Commission to consult on

Regulatory Instruments Consultation Document NO. 1 August 28 2020

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation on the following regulatory instruments in the Member States (the "Regulatory Instruments"):
 1. Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Measures for Retail Services in the ECTEL Member States.
 2. Proposed changes to Regulation 17(c) of the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector).
2. A copy of the draft regulatory instruments is attached to the Consultative Document.
3. The initial comments period will run from 28 August, to 9 October 2020.
4. The Comment on Comments period will run from 13 October, to 27 October, 2020
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the regulatory instruments to the Board of Directors and Council of Ministers for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be sent via e-mail to: -
Managing Director
ECTEL
Email: consultation@ectel.int

Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

Suggested Guidelines for Responses to Consultations

In order to promote faster processing of views expressed and to reduce administrative lag in ECTEL's public consultation processes, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below. ECTEL would therefore be grateful if commenting parties could please observe these guidelines where possible.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address and telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Responses/comments to specific recommendations should be double spaced and numbered in sequence with the recommendation. Where comments are extensive, paragraphs should be numbered. Pages should be numbered.
- 4) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 5) Where possible, comment documents should be submitted in PDF format.
- 6) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 7) Commenting parties should expressly indicate or highlight which parts of comment documents contain commercially sensitive or confidential information that should not be published. ECTEL reserves the right not to consider comments submitted under confidential cover in making any revisions to the proposals in the consultation document.
- 8) Where parties are commenting on specific provisions of legal language, alternative language should be proposed where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments.

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL)

Consultation on

- 1. Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Measures for Retail Services in the ECTEL Member States**

**EASTERN CARIBBEAN
TELECOMMUNICATIONS AUTHORITY
("ECTEL")**

Consultation Document

on

**Market Assessment of Regulated and
Unregulated Retail Services and Proposed
Recommended Regulatory Measures**

August 28, 2020

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1 Introduction

The Eastern Caribbean Telecommunications Authority (“ECTEL”) is launching this Consultation Document on “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Regulatory Measures” as a periodic review of selected retail electronic communications service (“ECS”) markets in each ECTEL Member State (“MS”).

The market assessments included in this document cover two ECS market categories. The first category includes all fixed markets in which Cable & Wireless (“C&W”) is deemed to be dominant or, equivalently, possess significant market power (“SMP”) and, as such, may require *ex ante* price or other forms of regulation. Services in these markets are referred to as “Regulated Services”. The second category includes retail mobile services and retail pay TV services, which are not subject to *ex ante* price regulation at this time because no Licensee in those markets has been designated as dominant. These services are referred to as “Reviewable Unregulated Services”.

Based on the preliminary market assessment included in this Consultation Document, ECTEL is proposing that the National Telecommunications Regulatory Commissions (“NTRCs”) implement a new retail price regulation regime (“New RPRR”) for Regulated Services offered by C&W. The proposed New RPRR would replace the price cap plans (“PCPs”) that are currently in place for C&W’s Regulated Services. Pursuant 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 RPRR for C&W’s Regulated Services. That process¹ has been successfully completed and is reflected in this Consultation Document.

With respect to the Reviewable Unregulated Services, ECTEL is not proposing any *ex ante* price regulation measures. However, ECTEL has reviewed mobile operators’ current mobile pricing and marketing practices and has found on a preliminary basis that certain elements of these practices likely raise significant concerns for users. Consequently, pursuant to the legal requirements set out in Section 2, and with the objective of addressing any such concerns, ECTEL is proposing a set of Mobile Consumer Safeguards.

The balance of this document is structured as follows: **Section 2** provides the relevant legal and regulatory background. **Section 3** provides the market assessment for the Regulated Services. **Section 4** presents the proposed New RPRR for C&W’s Regulated Services. **Section 5** presents the market assessment for Reviewable Unregulated Services, an analysis of select current mobile pricing and marketing practices and ECTEL’s proposed mobile consumer safeguards to address certain elements of those practices. **Section 6** covers other related administrative matters. Annexes 1 and 2 provide information relating to the review of Regulated Services and Annexes 3 and 4 provide information relating to the review of mobile retail services, including the draft NTRC Guidelines setting out the proposed Mobile Consumer Safeguards.

¹ The negotiation process included providing C&W with a *Restricted* Consultation Document that was limited to the Regulated Services provided by C&W, dated August 20, 2019, C&W’s written comments on same, dated September 13, 2019, and the subsequent discussion/negotiation process between ECTEL and C&W over the period September 13 to November 25, 2019 (the “Negotiation Process”).

2 Legal and Regulatory Framework

2.1 Regulated Services

Pursuant to the *Telecommunications (Retail Tariff) Regulations*² (the “Regulations”), retail services offered by a dominant service provider or, equivalently, not subject to a sufficient degree of competition to protect the interests of consumers, are deemed to be Regulated Services. The Regulations allow for the regulation of the prices of Regulated Services and establish a general institutional framework wherein ECTEL recommends a draft price regulation regime for adoption by the NTRCs. At this time, Regulated Services include all fixed services offered by C&W.³

ECTEL last conducted a market assessment of the Regulated Services in 2014-2015. That review led to ECTEL’s recommended 2015 price cap plan (“2015 PCP”), which was intended to be implemented in each MS to replace the earlier price cap plan established in 2010 (the “2010 PCP”). However, due to the significant market structure changes discussed in Section 3, the 2015 PCP was only implemented in Dominica and St. Kitts and Nevis, which meant that 2010 PCP remained in place in Grenada, Saint Lucia, and St. Vincent and the Grenadines. The New RPRR would replace the 2010 PCP and the 2015 PCP in each MS, as applicable.

There are two vintages of Regulations. The “First Vintage” corresponds to the Regulations included as part of the 2004 Implementation Agreement between the MS, ECTEL and C&W. During the subsequent period all five MS had similar 2004 Regulations. The “Second Vintage” correspond to the period from 2012 onwards during which four of the five MS implemented ECTEL-recommended updates and revisions to the 2004 Regulations. The fifth MS, St. Vincent and the Grenadines has not yet adopted the ECTEL-recommended revisions, which means that the 2004 Regulations remain in place.

While the First and Second Vintage Regulations are comparatively similar, there are some substantive and procedural differences. As set out in the St. Vincent and the Grenadines 2004 Regulations, the First Vintage requires that ECTEL and C&W make reasonable efforts to reach agreement with respect to a proposed RPRR:

28. (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 subregulation (2), ECTEL and the major supplier shall make reasonable efforts to reach agreement on the terms of the price cap plan for filing with the Commission.

² The effective dates vary by MS: 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.

³ Fixed voice, broadband, domestic/international private leased circuits and data services.

ECTEL emphasizes that regulation 28(3) requires that ECTEL and C&W *make reasonable efforts* to reach an agreement, but it does not require that the parties reach an agreement.

In contrast, the Second Vintage Regulations do not include the previous requirement to reach an agreement, instead reverting to the traditional requirement of sufficient notice to exchange comments, as set out in the Dominica 2012 Regulations:

22. (1) ECTEL may recommend a draft price regulation regime applicable to a dominant telecommunications provider, for adoption by the Commission.

(2) Prior to recommending the adoption of a draft price regulation regime, ECTEL shall provide at least 30 days notice to the dominant telecommunications provider by publishing a notice on its website and providing the dominant telecommunications provider with a copy of the proposed draft price regulation regime.

The differences in the Regulations imply a variety of alternative approaches could be adopted to review the current PCPs in place in each MS. Ultimately, ECTEL decided to adopt a uniform approach for all MS, which meant that it followed the procedures pursuant to the First Vintage Regulations. As noted above, ECTEL carried out a restricted consultation and negotiation process with C&W to arrive at a proposed New RPRR that would be applicable in all MS.

Lastly, it should be noted that there is a process that is currently underway to implement a draft new Electronic Communications Bill (“EC Bill”) with a series of associated revised and new regulations. One of the EC Bill-associated revised regulations is the draft EC (Retail Tariff) Regulations (the “Draft EC Regulations”). After the EC Bill comes into force and the new and revised regulations are implemented, the Draft EC Regulations would replace the current Regulations. ECTEL considers that the Draft EC Regulations are sufficiently similar in nature to the current Regulations, that any new RPRR established under the current Regulations would be applicable under the Draft EC Regulations.

2.2 Reviewable Unregulated Services

This is ECTEL’s first market assessment of retail mobile services and retail pay TV services. As noted above, no operator in those markets has been deemed or found to be dominant and hence these services are not subject to *ex ante* price regulation. In this review ECTEL is not proposing to declare any operator as dominant in either of these markets and, as a consequence, consider the need for *ex-ante* retail price regulation for either retail mobile or retail pay TV services at this time.

However, based on input from the NTRCs and its own experience, ECTEL is aware of a number of mobile service pricing and marketing practices that raise significant concerns for mobile users in the MS. ECTEL is also aware of numerous other jurisdictions that have introduced consumer safeguards to protect the interests of consumers. Based on its analysis of mobile service pricing and marketing practices, ECTEL is of the preliminary view that a number of mobile consumer safeguards are necessary and appropriate at this time.

The legal and institutional framework for the implementation of any such safeguards to address such concerns in relation to Unregulated Services is different from the above-noted process for Regulated Services wherein ECTEL makes a recommendation for adoption by the NTRC. The

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Telecommunications Act⁴ (the “Act”) in all ECTEL MS (except St. Kitts and Nevis) gives a general power to the NTRCs to provide *guidelines* on matters as prescribed. The Act in St Kitts and Nevis gives a general power to the NTRC to perform any functions under the Regulations made under the Act. Further, the Act is supplemented by Regulations⁵ which provide for a number of options in this regard, but the general approach is reflected in the Second Vintage Regulations, as set out in the Dominica 2012 Regulations:

2. *tariff means “the rates, terms and conditions applicable to a telecommunications service;”*

4. (1) *Subject to these Regulations, the Commission has the authority to regulate the rates, terms and conditions of telecommunications services offered by a telecommunications provider.*

(2) *Without limiting the generality of subsection (1), the Commission has the authority to –*

[...]

(k) make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers appropriate; and

[...]

(3) Prior to the exercise of any of the powers of the Commission under subregulation (2), the Commission shall consult ECTEL.

49. The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.

With respect to the First Vintage Regulations applicable in St. Vincent and the Grenadines, the provisions are not the same as the provisions in the other the four (4) MS. However, one of the purposes of ECTEL as outlined in the ECTEL Treaty, is to promote harmonised policies on a regional level for electronic communications in all the MS⁶.

Based on ECTEL’s analysis of the mobile service pricing and marketing practices included in Section 5 below, ECTEL has proposed a set of Mobile Consumer Safeguards be introduced by the NTRCs pursuant to the Regulations. As discussed above, the NTRCs have an option to give legal effect to such a proposal either via an Order or issuance of Directions or Guidelines, after consultation with ECTEL. With this in mind, ECTEL is proposing a draft NTRC Guidelines to give legal effect to the proposed Mobile Consumer Safeguards. The draft NTRC Guidelines is included in Annex 4.

⁴ Dominica- section 15(1), (2) and (3), Grenada section 14(1), (2) and (3), St. Kitts and Nevis- section 17(1)(r), Saint Lucia- section (15(1), (2) and (3) and St. Vincent and the Grenadines- section 13(1), (2) and (3).

⁵ *First Vintage Regulations:* St. Vincent and the Grenadines – regulation 5(e) and regulation (7).
Second Vintage Regulations: Dominica and Grenada – regulation 4(1) and 4(2)(a), (k) and (l), 4(3), regulation 6(2)(a), regulation 7(1)(e) and (f), regulation 36(1)(b), (c) and (d), 36(2)-(7) and regulation 49; St. Kitts and Nevis – regulations 5(1), 5(2)(a), (k) and (l), 5(3), regulation 7(2)(a), regulation 8(1)(e) and (f), regulation 37(1)(b), (c) and (d), 37(2)-(7) and regulation 50; and Saint. Lucia – regulations 4(1), 4(2)(a), (n) and (o), 5(2)(a), 6(1)(f) and (g), 10(1)(b), (c) and (d), 10(2)-(5) and (7) and 36.

⁶ Article 4 (1)(b) and 5(1)(c) of the ECTEL Treaty.

3 Regulated Services – Market Assessment

ECTEL has conducted a broad market assessment of the Regulated Service and Reviewable Unregulated Service markets in each MS. The market assessment methodology used by ECTEL is described in this section along with ECTEL’s preliminary market assessment conclusions. The detailed market assessment results underlying ECTEL’s preliminary conclusions are provided in Annex 1.

The purpose of ECTEL’s market assessment is not 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.

This section deals solely with Regulated Services. The market assessments for the Reviewable Unregulated Service markets are included in Section 5.

3.1 Market Assessment Methodology

The methodology being used for the present market assessment is the same as that used by ECTEL to develop the 2015 PCP.⁷ It consists of two steps: (i) the definition of the relevant markets in question and (ii) the analysis of the degree of competitiveness of each of the defined markets. The results of the market assessments are then used to determine whether any service(s) in any of the defined relevant markets should be subject to some form of *ex ante* price regulation and/or some other regulatory measure(s).

The approach followed for each of these two steps is “streamlined” in nature in that it builds on and follows best-practice experience in other comparable jurisdictions. As a result, the market definitions and market assessment criteria used for the present market assessment conform with those used in the past by ECTEL, as well as in other comparable jurisdictions.

3.2 Defined Relevant Markets

3.2.1 Regulated Service Markets

ECTEL considers that the seven relevant Regulated Service markets from the 2015 PCP process remain appropriate today. These include Markets #1 to #3 and #5 to #8 below. While not examined in the context of the 2015 PCP process, international calls from a fixed location can also be considered a relevant Regulated Service market and, therefore, is included below as Market #4:

- Market #1: Residential Access at a Fixed Location

⁷ ECTEL Consultation Document, *Recommendation to the National Telecommunications Regulatory Commission to consult on: Recommended Price Caps Plan for the Regulation of Price Capped Retail Services provided by LIME*, October 24, 2014 (“2015 PCP Consultation Document”).

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- Market #2: Business Access at a Fixed Location
- Market #3: Domestic Calls from a Fixed Location
- Market #4: International Calls from a Fixed Location
- Market #5: Broadband Internet Access at a Fixed Location
- Market #6: Domestic Private Leased Circuits ("DPLC")
- Market #7: International Private Leased Circuits ("IPLC")
- Market #8: Data Services

Table 1 provides a summary of the eight proposed relevant retail service markets subject to market assessment in this section. Note that as in the case of the 2015 PCP market assessment, the geographic scope of each of the proposed relevant markets is nation-wide for each MS.

| Table 1 – Proposed Relevant Retail Service Markets | | |
|---|---|--|
| No. | Relevant Market | Service Inclusions |
| #1 | Residential Access at a Fixed Location | <ul style="list-style-type: none"> • Standalone or basic local access • Residential value-added services (“VAS”), including services such as caller ID and voice mail • Bundled local access services (including bundled basic local access, VAS and/or domestic and/or international calling services, etc.) • All related services, such as installation, activation or re-connection |
| #2 | Business Access at a Fixed Location | <ul style="list-style-type: none"> • Standalone or basic single-line local access • Multiline local access (including PBX and Government) • Business VAS • Bundled local access services (e.g., including single-line or multiline local access, VAS and/or domestic and/or international calling services, etc.) • All related services, such as installation, activation or re-connection |
| #3 | Domestic Calling from a Fixed Location | <ul style="list-style-type: none"> • Domestic fixed-to-fixed (“FTF”) calling • Domestic fixed-to-mobile (“FTM”) calling • Including in both cases "on-net" and "off-net" calling (i.e., to an unaffiliated fixed or mobile operator) |
| #4 | International Calling from a Fixed Location | <ul style="list-style-type: none"> • International FTF and FTM calling (all foreign destinations) |
| #5 | Broadband Internet Access at a Fixed Location | <ul style="list-style-type: none"> • Dial-up Access (<i>currently obsolete and, therefore, irrelevant</i>) • Broadband Internet Access • Dedicated Internet Access ("DIA") • All related services, such as installation, activation or re-connection |
| #6 | Domestic Private Leased Circuits | <ul style="list-style-type: none"> • All DPLC services (i.e., regardless of transmission speeds and technologies) • All related services, such as installation, activation or re-connection |
| #7 | International Private Leased Circuits | <ul style="list-style-type: none"> • All IPLC services (i.e., regardless of transmissions speeds and technologies) • All related services, such as installation, activation or re-connection |
| #8 | Data Services | <ul style="list-style-type: none"> • All data services not covered by Markets #6 and #7, including W/LAN, VPN and unified communications, etc. • Covering all technologies used including legacy (e.g., X.25, frame relay) and new generation (e.g., Ethernet, IP, MPLS) technologies • All related services, such as installation, activation or re-connection |

322 Relevant Market Definition Issues

ECTEL has identified two major issues regarding the proposed relevant market definitions.

- **Whether fixed and mobile voice access and calling are in the same relevant markets.** As in the case of the PCP 2015 consultation process, ECTEL continues to be of the view that fixed and mobile access and calling should primarily be considered as complements rather than

substitutes and, therefore, fall into separate relevant markets. There are several factors that support this view. First, from a functional perspective, fixed access services do not provide the capability of mobility, which is the primary distinguishing feature of mobile access services. This difference in technical functionality represents a significant differentiating factor between the two services. Second, 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. Third, while mobile penetration has increased significantly in the MS (as elsewhere), fixed penetration has remained relatively stable. Fourth, as noted in ECTEL’s PCP 2015 consultation paper, survey evidence in the Caribbean region suggests that consumers tend to consider fixed and mobile services as complements rather than substitutes.⁸ Therefore, taking all of these factors into account, ECTEL considers that mobile and fixed access and calling services fall into separate relevant markets. That said, ECTEL also recognizes that mobile services provide indirect competitive pressure on fixed services and has reflected this fact in its proposed New RPRR for fixed access and calling services.

- **Whether fixed and mobile broadband are in the same relevant market.** A similar question can be asked about whether fixed and mobile broadband services are complements or substitutes and, therefore, fall into separate relevant markets or the same relevant market. As in the case of fixed and mobile voice access and calling, ECTEL is also of the view that fixed and mobile broadband services are complements rather than substitutes because of their functional differences and, more importantly, their pricing differences. The current prices of mobile broadband services generally far exceed fixed broadband services when the average monthly usage levels of fixed broadband users are taken into account. There is little reason to expect the price gap between fixed and mobile broadband services will disappear in the coming months or, for that matter, years. Therefore, ECTEL considers that mobile and fixed broadband services fall into separate relevant markets.

3.3 Market Assessment Criteria

ECTEL proposes to use the same market competitiveness test criteria used in ECTEL’s 2015 PCP consultation process. The criteria are listed in Table 2. These criteria are consistent with the standard economic practice for such exercises.

| No. | Criterion | Description & Relevance |
|-----|--|---|
| 1. | Dominant Operator Specific Data | <ul style="list-style-type: none"> • Consideration of historical volume, price and revenue data for the dominant operator (C&W) in the relevant market in question. • Consideration of forward-looking trends for same (where available). • <i>Relevance: Evidence of declining trends for one or more of these factors may be indicative of an increasing level of competition.</i> |
| 2. | Competitive Alternatives (including evidence of rivalrous behaviour) | <ul style="list-style-type: none"> • Identification of all existing and potential substitutes or alternatives by technology: wireline, fixed wireless and mobile wireless (as may be applicable). • Including in each case, service coverage, supply capacity and alternative pricing information. • Evidence of falling prices, vigorous marketing activities and an expanding scope of activities by existing competitors. |

⁸ ECTEL 2015 PCP Consultation Document, *op cit*.

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| | | |
|----|----------------------|---|
| | | <ul style="list-style-type: none"> • <i>Relevance: Significant evidence of competitive alternatives and rivalrous behaviour would be supportive of a finding of a high degree of competitiveness.</i> |
| 3. | Market Shares | <ul style="list-style-type: none"> • Estimation of service providers' current and historical market share (where possible). • <i>Relevance: Low or declining market share (for C&W in the case of Regulated Services) would be indicative of a high level of competition; however, high market share in and of itself would not preclude finding of sufficient competitiveness.</i> |
| 4. | Market/Sector Trends | <ul style="list-style-type: none"> • Consideration of ongoing innovations and technological changes affecting the nature and scope of existing and potential competition. • <i>Relevance: Evidence of rapid innovation and technological advancement would be supportive of increasing competitiveness.</i> |
| 5. | Barriers to Entry | <ul style="list-style-type: none"> • Identification of any financial, technical or regulatory barriers to market entry or expansion or, more generally, competition. • <i>Relevance: Absence of any significant barriers to entry would be indicative of potential competitiveness.</i> |
| 6. | Consumer Behaviour | <ul style="list-style-type: none"> • Identification of any barriers to switching • Survey information on customer perceptions on the substitutability service alternatives (where available). • <i>Relevance: Absence of any significant barriers to switching and positive consumer opinions of alternatives would be indicative of increasing competitiveness.</i> |

3.4 Market Data and Information

The market data and information ECTEL relied on to conduct its preliminary market assessments included the following:

- ECTEL's Sector Review database used for its annual Sector Review Report, which currently includes historical data to fiscal year-end 2017;
- Initial responses to ECTEL's 2018 Sector Review data collection, which will be used to produce ECTEL's 2018 Sector Review Report;
- C&W's responses to ECTEL's December 21, 2018 RFIs filed January 25 and 31, 2019;
- C&W's historical 2010 PCP and 2015 PCP-related Annual Compliance Filings ("ACF"), including updated PCP index spreadsheets for 2017-18 which were provided in C&W's above-noted RFI responses;
- C&W's response to the *Restricted* Consultation Document dated September 13, 2019 as well as information provided by C&W in the context of the Negotiation Process;
- Digicel's responses to ECTEL's December 21, 2018 RFIs filed February 27, 2019 and ECTEL's October 3, 2019 further RFIs filed October 29, 2019; and
- Service, pricing and related data and information collected from operators' websites and other market research information collected online and through direct contact with relevant third parties.

The data and information collection process for the market assessments is an ongoing activity. ECTEL expects that through the present consultation process further market data and information may be provided by interested parties. Consequently, as new data and information becomes available, the preliminary market assessment conclusions may be subject to change.

3.5 Market Structure Considerations

Over the course of the last seven years there have been a number of mergers and acquisitions in the Caribbean region that have resulted in significant changes in the structure of the relevant markets under consideration. These changes have resulted in or strengthened existing market dominance in a number of relevant markets in some MS. The most notable recent mergers and acquisitions include the following:

- i) In 2013, Digicel reached an agreement with the Loret Group and Caribbean Fibre Holdings to acquire submarine fibre network facilities extending across the Caribbean region, including Middle Caribbean Network, Southern Caribbean Fibre and Antilles Crossings.
- ii) In 2013, Columbus International Inc. (“Columbus”) acquired Kelcom International Limited and certain related companies that included Karib Cable’s cable operations in Saint Lucia and St. Vincent and the Grenadines.
- iii) In 2014, Cable & Wireless Communications PLC (“CWC”) acquired Columbus, which included cable operations in Grenada, Saint Lucia and St. Vincent and the Grenadines (all of whom operated under the “FLOW” brand).
- iv) In 2014, Digicel acquired SAT Telecoms and Broadcasting (“SAT”), a local telephony, broadband and pay TV service provider in Dominica.
- v) In 2016, Digicel acquired Caribbean Cable Communications, a local broadband and pay TV service provider in in St. Kitts and Nevis.
- vi) In 2017, C&W acquired Marpin 2K4 Ltd (“Marpin”), a local broadband and pay TV service provider in Dominica.

CWC’s acquisition of Columbus and, through Columbus, Karib Cable (the second and third items noted above) have had the most profound impact on the relevant markets under consideration. Prior to CWC’s acquisition of Columbus, C&W and Columbus competed in the telephony, broadband and/or pay TV markets in Grenada, Saint Lucia and St. Vincent and the Grenadines. However, having integrated Columbus’ operations with its own, C&W is dominant or, equivalently, possesses SMP in these relevant markets in each of these three MS at this time. In this respect, C&W characterized the nature of its integrated C&W/Columbus operations as follows:⁹

- *Network Integration:* C&W and Columbus are in the process of integrating and simultaneously upgrading their copper and hybrid fibre-coax (“HFC”) networks and that this “single, integrated network” will be used to provide fixed services to businesses and homes.
- *Network Management:* Staff from both organizations will be part of a “single network team” with cross-training, learning and sharing as operating practice.

⁹ C&W Response to RFI #1(a), 25 January 2019.

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- *Customer Interface:* C&W and Columbus’ network integration will be seamless from customers’ perspective as they will be select among a “suite of solutions” (copper or HFC) based on whatever is most suitable for their needs.
- *Commercial and Marketing Practices:* The messaging of the products and services offered to customers will be “unified” under the “FLOW brand” for the consumer market segment and C&W Business for the business market segment, and existing customers will be actively migrated from the legacy C&W (LIME) services to FLOW or C&W Business services as applicable.
- *Customer Facing Presence:* C&W and Columbus’ services are marketed through a single consumer website (discoverflow.co) and business website (cwcbusiness.com/countries), and retail stores in each market operate under these unified brands.

From an operations perspective, therefore, C&W and Columbus clearly operate as a “single, integrated” service provider in Grenada, Saint Lucia and St. Vincent and the Grenadines and as such, in no way compete with each other.

As noted above, there have been a number of additional mergers and acquisitions that have had the effect of reducing the number of actual or potential competitors in several MS. However, they have not created market dominance in any ECS markets as in the case of CWC’s acquisition of Columbus.

Table 3 provides an overview of the current structure of the relevant markets under consideration in this Consultation Document in each MS. It lists the primary service providers in each single or grouped relevant markets in each MS. In cases where C&W currently holds SMP the cells are shaded blue. For the most part, the remaining markets are duopolies, with the exception of the fixed broadband market in St. Kitts and Nevis where there are three operators.

| Table 3: Primary Service Providers by Market and MS <i>(Highlighted cells show where C&W currently holds SMP)</i> | | | |
|---|---|--|---|
| MS / Markets | Fixed Telephony (Markets #1-4) | Fixed Broadband (Market #5) | Business Services (Markets #6-8) |
| Dominica | C&W (Marpin)* | C&W (Marpin) Digicel (SAT) | C&W Digicel |
| Grenada | C&W (Columbus) | C&W (Columbus)* | C&W Digicel |
| St. Kitts and Nevis | C&W* | C&W The Cable Digicel | C&W Digicel |
| Saint Lucia | C&W (Columbus) | C&W (Columbus) | C&W Digicel |
| St. Vincent and the Grenadines | C&W (Columbus) | C&W (Columbus) | C&W Digicel |

*Note *: There may be some potential alternative source of competition in these highlighted cases.*

3.6 Significant Recent Market Developments

The most significant recent market development in the region is the imminent launch of Digicel's extensive fibre networks in Grenada, Saint Lucia and St. Vincent and the Grenadines. This development has the potential to change the preliminary market assessment and conclusions in Markets #1 to 5 in these 3 MS.

Digicel is launching these fixed networks pursuant to the World Bank's "Caribbean Regional Communications Infrastructure Program" ("CARCIP") Project that provided the three MS (the "CARCIP Beneficiary MS") with funding to upgrade and expand national and international connectivity.

There are three components to the Digicel fibre networks, an international component and two national components, a contracted element and a retail element.

- The international element comprises of an open access undersea cable connectivity network between several islands in St. Vincent and the Grenadines and Grenada. This network was partially financed by the CARCIP Project and will be operated as a Special Purpose Vehicle to provide open access to all parties. This element is outside the scope of this Consultation Document.
- Pursuant to the CARCIP Project, Digicel was contracted to provide a specified set of national connectivity services directly to public institutions in each CARCIP Beneficiary MS, including Government Wide Area Networks and broadband Internet services for schools and community centres, among other designated locations. The fibre networks were partially financed by the CARCIP Project and will be operated directly by Digicel under a Public Private Partnership ("PPP")-type arrangement in each of the three CARCIP Beneficiary MS. Under the terms of the Contracts between Digicel and the CARCIP Beneficiary MS, Digicel is not required to provide access to third parties to these networks.
- Digicel has indicated that it intends to leverage the national fibre networks built under the CARCIP Project to provide commercial services directly to end-users in the CARCIP Beneficiary MS. Such an eventuality is permitted under the PPP Contracts noted above. Further, based on available evidence, it appears that Digicel intends to leverage its newly constructed fibre facilities to provide retail fixed services, including voice and broadband, (referred to herein as "Fibre-based Retail Services") in the CARCIP Beneficiary MS in the near future. Once launched, Digicel's Fibre-based Retail Services could change the market assessment and conclusions in the CARCIP Beneficiary MS.

3.7 Preliminary Market Assessment Conclusions

371 Relevant Markets #1 to #4

As discussed above, CWC's acquisition of Columbus has resulted in C&W currently holding a dominant position in residential and business fixed voice access and domestic calling markets in Grenada, Saint Lucia and St. Vincent and the Grenadines. In addition, there is little if any direct

competition in these markets in the other two MS, Dominica and St Kitts and Nevis, where C&W also holds a dominant position. That said, if Digicel launches its Fibre-based Retail Services, it could erode C&W's dominant position in the CARCIP Beneficiary MS; however, the potential timing and extent of Digicel's entry in these MS is currently unknown to ECTEL.

Consequently, in light of the actual current market conditions, ECTEL is of the preliminary view that *ex ante* price regulation continues to be necessary in the case of services provided by C&W for Markets #1, #2 and #3. On the other hand, given the wide range of international calling options available to consumers, ECTEL is of the preliminary view that there is generally no need for *ex ante* price regulation for Market #4.

However, recognizing that Digicel could roll out its Fibre-based Retail Services between now and the next periodic market assessment review, ECTEL considers that an Automatic Adjustment Mechanism ("AAM") should be built into the New RPRR so that the New RPRR could be quickly adjusted if there is evidence that Digicel has launched its Fibre-based Retail Services and achieved a threshold-level of penetration in any one or more of the CARCIP Beneficiary MS. Indeed, ECTEL considers that the proposed AAM could be equally applied in the case of the other two MS as well. The proposed AAM is discussed further below.

3.72 Relevant Market #5

CWC's acquisition of Columbus has also resulted in C&W currently holding a dominant position in the fixed broadband markets in Grenada, Saint Lucia and St. Vincent and the Grenadines. Here again, if Digicel launches its Fibre-based Retail Services, including fixed broadband services, then it could erode C&W's existing dominant fixed broadband market position in these CARCIP Beneficiary MS. C&W's market position is otherwise more limited in Dominica and St Kitts and Nevis.

Under the circumstances, ECTEL considers that light-handed regulatory measures are required in this Market #5 that, on one hand, do not dampen incentives for continued significant investments in broadband infrastructure in the MS while, on the other, also serve to promote increased broadband penetration and help ensure the affordability of "basic" broadband services. To this end, ECTEL proposes that C&W be required to provide a "basic" broadband service at a reasonably affordable price in each MS impacted by CWC's acquisition of Columbus: Grenada, Saint Lucia and St. Vincent and the Grenadines. The details of the proposed obligations in this case are set out below.

3.73 Relevant Markets #6 to #8

In the case of the markets for DPLCs, IPLCs and data services (i.e., Markets #6, #7 and #8), there appears to be a reasonable degree of competition between the two main service providers, C&W and Digicel. In addition, the product and service lines between these three markets are increasingly blurring given advances in technology and the fact that business customers often purchase these services jointly rather than separately. For this reason, business customers often tend to rely on a single service provider for these services. Consequently, ECTEL is of the preliminary view that

there appears to be no need to regulate retail prices on an *ex ante* basis in these markets (i.e., Markets #6, #7 and #8).

That said, ECTEL is aware of complaints relating to difficulties faced by third-party operators who wish to purchase these services on a wholesale basis from C&W and Digicel (especially international connectivity services). While ECTEL is not proposing any specific measures in this proposal to address such concerns, it may consider introducing other regulatory measures to ensure that third-party operators are provided with timely and reasonably priced wholesale access and to domestic and international connectivity services.

374 Summary of Preliminary Conclusions for Regulated Services

ECTEL’s proposed regulatory measures applying to Markets #1 through #8, where considered necessary, are set out in Section 4. ECTEL notes that the supporting evidence for its preliminary conclusions and proposals in regard to these markets is provided in Annex 1. Table 4 provides a summary of ECTEL’s preliminary market assessment conclusions by relevant market.

| Table 4 – Preliminary Market Assessment Conclusions by Relevant Market | | |
|---|---|---|
| No. | Relevant Market | Competitiveness |
| #1 | Residential Access at a Fixed Location | <p>C&W is currently dominant in the provision of residential fixed access services in all MS. Indirect competition from mobile and OTT VoIP services is not sufficient to significantly constrain C&W’s market power.</p> <p>Therefore, ECTEL proposes that C&W’s residential fixed access line services should continue to be subject to <i>ex ante</i> price regulation; however, an AAM should be built into the proposed New RPRR so that established price regulations could be quickly removed in this relevant market should evidence of new entry be found before the next periodic market review.</p> |
| #2 | Business Access at a Fixed Location | <p>C&W is currently dominant in the provision of business fixed access services in all MS. The only significant source of actual/potential competition appears to be from Digicel via fixed wireless technology or its subsidiaries SAT Telecom and Caribbean Cable Communications. Indirect competition from mobile and OTT VoIP services is not sufficient to significantly constrain C&W’s market power.</p> <p>Therefore, ECTEL proposes that C&W’s business fixed access services should continue to be subject to <i>ex ante</i> price regulation; however, the proposed AAM should also apply in the case of this relevant market.</p> |
| #3 | Domestic Calling from a Fixed Location | <p>C&W is currently dominant in the provision of residential and business fixed access services in all MS and, consequently, the same applies to domestic FTF and FTM calling from a fixed location. To the limited extent direct competition exists (e.g., via Digicel), it is focused on the business segment of the market. There is some indirect competition from mobile and OTT VoIP services, but it is not sufficient to significantly constrain C&W’s market power in this market.</p> <p>Therefore, ECTEL proposes that C&W’s domestic FTF and FTM call services should continue to be subject to <i>ex ante</i> price regulation; however, the proposed AAM should also apply in the case of this relevant market.</p> |
| #4 | International Calling from a Fixed Location | <p>C&W currently possesses SMP in the provision of residential and business fixed access services in all MS and, consequently, the same applies to international FTF and FTM calling from a fixed location. To the limited extent direct competition exists (e.g., via Digicel), it is focused on the business segment of the market. However, there is an extensive range of alternatives to traditional international calling from a fixed location. These include fixed and mobile broadband OTT VoIP applications, mobile international calling services, and international calling cards. These alternatives provide considerable competitive constraints on international calling rates.</p> |

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| | | |
|----|---|--|
| | | Therefore, ECTEL proposes that C&W's international FTF and FTM call service from a fixed location should not be subject to <i>ex ante</i> price regulation. |
| #5 | Broadband Internet Access at a Fixed Location | <p>In Grenada, Saint Lucia and St Vincent and the Grenadines, C&W currently holds a dominant market position, whereas, in Dominica and St Kitts and Nevis, there are competitive alternatives available. That said, there is potential for competition alternatives in most, if not all, MS if Digicel enters the broadband markets in this first three MS using its CARCIP Project related fibre network facilities in the near future.</p> <p>In this case, ECTEL proposes a "mixed" price regulation approach in this market, which would focus on adopting regulatory measures that promote increased broadband penetration in all MS, while also ensuring that a "basic" broadband service is available to subscribers at a reasonably affordable price in those MS where competition remains emergent.</p> |
| #6 | Domestic Private Leased Circuits (DPLC) | <p>C&W appears to face limited direct DPLC competition from Digicel and other service providers. However, Digicel nevertheless offers a range of potentially substitutable data services, which provide a significant source of indirect (if not direct) competition, especially given technology trends. When considered in this broader context, C&W's market share is far more limited.</p> <p>Therefore, ECTEL proposes that C&W's DPLC services should not be subject to <i>ex ante</i> retail price regulation.</p> |
| #7 | International Private Leased Circuits (IPLC) | <p>C&W faces significant IPLC competition from Digicel, including its subsidiaries Middle Caribbean Network, Southern Caribbean Fiber and Antilles Crossing. In some ECTEL Member States, C&W's market share appears to be very limited and, on an ECTEL MS wide basis, its market share is comparable to Digicel's.</p> <p>Therefore, ECTEL proposes that C&W's IPLC services should not be subject to <i>ex ante</i> retail price regulation.</p> |
| #8 | Data Services | <p>C&W faces significant Data Services competition from Digicel. In fact, Digicel has the largest market share in each MS.</p> <p>Therefore, ECTEL proposes that C&W's data services should not be subject to <i>ex ante</i> retail price regulation.</p> |

4 Regulated Services – Proposed New RPRR

Based on the results of its fixed service market assessments and the Negotiation Process, ECTEL has developed a proposed New RPRR covering the Regulated Services offered by C&W. In developing its recommendations, ECTEL has sought to ensure that any regulatory measures are narrowly focused and light-touch in nature, so they protect the interests of consumers while also provide C&W with pricing and marketing flexibility. The proposed measures are also intended to be relatively straightforward to administer. In addition, for certain relevant markets, ECTEL has proposed that an AAM be incorporated so that price regulations included in the proposed New RPRR could be quickly removed should evidence of new entry be found before the next periodic market review.

4.1 Fixed Access from a Fixed Location (Markets #1 and #2)

The market assessment results show that C&W currently holds a position of dominance in both the residential and business segments of the fixed access markets in all MS. At the same time, however, it is important to recognize that fixed voice access service is largely a legacy market segment that is for the most part in a state of gradual long-term decline. As well, while not full substitutes, mobile and OTT services do provide a degree of indirect competitive pressure on fixed voice access service prices. Consequently, ECTEL considers that only a narrowly targeted *ex ante* price cap constraint should be applied in the case of these services given current market conditions. The objective in this respect is to provide an appropriate measure of price protection for consumers, while not creating an excessive regulatory burden.

4.1.1 Price Cap Constraints

The proposed price cap would be based on a standard price cap index (“PCI”) formula: inflation (“I”) less a productivity offset (“X”) formula. As well, exogenous factors (“Z”) that increase or decrease operating costs significantly would also be taken into account. To be eligible for inclusion in the PCI, Z factors should reflect events or measures that are outside the direct control of C&W, material in magnitude and supported with adequate rationale and quantitative evidence. Therefore, the full PCI formula would take the form:

$$\text{PCI} = \text{I} - \text{X} \pm \text{Z}$$

ECTEL is of the preliminary view that a price cap should apply separately to residential and business “standalone basic” fixed voice access services. Consistent with the 2015 PCP, ECTEL considers that the X-factor could be set at zero in both cases. ECTEL notes that the proposed inflation-based price cap would allow C&W to adjust prices for inflationary pressures, but also serve to protect the ongoing affordability of residential standalone basic fixed voice access service.

Therefore, on a preliminary basis, ECTEL proposes the following price caps apply under the New RPRR:

- *Residential standalone basic fixed access:* $\text{PCI} = \text{I} - \text{X}$, where $\text{X} = 0$.

- *Business standalone basic fixed access:* $PCI = I - X$, where $X = 0$.

Consistent with the 2015 PCP, ECTEL also proposes the following associated regulatory measures apply under the proposed price caps:

- C&W must provide “standalone” residential and business basic fixed voice access services.
- Unused PCI headroom may be carried forward and used in subsequent price cap periods.
- The maximum allowed residential or business standalone basic fixed price increase in any one price cap period is 5%.

412 Additional Regulatory Obligations

Free Minute Allowance: Consistent with the 2010 and 2015 PCPs, ECTEL proposes that C&W be required to include a minimum of 100 free off-peak (i.e., evenings and weekends) on-net fixed-to-fixed (“FTF”) call minutes with its residential standalone basic fixed voice access services.

Harmonization: As under the existing PCPs, ECTEL proposes that the existing price harmonization obligations for fixed access services remain in place:

- *Residential:* The lowest monthly residential standalone basic access line rate must be equal to or more than 77% of the highest monthly residential standalone basic access line rate in any other MS.
- *Business:* The lowest monthly business standalone basic access line rate must be equal to or more than 90% of the highest monthly business standalone basic access line rate in any other MS.

ECTEL notes that these proposed price cap constraints and additional regulatory obligations are intended to provide C&W with the flexibility to market bundled fixed access services – i.e., fixed access, domestic calling, international calling and/or call feature packages – without *ex ante* pricing constraints or the need to seek prior regulatory approval. Therefore, at this time, ECTEL is proposing that no specific *ex ante* pricing constraints apply to bundles including fixed access services and other services such fixed broadband Internet access, and/or pay TV services.

413 Automatic Adjustment Mechanism

As discussed above, Digicel may enter the fixed voice access markets in Grenada, Saint Lucia and St. Vincent and the Grenadines as part of a future launch of its Fibre-based Retail Services. In such case, the proposed fixed voice access price caps and related additional regulatory obligations would become unnecessary in whole or part. For this reason, ECTEL proposes that an AAM be implemented that would trigger the removal of *ex ante* regulations and related additional regulatory obligations established under the New RPRR for Markets #1 and #2. Rather than limit the proposed AAM to the CARCIP Beneficiary MS, ECTEL proposes that the AAM be adopted for all five MS.

The full description of the mechanics and administration of the proposed AAM is provided in Annex 2. In brief, under the AAM, ECTEL would collect fixed voice services market data from both Digicel and C&W for each MS prior to the launch of the New RPRR and every six months thereafter, as necessary.

In Digicel’s case, the AAM-related data would include the number of its residential and small business fixed voice access customers, if any. In C&W’s case, the AAM-related data would include the number of its residential and small business fixed voice access customers together with any evidence C&W may be able to provide demonstrating Digicel’s entry into the fixed voice services market (e.g., marketing or advertising materials).

The AAM would be applied on an MS-specific basis. The AAM would be triggered if (i) Digicel’s fixed voice access customer base surpassed a pre-established threshold amount and/or (ii) if C&W’s fixed voice access customer base decreased by more than a pre-established threshold amount and there is also evidence of Digicel’s entry in the market (e.g., via marketing or advertising materials). The specific proposed AAM trigger thresholds for each MS are provided in Annex 2.

For any MS where the AAM is triggered, the price cap constraints on C&W’s standalone basic residential and small business services would be removed along with the associated additional regulatory obligations (i.e., free minute allowance and harmonization obligations, as applicable).

4.2 Domestic and International Calling (Markets #3 and #4)

The market assessment results for domestic and international calling are very similar to those for fixed voice access. As in the case of fixed access, C&W also currently holds a position of dominance in these markets. The one key difference is that while there are services (such as mobile) that provide a degree of indirect competitive pressure on prices in these markets, there is a growing number of effective alternatives in the case of international calling. Therefore, on a preliminary basis, ECTEL considers that *ex ante* price cap constraints are only necessary and appropriate in the case of standalone basic FTF and FTM domestic calling (as under previous PCPs). While ECTEL does not consider there is any need for *ex ante* price cap constraints in international direct dial (“IDD”) rates, it considers that the existing IDD harmonization constraint should remain in place as under the previous PCPs.

4.2.1 Price Cap Constraints

Based on current market conditions for domestic FTF and FTM calling, ECTEL proposes the following price caps apply under the New RPRR:

- *Domestic standalone basic FTF calls:* $PCI = I - X$, where $X = 0$.
- *Domestic standalone basic FTM calls:* $PCI = I - X$, where $X = 0$.

Consistent with the 2015 PCP, ECTEL also proposes the following associated regulatory measures:

- C&W must provide “standalone” basic FTF and FTM call services.
- Unused PCI headroom may be carried forward and used in subsequent price cap periods.
- The maximum allowed FTF or FTM price increase in any one price cap period is 5%.

422 Additional Regulatory Obligations

Harmonization: As under the existing PCPs, ECTEL proposes that the existing price harmonization obligations for these two services remain in place:

- *Domestic FTF Calls:* The lowest FTF weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTF weekday/evening/weekend rate in any other MS.
- *Domestic FTM Calls:* The lowest FTM weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTM weekday/evening/weekend rate in any other MS.

International Call Price Ceiling: Also, as under the previous PCPs, ECTEL proposes that the existing price harmonization obligation for IDD call services remain in place:

- *IDD Call Prices:* Each fixed IDD price must be equal to or less than the corresponding mobile IDD price charged by C&W.

423 Flow-through of Mandated Changes in Interconnection Rates

In April 2018, ECTEL completed a review of interconnection rates aimed at ensuring interconnection rates in each MS are cost oriented. Among other things, in its decision,¹⁰ ECTEL recommended significant reductions in fixed and mobile call termination rates (i.e., “FTR” and “MTR”, respectively). These involved FTR reductions of over 80% in most MS and MTR reductions of 90% or more in all MS. ECTEL also recommended that the FTR and MTR reductions be phased in over three years, with the first reduction scheduled for May 2018 and the following two reductions scheduled for May 2019 and May 2020. The vast majority of the overall recommended FTR and MTR reductions were front-end loaded into the scheduled May 2018 and May 2019 reductions (i.e., 95% or more of the total reduction). Therefore, by the time the New RPRR is implemented, the vast majority of the recommended FTR and MTR reductions will have been implemented and, in any event, will be completed in 2020.¹¹

The mandated MTR and FTR reductions for each MS are presented in Table 5. The MTR reductions vary from 21.0 to 26.7¢/minute, with an average of 23.3¢/minute. The FTR reductions vary from 1.8 to 4.8¢/minute and average 3.5¢/minute.

| Table 5 – Mandated MTR and FTR Reductions by MS (¢/minute) | | | | | | |
|--|-------------|-------------------|-----------------|-----------------|-----------------|------------------------|
| MS | Rate | April 2018 | May 2018 | May 2019 | May 2020 | Total Reduction |
| DOM | MTR | 25.80 | 12.90 | 2.01 | 1.93 | -23.87 |

¹⁰ ECTEL, *Recommendation to National Telecommunications Regulatory Commissions on Cost Oriented Interconnection Rates in the ECTEL Member States*, April 2018.

¹¹ ECTEL notes that there have been some variations in the timing of the implementation of ECTEL’s recommended interconnection rates in each MS, the variations are relatively minor and, as noted, the full implementation of the recommended FTRs and MTRs will be completed by mid-2020.

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| | | | | | | |
|----------------|------------|--------------|--------------|-------------|-------------|---------------|
| GND | MTR | 25.10 | 12.55 | 1.92 | 1.83 | -23.27 |
| SKN | MTR | 28.17 | 14.09 | 1.45 | 1.51 | -26.66 |
| SLU | MTR | 22.40 | 11.20 | 1.43 | 1.40 | -21.00 |
| SVG | MTR | 24.13 | 12.07 | 2.53 | 2.36 | -21.77 |
| Average | | 25.12 | 12.56 | 1.87 | 1.81 | -23.31 |
| DOM | FTR | 5.86 | 2.93 | 1.04 | 1.04 | -4.82 |
| GND | FTR | 4.07 | 2.04 | 0.59 | 0.60 | -3.47 |
| SKN | FTR | 2.61 | 1.31 | 0.75 | 0.77 | -1.84 |
| SLU | FTR | 3.46 | 1.73 | 0.53 | 0.53 | -2.93 |
| SVG | FTR | 5.34 | 2.67 | 0.82 | 0.83 | -4.51 |
| Average | | 4.27 | 2.14 | 0.75 | 0.75 | -3.51 |

ECTEL considers that the mandated FTR and MTR reductions qualify as eligible Z factors. Reductions in FTRs and MTRs reduce C&W’s wholesale call termination costs and, as a result, directly reduce the per-minute costs of providing retail FTF and FTM calls. Accordingly, as Z factors, ECTEL is of the preliminary view that FTR and MTR reductions should be flowed through if not in whole, in large part to retail standalone basic FTF and FTM call rates.

In 2010, the previous time when MTR reductions were flowed through to FTM rates, the focus was on reducing FTM rates to a common “target” rate for all MS rather than flowing through MTR reductions in full. As a result, the FTM rate, which was 71¢/minute in each MS at the time, was reduced by 31¢/minute to a target rate of 40¢/minute. At the time, the mandated MTR reductions varied from 32.8 to 38.6¢/minute by MS, with an average reduction of 35.9¢/minute. Consequently, the MTR reduction flow-through percentage averaged 87% (31¢/35.9¢). At the time, there were no mandated reductions in the FTR and, consequently, no FTR-related flow-through reductions to FTF rates were necessary. ECTEL considers that the MTR reduction approach used for FTM rates in 2010 can be used in a similar fashion for both FTM and FTF flow-through purposes in the current instance.

Proposed MTR Reduction flow-through to FTM Rates

In this case, ECTEL proposes that the target domestic FTM rate for the flow-through of mandated MTR reductions be set at **25¢/minute** (i.e., representing a reduction of 15¢/minute relative to the current rate level of 40¢/minute). This would amount to a flow-through percentage of **64%** (i.e., relative to the average MTR reduction of 23.3¢/minute). In addition, ECTEL proposes that the flow-through rate reductions be phased in over two years on a front-end loaded basis – i.e., two thirds at the start of Year 1 and the balance, one third, at the start of Year 2 of the New RPRR. Table 6 summarizes the proposed flow-through amounts and timing by MS.

| Table 6 –MTR to FTM flow-through Proposal (¢/minute) | | | | | | |
|--|--------------------|-------------------|-------------------|----------------------------|----------------------------|--------------------------------|
| MS | Current FTM | Year 1 FTM | Year 2 FTM | Total FTM Reduction | Total MTR Reduction | Flow-through Percentage |
| DOM | 40.0 | 30.0 | 25.0 | -15.0 | -23.87 | 63% |
| GND | 40.0 | 30.0 | 25.0 | -15.0 | -23.27 | 64% |

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| | | | | | | |
|----------------|-------------|-------------|-------------|--------------|---------------|------------|
| SKN | 40.0 | 30.0 | 25.0 | -15.0 | -26.66 | 56% |
| SLU | 40.0 | 30.0 | 25.0 | -15.0 | -21.00 | 71% |
| SVG | 40.0 | 30.0 | 25.0 | -15.0 | -21.77 | 69% |
| Average | 40.0 | 30.0 | 25.0 | -15.0 | -23.31 | 64% |

FTR to FTF Flow-through Proposal

ECTEL notes that C&W currently has separate peak (weekday) and off-peak (evenings and weekend) domestic FTF call rates in place, as a result, two separate target rates are required in this case. Therefore, ECTEL proposes that the target peak and off-peak FTF rates be **5.5¢/minute** and **2.5¢/minute** respectively (reductions of 1.5¢/minute in both cases from the current rates levels of 7.0¢/minute and 4.0¢/minute, respectively).

This amounts to flow-through percentage of **43%** on average for all MS for both peak and off-peak rates. Here as well, ECTEL proposes that the flow-through rate reductions be phased in over two years – i.e., two thirds in Year 1 and one third in Year 2 of the New RPRR. Table 7 summarizes the proposed flow-through amounts and timing by MS.

| Table 7 – FTR to FTF flow-trough Proposal | | | | | | |
|--|-----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|--|
| <i>(¢/minute)</i> | | | | | | |
| MS | Current Peak FTF | Year 1 Peak FTF | Year 2 Peak FTF | Total FTF Reduction | Total FTR Reduction | Peak Period Flow-through Percentage |
| DOM | 7.0 | 6.0 | 5.5 | -1.5 | -4.82 | 31% |
| GND | 7.0 | 6.0 | 5.5 | -1.5 | -3.47 | 43% |
| SKN | 7.0 | 6.0 | 5.5 | -1.5 | -1.84 | 82% |
| SLU | 7.0 | 6.0 | 5.5 | -1.5 | -2.93 | 51% |
| SVG | 7.0 | 6.0 | 5.5 | -1.5 | -4.51 | 33% |
| Average | 7.0 | 6.0 | 5.5 | -1.5 | -3.51 | 43% |
| | Current Off-Peak FTF | Year 1 Off-Peak FTF | Year 2 Off-Peak FTF | Total FTF Reduction | Total FTR Reduction | Off-Peak flow-through Percentage |
| DOM | 4.0 | 3.0 | 2.5 | -1.5 | -4.82 | 31% |
| GND | 4.0 | 3.0 | 2.5 | -1.5 | -3.47 | 43% |
| SKN | 4.0 | 3.0 | 2.5 | -1.5 | -1.84 | 82% |
| SLU | 4.0 | 3.0 | 2.5 | -1.5 | -2.93 | 51% |
| SVG | 4.0 | 3.0 | 2.5 | -1.5 | -4.51 | 33% |
| Average | 4.0 | 3.0 | 2.5 | -1.5 | -3.51 | 43% |

ECTEL notes that the flow-through percentages in the case of the peak and off-peak FTF rates are lower than in the case of the FTM largely due to the fact that current FTF rates are much lower than current FTM rates. As well, the differential between peak and off-peak FTF rates and the FTR is also lower than in the case of FTM rates and the MTR. In ECTEL’s view, both of these factors warrant lower flow-through percentage in the case of the FTF relative to the FTM rates.

424 Automatic Adjustment Mechanism

The AAM mechanism discussed in Section 4.1.3 and described in Annex 2 would also apply to standalone domestic FTF and FTM call and international call rates. In any MS where the AAM is triggered, the proposed price cap constraints and additional regulatory measures (i.e., harmonization and international call price ceiling obligation, as applicable) would be removed.

However, the mandated flow-through amounts to FTF and FTM rates would remain in place. In other words, under the proposed New RPRR, the mandated flow-through amounts must be fully implemented regardless of whether the AAM is triggered.

4.3 Broadband Internet Access (Market #5)

The market assessment results show that C&W and Columbus currently have market dominance in the fixed broadband services market in Grenada, Saint Lucia and St. Vincent and the Grenadines. However, as noted, Digicel could enter these markets with its Fibre-based Retail Services in the near future. In contrast, there are established competitive alternatives to C&W in the other two MS, Dominica and St Kitts and Nevis.¹²

ECTEL considers that the significant differences in market conditions in the fixed broadband services across MS requires a mixed approach to price regulation in this instance. Where C&W and Columbus hold a dominant position, ECTEL is of the preliminary view that *ex ante* price regulation is required. At the same time, in such cases, ECTEL also believes a light touch price regulation approach is also necessary and appropriate in this market, especially in view of the need for ongoing network investments to improve capacity and expand coverage of latest generation broadband technologies. Otherwise, ECTEL is of the preliminary view that direct *ex ante* price regulation is not required in MS where competitive fixed broadband service alternatives exist.

Therefore, ECTEL considers that *ex ante* price regulation should apply to standalone “basic” fixed broadband service offered by C&W and Columbus in Grenada, Saint Lucia and St. Vincent and the Grenadines (i.e., those MS in which C&W and Columbus hold a dominant market position). Encouraging both the deployment of advanced, high-speed broadband facilities and subscriber take-up of broadband services are key ECTEL policy objectives. ECTEL recognizes that the significant investments are required to constantly improve speeds, capacity and coverage of latest generation broadband technologies. At the same time, ECTEL is concerned that broadband service prices can raise affordability concerns for many existing and potential customers and, therefore, could serve to limit broadband penetration. With these considerations in mind, in the *Restricted Consultation Document*, ECTEL required as a regulatory obligation for these three MS that C&W provide a “basic” broadband offer (“BBO”) that satisfies proposed minimum broadband services capabilities at a reasonably affordable price. The resulting BBO that was finalized through the Negotiation Process is described below.

¹² i.e., SAT Telecom (owned by Digicel) in Dominica and Caribbean Cable Communications (owned by Digicel), The Cable and Green Dot in St. Kitts and Nevis.

431 Basic Broadband Offer Obligation

The proposed C&W/Columbus BBO would be made available in the three CARCIP Beneficiary MS and would consist of the following service characteristics:

- i) it would be available on a standalone basis (i.e., it could be purchased on an unbundled basis);
- ii) it would be offered with unlimited monthly usage (i.e., without a monthly data usage cap);
- iii) it would provide minimum download / upload speeds of 10 Mbps / 1Mbps, respectively;
- iv) the monthly retail price of the service would not exceed \$99 (VAT included);
- v) it would be available to both new and existing customers; and
- vi) customers on other existing broadband plans who wish to switch to the BBO would not be subject to early termination fees.

It should be noted that the above-noted minimum speed requirements are not intended to limit the actual speeds that may be offered by C&W/Columbus at the outset or over the course of the New RPRR. C&W/Columbus would be free to and, indeed, encouraged to increase BBO download and/or upload speeds at any time. In this way, the BBO could be enhanced in terms of service speeds or other service features at any time by C&W/Columbus.

In addition, C&W/Columbus would be free to price the BBO below the \$99 (VAT included) ceiling under the New RPRR. Indeed, ECTEL would encourage C&W/Columbus to keep the price of the BBO below this price, since even at this level, it could raise affordability concerns for many existing or potential basic broadband service customers.¹³

432 Additional Regulatory Obligations

As noted, the proposed BBO Obligation would only apply in the three CARCIP Beneficiary MS. While Digicel's entry into these markets via its Fibre-based Retail Services would significantly change broadband market conditions in these three MS, ECTEL considers that there would be no assurance that basic fixed broadband service be reasonably affordable in these three MS without a BBO obligation. Therefore, ECTEL considers that a harmonization obligation should apply in the case of the BBO.

Harmonization: ECTEL proposes that the following BBO harmonization requirements apply to C&W across the three CARCIP Beneficiary MS:

¹³ For instance, the International telecommunications Union ("ITU") measures affordability relative to Gross National Income ("GNI") per capita. It has suggested that to be considered affordable, basic broadband service rates should represent less than 5% of GNI per capita. On this basis, C&W's current basic fixed broadband rates could raise potential affordability concerns in several MS.

- *BBO Availability Harmonisation:* a basic fixed broadband service offer meeting the established BBO characteristics must be made available in all MS, where a BBO obligation applies.
- *BBO Price Harmonisation:* The highest monthly rate (VAT included) for the BBO must be no more than 10% higher than the lowest monthly rate standalone basic fixed broadband service in any other MS, where a BBO obligation applies.

Lastly, ECTEL notes that the BBO and additional regulatory obligations would remain in place for the full term of the New RPRR and would not be subject to the AAM.

ECTEL notes that the broader intent of the BBO obligation is to protect the affordability of and promote the take up of broadband services. ECTEL is not proposing to introduce a similar BBO obligation in the other two MS (Dominica and St. Kitts and Nevis) at this time; however, it may do so in the future. If and when the BBO is reviewed, ECTEL would re-evaluate the specifications of the BBO (e.g., in terms of price and speed) and also consider extending the obligation to all licenced broadband services providers. In the meantime, ECTEL encourages C&W/Columbus to provide comparable “basic” broadband services (in terms of price and speed) in Dominica and St. Kitts and Nevis as in the three CARCIP Beneficiary MS.

4.4 DPLC, IPLC and Data Services (Markets #6 to #8)

The market assessment results show that C&W faces a reasonable degree of competition in the relevant markets for DPLC, IPLC and data services. The primary, if not sole, source of competition in this respect comes from Digicel. In fact, in some cases, it appears that Digicel holds a greater market share than C&W. Therefore, on a preliminary basis, ECTEL considers that there is no need for *ex ante* price regulation of retail services in any of these markets.

However, as noted, ECTEL is aware of complaints relating to difficulties faced by third-party operators wishing to purchase these services not just from C&W, but also Digicel. ECTEL considers that denial of reasonable service requests or excessive pricing of services in these relevant markets, especially when requested by a competing operator, could be viewed as potential anti-competitive conduct. ECTEL considers that any such complaints can and should be addressed under the relevant anti-competitive conduct provisions of the applicable Telecommunications Act and regulations. ECTEL in conjunction with the applicable NTRC(s) will strive to ensure that any such complaints are addressed in a timely manner. ECTEL further notes that it may also undertake a further review of these relevant markets in the future to determine whether there is a need to establish wholesale service obligations to ensure that alternative sources of competition are not hampered or blocked.

4.5 Proposed New RPRR for Regulated Services

Table 8 includes an overview of the proposed provisions of the New RPRR for Regulated Services offered by C&W/Columbus developed in each of the relevant markets developed in the preceding sections.

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| Table 8 – Proposed New RPRR Recommendations Applicable to C&W/Columbus in all MS (except where noted otherwise) | | |
|--|---|---|
| No. | Relevant Market | Proposed RPRR |
| #1 | Residential Access at a Fixed Location | <p><u>Price Cap Constraints:</u></p> <ul style="list-style-type: none"> • Residential basic standalone fixed access $PCI = I - X$, where $X = 0$ • C&W must provide residential basic standalone fixed voice access service • Unused headroom can be carried forward to subsequent price cap periods • The maximum allowed price increase in any one price cap period is 5%. <p><u>Additional Regulatory Obligations:</u></p> <ul style="list-style-type: none"> ○ <i>Free Minute Allowance:</i> residential basic standalone fixed voice access service must include a minimum of 100 off-peak, on-net FTF minutes ○ <i>Harmonization:</i> The lowest monthly residential standalone basic access line rate must be equal to or more than 77% of the highest monthly residential standalone basic access line rate in any other MS <ul style="list-style-type: none"> • AAM Applies to this Market: If AAM triggered, then the above-noted price cap constraints and additional regulatory obligations would be removed |
| #2 | Business Access at a Fixed Location | <p><u>Price Cap Constraints:</u></p> <ul style="list-style-type: none"> • Business basic standalone fixed access $PCI = I - X$, where $X = 0$ • C&W must provide business basic standalone fixed voice access service • Unused headroom can be carried forward to subsequent price cap periods • The maximum allowed price increase in any one price cap period is 5%. <p><u>Additional Regulatory Obligations:</u></p> <ul style="list-style-type: none"> ○ <i>Harmonization:</i> The lowest monthly business standalone basic access line rate must be equal to or more than 90% of the highest monthly business standalone basic access line rate in any other MS <ul style="list-style-type: none"> • AAM Applies to this Market: If AAM triggered, then the above-noted price cap constraints and additional regulatory obligations would be removed |
| #3 | Domestic Calling from a Fixed Location | <p><u>Price Constraints:</u></p> <ul style="list-style-type: none"> • FTF calls: $PCI = I - X$, where $X = 0$ • FTM calls: $PCI = I - X$, where $X = 0$ • Unused headroom can be carried forward to subsequent price cap periods • The maximum allowed price increase in any one price cap period is 5%. <p><u>Additional Regulatory Obligations:</u></p> <ul style="list-style-type: none"> ○ <i>Harmonization – Domestic FTF Calls:</i> The lowest FTF weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTF weekday/evening/weekend rate in any other MS ○ <i>Harmonization – Domestic FTM Calls:</i> The lowest FTM weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTM weekday/evening/weekend rate in any other MS ○ <i>Flow-through:</i> Mandated MTR and FTR reductions considered Z factors and, therefore, must be flow through as FTM and FTF rate reductions as proposed in Section 4.2.3 of this Consultation Document. <ul style="list-style-type: none"> • AAM Applies to this Market: If AAM triggered, then the above-noted price cap constraints and additional regulatory obligations would be removed (<u>excluding</u> the flow-through obligation) |
| #4 | International Calling from a Fixed Location | <p><u>Regulatory Obligation:</u></p> <ul style="list-style-type: none"> ○ <i>IDD Call Price Ceiling:</i> Each fixed IDD price must be equal to or less than the corresponding mobile IDD price charged by C&W <ul style="list-style-type: none"> • AAM Applies to this Market: If AAM triggered, then IDD call price ceiling obligation would be removed |

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| Table 8 – Proposed New RPRR Recommendations | | |
|--|---|---|
| Applicable to C&W/Columbus in all MS (except where noted otherwise) | | |
| No. | Relevant Market | Proposed RPRR |
| #5 | Broadband Internet Access at a Fixed Location | <p>Applicability: Grenada, St. Lucia and St. Vincent and the Grenadines</p> <p><u>Basic Broadband Offer (“BBO”) Obligation:</u></p> <ul style="list-style-type: none"> • Applicable in Grenada, Saint Lucia and St. Vincent and the Grenadines • Mandated Basic Broadband Offer Characteristics: <ul style="list-style-type: none"> ○ service must be available on a standalone basis ○ offered with unlimited monthly usage ○ minimum download / upload speeds of 10 Mbps / 1Mbps, respectively ○ the monthly retail price ceiling of \$99 (VAT included) ○ service would be available to new and existing customers ○ customers would have the flexibility to change broadband service plan without penalty <p><u>Additional Regulatory Obligations:</u></p> <ul style="list-style-type: none"> • Harmonization obligations across all three MS: <ul style="list-style-type: none"> ○ <i>BBO Availability Harmonization:</i> a basic fixed broadband service offer meeting the established Basic Broadband Offer characteristics must be made available in all MS ○ <i>BBO Price Harmonization:</i> The highest monthly rate (VAT included) for the Basic Broadband Offer must be no more than 10% higher than the lowest monthly rate standalone basic fixed broadband service in any other MS |
| #6 | Domestic Private Leased Circuits | <ul style="list-style-type: none"> • No price cap constraints or additional regulatory options on retail DPLC services |
| #7 | International Private Leased Circuits | <ul style="list-style-type: none"> • No price cap constraints or additional regulatory options on retail IPLC services |
| #8 | Data Services | <ul style="list-style-type: none"> • No price cap constraints or additional regulatory options on retail data services |

5 Reviewable Unregulated Services

5.1 Defined Relevant Markets

In addition to the eight Regulated Services markets considered above, ECTEL has reviewed two additional Unregulated Service markets – mobile and pay TV services. No operator(s) in these markets is currently deemed to be dominant and, accordingly, services in these markets are unregulated (i.e., they are not subject to *ex ante* price regulation, but nevertheless subject to the Regulations).

In the first case, mobile wireless service, which includes voice and data services,¹⁴ is designated as Market #9 for the purposes of this consultation. Since the mobile voice and data services are generally sold together and, moreover, are in many respects substitutable, they can be considered as a single rather than two separate relevant markets for market assessment purposes.¹⁵

In the second case, fixed pay TV service, which includes subscription-based TV services provided at a fixed location regardless of delivery technology (e.g., cable, copper, fibre or fixed wireless), is designated as Market #10. The service element inclusions for each of these Reviewable Unregulated Service markets are provided in Table 9.

| Table 9 – Proposed Reviewable Unregulated Service Relevant Retail Service Markets | | |
|--|--|--|
| No. | Relevant Market | Service Inclusions |
| #9 | Mobile Voice and Data Services <i>(Residential and Business)</i> | <ul style="list-style-type: none"> • Mobile access on a prepaid and postpaid basis • Domestic mobile-to-mobile (“MTM”) calling, on and off-net • Domestic mobile-to-fixed (“MTF”) calling, on and off-net • Domestic SMS messaging, on and off-net • International calling and messaging • Mobile data • Mobile VAS • All mobile service bundles, including combinations of some or all of the above |
| #10 | Pay TV Services at a Fixed Location <i>(Residential and Business)</i> | <ul style="list-style-type: none"> • Basic pay TV services provided at a fixed location • All above-basic tier add-on standalone TV channels and channel packages • All Pay TV service bundles, including combinations of some or all of the above • All related services, such as installation, activation or re-connection |

5.2 Preliminary Market Assessment and Conclusions

ECTEL notes that the same market assessment criteria, market data and information sources and market structure considerations that were discussed in Section 3 and were used for the assessments of Regulated Service Markets #1 to #8 were equally used for Reviewable Unregulated Service Markets #9 and #10.

In the case of mobile services (Market #9), the market is duopolistic in structure in most MS, served by C&W and Digicel. The one exception is Grenada, where a third service provider

¹⁴ Note that data services include SMS and other messaging services (such as WhatsApp).

¹⁵ E.g., applications such as Skype and WhatsApp can be used for voice communications purposes.

operates, AisleCom. Despite the largely duopoly market structure, the degree of competitive rivalry appears to be relatively strong in all MS – e.g., in terms of high volume of promotional activities to attract new and retain existing customers and fluctuating market shares on a year-over-year basis.¹⁶ Therefore, ECTEL is of the preliminary view that there appears to be no need to regulate prices on an *ex ante* basis in this market at this time.

That said, ECTEL is aware of long-standing consumer concerns with certain pricing and marketing practices in this market. While the Draft EC Consumer Protection Regulations are intended to address some of these concerns in the context of a comprehensive consumer protection framework (e.g. provision of information, consumer contracts, promotions and advertising and complaints handling), they have not been implemented as of yet. In any event, ECTEL considers that the mobile pricing and marketing practices of concern can be readily be addressed through targeted mobile consumer safeguards pursuant to the Regulations. Indeed, ECTEL is also aware of a variety of mobile consumer safeguards that have been introduced in other countries that address these types of concerns, such as “bill shock” arising from out-of-bundle overage charges or international roaming charges, as well as the treatment of rollover data. In this context, ECTEL has reviewed a number of current mobile service pricing and marketing practices (see Section 5.3) and, based on its review, developed a set of proposed mobile consumer safeguards to deal with issues of greatest concern at this time.

In the case of the pay TV services (Market #10), CWC’s acquisition of Columbus has resulted in C&W holding a dominant position in this market in Grenada, Saint Lucia and St. Vincent and the Grenadines. However, here again, Digicel could enter these markets with its Fibre-based Retail Services in the near future, which would introduce a significant competitive alternative for consumers. In addition, C&W’s acquisition of Marpin has resulted in it holding a significant market share in Dominica as well. Otherwise, C&W’s presence in the pay TV market is very limited in St. Kitts and Nevis, which is currently also served by The Cable and Digicel.

More generally, ECTEL also recognizes that video consumers have an increasing range of competitive alternatives available. These include a growing number of free and subscription-based online video-on-demand services available (such as Netflix, Amazon Prime, Apple TV, Disney+ and YouTube). As well, other traditional TV options exist such as over-the-air and satellite TV. Moreover, pay TV services can be considered as more discretionary rather than essential in nature. Therefore, as in the case of mobile services, there appears to be no need to regulate prices on an *ex ante* basis in the pay TV market at this time. That said, ECTEL intends to monitor pricing and marketing practices in the pay TV market to determine whether *ex ante* price regulation and/or consumer protection safeguards may be necessary in the future.

A summary of ECTEL’s preliminary market assessment conclusions with respect to the mobile and pay TV service markets are provided in Table 10. Note that detailed results of ECTEL’s market assessments for Markets #9 and #10 are provided in Annex 1.

| |
|---|
| Table 10 – Preliminary Market Assessment Conclusions |
|---|

¹⁶ The recent introduction of mobile number portability in the MS supports customer switching and, therefore, a greater degree of competition.

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| For Reviewable Unregulated Service | | |
|---|--|--|
| No. | Relevant Market | Competitiveness |
| #9 | Mobile Voice and Data Services <i>(Residential and Business)</i> | <p>The market for mobile voice and data services is a duopoly in each ECTEL Member States shared by C&W and Digicel. The lone exception is in Grenada where AisleCom provides a small but growing competitive alternative. Despite the relatively longstanding duopoly market structure, there appears to be a significant degree of competitive rivalry between C&W and Digicel.</p> <p>Therefore, on a preliminary basis, ECTEL proposes that <i>ex ante</i> price regulation should <u>not</u> be introduced in the mobile voice and data services market.</p> <p>That said, ECTEL considers that a preliminary review of current mobile service pricing and marketing practices is necessary to determine whether any such practices raise significant concerns for mobile consumers and, if so, to consider the need to potentially implement, where deemed necessary, targeted mobile consumer safeguards. The specific issues of concern are discussed in Section 5.3.</p> |
| #10 | Pay TV Services at a Fixed Location <i>(Residential and Business)</i> | <p>C&W holds a monopoly market position on the fixed pay TV service markets in Grenada, Saint Lucia and St Vincent and the Grenadines; however, Digicel could enter these markets with Fibre-based Retail Services in the near future. The corresponding markets in Dominica and St Kitts and Nevis are effectively duopolistic, with C&W (Marpin) and The Cable holding the largest market shares, respectively. While the fixed pay TV service markets are highly concentrated, there is a growing number of indirect competitive alternatives available, including pay and free OTT online VOD options. In addition, there are other traditional alternatives such as OTA and satellite TV. In addition, pay TV services can in many respects be considered more of a discretionary rather than essential service.</p> <p>Therefore, on a preliminary basis, ECTEL proposes that <i>ex ante</i> price regulation should <u>not</u> be introduced in the fixed pay TV services market, nor is it proposing that any specific consumer safeguards are necessary at this time.</p> |

5.3 First Review of Mobile Marketing Practices

This section presents ECTEL’s first review of specific retail mobile pricing and marketing practices in the MS. As noted above, ECTEL is not proposing to designate any operator as dominant in this market or, as a consequence, to consider the need to regulating mobile prices. Rather, ECTEL’s objective in this first review is to identify and assess current mobile pricing and marketing practices, including those that ECTEL considers are likely to raise significant concerns for consumers. In this case, and as discussed in discussed in Section 2, ECTEL is proposing a set of Mobile Consumer Safeguards to address such concerns.

ECTEL’s present mobile pricing and marketing practice review is based on the following considerations:

- **First**, as noted above, ECTEL is aware of long-standing consumer concerns with certain mobile service pricing and marketing practices. Some of these concerns have been brought to ECTEL’s attention by the NTRCs. ECTEL is aware of other such practices based on its knowledge of the mobile market in the MS. As in other jurisdictions (see below), many of these concerns are related to “bill shock” from unexpectedly high mobile invoices or rapid credit depletion. On this basis, ECTEL developed a conceptual “long-list” of mobile pricing and marketing matters of concern.
- **Second**, as also noted above, a number of regulatory agencies around the world have established mobile consumer safeguards to deal with these types of concerns, including those

related to bill shock. In this context, ECTEL undertook a comprehensive scan of mobile consumer safeguards that have been implemented in a select group of countries in the Caribbean and elsewhere, including the Dominican Republic (“DR”), the USA, Canada (“CA”), the United Kingdom (“UK”), South Africa (“RSA”) and Hong Kong (“HK”). The general results of this survey are summarized in Annex 3 and also incorporated in Tables 11-15 below.

- **Third**, ECTEL developed a detailed request for information (“RFI”) to be completed by C&W and Digicel for each of the 5 MS with respect to their current mobile pricing and marketing practices. ECTEL developed the RFI by analysing its “long-list” of concerns against the specific safeguards being implemented internationally and, on this basis, developed a “short list” of matters that were included in the RFI. The RFI was initially completed by C&W and Digicel in May 2019 and then later updated in December 2019. The relevant details of the responses of the RFIs are incorporated in Tables 11-15 below.

- **Fourth**, in May 2019 the Jamaican regulatory agency, the Office of Utility Regulation (“OUR”) initiated a regulatory process dealing with many of the same issues addressed in this section.¹⁷ The OUR set out a series of regulatory proposals to address consumer complaints related to high call charges, receipt of notifications, rapid credit depletion due to data use, etc. While the OUR has not issued a decision as of yet, ECTEL has taken into account responses to the OUR Consultation Document submitted by C&W Jamaica¹⁸ and Digicel Jamaica,¹⁹ which provide a detailed description of their current commercial practices in relation to those proposals. The relevant details of the Jamaican experience are incorporated in Tables 11-15 below.

Based on the results of the RFI process and taking into account the other above-noted information, ECTEL developed a list of thirteen (13) pricing/marketing practice “elements” that ECTEL believes should be assessed in this first review. These elements are described and addressed in the remainder of this section and organized into five categories. The first four categories are related to “bill shock” and correspond to whether the mobile pricing or market practice relates to “in-bundle” or “out-of-bundle” national or roaming usage. “In-bundle” usage includes voice, SMS and/or data usage that is included in a plan – i.e., the in-bundle usage “allotment” offered on a prepaid or postpaid basis. Nine of the thirteen pricing/marketing practice elements reviewed fall within the first four categories. Conversely, “out-of-bundle” usage includes usage that is in excess of any plan usage allotment. The fifth category of elements relates to the treatment of whether and how any unused usage allotment is “rolled over” – i.e., “in-bundle” voice, SMS and/or data usage

¹⁷ OUR, “Improving Information Transparency in Telecommunication Markets”, Consultation Document, dated 2019 May 3, Available at:
https://www.our.org.jm/ourweb/sites/default/files/documents/sector_documents/improving_information_transparency_in_telcommunication_markets_-_our_consultation_document.pdf.

¹⁸ https://www.our.org.jm/ourweb/sites/default/files/documents/sector_documents/flows_response_-_improving_information_transparency_0.pdf

¹⁹ https://www.our.org.jm/ourweb/sites/default/files/documents/sector_documents/consultation_response_-_transparency_in_telco_market_-_digicel_1.pdf

“rollover” as applicable. The remaining four pricing/marketing practice elements reviewed relate to the fifth rollover-related category.

A description of each pricing/marketing practice element reviewed is provided in the following sections. Based on the responses to the RFI, C&W’s and Digicel’s current commercial practice is described for each element, including any differences that may exist across MS. For comparative regional commercial and international regulatory practice, ECTEL also describes the current Jamaican pricing/marketing practice for the same elements and, where applicable, relevant practices and/or policies for the six countries included in the international regulatory scan. Unless otherwise noted, the descriptions apply to both prepaid and postpaid plans.

In what follows, ECTEL reviews thirteen identified mobile pricing/marketing practice elements that raise potential concerns for mobile consumers. In each case, ECTEL provides its preliminary assessment and conclusion as to whether or not a mobile consumer safeguard is necessary and appropriate at this time. For those pricing/marketing practice elements for which ECTEL has concluded on a preliminary basis that safeguards are necessary, the related proposed Mobile Consumer Safeguards are set out in Annex 4 in the form of draft NTRC Guidelines.

531 In-Bundle National Usage

National prepaid and postpaid plans typically include specific voice, SMS and/or data national usage allotments and plan durations (e.g., daily, weekly or monthly). One element of concern is whether users are notified by their service provider as they approach or reach their national usage allotment limits (**Element #1**).

With respect to **Element #1**, as set out in Table 11, ECTEL notes that C&W and Digicel have indicated that they currently provide such notifications. This practice is generally consistent with Jamaican commercial practice, as well as international commercial practice.

ECTEL considers that such usage notifications should be standard practice for mobile service providers to help ensure consumers are protected from incurring unwanted out-of-bundle usage charges (i.e., bill shock). ECTEL recognizes that both C&W and Digicel have indicated that they both provide such notices to their subscribers. Nevertheless, ECTEL is of the preliminary view that such notifications should be mandatory. Therefore, ECTEL proposes that a Mobile Consumer Safeguard be implemented that would make such notifications mandatory. ECTEL considers that if implemented, C&W and Digicel should have no difficulty complying with such an obligation given that they have indicated that they already provide such notifications. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Table 11: Summary of In-Bundle National Usage Notification Practice

| Element Description | C&W Commercial Practice in ECTEL | Digicel Commercial Practice in ECTEL | Jamaica Commercial Practice | Selected Other Regulatory Practice |
|---|----------------------------------|--------------------------------------|---|---|
| #1 National Usage Allotment Notification | All MS: Yes for all services. | All MS: Yes for all services. | Digicel: Yes for all services. C&W: Yes for newer Prepaid and Postpaid plans. No for legacy Plans. | Not generally required (general commercial practice). |
| Are users notified they are approaching or have reached National usage allotment limits? | | | | |

532 In-Bundle Roaming Usage

Roaming may be accessed via national plans or roaming add-on plans. For the former, roaming usage, if available, is generally accessible on a “pay as you go” (PAYGO) basis, while the latter generally have specific plan durations and roaming usage allotments. Two elements related to roaming plans that raise potential concerns include: (i) how users access roaming usage – i.e., whether they “default” into roaming usage or are provided a choice to “opt-in” (**Element #2**) and (ii) whether users are notified that they are approaching or have reached their roaming usage allotment limits (where applicable) (**Element #3**).

With respect to **Element #2**, ECTEL notes that, as set out in Table 12, C&W and Digicel both have a “default” regime whereby users are defaulted into roaming usage outside of their home country. This is also the current commercial practice in Jamaica. Of the six other international jurisdictions reviewed, only the DR has a specific provision requiring an “opt-in” approach. Consequently, ECTEL is of the preliminary view that maintaining the current “default” regime is appropriate at this time.

For **Element #3**, ECTEL notes that, as set out in Table 12, neither C&W nor Digicel currently notify users that they are approaching or have reached their roaming allotment limits (if any). None of the other six international jurisdictions reviewed have any requirements in this regard, but ECTEL notes that Digicel Jamaica does provide notifications for its prepaid customers, which suggests that this may be technically and commercially feasible in the MS as well.

As with Element #1, ECTEL considers that in-bundle roaming usage notifications should be standard practice for mobile service providers to help ensure consumers are protected from incurring from unwanted out-of-bundle usage charges. Consequently, on a preliminary basis, ECTEL considers that roaming usage notifications are necessary and appropriate and, therefore, proposes that this practice be made mandatory through the implementation of a mobile consumer safeguard. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Table 12: Summary of In-Bundle Roaming Service Practice

| Element Description | C&W Commercial Practice in ECTEL | Digicel Commercial Practice in ECTEL | Jamaica Commercial Practice | Selected Other Regulatory Practice |
|---|--|--|---|--|
| <p>#2. Access Regime for Roaming</p> <p>With respect to accessing roaming services, are users automatically “defaulted” into roaming usage or “landing”; or given choice to “opt-in” to roaming usage?</p> | <p>All MS: “default” for all services (users notified of availability of roaming plan or default into PAYGO usage, as applicable)</p> | <p>All MS: “default” for all services (users notified of availability of roaming plan or default into PAYGO usage, as applicable)</p> | <p>Digicel: “default” for all services (users notified of availability of roaming plan or default into PAYGO usage, as applicable)</p> <p>C&W: “default” for all services (users notified of availability of roaming plan or default into PAYGO usage, as applicable)</p> | <p>DR: “opt-in” for all services.</p> |
| <p>#3. Roaming Usage Allotment Notification</p> <p>Are users notified they are approaching or have reached roaming usage allotments?</p> | <p>All MS: No.</p> | <p>All MS: No.</p> | <p>Digicel: Yes for Prepaid; No for Postpaid.</p> <p>C&W: No.</p> | <p>None.</p> |

533 Out-of-Bundle National Usage

National prepaid and postpaid plans have specific daily/weekly/monthly durations and national usage allotments. ECTEL notes that usage in excess of such allotments is subject to user-specific available credit limits/balances established by service providers and users. Separate from any such user-specific credit limit-related caps, three elements of concern in this regard relate to how such excess usage is treated.

Three matters arise in this respect:

Element #4 relates to whether operators in effect disallow out-of-bundle (“OOB”) national usage by requiring users to purchase a new plan/add-on for any excess usage or, alternatively, if they allow OOB national usage, whether users are “defaulted” into it or are provided a choice to “opt-in”.

Element #5 relates to whether users are notified by their service provider they are accessing OOB national usage and, if so, what the applicable OOB usage rates are.

Element #6 relates to whether operators impose any OOB national usage caps/limits separate from any user-specific credit limit-related caps.

For **Element #4**, ECTEL notes that, as set out in Table 13, C&W and Digicel both generally have a “default” regime whereby users are defaulted into OOB national usage. The one exception is the “disallow” regime for data services for Digicel SLU. There is some variation as well in Jamaica, where C&W has a “default” regime for all services, but Digicel has “opt-in” for voice/SMS in

most plans and “disallow” for data for all plans, suggesting that this may be technically and commercially feasible for C&W and Digicel in the other four MS. The surveyed international regulatory practice is mixed as well, with HK requiring “disallow” for data and RSA requiring “opt-in” for all services. Based on the available evidence, there is generally a mixed approach with respect to the commercial practice for incurring OOB national usage.

Nonetheless, ECTEL considers that OOB national usage raises significant bill-shock concerns for mobile consumers and, therefore, on a preliminary basis, ECTEL considers a mobile consumer safeguard is necessary and appropriate in this case and therefore, ECTEL proposes that a mobile consumer safeguard be established that would require mobile consumers to formally “opt-in” for OOB national usage before they are able to use and, consequently, be charged for OOB national usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Element #5 is closely related to Element #4. As shown in Table 13, there is some variation between and within C&W and Digicel with respect to the notification of users when they begin OOB national usage. Generally, C&W and Digicel do not notify users they are accessing national OOB usage or of the applicable rates. Digicel does notify and prompt users to purchase more data in postpaid plans and in Grenada and Saint Lucia for prepaid data usage, suggesting this may be technically and commercially feasible for C&W and Digicel across all MS. The practice in Jamaica mirrors that of the access regime, where Digicel provide such notification (depending on the plan and type of services) but C&W does not. Three of the other international jurisdictions surveyed have usage and/or rates notification requirements.

For the same reasons applicable in the case of Element #4, ECTEL considers that a mobile consumer safeguard is necessary and appropriate in this case to protect consumer interests. Therefore, ECTEL proposes that a Mobile Consumer Safeguard be established that would require mobile consumers be notified of applicable OOB national rates before they begin making use of OOB national usage and, consequently, be charged for such usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Element #6 is also related to Element #4. ECTEL notes that, as set out in Table 13, that neither C&W nor Digicel have established general caps or limits on OOB national usage charges, other than those implied by any user-specific credit limits/balances, with the notable exception of the 60MB/day cap on OOB data usage by Digicel in Grenada. Only one of the surveyed international jurisdictions, Canada, sets a mandated cap on OOB data usage charges. While ECTEL is of the general view that such OOB usage charge caps could help protect consumers from potential bill-shock concerns, proposed Mobile Consumer Safeguards #3 and #4 should provide adequate initial protection in this regard. Consequently, ECTEL is of the preliminary view that a requirement for mandated caps on OOB national usage charges are not necessary at this time.

Table 13: Summary of Out-of-Bundle (OOB) National usage practice

| Element Description | C&W Commercial Practice in ECTEL | Digicel Commercial Practice in ECTEL | Jamaica Commercial Practice | Selected Other Regulatory Practice |
|--|-------------------------------------|--|---|--|
| <p>#4. Access Regime for National OOB Usage Separate from any user-specific available credit limits/balances, is national “excess” usage: “disallowed” (operators require any excess usage to be under a new plan/add-on) are users automatically “defaulted” into OOB usage; or are users given choice to “opt-in” to OOB usage?</p> | All MS: “default” for all services. | <p>DOM, GND, SKN, SVG: “default” for all services.</p> <p>SLU: “default” for voice/SMS; “disallow” for data.</p> | <p>Digicel: “Opt-in” for prepaid/newer postpaid voice/SMS; “disallow” for data.</p> <p>“Default” for legacy postpaid voice/ SMS; “disallow” for data.</p> <p>C&W: “default” for all services.</p> | <p>HK: “disallow” for data.</p> <p>RSA: #3 “opt-in” for all services.</p> |
| <p>#5. National OOB Usage/Rates Notification Are users notified they are accessing OOB National usage and of the applicable rates?</p> | All MS: No notification. | <p>Prepaid DOM, SKN, SVG: No usage/rates notification. GND: No notification for voice/SMS; notification when reach OOB data cap of 60MB/day. SLU: No for voice/SMS; notification to purchase new data</p> <p>Postpaid All MS: No for voice/SMS; notification to purchase new data.</p> | <p>Digicel: Yes, notified to “opt-in” for prepaid/newer postpaid voice/ SMS; yes for excess data (user notified a new data plan is required)</p> <p>C&W: No usage/rates notification.</p> | <p>HK: Yes, notification to purchase new data.</p> <p>RSA: Yes, for any OOB usage for all services.</p> <p>CA: Yes, notification when reach OOB data cap.</p> |
| <p>#6. National OOB usage Limit/Cap Separate from any user-specific credit limits/balances, are there any external (by operator or regulator) caps/limits on OOB National usage?</p> | All MS: None for all services. | <p>Prepaid: DOM, SKN, SVG: None for all services. GND: None for voice/SMS; 60MB/day cap on data. SLU: None for voice/SMS; no excess data allowed.</p> | <p>Digicel: None for voice/SMS; no excess data allowed.</p> <p>C&W: None for all services.</p> | <p>CA: OOB data cap CA\$50/mth (~XCD\$100)</p> |

534 Out-of-Bundle Roaming Usage

National prepaid and postpaid plans have specific durations, national usage allotments and sometimes roaming usage allotments. In these plans, roaming usage, if available, is provided on either an in-plan basis (i.e., a defined allotment) or PAYGO basis (sometimes with a PAYGO allotment limit). Separately, users may purchase prepaid or postpaid roaming plans/add-ons, which have specific durations and roaming usage allotments. ECTEL notes that usage in excess of such allotments is subject to user-specific available credit limits/balances established by service providers and users. Separate from any such user-specific credit limit-related caps, there are three

elements of concern from ECTEL's perspective, which relate to how such excess roaming usage is treated:

Element #7 relates to whether operators in effect disallow OOB roaming usage by requiring users to purchase a new plan/add-on for any excess usage or if they allow OOB roaming usage, whether users are "defaulted" into it or are provided a choice to "opt-in".

Element #8 relates to whether users are notified by their service provider that they are accessing OOB roaming usage and, if so, the applicable roaming rates.

Element #9 relates to whether operators impose any OOB roaming usage caps/limits, separate from any user-specific credit limit-related caps.

For **Element #7**, ECTEL notes that, as set out in Table 14, there is some variation between and C&W and Digicel and across MS with respect to practice for users to access OOB roaming usage. C&W generally has the "default" regime. Digicel also mostly uses a the "default" regime, except where it offers its Prepaid "EZ Roaming" plans for which a "disallow" approach applies. This suggests that an alternative "opt-in" or "disallow" approaches for OOB roaming may be technically and commercially feasible for C&W and Digicel across all plans and in all MS. Elsewhere, a "default" regime applies in Jamaica and most other surveyed international jurisdictions, other than HK where a "disallow" regime for data services applies and RSA where an "opt-in" approach applies for roaming services. Based on the available evidence, there is a mixed approach with respect to the commercial practice to roaming usage.

As with Element #4 (Mobile Consumer Safeguard #3), ECTEL considers that OOB roaming usage raises significant bill-shock concerns for mobile consumers and, therefore, on a preliminary basis, ECTEL considers a mobile consumer safeguard is necessary and appropriate and, therefore, proposes that a mobile consumer safeguard be established that would require mobile consumers to formally "opt-in" for OOB roaming usage before they are able to use and, consequently, be charged for OOB roaming usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

For **Element #8** there is some variation between C&W and Digicel and across MS that mirrors the regime adopted under Element #7. Generally, C&W and Digicel do not notify users that they are accessing OOB roaming usage or provide the applicable roaming rates. Digicel does, however, notify users of prepaid "EZ Roaming" plans that they need to purchase a new plan to continue to roam. There is generally no roaming usage or rates notifications in Jamaica. In contrast, the majority of the surveyed international jurisdictions have requirements for these types of roaming usage or rate notifications.

For the same reasons applicable in the case of Element #7 and consistent with Mobile Consumer Safeguard #4, ECTEL considers that a mobile consumer safeguard is necessary and appropriate and, therefore, proposes that a mobile consumer safeguard be established that would require mobile consumers to be notified of applicable OOB roaming rates before they begin making use of OOB roaming usage and, consequently, be charged for such usage. This measure is set out in the proposed **Mobile Consumer Safeguards** in Annex 4.

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Element #9 is also related to Element #7. ECTEL notes that, as set out in Table 14, that neither C&W nor Digicel have established general caps or limits on OOB roaming usage charges, other than those implied by existing user-specific credit limits/balances. This is also the current commercial practice in Jamaica and most of the other surveyed international jurisdictions, with the exception of Canada which has mandated caps OOB roaming data usage charges and the DR which requires operators to offer users the possibility of setting a self-imposed cap. Like Element #6, while ECTEL is of the general view that such OOB usage charge caps could help protect consumers from potential bill-shock concerns, proposed Mobile Consumer Safeguards #5 and #6 should provide adequate initial protection in this regard. Consequently, ECTEL is of the preliminary view that a requirement for mandated caps on OOB roaming usage charges are not necessary at this time.

Table 14: Summary of Out-of-Bundle (OOB) Roaming usage practice

| Element Description | C&W Commercial Practice in ECTEL | Digicel Commercial Practice in ECTEL | Jamaica Commercial Practice | Selected Other Regulatory Practice |
|--|---|--|--|---|
| #7. Access Regime for Roaming OOB usage Separate from any user-specific available credit limits/balances, is roaming “excess” usage: “disallowed” (operators require any excess usage to be under a new plan/add-on) are users automatically “defaulted” into OOB usage, or are users given the choice to “opt-in” to OOB usage? | All MS: “default” for all services. | DOM: “default” for all services. | Digicel: “default” for all services. | HK: “disallow” for data |
| | | GND, SKN, SLU, SVG: “default” for all services in some Prepaid plans and all Postpaid plans; “disallow” for data in Prepaid “EZ Roaming” plans. | C&W: “default” for all services. | RSA: “opt-in” for all services |
| #8. Roaming OOB Usage/Rates Notification Are users notified they are accessing OOB roaming usage and of the applicable rates? | All MS: No notification (rates available on web/app) | All MS: No usage/rates notification for Postpaid plans and Prepaid “Roam like at home” plans. | Digicel: No notification (rates available on Web/app) C&W: Yes notification of usage for users roaming without roaming plan, at landing. | CA: Yes. UK: Yes. HK: Yes. USA: Yes for users roaming without roaming plan, at landing RSA: Yes, for any OOB usage for all services. |
| #9. Roaming OOB usage Limit/Cap Separate from any user-specific credit limits/balances, are there any external (by operator or regulator) caps/limits on OOB roaming usage? | All MS: None for all services. | All MS: None for all services. | Digicel: None for all services. Further, for Postpaid plans, any user-specific credit limit does not apply to OOB Roaming usage as operator reserves right to bill users up to 30 days after roaming transaction. | CA: OOB data cap of CA\$100/mth (~XCD\$200) DR: When activate roaming, operator must Offer user Roaming cap. |
| | | | C&W: None for all services. | |

535 Rollover of unused National allotments

National prepaid and postpaid plans have specific durations and national allotments. Four elements of concern identified by ECTEL relate to the treatment of any unused allotments available to users at the end of the duration of the plan:

Element #10 relates to whether operators allow unused allotments to be used under new plans/cycles.

Element #11 deals with how soon prepaid plan users have to purchase a new plan to use their rollover allotment (“rollover eligibility”).

Element #12 relates to how many plans/cycles is the unused allotment available for rollover (“rollover duration”).

Element #13 relates to whether rollover allotment or the regular allotment is used first (“rollover consumption”).

For **Element #10**, ECTEL notes that, as set out in Table 15, C&W and Digicel both have “rollover” plans under which users can potentially access unused in-bundle usage allotments. Current commercial practice in Jamaica with respect to rollover plans (if any) is not known. Two of the six surveyed international jurisdictions mandate a rollover regime of some form either for all services (i.e., in the DR) or for just data services (RSA). More broadly, ECTEL is aware that rollover plans are not generally commercially available in other countries. ECTEL is of the preliminary view that the terms and conditions for any available rollover plans should be clearly specified and easily understandable. ECTEL is not proposing a rollover-related mobile consumer safeguard at this time.

For **Element #11**, as set out in Table 15, C&W and Digicel both require that prepaid plan usage rollover is contingent on the user purchasing a new plan before or on expiry date of the existing plan. One of the six international jurisdictions surveyed has provisions in terms of rollover eligibility (i.e., the DR), which allows prepaid customers up to 90 days to purchase a new plan and still be eligible for usage rollover. As noted previously ECTEL is of the preliminary view that the terms and conditions (including eligibility) for any available rollover plans should be clearly specified and easily understandable and is not proposing a mobile customer safeguard for rollover eligibility at this time.

For **Element #12** ECTEL notes that, as set out in Table 15, there is some variability between C&W and Digicel and across MS with respect to rollover duration. C&W rolls over unused allotment for one plan/cycle for all plans, as does Digicel for prepaid and legacy postpaid plans. However, Digicel has indefinite rollover for newer postpaid plans. One of the six surveyed international jurisdictions has mandated provisions in place in this respect (i.e., the DR), which requires unused allotments be available for 90 days for prepaid and 3 monthly cycles for postpaid service plans. For the reasons noted above, ECTEL is also not proposing a mobile customer safeguard for rollover duration at this time.

For **Element #13** ECTEL notes that, as set out in Table 15, there is some variability between C&W and Digicel and across MS with regard to rollover consumption. C&W and Digicel’s practice in

this regard with respect to prepaid plans is not clear; however, for postpaid plans the rollover allotment is used first in C&W’s case, whereas Digicel does the opposite by using the regular allotment first. The DR and RSA are the only surveyed jurisdictions with provisions in this respect; they both require that rollover allotment be used first. For the reasons previously stated, ECTEL is not proposing a mobile customer safeguards for rollover consumption at this time.

Table 15: Summary of Rollover of unused National allotments practice

| Element Description | C&W Commercial Practice in ECTEL | Digicel Commercial Practice in ECTEL | Jamaica Commercial Practice | Selected Other Regulatory Practice |
|--|---|---|--|---|
| #10. Availability of Rollover Are unused national allotment(s) “expired” after plan/cycle expiry and not available to users or are they rolled over” and potentially available to users? | All MS: “rollover” for all services. | GND, SLU, SVG: “rollover” for all services. DOM, SKN: “rollover” for all services for Postpaid, newer Prepaid plans, and for data for legacy Prepaid plans; “expiry” for voice/SMS for legacy Prepaid plans. | Digicel: Not known. C&W: Not known. | DR: “rollover” for all services. RSA: “expiry” for voice/SMS; “rollover” for data. |
| #11. Timing of New Prepaid Plan for Rollover For Prepaid rollover, relative to a current plan, when must a new Prepaid plan be purchased? | All MS: before the expiry of current plan. | All MS: For applicable plans, until 23:59 of day of expiry of current plan. | Digicel: Not known. C&W: Not known. | DR: Within 90 days of expiry of current plan. |
| #12. Durability of Rollover For how many plans/cycles is the unused allotment available for rollover? | All MS: 1 new plan for Prepaid; 1 billing cycle for Postpaid. | All MS: 1 new plan for Prepaid; 1 billing cycle for legacy Postpaid plans, indefinitely for newer Postpaid plans. | Digicel: Not known. C&W: Not known. | DR: 90 days for prepaid; 3 billing cycles for Postpaid. |
| #13. Rollover Sequencing Is the rollover allotment or the regular allotment used first? | All MS: rollover allotment is used first for Postpaid. | All MS: Regular allotment is used first for Postpaid. | Digicel: Not known. C&W: Not known. | DR: Rollover allotment is used first. RSA: For data, rollover allotment is used first. |

536 Summary of Preliminary Conclusions

Table 16 summarizes ECTEL’s preliminary conclusions on the need for mobile consumer safeguards at this time in regard to the 13 mobile pricing and marketing elements discussed above. As discussed, ECTEL has proposed that Mobile Consumer Safeguards be established for 6 of the 13 elements. For the 7 other elements discussed above, and for the other numerous elements that ECTEL reviewed in its long list mobile pricing and marketing practices but did not include in the current document, ECTEL does not consider it necessary or appropriate at this time to propose such measures at this time.

As noted, this is ECTEL first review of the Reviewable Unregulated Services. ECTEL expects undertake subsequent reviews of these services on a periodic basis.

| Table 16: Summary of Initial Review of Mobile Pricing and Marketing Practices | |
|--|--|
| | Is a Mobile Consumer Safeguard necessary and appropriate? If YES , it is included as part of Draft NTRC Guidelines in Annex 4 |
| Element #1. National Usage Allotment Notification | YES |
| Element #2. Access Regime for Roaming | No |
| Element #3. Roaming Usage Allotment Notification | YES |
| Element #4. Access Regime for National OOB Usage | YES |
| Element #5. National OOB Usage/Rates Notification | YES |
| Element #6. National OOB usage Limit/Cap | No |
| Element #7. Access Regime for Roaming OOB usage | YES |
| Element #8. Roaming OOB Usage/Rates Notification | YES |
| Element #9. Roaming OOB usage Limit/Cap | No |
| Element #10. Availability of Rollover | No |
| Element #11. Timing of New Prepaid Plan for Rollover | No |
| Element #12. Durability of Rollover | No |
| Element #13. Rollover Sequencing | No |

ECTEL expects and welcomes C&W and Digicel’s comments on ECTEL’s analysis and conclusions in this section and the corresponding draft NTRC Guidelines setting out the proposed Mobile Consumer Safeguards in Annex 4. ECTEL would specifically request C&W and Digicel to include in their responses their views on the technical and commercial feasibility of complying with the draft NTRC Guidelines, including the necessary timelines and resources required for implementation and any regulatory barriers to implementation. If plans to implement any of the proposed safeguards already exist, then include the details of those plans in the responses to this Consultation Document.

6 Other Administrative Matters

6.1 Regulated Services

There are a number of other administrative matters relating to the New RPRR applicable to Regulated Services offered by C&W/Columbus, including the following:

- *Effective Date:* ECTEL proposes that the New RPRR take effect from **December 1, 2020** and the price cap index be updated annually on April 1st each year. However, ultimately, the final effective date of the New RPRR will depend on the time it takes to complete this consultation process. If the final effective is later than April 1, 2020, then a shortened Year 1 RPRR period would be required for which the applicable Year 1 inflation rate in the PCI formula would be prorated accordingly.
- *Duration and Automatic Renewal:* ECTEL proposes that the duration of the New RPRR be 4 years, after which it would expire, unless it is either renewed or replaced.
- *Inflation Factor:* The Inflation rate or I-Factor is calculated as the previous year's change in the consumer price index ("CPI") for the applicable MS as calculated and published by the Eastern Caribbean Central Bank.
- *Exogenous Factors:* ECTEL proposes that if an exogenous factor or event occurs that significantly impacts the ongoing applicability of any or all regulatory measures under the New RPRR, C&W could apply to alter the regime in an appropriate manner, providing it provided adequate support evidence and justification.

As noted in Section 4.1, mandated reductions in interconnection rates would qualify as exogenous factors and, as such, must be flowed through as reductions in corresponding retail call rates in the manner specified in Table 7 above.

- *Reporting Requirements:* On the 15th of the month preceding the launch of the New RPRR and on March 15th each year (or the closest business day in each case), C&W would be required to file an RPRR Compliance Report, which would update the applicable price cap indexes, demonstrate and confirm compliance with all price constraint and additional regulatory obligations, as applicable, as well as all BBO and MTR and FTR reduction flow-through obligations.

In addition, while C&W would be required to file audited statutory annual financial statements covering its own and acquired/integrated operations, it would no longer be required to produce or file Enhanced Allocation Model ("EAM") results or reports.

- *AAM Data Collection:* Both C&W and Digicel will be required to file the AAM related data set out in Annex 2 one month prior to the New RPRR taking effect and, as necessary, every six months thereafter. In each such instance, ECTEL would issue a formal RFI to both parties for this purpose as part of the AAM process. ECTEL would also keep parties

apprised of the outcome of its AAM assessments and findings each time the AAM exercise is conducted.

- *Relationship between New RPRR and Regulations:* Also, for the avoidance of doubt, to the extent there may be a conflict between the New RPRR and the Regulations, the Regulations would take precedence. Likewise, to the extent there may be a conflict between the New RPRR and the Draft EC Regulations, the Draft EC Regulations would take precedence.

6.2 Reviewable Unregulated Services

As discussed in Section 5.3 and set out in Annex 4, ECTEL proposes that the NTRCs introduce a number of Mobile Consumer Safeguards following the conclusion of this proceeding. The proposed mobile consumer safeguards may of course be modified based on comments received in response to this Consultation Document. However, once a decision is issued, ECTEL recommends that the final Mobile Consumer Safeguards should become effective within three months of the date of the decision, unless service providers show cause as to why a longer implementation period may be necessary for one or more of the proposed Mobile Consumer Safeguards.

Annex 1: Detailed Market Assessments

| Market #1 - Residential ("RES") Access at a Fixed Location | | | | | |
|---|-----------------------|--|---|-----------|---|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's fixed voice revenues declining significantly in most cases | | | ECTEL Sector Database (2) |
| | Service Volumes | C&W's fixed RES access lines flat or growing in some MS | | | ECTEL Sector Database |
| | Service Prices | C&W's fixed RES access line rates constant | FLOW brand rates increased in GND to match C&W | | ECTEL Sector Database and C&W RFI #2(a) |
| | PCP API vs PCI | APIs less than PCIs in all ECTEL MS, but headroom in all cases minimal (varies by vintage of the PCP 2010 vs 2015) | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS | | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | Generally declining given decline in access lines and call volumes while prices have largely been constant | | | |
| | Promotions | No specific RES fixed access line promotions identified by C&W, but some promotional offers noted for international calling add-ons and pay TV and fixed broadband bundles (e.g., free installation, free international calling for one month, etc.) | Mostly in GND, SLU and SVG | | C&W RFI #2(a) |
| | Profitability | Segment-specific profitability not available | | | |
| 2. Competitive Alternatives | Direct Substitutes | With CWC's acquisition of Columbus in GND, SLU and SVG and C&W's acquisition of Marpin 2K4 in DOM, there is little if any direct RES fixed access line competition in any MS at this time. The only current sources of direct fixed line access competition appear to be from SAT Telecom (owned by Digicel) in DOM, Grencomm in GND, and Caribbean Cable Communications (owned by Digicel) in SKN – however, these competitive alternatives currently appear to only have a very limited presence in the RES fixed voice access market. | C&W-Columbus & Marpin mergers directly affect DOM, GND, SLU and SVG | | ECTEL Sector Database and market assessment, Digicel RFIs |
| | Coverage/Capacity | C&W is currently the only service provider and has extensive RES market coverage. | | | |

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| | | | | |
|-------------------------|----------------------|---|---|---|
| | Indirect Substitutes | Mobile access can provide an indirect substitute for fixed access and, more generally, can provide some competitive pressure to fixed access pricing. In addition, OTT VoIP applications can also provide indirect competition, although such applications require a broadband connection and may preclude having a local telephone number. | | Market Assessment |
| | Coverage/Capacity | Mobile is generally available near-nationwide and OTT VoIP apps depends on broadband coverage, but at a minimum includes C&W's own broadband network footprint. | | Market Assessment |
| | Evidence of Rivalry | With CWC's acquisition of Columbus and C&W's acquisition of Marpin there is very little apparent direct rivalry in the RES fixed voice access market at this time. There is at most some indirect rivalry from mobile and OTT alternatives. | | |
| 3. Market Share | Revenue-based | With its recent acquisitions, C&W's RES fixed voice market share is virtually 100% at this time. | | ECTEL Sector Database (2) |
| | Volume-based | With its recent acquisitions, C&W's RES fixed voice market share is virtually 100% at this time. | | ECTEL Sector Database |
| | Trends | Little if any variation over the last 5 years, but this could change in GND, SLU and SVG if Digicel enters the RES fixed voice market by providing Fibre-based Retail Services in these MS. | | |
| 4. Market Trends | Technology | In many countries, fixed access competition has resulted primarily from the entry of cable companies into what was formerly a near-monopoly market. This possibility has been eliminated in any MS through CWC's recent cable company acquisitions. At the same time, reliance on fixed access technologies for voice services has been decreasing, while mobile access increasing - although there has been growth in fixed lines in many MS, but usage in terms of call minutes has been nevertheless been declining (see Market #3). Fixed line penetration in MS overall has remained relatively constant (i.e., 23% in 2013 versus 22% as of 2017), whereas mobile penetration remains at very high levels, though declining over the last several years (i.e., from 128% in 2013 to 107% as of 2017). | | ECTEL Sector Review and Market Assessment |
| | Likelihood of Entry | The likelihood of entry in the RES fixed access market using either wireline or fixed wireless technology is normally low. However, there is potential for cable-based entry in SKN (via Caribbean Cable Communications) and fibre-based entry in GND, SLU and SVG via Digicel's CARCIP Project related fibre networks in these three MS. | Potential cable-based entry in SKN and new fibre-based entry in GND, SLU and SVG. | Market Assessment |

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| | | | | |
|------------------------------|-------------------------------|--|--|-------------------|
| 5. Barriers to Entry | Financial | Very high cost of entry for new wireline entrants, whereas fixed wireless technology would be less costly. With CWC's acquisitions of cable companies in most MS, there is limited prospect for cable-based competition in most MS (with the potential exception of SKN). Otherwise, as noted, Digicel may soon enter the RES fixed voice market by providing Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/ Regulatory | Number portability and unbundled loops not currently available | | |
| 6. Consumer Behaviour | Barriers to Switching | The imminent introduction of fixed number portability should promote switching and, therefore, greater competition | | |
| | Survey Evidence | ECTEL 2015 Broadband Use Survey provides information on alternative forms of access use in the ECTEL MS, although it is dated now. | | |
| 7. Other Factors | Countervailing Buyer Power | Not applicable | | |

Notes: (1) All information on C&W includes its recent acquisitions - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.
(2) Revenues include RES and BUS local access and calling revenues as well as domestic leased circuit revenues.

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| Market #2 - Business ("BUS") Access at a Fixed Location | | | | | |
|--|-----------------------|---|--|-----------|--|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's fixed voice revenues declining significantly in most cases. | | | ECTEL Sector Database (2) |
| | Service Volumes | C&W's fixed BUS access lines mostly declining with the exception of GND. | | | ECTEL Sector Database |
| | Service Prices | C&W's fixed BUS access single line rates constant. | FLOW brand rates increased in GND to match C&W | | PCP ACF and RFI #2(a) |
| | PCP API vs PCI | APIs less than PCIs in all ECTEL MS, headroom varies by MS ECTEL considerably (and by vintage of the PCP 2010 vs 2015). Harmonization constraints also limit MS-specific changes. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS | | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | Generally declining given decline in access lines and call volumes while prices have largely been constant. | | | |
| | Promotions | No specific BUS fixed access line promotions noted by C&W. | | | C&W RFI #2(a) |
| | Profitability | Segment-specific profitability not available. | | | |
| 2. Competitive Alternatives | Direct Substitutes | With CWC's acquisition of Columbus in GND, SLU and SVG and C&W's acquisition of Marpin 2K4 in DOM, there is little if any direct BUS fixed access line competition in the MS. The only source of direct fixed line access competition at this time appears to be from SAT Telecom (owned by Digicel) in DOM, Grencomm in GND, and Caribbean Cable Communications (owned by Digicel) in SKN – however, these competitive alternatives currently appear to have a very limited presence in the BUS fixed voice access market. | C&W-Columbus & Marpin mergers directly affect DOM, GND, SLU and SVG. | | ECTEL Sector Database, Digicel RFI and market assessment |
| | Coverage/Capacity | C&W is the primary service provider and has extensive market coverage. The coverage of other competitors such as SAT Telecom and Grencomm is unknown but is likely less extensive. | . | | ECTEL Sector Database, Digicel RFI and market assessment |

**Market Assessment of Regulated and Unregulated Retail Services and
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|-------------------------|----------------------|---|--|---|
| | Indirect Substitutes | Mobile access can provide an indirect substitute and, more generally, can provide some competitive pressure to fixed line pricing. In addition, OTT VoIP applications can also provide indirect competition, although they require a broadband connection and may preclude having a local telephone number. However, these options may be of more limited appeal as a substitute for BUS compared to RES fixed line access. | | Market Assessment |
| | Coverage/Capacity | Mobile is generally available near-nationwide and OTT VoIP apps depends on broadband coverage, but at a minimum includes C&W's own broadband network footprint. | | Market Assessment |
| | Evidence of Rivalry | With CWC's acquisition of Columbus and C&W's acquisition of Marpin there is very little apparent direct rivalry in the BUS fixed voice access market at this time. There is some residual indirect rivalry from mobile and OTT alternatives, but this would likely be limited to the small business segment of the market. | | |
| 3. Market Share | Revenue-based | With its recent acquisitions, C&W's BUS fixed voice market share is virtually 100% at this time. | | ECTEL Sector Database (2) |
| | Volume-based | With its recent acquisitions, C&W's BUS fixed voice market share is virtually 100% at this time. | | ECTEL Sector Database |
| | Trends | Little if any variation over the last 5 years, but this could change in GND, SLU and SVG if Digicel enters the BUS fixed voice market by providing Fibre-based Retail Services in these MS. | | |
| 4. Market Trends | Technology | In many countries, fixed access competition has resulted primarily from the entry of cable companies into what was formerly a near-monopoly market (at least for small to medium business customers). This possibility has been eliminated in most MS through CWC's recent cable company acquisitions. At the same time, BUS fixed access lines are generally flat or growing slowly at best. In addition, in terms of technology, the trend is from POTS to converged IP platforms along with increasing use of mobile technologies. | | ECTEL Sector Review and market assessment |

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|------------------------------|----------------------------|--|--|------------------------------------|
| | Likelihood of Entry | The likelihood of entry in the BUS fixed access market using wireline technology is normally very low, though there is some prospect for entry using fixed wireless technology, which would be most effective in the medium to large business segments of the market. Digicel has used this technology in other countries in the Caribbean, and could use it in the MS. As well, in GND, SLU and SVG, Digicel has the means to enter the BUS fixed voice market via its CARCIP Project related fibre networks in these three MS. In addition, there is also potential for cable-based entry in SKN (via Caribbean Cable Communications). | Potential cable-based entry in SKN and new fibre-based entry in GND, SLU and SVG | Market Assessment and Digicel RFIs |
| 5. Barriers to Entry | Financial | Very high cost of entry for new wireline entrants, whereas fixed wireless technology would be less costly. However, with CWC's acquisition of FLOW, Marpin and Karib there is no prospect for a cable-based competitive entry in most MS. Otherwise, as noted, Digicel has the means to enter the BUS fixed voice market by providing Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/ Regulatory | Number portability and unbundled loops not currently available. | | |
| 6. Consumer Behaviour | Barriers to Switching | The imminent introduction of fixed number portability should promote switching and, therefore, greater competition | | |
| | Survey Evidence | No recent survey evidence. | | |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of large multiline/bundled service customers. | | |

Notes: (1) All information on C&W includes its recent acquisitions - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.
(2) Revenues include RES and BUS local access and calling revenues as well as domestic leased circuit revenues.

*Market Assessment of Regulated and Unregulated Retail Services and
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| Market #3 - Domestic Calls from a Fixed Location | | | | | |
|---|-----------------------|---|---|-----------|--------------------------------------|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's fixed voice revenues declining significantly in most cases. | | | ECTEL Sector Database (2) |
| | Service Volumes | Call volumes (measured in minutes) for C&W fixed lines are generally declining in all MS, in some cases significantly. FTF call volumes are generally declining at a faster rate than FTM calls. | | | ECTEL Sector Database |
| | Service Prices | C&W FTF and FTM call prices (on-net and off-net) effectively unchanged over the last five years. Comparable rates offered by Columbus (FLOW) increased to match C&W in GND. | FLOW brand rates increased in GND to match C&W | | PCP ACF and RFI #2(a) |
| | PCP API vs PCI | APIs less than PCIs in all MS, headroom varies by MS considerably (and by vintage of the PCP 2010 vs 2015). Harmonization constraints also limit MS-specific changes. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS | | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | N/A | | | |
| | Promotions | No specific promotions noted. | | | C&W RFI #2(a) |
| | Profitability | Segment-specific profitability not available. | | | |
| 2. Competitive Alternatives | Direct Substitutes | Same as the RES and BUS access market. | | | See Markets 1 and 2 |
| | Coverage/Capacity | Same as the RES and BUS access market. | | | See Markets 1 and 2 |
| | Indirect Substitutes | Mobile access can provide an indirect substitute and, more generally, can provide some competitive pressure on fixed call pricing. In addition, OTT VoIP applications can also provide indirect competition, although they require a broadband connection and may preclude having a local telephone number. | | | Market Assessment |
| | Coverage/Capacity | Mobile is generally available near-nationwide and OTT VoIP apps depend on broadband coverage, but at a minimum includes C&W's own broadband network footprint. | | | Market Assessment |
| | Evidence of Rivalry | Same as the RES and BUS fixed voice access market. | | | |
| 3. Market Share | Revenue-based | With its recent acquisitions, C&W's domestic calling market share is virtually 100% at this time. | | | ECTEL Sector Database (2) |
| | Volume-based | With its recent acquisitions, C&W's domestic calling market share is virtually 100% at this time. | | | ECTEL Sector Database |

**Market Assessment of Regulated and Unregulated Retail Services and
Proposed Recommended Regulatory Measures**

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|------------------------------|----------------------------|---|--|---|
| | Trends | Little if any variation over the last 5 years, but this could change in GND, SLU and SVG if Digicel enters the fixed voice market by providing Fibre-based Retail Services in these MS. | | |
| 4. Market Trends | Technology | Same as the RES and BUS fixed voice access market. | | ECTEL Sector Review and market assessment |
| | Likelihood of Entry | Same as the RES and BUS fixed voice access market. | Potential cable-based entry in SKN and new fibre-based entry in GND, SLU and SVG | Market Assessment and Digicel RFIs |
| 5. Barriers to Entry | Financial | Same as the RES and BUS fixed voice access market. | | Market Assessment |
| | Technical/Regulatory | Number portability and unbundled loops not currently available. | | |
| 6. Consumer Behaviour | Barriers to Switching | Moderate given absence of local number portability. | | |
| | Survey Evidence | No recent survey evidence. | | |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of large multiline/bundled service customers. | | |

*Notes: (1) All information on C&W includes its recent acquisitions - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.
(2) Revenues include RES and BUS local access and calling revenues as well as domestic leased circuit revenues.*

*Market Assessment of Regulated and Unregulated Retail Services and
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| Market #4 - International Calls from a Fixed Location | | | | | |
|--|-----------------------|---|----------------------------|-----------|---------------------------|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's fixed voice revenues declining significantly in most cases. | | | ECTEL Sector Database (2) |
| | Service Volumes | Call volumes (measured in minutes) for C&W fixed lines are generally declining in all MS, with the exception of DOM. | | | ECTEL Sector Database |
| | Service Prices | Some limited evidence of price increases and decreases (i.e., in region and Can/US). | | | ECTEL Sector Database |
| | PCP API vs PCI | Not covered directly by 2010 or 2015 PCP. | | | |
| | ARPU trends | N/A | | | |
| | Promotions | N/A | | | |
| | Profitability | Segment-specific profitability not available. | | | |
| 2. Competitive Alternatives | Direct Substitutes | Same as the RES and BUS access market. | | | See Markets 1 and 2 |
| | Coverage/Capacity | Same as the RES and BUS access market. | | | See Markets 1 and 2 |
| | Indirect Substitutes | Indirect competition comes from over-the-top ("OTT") VoIP applications such as Skype, Google Hangouts, Viber (and many others), although such VoIP apps require a broadband connection. International calling cards another option for international calling. In addition, mobile voice and data services (e.g., in the latter case, WhatsApp, FaceTime, Google Voice). All of these services can also provide indirect substitutes for and, more generally, can provide some competitive pressure on international call pricing. | | | Market Assessment |
| | Coverage/Capacity | OTT VoIP apps depend on broadband coverage, which at a minimum includes C&W's own broadband network footprint, whereas mobile service is generally available near-nationwide. | | | Market Assessment |
| | Evidence of Rivalry | Same as the RES and BUS fixed voice access market; however, greatest current source of rivalry comes from the above-noted indirect sources. | | | |
| 3. Market Share | Revenue-based | With its recent acquisitions, C&W's revenue-based international calling market share is virtually 100% at this time (when excluding consideration of indirect sources of competition). | | | ECTEL Sector Database (2) |

**Market Assessment of Regulated and Unregulated Retail Services and
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|------------------------------|----------------------------|--|--|---|
| | Volume-based | With its recent acquisitions, C&W's volume-based international calling market share is virtually 100% at this time (when excluding consideration of indirect sources of competition). | | ECTEL Sector Database |
| | Trends | Little if any variation over the last 5 years, but this could change in GND, SLU and SVG if Digicel enters the fixed voice market by providing Fibre-based Retail Services in these MS. | | |
| 4. Market Trends | Technology | International call volumes from fixed locations over traditional telco/cableco facilities have been declining for years as popularity of VoIP apps over fixed and mobile broadband services has grown. | | ECTEL Sector Review and market assessment |
| | Likelihood of Entry | Same as the RES and BUS fixed voice access market. | Potential cable-based entry is SKN and new fibre-based entry in GND, SLU and SVG | Market Assessment |
| 5. Barriers to Entry | Financial | Same as the RES and BUS fixed voice access market. | | Market Assessment |
| | Technical/Regulatory | Number portability and unbundled loops not currently available, and dial-around ILD services not available in ECTEL MS. | | |
| 6. Consumer Behaviour | Barriers to Switching | Moderate given absence of local number portability | | |
| | Survey Evidence | No recent survey evidence | | |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of multiline/bundled service business customers | | |

Notes: (1) All information on C&W includes its recent acquisitions - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.
(2) Revenues include RES and BUS local access and calling revenues as well as domestic leased circuit revenues.

*Market Assessment of Regulated and Unregulated Retail Services and
Proposed Recommended Regulatory Measures*

| Market #5 - Broadband ("BB") Internet Access at a Fixed Location | | | | |
|---|-----------------------|--|---|--------------------------------------|
| Assessment Criteria | Considerations | Evidence | Notable Differences MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's fixed BB revenues are growing significantly in all MS with the exception of DOM. C&W's BB revenue growth in GND, SLU and SVG driven mostly by acquisitions of cable companies FLOW and Karib. | C&W (DOM) fixed BB revenues dropping seemingly due to competition. | ECTEL Sector Database (1) |
| | Service Volumes | C&W's fixed BB connections growth varies considerably by MS. The highest growth countries are those where C&W acquired Columbus (FLOW). | C&W (DOM & SKN) fixed BB connections dropping seemingly due to competition. | ECTEL Sector Database |
| | Service Prices | Some C&W prices have increased, but so too have BB speeds. In other cases, BB speeds have increased with no change in price. Digicel provided indication that it too has raised some BB prices. On balance, no clear indication as to whether prices have either significantly increased or decreased. | | C&W RFI #4(b) and Digicel RFI #2(c) |
| | PCP API vs PCI | BB included in Basket 3 with other services under the 2010 PCP but uncapped under the 2015 PCP. No apparent remaining headroom under the 2010 PCP. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | ARPU is generally declining in all MS, but mostly to a limited extent. This trend is influenced by a variety of factors such as price decreases/increases (the latter of which often include service speed increases), customer service upgrades, and changes in technology mix (cable vs DSL vs fibre). | | ECTEL Sector Database |
| | Promotions | Numerous examples of fixed BB service promotions provided by C&W and Digicel for each MS (e.g., free installation, one-month free trial, three-month free speed upgrades and bundling discounts) | | C&W RFI #4(a) and Digicel RFI #2(b) |
| | Profitability | Segment-specific profitability not available | | |

**Market Assessment of Regulated and Unregulated Retail Services and
Proposed Recommended Regulatory Measures**

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|------------------------------------|----------------------|--|--|---|
| 2. Competitive Alternatives | Direct Substitutes | With CWC's acquisition of Columbus in GND, SLU and SVG and C&W's acquisition of Marpin 2K4 in DOM, there is relatively limited direct fixed BB competition in GND, SLU and SVG. Otherwise, there is direct fixed BB competition from SAT Telecom (owned by Digicel) in DOM, Digicel in GND, and Caribbean Cable Communications (owned by Digicel), The Cable and Green Dot in SKN, which have a significant presence in the fixed BB market in DOM and SKN. Digicel also offers fixed wireless (WiMax) in at least one MS (GND). | Only MS with significant cable competition are DOM and SKN. | ECTEL Sector Database, C&W and Digicel RFIs |
| | Coverage/Capacity | C&W has extensive market coverage (e.g., number of households passed in each ECTEL MS is high). The coverage of alternative fixed BB service providers such as SAT Telecom, Caribbean Cable Communications, The Cable and Green Dot is unknown. Digicel reported coverage of 76% DOM and much more limited coverage in SKN. | Note that damage from Hurricane Maria (2017) significantly impacted coverage in DOM. | C&W RFI #4(d) and Digicel RFI #2(e) |
| | Indirect Substitutes | Mobile BB could eventually provide an indirect source of competition – however, due to price differentials and data usage limitations, it is not considered a full substitute at this time and nor it is expected to become a full substitute in the immediate future. | | Market Assessment |
| | Coverage/Capacity | Mobile coverage is generally available near-nationwide. For the MS as a group, as of 2017, mobile penetration exceeded 100%, while mobile BB penetration reached 45%. | | Market Assessment |
| | Evidence of Rivalry | With CWC's acquisition of Columbus in GND, SLU and SVG, direct fixed BB rivalry has been largely eliminated in those countries. Nevertheless, given the potential for market growth and service upgrade sales, there appears to be a relatively high number of promotional offers in the market. Otherwise, rivalry appears to be strong in DOM and SKN. In addition, C&W for one has indicated that it has invested significant amounts to upgrade and expand BB network speeds and capacity. | Only MS with significant cable competition are DOM and SKN | C&W RFI #4(c) and Digicel RFI #2(d) |
| 3. Market Share | Revenue-based | With its recent cable company acquisitions, C&W's BB revenue market share is virtually 100% in GND, SLU and SVG at this time, whereas its revenue market share is far more limited in DOM and SKN. | | ECTEL Sector Database |

**Market Assessment of Regulated and Unregulated Retail Services and
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|------------------------------|----------------------------|--|---|--|
| | Volume-based | With its recent cable company acquisitions, C&W's BB connection market share is near 100% in GND, SLU and SVG at this time, whereas its volume-based market share is far more limited in DOM and SKN. | | ECTEL Sector Database |
| | Trends | In DOM and SKN, C&W's competitors have gained significant market share in recent years. While there has been little if any variation over the last 5 years in GND, SLU and SVG, this could change if Digicel enters the fixed BB market by providing Fibre-based Retail Services in these MS. | Market share changes significant in DOM and SKN over the last 5 years | |
| 4. Market Trends | Technology | Broadband penetration growing, BB service speeds improving, and per Mbps prices generally falling. BB penetration in MS increased from 14% in 2013 to 21% in 2017. New higher-speed BB technologies being deployed including WiMax, VDSL 2+, DOCSIS 3+ and FTTH. | | ECTEL Sector Review, C&W RFI #4(c), Digicel RFI #2(d), and Market Assessment |
| | Likelihood of Entry | The likelihood of entry in the fixed BB market using wireline technology is normally low. However, in GND, SLU and SVG, it is expected that Digicel may soon enter the RES fixed voice market by leveraging its CARCIP Project related fibre networks in these three MS. As well, prospects for fixed wireless entry are higher and longer-term prospects for 5G mobile are promising. | Potential new fibre-based entry in GND, SLU and SVG | Market Assessment |
| 5. Barriers to Entry | Financial | Very high cost of entry for new wireline entrants, whereas fixed wireless technology would be less costly. Otherwise, as noted, Digicel has the means to enter the fixed BB market by providing Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/Regulatory | Resale and/or unbundled BB access not currently available | | |
| 6. Consumer Behaviour | Barriers to Switching | Generally low where alternatives exist. | | |
| | Survey Evidence | ECTEL 2015 Broadband Use Survey provides information on BB subscriptions and use in the MS, although it is dated now. | | |
| 7. Other Factors | Countervailing Buyer Power | Not applicable. | | |

Notes: (1) All information on C&W includes its recent acquisition - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.

*Market Assessment of Regulated and Unregulated Retail Services and
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| Market #6 - Domestic Private Leased Circuits ("DPLC") | | | | |
|--|-----------------------|--|---|--|
| Assessment Criteria | Considerations | Evidence | Notable MS Differences | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's DPLC revenues account for a small of C&W's total FY2017 and FY2018 revenues. ECTEL MS wide 2017/18 revenue growth limited, but fluctuates by MS. | Highest share of total revenues in DOM and lowest in GND | C&W RFI #11. |
| | Service Volumes | No historical information on services volumes (e.g., circuits) available. | | |
| | Service Prices | Prices generally appear to be unchanged (at least for legacy technology DPLC services included in the PCP model used for ACF purposes). | | C&W historical and updated ACFs |
| | PCP API vs PCI | Included in baskets with other services under the 2010 and 2015 PCPs. No apparent remaining headroom. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | Not available | | |
| | Promotions | No examples available | | C&W RFI #5 |
| | Profitability | Segment-specific profitability not available | | |
| 2. Competitive Alternatives | Direct Substitutes | CWC's acquisition of Columbus in GND, SLU and SVG and C&W's acquisition of Marpin 2K4 in DOM have ruled out potential cable company based DPLC competition in these four MS. Otherwise, Digicel either directly or via its subsidiaries SAT Telecom in DOM and Caribbean Cable Communications in SKN appears to provide direct DPLC substitutes and/or data service equivalents in all MS (i.e., Digicel reports significant data revenues for each MS). | | ECTEL Sector Database, C&W RFI #5 and Digicel RFI #3, 5, 8 |
| | Coverage/Capacity | C&W has capacity to serve the entire market, whereas Digicel's footprint may be less extensive (although the market for DPLC and data services is generally concentrated in urban core areas and, therefore, more readily assessable to competitors). Moreover, Digicel would be able to expand its coverage and capacity if it provides the Fibre-based Retail Services in GND, SLU and SVG. | | C&W RFI #5 and Digicel RFI #3, 5, 8 |
| | Indirect Substitutes | Data services offered by both C&W and Digicel, and possibly other service providers (e.g., Metro-ethernet and MPLS used for VPN and W/LAN connectivity). | | Market Assessment |
| | Coverage/Capacity | Data services coverage likely very similar to existing DPLC service coverage and availability. | | |

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| | Evidence of Rivalry | DPLC and similar business services appear to be actively promoted in the region by C&W's Business Services and Digicel's Business Solutions divisions, which suggest that competitive alternatives are available to business customers. | | |
| 3. Market Share | Revenue-based | While C&W could be considered to have a very high market share based on consideration of reported DPLC revenues alone, when considering the broader domestic leased circuit and data service markets together, C&W's market share is far more limited. | Includes DPLC and data service revenues | ECTEL Sector Database, C&W RFI #5 and 11 and Digicel RFI #3, 5 and 8 |
| | Volume-based | N/A | | |
| | Trends | N/A | | |
| 4. Market Trends | Technology | Data services generally transitioning from lower to higher speeds, and from legacy to Ethernet and IP technologies carrying converged voice and data traffic. Many of these facilities and services can be used to provide DPLC and/or data services. | | ECTEL Sector Review and Market Assessment |
| | Likelihood of Entry | Further market entry possible on a targeted basis, given the geographically concentrated nature of the business market. As well, Digicel's CARCIP Project related fibre networks in GND, SLU and SVG, should provide it with significantly improved coverage and capacity in these three MS. | | Market Assessment |
| 5. Barriers to Entry | Financial | Relatively high cost of entry for completely new entrants, but the market is generally more concentrated geographically and wireless technology provides a potentially lower cost means of entry. Moreover, Digicel's would be able to expand its coverage and capacity if it provides the Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/Regulatory | Feasible wholesale options for entry not readily available | | Market Assessment |
| 6. Consumer Behaviour | Barriers to Switching | Adjustment and CPE costs can be a considerable barrier (e.g., when moving from a legacy to next generation service). | | Market Assessment |
| | Survey Evidence | NA | | |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of large business customers with multi service requirements | | |

Notes: (1) All information on C&W includes its recent acquisition - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.

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Proposed Recommended Regulatory Measures*

| Market #7 - International Private Leased Circuits ("IPLC") | | | | |
|---|-----------------------|---|--|---|
| Assessment Criteria | Considerations | Evidence | Notable MS Differences | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's IPLC revenues account for a small share of C&W's total FY2017 and FY2018 revenues. MS-wide 2017/18 revenue growth significantly positive, but varies widely by MS. | Highest share of total revenues in SKN and lowest in DOM and SLU - most growth occurred in SKN | C&W RFI #11. |
| | Service Volumes | No historical information on services volumes (e.g., circuits) available. | | |
| | Service Prices | Prices generally appear to be unchanged (at least for legacy technology IPLC services included in the PCP model used for ACF purposes). | | C&W historical and updated ACFs |
| | PCP API vs PCI | Included in baskets with other services under the 2010 and 2015 PCPs. No apparent remaining headroom. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS (but may not be in effect) | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | Not available. | | |
| | Promotions | No examples available. | | |
| | Profitability | Segment-specific profitability not available. | | |
| 2. Competitive Alternatives | Direct Substitutes | Both C&W and Digicel offer IPLC as well as other international connectivity services (e.g., DIA and GWAN) in all MS. In Digicel's case, these services are provided either directly or through its subsidiaries Middle Caribbean Network (DOM), Southern Caribbean Fiber (GND, SKN, SLU and SVG) and Antilles Crossing (SLU). | | ECTEL Sector Database, C&W RFI #6 and 11 and Digicel RFI #4 and 8 |
| | Coverage/Capacity | Both C&W and Digicel have potential capacity to serve most if not the full market. In addition, Digicel's new fibre network build in GND, SLU and SVG and undersea facilities between SVG islands and GND adds to its coverage and capacity in the MS. | | Websites, C&W RFI #5 and 11, Digicel RFI #4 and 8 |
| | Indirect Substitutes | NA | | Market Assessment |
| | Coverage/Capacity | NA | | |

**Market Assessment of Regulated and Unregulated Retail Services and
Proposed Recommended Regulatory Measures**

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|------------------------------|----------------------------|--|--|---|
| | Evidence of Rivalry | IPLC and other international connectivity business services appear to be actively promoted in the region by C&W's Business Services and Digicel's Business Solutions divisions (and subsidiaries), which suggest that competitive alternatives are available to business customers. | | Websites, C&W RFI #5 and 11, Digicel RFI #4 and 8 |
| 3. Market Share | Revenue-based | While available data suggests that C&W and Digicel's revenue-based market shares vary considerable by MS, in aggregate they each appear to have relatively similar market shares. | | ECTEL Sector Database, C&W RFI #11 |
| | Volume-based | NA | | |
| | Trends | NA | | |
| 4. Market Trends | Technology | IPLC services generally transitioning from lower to higher speeds, and from legacy to Ethernet and IP technologies carrying converged voice and data traffic. | | ECTEL Sector Review and Market Assessment |
| | Likelihood of Entry | Further subsea transmission capacity expansion, by C&W and/or Digicel, but new entry unlikely. | | Market Assessment |
| 5. Barriers to Entry | Financial | Relatively high cost for capability expansion and/or of entry for completely new supplier. As noted, Digicel's World Bank-financed CARCIP Project related fibre network build also included undersea facilities between SVG islands and GND which will add to its coverage and capacity in the MS. | | Market Assessment |
| | Technical/Regulatory | Feasible wholesale options for entry not available. | | Market Assessment |
| 6. Consumer Behaviour | Barriers to Switching | Adjustment and CPE costs can be a considerable barrier (e.g., when moving from a legacy to next generation service). | | Market Assessment |
| | Survey Evidence | NA | | |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of large business customers with multi service requirements | | |

Notes: (1) All information on C&W includes its recent acquisition - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.

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| Market #8 - Data Services | | | | | |
|-------------------------------------|-----------------------|--|--|-----------|---|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Company-Specific Data (1) | Service Revenues | C&W's data service revenues account for a small share of C&W's total FY2017 and FY2018 revenues. ECTEL MS wide 2017/18 revenue growth positive, though growth rates vary significantly by MS. | Highest share of total revenues in SKN and lowest in DOM and SLU | | C&W RFI #11. |
| | Service Volumes | No historical information on services volumes available. | | | |
| | Service Prices | Prices generally appear to be unchanged (at least for legacy technology data services such as Frame Relay included in the PCP model used for ACF purposes). | | | C&W historical and updated ACFs |
| | PCP API vs PCI | Included in baskets with other services under the 2010 and 2015 PCPs. No apparent remaining headroom. | 2015 PCP applies in DOM and SKN, the 2010 PCP in other MS (but may not be in effect) | | C&W RFI #10 - ACFs (updated 2017-18) |
| | ARPU trends | Not available. | | | |
| | Promotions | No examples available. | | | C&W RFI #4(a) |
| | Profitability | Segment-specific profitability not available. | | | |
| 2. Competitive Alternatives | Direct Substitutes | Both C&W and Digicel offer a range of data services including, Ethernet, MPLS, VPN, W/LAN and unified communications services through their respective Business Services divisions. | | | C&W and Digicel websites, C&W RFI #7 and 11 and Digicel RFI #5 and 8 (Note 1) |
| | Coverage/Capacity | Both C&W and Digicel have potential capacity to serve most if not the full market. Moreover, Digicel would be able to expand its coverage and capacity if it provides Fibre-based Retail Services in GND, SLU and SVG. | | | Websites, C&W RFI #7 and 11, Digicel RFI #5 and 8 |
| | Indirect Substitutes | NA | | | Market Assessment |
| | Coverage/Capacity | NA | | | |
| | Evidence of Rivalry | Services appear to be actively promoted in the region by C&W's Business Services and Digicel's Business Solutions divisions, which suggest that competitive alternatives are available to business customers. | | | |
| 3. Market Share | Revenue-based | C&W's revenue-based market shares vary considerable by MS and are generally limited in magnitude. | | | C&W RFI #11, Digicel RFI #8 |
| | Volume-based | NA | | | |

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| | Trends | NA | | |
|------------------------------|----------------------------|--|--|---|
| 4. Market Trends | Technology | Data services generally transitioning from lower to higher speeds, and from legacy to Ethernet and IP technologies carrying converged voice and data traffic. Many of these facilities and services can be used to provide DPLC and/or data services. | | ECTEL Sector Review and Market Assessment |
| | Likelihood of Entry | Further market entry possible on a targeted basis, given the geographically concentrated nature of the business market. Moreover, Digicel would be able to expand its coverage and capacity if it provides Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| 5. Barriers to Entry | Financial | Relatively high cost of entry for completely new entrants, but the market is generally more concentrated geographically and wireless technology provides a potentially lower cost means of entry. As noted, Digicel would also be able to expand its coverage and capacity if it provides Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/Regulatory | Feasible wholesale options for entry not readily available | | Market Assessment |
| 6. Consumer Behaviour | Barrier to Switching | Adjustment and CPE costs can be a considerable barrier (e.g., when moving from a legacy to next generation service). | | Market Assessment |
| 7. Other Factors | Countervailing Buyer Power | Likely in the case of large business customers with multi service requirements | | |

Notes: (1) All information on C&W includes its recent acquisition - i.e., Columbus (FLOW) in GND, SLU and SVG, Marpin in DOM, and Karib Cable in SLU and SVG.

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| Market #9 - Mobile Voice and Data Services | | | | |
|---|-----------------------|---|---|---------------------------------|
| Assessment Criteria | Considerations | Evidence | Notable Differences MS | Source |
| 1. Market-Specific Data | Service Revenues | Mobile revenues have generally been declining over the last 5 years, with the lone exception of SKN. MS-wide 5-year CAGR = - 2%. | Revenues increasing only in SKN | ECTEL Sector Review |
| | Service Volumes | Prepaid and postpaid subscribers generally account for 90% and 10% of mobile subscribers in each MS, resp. Prepaid subscribers have generally been declining in number, whereas postpaid subscribers have been growing over the last 5 years. Across all MS over the last 5 years, prepaid subs CAGR=-5%, postpaid subs CAGR=4% and combined CAGR=-4%. | | ECTEL Sector Review |
| | Service Prices | C&W provided list of new mobile service plans, but no examples of price changes. Digicel provided one example of a price reduction. Otherwise, pricing trends not readily observable given the range of prepaid and postpaid plans available. | | C&W RFI #8(c), Digicel #6(b) |
| | PCP API vs PCI | NA. | | |
| | ARPU trends | Aggregate prepaid and postpaid ARPU increasing in all MS, with the lone exception of SVG. As of 2017, aggregate ARPU ranged from \$46 in SVG to \$70 in SKN. Across all MS over the last 5 years, aggregate ARPU CAGR = 2%. | ARPU declining only in SVG | ECTEL Sector Review |
| | Promotions | C&W provided numerous examples of mobile promotions available in each MS (including bonus minutes, data, free WhatsApp usage and prizes). It also provided a summary of new mobile plans recently launched. Digicel also provided numerous examples of promotions made available in each ECTEL MS (including service plan and handset special offers and discount pricing on mobile bundles). | | C&W RFI #8(a, b), Digicel #6(a) |
| | Profitability | NA | | |
| 2. Competitive Alternatives | Direct Substitutes | C&W and Digicel are the sole mobile service providers in each MS, with the exception of AisleCom that is a small but growing competitive alternative in GND. | GND the only MS with three mobile service providers | ECTEL Sector Review |
| | Coverage/Capacity | Both C&W and Digicel have potential capacity to serve most if not the full market in each MS. AisleCom coverage in GND unknown, but likely extensive given the nature of mobile wireless technology. | | Market Assessment |
| | Indirect Substitutes | NA | | Market Assessment |
| | Coverage/Capacity | NA | | Market Assessment |

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| | | | | |
|------------------------------|----------------------------|--|--|--|
| | Evidence of Rivalry | There appears to be reasonably strong rivalry between C&W and Digicel given the extent of observed promotional activity and the fact that their respective market shares have fluctuated considerably over time in each MS. As well, C&W and Digicel market shares vary significantly across MS (see below). Further, Aisle Comm appears to be making considerable inroads into the GND mobile market. | | ECTEL Sector Review, C&W RFI #8(a, b), Digicel #6(a) |
| 3. Market Share | Revenue-based | Across all 5 ECTEL MS, Digicel holds the highest revenue-based market share. For the most part, other than in GND, C&W holds the balance. However, Digicel and C&W market shares fluctuate by ECTEL MS. | | ECTEL Sector Review |
| | Volume-based | Here as well, across all 5 ECTEL MS, Digicel holds the highest subscriber-based market and, for the most part, other than in GND, C&W holds the balance. However, Digicel and C&W subscriber-based market shares fluctuate by MS. | | |
| | Trends | Market share levels have fluctuated considerably in most ECTEL MS, suggesting the existence of considerable competitive rivalry between Digicel and C&W. | | |
| 4. Market Trends | Technology | The pace of mobile wireless technological change continues to be rapid, which recent transition from 3G to 4G LTE technology and with 5G on the near horizon. Growth in mobile services in ECTEL MS is flattening given the high penetration levels, usage is shifting from voice and SMS services to rapid growth in data usage. | | |
| | Likelihood of Entry | Possibility of further entry is very limited given financial, technical and regulatory barriers, as well as the fact the markets in question are small in size. | | |
| 5. Barriers to Entry | Financial | Cost of deploying mobile wireless network is costly, but primary barriers to entry are technical and regulatory in nature. | | |
| | Technical/Regulatory | Primarily barrier is spectrum allocation. As well, feasible wholesale options (such as mandated MVNO resale) for entry not available. | | |
| 6. Consumer Behaviour | Barriers to Switching | The recent introduction of mobile number portability should promote switching and, therefore, greater competition. | | |
| | Survey Evidence | NA | | |
| 7. Other Factors | Countervailing Buyer Power | NA | | |

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| Market #10 – Fixed Pay TV Services | | | | | |
|---|-----------------------|--|------------------------------------|-----------|---|
| Assessment Criteria | Considerations | Evidence | Notable Differences | MS | Source |
| 1. Market-Specific Data | Service Revenues | Pay TV service revenues have generally been declining over the last 5 years, with the exception of SVG. MS-wide 5-year CAGR = -2%. | Revenues increasing only in SVG | | ECTEL Sector Review |
| | Service Volumes | Pay TV service subscriber levels have generally been flat or declining over the last 5 years, with the lone exception of DOM. ECTEL MS wide 5-year CAGR = -2%. | Subscribers increasing only in DOM | | ECTEL Sector Review |
| | Service Prices | C&W reported no recent price changes. Digicel mostly reported price increases for services it offers in DOM and SKN. Otherwise, longer term pricing trends not readily observable given the range of pay TV plans available. | | | C&W RFI #9(c) and Digicel RFI #7© |
| | PCP API vs PCI | NA | | | |
| | ARPU trends | ARPU has been flat or increasing in all MS over the last 5 years. As of 2017, aggregate ARPU ranged from \$66 in DOM to \$103 in SVG. Across all MS over the last 5 years, ARPU CAGR was close to 2%. | ARPU growth highest in SVG | | ECTEL Sector Review |
| | Promotions | C&W provided numerous examples of pay TV promotions available in each MS where it operates (including free or discounted premium add-on channels, free channel previews, free installation, etc.). Digicel also provided numerous examples of promotions made available in DOM and SKN (including prizes, free service periods and bundling discounts). | | | C&W RFI #9(a, b), Digicel #7(a) |
| | Profitability | NA | | | |
| 2. Competitive Alternatives | Direct Substitutes | With CWC's acquisition of Columbus in GND, SLU and SVG and C&W's acquisition of Marpin 2K4 in DOM, there is limited direct pay TV service competition in GND, SLU and SVG. Otherwise, there is direct pay TV competition from Digicel Play and SAT Telecom (owned by Digicel) in DOM and Silvakast in SVG. There are two pay TV services providers in SKN: Caribbean Cable Communications (CCC, owned by Digicel) and The Cable; however, C&W launched an IPTV service in SKN under its C&W brand name in late 2017. | | | ECTEL Sector Review, C&W RFI #9 and Digicel RFI #7. |
| | Coverage/Capacity | C&W (and its subsidiaries), Digicel (and its subsidiaries) and The Cable all appear to have relatively extensive pay TV footprints in the ECTEL MS in which they operate. | | | Market Assessment |

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| | | | | |
|------------------------|----------------------|--|---|---|
| | Indirect Substitutes | Over-the-air (OTA) TV where available, online Over-the-top (OTT) subscription VOD such as Netflix, Amazon Prime, etc. and free online VOD such as YouTube. Satellite TV services (grey and/or black market) also provide a competitive alternative, although typically without local TV content. | | |
| | Coverage/Capacity | OTA TV coverage depends on antenna placement and transmission power, online services available where fixed broadband services are available and mobile broadband can and will be increasingly used to access OTT VOD services. | | Market Assessment |
| | Evidence of Rivalry | While there appears to be considerable efforts by all pay TV service providers to attract new subscribers and encourage existing subscribers to upgrade, the only significant evidence direct rivalry exists is in DOM, where Digicel (SAT) competes with C&W (Marpin), and also SKN where Digicel (CCC) competes with The Cable, and C&W (C&W) recently entered the market. | | ECTEL Sector Review, C&W RFI #9 and Digicel RFI #7. |
| 3. Market Share | Revenue-based | C&W (C&W/Karib) is the dominant pay TV service provider in GND, SLU and SVG, with virtually 100% market share of the fixed pay TV services market in each case. Otherwise, C&W's share of the market in DOM is more limited, given Digicel's presence in that MS. In SKN, The Cable is the dominant fixed pay TV service provider, and Digicel (CCC) accounts for the balance of the market in that ECTEL MS - although C&W/C&W is expected to gain market share with its recent IPTV launch in SKN. | C&W holds the dominant market share in each ECTEL MS, with the exception of SKN where The Cable holds the dominant market share | ECTEL Sector Review |
| | Volume-based | C&W subscriber-based pay TV market shares are very similar to those reported above on a revenue basis. | Same as above | ECTEL Sector Review |
| | Trends | C&W's (C&W/Karib) has held a dominant market position in GND, SLU and SVG over the last 5 years; however, this could change if Digicel enters the fixed pay TV market by providing Fibre-based Retail Services in these MS. Otherwise, Digicel (SAT) has been gaining market share in DOM in competition with C&W (Marpin). While there is insufficient data to assess market share trends in SKN where Digicel (CCC) competes with The Cable, the recent entry of C&W (C&W) in SKN should have a significant impact on markets going forward. | | |

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| | | | | |
|------------------------------|----------------------------|---|--|---|
| 4. Market Trends | Technology | Fixed pay TV services have evolved from delivery over analog to digital, and more recently, to IPTV platforms. At the same time, an increasing number of pay and free OTT VOD services have become available, as well as black market (pirated) OTT VOD services. The rise of these latter online video services, among other factors, has led to a steady decline in the number of fixed pay TV subscribers and revenues in recent years (i.e., as noted above). | | ECTEL Sector Review and Market Assessment |
| | Likelihood of Entry | The likelihood of entry in the fixed pay TV market using wireline technology is normally low. However, in GND, SLU and SVG, it is expected that Digicel may soon enter this market by leveraging its CARCIP Project related fibre networks. Fixed wireless entry could also provide an alternative less costly means of entry. | | Market Assessment |
| 5. Barriers to Entry | Financial | Cost of deploying either wireline or wireless pay TV network is costly, where existing facilities/capacity does not exist. Otherwise, as noted, Digicel has the means to enter the fixed pay TV market by providing Fibre-based Retail Services in GND, SLU and SVG. | | Market Assessment |
| | Technical/Regulatory | Feasible wholesale options for entry not available. | | |
| 6. Consumer Behaviour | Barriers to Switching | Relatively low | | Market Assessment |
| | Survey Evidence | NA | | |
| 7. Other Factors | Countervailing Buyer Power | NA | | |

Annex 2: Proposed Automatic Adjustment Mechanism

The proposed Automatic Adjustment Mechanism (“AAM”) would apply to services offered by C&W/Columbus in Markets #1 to #4 in all 5 MS.

AAM TRIGGER

When the AAM conditions are met or “triggered” in any MS, most fixed voice access and calling service price cap constraints and associated regulatory measures established under the proposed New RPRR would be removed.²⁰ The proposed AAM trigger would consist of two components – the Digicel and C&W Components – both of which would be considered simultaneously to determine if AAM should be triggered in any MS. The proposed Digicel and C&W Components are as follows:

1. Digicel Component

Principle: Direct quantitative evidence from Digicel that it has entered the residential and small business fixed voice service markets.

Trigger Threshold: Digicel residential and small business fixed voice service customer base equal to or greater than approximately **2%** of the population of the MS in question as set out in Table A1.

| ECTEL MS | Population | Digicel Residential and Small Business Fixed Voice Subscriber Count |
|-----------------|-------------------|--|
| DOM | 72,000 | 1,450 |
| GND | 111,000 | 2,200 |
| SKN | 52,000 | 1,050 |
| SLU | 182,000 | 3,600 |
| SVG | 110,000 | 2,200 |

Subscriber Data Definition:²¹

- i) Residential** fixed services including (a) standalone fixed voice and (b) bundled fixed voice (e.g., with broadband Internet and/or pay TV) subscribers; and
- ii) Small business** fixed services including (a) standalone fixed voice, (b) bundled fixed voice (e.g., with broadband Internet and/or pay TV) subscribers.

²⁰ The sole exception being the MTR and FTR flow-through obligation.

²¹ The fixed services in question would be those exclusively marketed by Digicel to residential and small business customers and, therefore, exclude communications multiline fixed voice services marketed to larger business or public sector customers.

2. C&W Component

Principle: Indirect qualitative and quantitative evidence from C&W that Digicel has entered the residential and small business fixed voice service markets.

Trigger Thresholds:

- i) **Observed Entry**: Corroborating evidence either in the form of Digicel advertising or postings on Digicel’s website that Digicel offers residential and small business fixed voice services; **and**
- ii) **C&W Subscriber Loss**: Evidence of a minimum **10%** reduction in C&W’s residential and small business fixed voice service subscriber base relative to December 31, 2019 (the “Base” period), as set out in Table A2.

| Table A2: Proposed “C&W Component” Trigger Threshold | | |
|---|--|----------------------------------|
| ECTEL MS | C&W Residential and Small Business Fixed Voice Subscribers “Base” as of December 31, 2019 * | 10% of “Base” Subscribers |
| DOM | XXXX | 10% * XXXX |
| GND | XXXX | 10% * XXXX |
| SKN | XXXX | 10% * XXXX |
| SLU | XXXX | 10% * XXXX |
| SVG | XXXX | 10% * XXXX |

** Base fixed voice subscriber counts by MS to be provided by C&W*

ADMINISTRATION OF THE AAM

The data required for the Digicel and C&W Components of the AAM would be collected one month prior to the launch of the New RPRR and every six months thereafter, as necessary. The results of the Digicel and C&W Components of the AAM would be assessed simultaneously. In the event, the Digicel and C&W Components generated contradictory results for a given MS (e.g., one component indicting the AAM trigger is met, while the other component indicting it is not), then ECTEL would investigate the discrepancy, by following up with Digicel and/or C&W as necessary and do its best to resolve or determine the reason(s) for the difference in results. Where no resolution is found, ECTEL would place greater weight on the Digicel Component of the AAM. In other words, if the Digicel Component trigger is met, but not the C&W Component trigger, the AAM would be triggered. In the reverse instance, the AAM would not be triggered.

If the AAM is triggered in a given MS, then the price cap constraints and associated regulatory obligations applying to C&W’s fixed voice access and calling services (i.e., Markets #1 to #4) under the proposed New RPRR would in large part be removed in the MS. The only exclusion would be the obligation to flow through mandated reductions in MTRs and FTRs to the corresponding retail FTM and FTF call rates (as specified in Section 4.2.3 of the Consultation Document). The specific elements of the proposed New RPRR that would be affected are summarized in Table A3.

| Table A3 – Summary of Automatic Adjustments to the Proposed New RPRR if AAM is or is not Triggered in an MS | | | |
|--|---|---|--|
| No. | Relevant Market | Proposed New RPRR Without AAM Triggered | Proposed New RPRR With AAM Triggered |
| #1 | Residential Access at a Fixed Location | <ul style="list-style-type: none"> • Price cap on residential basic standalone fixed access (PCI = I – X, where X = 0) • Additional Regulatory Obligations (100 free minute allowance and harmonization) | <ul style="list-style-type: none"> • Price cap and associated regulatory obligations removed |
| #2 | Business Access at a Fixed Location | <ul style="list-style-type: none"> • Price cap on business basic standalone fixed access (PCI = I – X, where X = 0) • Additional Regulatory Obligation (harmonization) | <ul style="list-style-type: none"> • Price cap and associated regulatory obligations removed |
| #3 | Domestic Calling from a Fixed Location | <ul style="list-style-type: none"> • Price cap on standalone basic FTF and FTM calls (PCI = I – X, where X = 0) • Additional Regulatory Obligation (harmonization) • Flow-through obligation of FTR and MTR reductions | <ul style="list-style-type: none"> • Price cap and associated regulatory obligations removed • Flow-through of FTR and MTR retained and to be fully implemented |
| #4 | International Calling from a Fixed Location | <ul style="list-style-type: none"> • Additional Regulatory Obligation (mobile IDD price ceiling) | <ul style="list-style-type: none"> • Associated regulatory obligations Removed |

Practically, the AAM assessment and trigger process would work as follows in each MS:

One month before the New RPRR takes effect:

- 1) The NTRC shall determine whether to trigger the AAM at the outset of the New RPRR based on an ECTEL written determination of whether the AAM trigger conditions are met at the time the New RPRR is to take effect.

Biannually once the New RPRR is in effect (for those MS where the AAM not yet triggered):

- 2) The NTRC shall not trigger the AAM if ECTEL has confirmed in writing that it has determined that the AAM trigger conditions are not met.
- 3) The NTRC shall trigger the AAM if ECTEL has confirmed to it in writing that it has determined that the AAM trigger conditions have been met.
- 4) The NTRC shall trigger the AAM if it has not received any confirmation in writing from ECTEL regarding the status of the AAM trigger conditions. However, in such an instance, should circumstances delay ECTEL’s ability to assess AAM trigger conditions, ECTEL would inform the applicable NTRCs of this fact and, accordingly, pause the AAM process briefly, until the issue causing the delay is rectified.

To ensure full transparency as to the status of AAM assessment process, ECTEL would keep both C&W and Digicel informed in writing of its AAM trigger assessments, findings and related

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directions to the NTRCs each time they are conducted (i.e., at the outset of the New RPRR and every six months thereafter as necessary).

In terms of timelines, ECTEL proposes that the New RPRR/AAM process takes place as shown in Table A4. This process would be repeated as necessary, until the AAM is exercised in all five MS or the term of the New RPRR expires.

| Table A4 – Proposed New RPRR and AAM Timelines | |
|--|---|
| Date | Action |
| <i>One Month Prior to the New RPRR taking effect</i> | |
| Start of Month -1 | <i>Initial Digicel and C&W Component Data Collection:</i> ECTEL issues RFIs to Digicel and C&W for the specified AAM data. ECTEL assesses data received and follow-ups with Digicel and/or C&W. |
| Before end of Month -1 | <i>Initial AAM Trigger Assessment:</i> Based on the RFI responses, ECTEL determines whether AAM trigger conditions are met and issues written confirmation to the NTRCs as to whether the AAM should or should not be triggered. |
| Day 1 of New RPRR | New RPRR takes effect with or without the AAM triggered as per ECTEL’s Initial AAM Trigger Assessment. |
| <i>Biannual AAM Trigger Assessments during course of the New RPRR (as necessary)</i> | |
| Start of Month 6 | <i>Digicel and C&W Component Data Collection (as necessary):</i> ECTEL issues RFIs to Digicel and C&W for the specified AAM data. ECTEL assesses data received and follow-ups with Digicel and/or C&W. |
| Before end of Month 6 | <i>AAM Trigger Assessment (as necessary):</i> Based on the RFI responses, ECTEL determines whether AAM trigger conditions are met and issues written confirmation to the NTRCs as to whether the AAM should or should not be triggered. |
| Month 7 | AAM exercised in any MS where ECTEL has determined that the AAM trigger conditions are met or ECTEL has not issued written confirmation to the NTRC; otherwise the AAM is not exercised. |
| Beginning of Month 12 | ECTEL repeats the Digicel and C&W Component data collection as necessary. |
| Before end of Month 12 | ECTEL conducts AAM trigger assessment and provides written confirmation to the NTRCs as to whether the AAM should or should not be triggered, as necessary. |
| Day 1, next RPRR Year | AAM is / is not exercised, as in Month 7. |

Annex 3: International Scan of Mobile Safeguards

In its international scan, ECTEL identified six jurisdictions that had implemented mobile price-related safeguards. In three cases (Dominican Republic, South Africa and Canada) the safeguards were included in regulations or other decisions issued by the national regulatory authority (“NRA”). In the other three cases (UK, USA and Hong Kong), the safeguards are included in industry codes or commitments that have been required or promoted by the respective NRAs. Below is a summary of the relevant documents:

- In 2017 the NRA in the **Dominican Republic**, INDOTEL, issued Resolution 062-17 which approved the “*Reglamento sobre los Derechos y Obligaciones de los Usuarios*” (the “DR Consumer Regulation”), and Resolution 069-17 which approved the “*Norma que establece las medidas para la activación y facturación de: servicios móviles de datos; servicios de itinerancia móvil internacional y SMS Premium*” (the “DR Mobile Norm”).
- In 2018 the NRA of **South Africa**, ICASA, revised the 2016 “End-User and Subscriber Service Charter Amendment Regulations” (the “RSA EUSCC Regulations”).
- In 2017 the NRA of **Canada**, the CRTC issued Telecom Regulatory Policy CRTC 2017-200 which amended the 2013 Wireless Code (the “CA Wireless Code”).
- The NRA in the **UK**, Ofcom, provided the industry with the opportunity to develop the “UK Mobile Operators’ Code of practice on Consumer Billing” (the “UK Billing Code”).
- The NRA in the **USA**, FCC, provided the industry with the opportunity to develop “Consumer Code for Wireless Service” (the “USA Wireless Code”).
- The NRA in **Hong Kong**, OFCA, provided each Licensee with the opportunity to provide individual “Measures in Preventing Mobile Bill Shock in Hong Kong” (the “HK Bill Shock Measures”).

The rest of this Annex provides a summary of safeguards to manage usage and mitigate “Bill Shock” (Notifications, Roaming and Out-of-Bundle) and with respect to “Rollover”

1. Safeguards to Manage Usage and Mitigate Bill Shock: Notification Alerts

- The DR Consumer Regulation stipulates that consumers have the right to be informed by SMS of the account balance and the DR Mobile Norm sets out that licensees shall send SMS alerts of data usage at 500 MB intervals.
- The RSA EUSCC Regulations sets out that for voice and SMS: “*A Licensee must send usage depletion notifications via SMS, push notification or any applicable means to end-users when their usage reaches 50%, 80% and 100% depletion.*” A similar provision applies for mobile data service.
- The UK Billing Code sets out that service providers commit to “*providing customers with the capabilities to obtain accurate and timely information about the level of their spend, including*

alerts when they are reaching their data bundle limits or capabilities to monitor usage and thus manage their monthly spend”.

- The USA Wireless Code establishes that each wireless provider will provide, at no charge “*a notification ... when consumers approach and exceed their allowance for data usage and will incur overage charges*”. A similar provision applies for mobile voice and SMS service.
- The HK Bill Shock Measures require that service providers generally commit to “*alerting costumers through short messages as their pre-determined usage threshold is reached.*”

2. Safeguards to Manage Usage and Mitigate Bill Shock: International Roaming

- The DR Mobile Norm establishes that a) international data and voice roaming services shall by default be deactivated and may only be activated by explicit request by the consumer; and 2) if activated, the licensee must send the customer an SMS setting out the applicable international roaming charges.
- The CA Wireless Code sets out that a licensee must send the customer an SMS, setting out the applicable international roaming charges.
- The UK Billing Code stipulates that licensees must send the customer an SMS setting out the applicable international roaming charges.
- The USA Wireless Code sets out that licensees must send an SMS “*notification to consumers without an international roaming plan/package whose devices have registered abroad and who may incur charges for international usage.*”
- The HK Bill Shock Measures require that service providers shall send the customer an SMS setting out the applicable international roaming charges.

3. Safeguards to Manage Usage and Mitigate Bill Shock: Out of Bundle (“OOB”) Billing

- The DR Mobile Norm establishes that when activating international data roaming services, the Licensee must offer and the consumer must agree to a pre-established limit beyond which the Licensee must deactivate the service. The consumer may reactivate the service once that limit is reached.
- The RSA EUSCC Regulations state that for consumers who are on a post-paid plan and whose voice and SMS services are depleted, does not buy additional voice or SMS services, the Licensee must provide such end-user with an option not to access the depleted services and allow such end-users access to emergency services, customer care services and incoming voice calls and SMS and other free services. For data services, the consumer should not be “defaulted” onto out-of-bundle charges upon depletion of data bundles and provided an option to opt-in to out-of-bundle usage charge; a licensee must not permit any OOB data usage until such time the consumer purchases new data bundles or consents to be charged OOB data rates.

- The CA Wireless Code sets out that a Licensee must suspend data overage charges, once they reach CA \$50 (≈XCD \$100) within a single monthly billing cycle, unless the consumer expressly consents to pay additional charges. With respect to roaming, the Code stipulates that a Licensee suspend national and international data roaming charges, once they reach CA \$100 (≈XCD \$200) within a single monthly billing cycle, unless the consumer expressly consents to pay additional charges.
- The HK Bill Shock Measures require that Licensees automatically suspend service when designated data has been used up (at which point customers are required to purchase additional data plans to resume service).

4. Treatment of Rollover allocation

- The DR Consumer Regulation sets out that 1) for contracts with recurring charges that include a fixed allocation of calls/minutes, data or SMS, the licensee must rollover any unused allocation to be made available for the next three billing periods; 2) for pre-pay contracts, after the expiry of the plan, the licensee must roll-over any unused allocation for the consumer to use, if the consumer tops-up within 90 days of the expiry of the previous. In such a case, a licensee shall in first instance apply data usage against rolled over data, until that data is fully depleted, and thereafter against the newly-allocated data.
- The RSA EUSCC Regulations state that for data services, a licensee must provide consumers with an option to roll over unused data before the expiry date. In such a case, a Licensee shall in first instance apply data usage against rolled over data, until that data is fully depleted, and thereafter against the newly-allocated data.

Annex 4: Mobile Consumer Safeguards

GUIDELINES ON MOBILE CONSUMER SAFEGUARDS

1.0 Introduction

ECTEL continues to conduct periodic reviews of both regulated and unregulated retail electronic communications services to ensure that these services are being offered, in accordance with the Telecommunications (Retail Tariff) Regulations, (“Retail Tariff Regulations”)¹.

In the recent past, retail customers have voiced a number of concerns in relation to retail mobile services being offered, including prices, marketing practices, and limited information being provided on their terms and conditions to make informed decisions.

ECTEL proposes to address some of these concerns via a Consultation Document on “*Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Regulatory Measures*”.

¹ Each Contacting 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

ECTEL has developed a harmonised policy framework with the introduction of Mobile Consumer Safeguards, under the current legislative framework. These Mobile Consumer Safeguards will be to guide both retail customers and the service providers on the parameters for unregulated retail mobile services and ensure that consumer concerns are considered in the provision of these services. The Mobile Consumer Safeguards will be introduced by the NTRCs, in accordance with the current Retail Tariff Regulations.

2.0 Legislative framework

Under the Telecommunications Legislative framework, the legal authorities for the implementation of the new Mobile Consumer Safeguards are the Telecommunications Act (“Act”) in all Contracting States⁴, and the most up to date Telecommunications (Retail Tariff) Regulations (“Retail Tariff Regulations”) in all Contracting States, except for St. Vincent and the Grenadines.

On ECTEL’s recommendation, the Commissions may publish guidelines on any aspect of these regulations on its website and can also make the guidelines available to the public at the Commission’s office. In the case of St Vincent and the Grenadines in accordance with the Retail Tariff

⁴ 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)

Regulations S.R.O. No. 23 of 2004, there is no legal obligation to publish the guidelines on their website, as they are only required to make the guidelines available to the public at the Commission’s office.

The tables below outline the applicable legislative provisions for each Contracting State:

Commonwealth of Dominica

| Legislation | Provision |
|---|--|
| Telecommunications (Retail Tariff) Regulations S.R.O. No. 40 of 2012 | |
| Regulation 2 (Interpretation) | “tariff means the rates, terms and conditions applicable to a telecommunications service” |
| Regulation 4 (2)(k) | “... the Commission has the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers appropriate.” |
| Regulation 49 | “The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.” |
| Telecommunications Act, No. 8 of 2000 (as amended) | |
| Section 15 (1) | “The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed.” |
| Section 15 (2) | “Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.” |

Table 1.1: Legislation applicable for Commonwealth of Dominica

Grenada

| Legislation | Provision |
|--|--|
| Telecommunications (Retail Tariff) Regulations S.R.O. No.54 of 2014 | |
| Regulation 2 (Definition) | “tariff means the rates, terms and conditions applicable to a telecommunications service” |
| Regulation 4 (2)(k) | “... the Commission has the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers |

| | |
|---|--|
| | appropriate.” |
| Regulation 49 | “The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.” |
| Telecommunications Act, Cap. 315C (as revised) | |
| Section 14 (1) | “The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed.” |
| Section 14 (2) | “Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.” |

Table 1.2: Legislation applicable for Grenada

St. Kitts and Nevis

| Legislation | Provision |
|---|---|
| Telecommunications (Retail Tariff) Regulations S.R.O. No. 21 of 2015 | |
| Regulation 3 (Definition) | “tariff means the rates, retail price, terms and conditions applicable to a telecommunications service” |
| Regulation 5 (2)(k) | “... the Commission shall have the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it deems appropriate.” |
| Regulation 50 | “The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.” |
| Telecommunications Act, Cap. 16.05 (as revised) | |
| Section 17 (1)(r) | “The Commission shall perform the following functions, that is to say, perform such functions as may be conferred on it by regulation made under this Act or by any other enactment.” |

Table 1.3: Legislation applicable for St. Kitts and Nevis

Saint Lucia

| Legislation | Provision |
|--|---|
| Telecommunications (Retail Tariff) Regulations S.I. No. 110 of 2015 | |
| Regulation 2 (Interpretation) | “tariff means the rates, retail price, terms and conditions applicable to a telecommunications service” |
| Regulation 4 (2)(n) | “... the Commission shall, after consultation with ECTEL- make decisions and issue directions to a telecommunications provider in respect of tariffs as the |

| | |
|--|---|
| | Commission considers appropriate;” |
| Regulation 36 | “The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.” |
| Telecommunications Act, Cap. 19.09 (as revised) | |
| Section 15 (1) | “The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined, and on other matters as prescribed.” |
| Section 15 (2) | “Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.” |

Table 1.4: Legislation applicable for Saint Lucia

St. Vincent and the Grenadines

| Legislation | Provision |
|---|---|
| Telecommunications (Retail Tariff) Regulations S.R.O. No. 23 of 2004 | |
| Regulation 3 (Interpretation) | “tariff means the rates, terms and conditions applicable to a regulated service” |
| Telecommunications Act, Cap. 418 (as revised) | |
| Section 13 (1) | “The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed” |
| Section 13 (2) | “Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.” |

Table 1.5: Legislation applicable for St. Vincent and the Grenadines

3.0 The recommendation by ECTEL

3.1 Recommendation for NTRCs

Based on the applicable provisions in the Contracting States, the NTRCs can implement the proposed Guidelines on Mobile Consumer Safeguards by:

1. Making such Orders or issue such Directions to service providers in respect of tariffs as it considers appropriate⁵;
2. Making decisions and issue Directions, after consultation with ECTEL to a service providers, in respect of tariffs, as the Commission considers appropriate⁶; or
3. Publishing guidelines recommended by ECTEL on the NTRCs' website for all Contracting States⁷, except St Vincent and the Grenadines⁸, which requires the guidelines to be made available to the public at the Commission's office during business hours, or made available to a person on payment of the prescribed fee⁹. The latter requirement is not applicable to St. Kitts and Nevis¹⁰.

3.2 Recommended Action by NTRCs

ECTEL hereby recommends that, in accordance with the Telecommunications Act, the NTRC should:

1. Publish on the NTRC's websites the Telecommunications "Mobile Consumer Safeguards" Guidelines 2020 on [dd/mm/yyyy];
2. Make available the Telecommunications "Mobile Consumer Safeguards" Guidelines 2020 on [dd/mm/yyyy] to the public at the Commission's office during business hours or make available to a person on payment of the prescribed fee;
3. On publication of the Telecommunications "Mobile Consumer Safeguards" Guidelines 2020 on [dd/mm/yyyy], direct all service providers to submit revised retail tariff terms and conditions to the Commission/to amend their retail tariff terms and conditions, in accordance with the recommendation by ECTEL, within [90] days of the directive from the NTRC; and
4. Within [7] days of receipt from the service providers, forward all revised retail tariff terms and conditions to ECTEL.

⁵ Retail Tariff Regulations: regulation 4(2)(k)- Commonwealth of Dominica, regulation 4(2)(k)- Grenada, regulations 5(2)(k)- St. Kitts and Nevis.

⁶ Retail Tariff Regulation: regulation 4(2)(n)- Saint Lucia

⁷ Retail Tariff Regulations: regulation 49-Commonwealth of Dominica, regulation 49-Grenada, regulation 50- St. Kitts and Nevis and regulation 30- Saint Lucia

⁸ Telecommunications Act: section 13(2)- St. Vincent and the Grenadines

⁹ Telecommunications Act: section 15(2)- Commonwealth of Dominica, section 14(2) Grenada, section 15(2)- Saint Lucia and section 13(2)- St. Vincent and the Grenadines

¹⁰ Retail Tariff Regulations: regulation 50- St. Kitts and Nevis

[ECTEL CONTRACTING STATE]

No. 1 of 2020

Telecommunications (Mobile Consumer Safeguards) Guidelines [..]

Gazetted - - - - *Date [..]*

Coming into force - - *Date [..]*

The National Telecommunications Regulatory Authority hereby issues the following Guidelines on Mobile Consumer Safeguards in accordance with the applicable Telecommunications Act¹ and Retail Tariff Regulations² 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

- 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

¹ 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 (asrevised)

² Each Contacting 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

- licensee, the licensee shall notify the retail customer of the rate of the service.
- 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 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 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 (4) 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 (5) then the retail customer should be notified that they will no longer be able to use the service.

4. Customer Notification for Roaming Usage

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. The options referred to under sub-clause (4), may include the option

to—

- discontinue the use of the roaming mobile service;
- purchase an add-on for the roaming mobile service;
- purchase another roaming mobile service bundle;
- use an out-of-bundle roaming service;
- use a credit advance to continue using a roaming mobile service; or
- any other option available to the retail customer.

vi. If a retail customer does not select any option under sub-clause (5) then the customer should be notified that they will no longer be able to use the service.

National Telecommunications Regulatory Authority
[...], 2020

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL)

Consultation on

- 2. Proposed changes to Regulation 17(c) of the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)**

In ECTEL MEMBER STATES

**EASTERN CARIBBEAN
TELECOMMUNICATIONS AUTHORITY
("ECTEL")**

Consultation Document

on

**Proposed changes to Regulation 17(c) of the
draft Electronic Communications (Consumer
Protection) Regulations (Specific Rules on
Consumer Protection in the Electronic
Communications Sector)**

August 28, 2020

Proposed changes to Regulation 17(c) of the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)

A. Introduction

A Subscriber Identification Module (SIM card) is a small card containing a chip which is required for a mobile phone to operate on a GSM network. In the ECTEL Member States currently most mobile operators operate GSM networks and therefore all mobile customers are provided with a SIM card when they subscribe to a mobile service. This SIM card will allow a customer to access the mobile operator's network to use voice, text or data services.

Each customer is also assigned a number which allows them to make and receive calls and text messages. This number also facilitate the use of some communications Apps including WhatsApp. SIM cards and numbers are assigned to both prepaid and postpaid mobile customer subscription accounts. The main focus of this consultation is the treatment of prepaid subscriptions and in particular how these subscriptions are treated when there is limited or no activity.

Currently in the ECTEL Member States there are no specific regulation that govern the life cycle of the SIM card associated with prepaid or postpaid mobile customer subscription service. As such the major service providers have included in their policy on the life cycle for the SIM card associated with a prepaid mobile customer subscription service in the general terms and conditions for prepaid mobile services. The policy in relation to the life cycle for postpaid SIM card would be part of the contract terms for that service.

In 2016, through the National Telecommunications Regulatory Authorities, ECTEL consulted on a number of regulatory instruments for the ECTEL Member States, including draft Consumer Protection Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)¹. These draft Regulations included a provision at Regulation 18(4) that a licensee could not promote or sell a prepaid card that expires less than 3 months after the card is first used, or less than 6 months after the card is “topped up”. Following the public consultation process, the draft Regulations were revised taking into account comments received in the consultation process and ECTEL published the revised draft Regulations as draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)². The provision on the promotion, sale or distribution of prepaid cards were **now** at Regulation 17(c) in the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector).

Subsequent to the publication of the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector), ECTEL has been made aware of a number of lingering concerns from both consumers and the Commissions, on policies implemented by licensees for the life cycle for the SIM cards associated with a prepaid mobile customer subscription service. In this consultation document ECTEL proposes a number of changes to Regulation 17(c), to address the concerns raised which includes:

- Expiration of Prepaid Subscription
- Criteria for Termination of Prepaid Subscription
- Termination of Prepaid Subscription with outstanding credit balance

¹ <https://www.ectel.int/wp-content/uploads/2016/12/ECTEL-Public-Consultation-on-new-Regulatory-Instruments-Feb-2016.pdf>

² <https://www.ectel.int/wp-content/uploads/2016/12/consumer-protection-regs.pdf>

- Termination of Prepaid Subscription with unused minutes, text messages, data or other value

B. Current practice for the Deactivation of SIMs in the Member States

1. Digicel – Prepaid Terms and Conditions³

6 Our Rights to Bar or Disconnect The SIM Card

6.1 If you do not make or receive a call at least once in any three month period the SIM Card may (at our absolute discretion) be disconnected from the Network, you will not be able to use the Service at all and any credits left on your Account will be forfeited.

6.2 Each Voucher has a date by which you must Register the Voucher and use the amount credited to your Account (“Expiration Dates”). In the event that the Expiration Dates lapse (irrespective of your Account being in credit):

(a) and you do not credit your Account with a new Voucher within a maximum of 60 days of the Expiration Date, the SIM Card may (at our absolute discretion) be disconnected from the Network, and any credits left on your Account will be forfeited. During this period you will still be able to make calls to emergency services and to us and receive calls whilst the SIM Card is connected to the Network you will not, however, be allowed to make a chargeable call, retrieve a voice message, send a text or picture message, receive a reverse billed service or open a data session;

(b) and you credit your Account with a new Voucher within a maximum of 60 days of the Expiration Date, the amount of the new Voucher will be credited to your Account and any existing credit in your Account will expire on the date the new Voucher expires.

³ <https://www.digicelgroup.com/lc/en/terms-of-use/prepaid-terms---conditions.html>, March 4, 2020

6.3 In addition to anything else we may bar or disconnect the SIM Card from the Network and/or suspend Service without warning if: (a) you fail to comply with the Terms and Conditions in any material way; (b) you report that your Mobile Phone has been lost, stolen, damaged or destroyed; (c) the Service is used (with or without your knowledge) to make calls or send data, which is offensive, indecent, obscene, menacing, a hoax or nuisance, in breach of any rights or privacy of others or is unlawful; (d) you or anyone that uses the SIM Card damages the Network or puts it at risk; (e) we have reasonable cause to suspect fraudulent use of the Mobile Phone or Voucher; (f) we need to carry out repairs, modifications or upgrades to any part of our Network; (g) we believe that any equipment used in connection with the Service poses any danger to person or property or interferes with any service; (h) we are required to comply with an order, instruction or request of any government body, an emergency service organisation or any other person or organisation with the appropriate authority.

6.4 Where the SIM Card is disconnected from the Network and/or Service is suspended, we are not obliged to refund any credits held in your Account.

6.5 If the SIM Card is disconnected from the Network and you wish it to be reconnected to the Network, you must purchase a new SIM Card. For the avoidance of doubt once the SIM Card is disconnected from the Network you will lose the mobile phone number associated with the SIM Card.

2. Cable & Wireless - Service Specific Terms and Conditions Mobile Service⁴

1. PRE PAID SERVICE – THE CARD AND CALL CREDITS

1. Call Credits are valid for a prescribed number of days from the day that the Call Credit is activated. Call Credits not used within the prescribed periods expire at the end of the particular period.
2. If You add additional Call Credits to Your Account while it is active, Your Account is extended for an additional number of days from the latest top-up date.

⁴ <https://discoverflow.co/saint-lucia/service-specific-terms-conditions-mobile-services>, March 4, 2020

3. You must in any event perform a chargeable transaction within the grace period prescribed for the last Card activated on the Account. If You do not do so You will lose the telephone number assigned to You and You must obtain a new telephone number from Us by paying Us the charges set out in Our current Tariff Sheet for assigning You a new telephone number.
4. Call Credits are not refundable or redeemable for cash and, unless specifically stipulated by Us in specific circumstances, they cannot be transferred to anyone else.

2. CHARGES FOR PRE-PAID SERVICE

1. You pre-pay for the Service by topping-up Your Account with Us. You do this by purchasing additional Cards or via electronic or self “TopUp” systems. Your pre-payments are not repayable by Us nor is interest payable on any credit You have with Us. Each time the Service is used by You (or by someone else using the Equipment), the Call Credits You have purchased are reduced in accordance with the usage charges. You agree that Our records determine how much Your account is topped- up and the rate of use of the Service.
2. In the event that usage charges or Service Fees are not applied in real time and We subsequently become aware of such use of the Service We shall subtract the usage charges from Your Account at such later time.
3. You agree to pay Our rental charges if You rent Equipment from Us.
4. You agree to pay Our reactivation charge, as set out in Our current Tariff Sheet, if You reactivate the Service in accordance with Clause 6.3 above.

3. INACTIVE PRE PAID ACCOUNTS

1. If We provide You a pre-paid Service, We may terminate the Service without prior notice if the Account does not show a chargeable transaction beyond the end of the grace period prescribed for the credit activated on the Account.
2. Where the Service is suspended or disconnected We are not obliged to refund any additional pre-paid Call Credits held on Your Account.

C. Current Provisions for Deactivation of a SIM Card in the Draft Electronic Communications (Consumer Protection) Regulations

17. Prohibited Actions

A licensee that provides a pre-paid electronic communications service shall not do any of the following –

- (c) Provide, sell, resell, issue, or distribute a pre-paid electronic communications service card or pre-paid electronic communications service that expires, except for promotional credit for which the SIM or credit expires —
 - (i) before the date that is 3 months after the date on which such card or service is first used;
 - (ii) in the case of a pre-paid electronic communications service card or pre-paid electronic communications service that permits a consumer to purchase additional usage minutes or add additional value to the card or service, before the date that is 6 months after the date on which the consumer last purchased additional usage minutes or added additional value to the card or service.

D. Proposed changes the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)

ECTEL proposes the following change to the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector):

Delete Regulation 17(c);

Replace with:

Part V

LIFE CYCLE OF A PREPAID SUBSCRIPTION

20. Expiration of Prepaid Subscription

1. A licensee shall not activate a prepaid subscription for an electronic communications service that has a life cycle of less than 3 months.
2. If a licensee has a special promotion, a prepaid subscription may expire within 3 months from the date on which the electronic communications service is first used by a retail customer.
3. A licensee shall —
 - a. notify a retail customer by email, text message or other application, at least 5 days before a prepaid subscription expires; and
 - b. clearly inform a retail customer of the options that are available and the implications of inaction.
4. The options referred to under subregulation (3)(b), may include the option to—
 - a. request that a subscription be terminated;
 - b. purchase prepaid credit to make a subscription ineligible for termination;

- c. request a refund of outstanding prepaid credit for unused voice minutes, text messages, or data allowance;
 - d. request that any unused voice minutes, text messages, or data allowance be transferred to another prepaid subscription on the licensee's network; or
 - e. any other option available to a retail customer.
5. A licensee shall notify a retail customer that its prepaid subscription will be terminated, if the retail customer does not select an option under subregulation (4).
6. A retail customer may, within 15 days of the termination of a prepaid subscription, request that the prepaid subscription be reactivated, and to keep the same number that was previously assigned.
7. A retail customer is required to purchase credit before its prepaid subscription is reactivated by a licensee.

21. Criteria for Termination of Prepaid Subscription

A licensee shall not terminate a prepaid subscription, if—

- a. a retail customer has at least \$10.00 on his or her account;
- b. a retail customer has at least 10% of the voice minutes, text messages or data allowance on his or her account; or
- c. in the preceding 3 months, a retail customer has—
 - i. made or received a call;
 - ii. sent or received a text message; or
 - iii. used data.

22. Termination of Prepaid Subscription with outstanding credit balance

1. If a retail customer requests, a licensee shall, within 30 days of the termination of a prepaid subscription with an outstanding credit balance —
- a. refund the outstanding credit balance to the retail customer; or
 - b. transfer the outstanding credit balance from a terminated prepaid subscription to another prepaid subscription on the licensee's network.

2. If a prepaid subscription has been terminated by a licensee and the licensee has received no request from a retail customer for a refund or transfer of funds, the licensee shall, after a period of 3 months, deposit any outstanding credit balance to the Accountant General.

3. Any outstanding credit balance to be submitted to the Accountant General shall be subject to a 20% administrative fee.

23. Termination of Prepaid Subscription with unused minutes, text messages, data or other value

1. If a retail customer requests, a licensee shall transfer unused voice minutes, text messages or data allowance from a terminated prepaid subscription to another prepaid subscription on the licensee's network, within 30 days of the termination of the retail customer's prepaid subscription.

2. If a prepaid subscription has been terminated by a licensee and the licensee has received no request from a retail customer for a transfer of unused voice minutes, text messages or data allowance within 90 days of the termination of the prepaid subscription, the licensee shall conclude that the retail customer has forfeited the unused voice minutes, text messages or data allowance.

E. Invitation to submit comments

ECTEL invites interested parties to submit comments on the proposed changes to Regulation 17(c) in the draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector).

Please note that all comments should be in line with the "SUGGESTED GUIDELINES FOR RESPONSES TO CONSULTATION"

On completion of this consultation process, ECTEL will publish the further revised draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector).

