

CONSULTATION DOCUMENT

**Recommendation of the Eastern Caribbean Telecommunications Authority
("ECTEL")
To the National Telecommunications Regulatory Commission to consult on
GUIDELINES FOR PRICING OF ACCESS TO FACILITIES IN THE ECTEL MEMBER
STATES**

**Consultation Document
/NO.
November 2011**

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation for Guidelines for the pricing of access to facilities in the Member States.
2. A copy of the Draft Guidelines is attached to this Consultative Document.
3. The initial comments period will run from **10th November to 12th December 2011**.
4. The Comment on Comments period will run from **15th December 2011 to 6th January 2012**.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the Guidelines to the Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or e-mail to: -
Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
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 lags 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) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 4) Where possible, comment documents should be submitted in PDF format.
- 5) 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.
- 6) 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.

EXPLANATORY MEMORANDUM

GUIDELINES FOR PRICING OF ACCESS TO FACILITIES IN THE ECTEL MEMBER STATES

These Explanatory Notes relate to the Guidelines for Pricing Access to Facilities in the ECTEL Member States. These notes have been prepared to assist the reader and do not constitute part of the Guidelines.

The Telecommunications Act in the ECTEL Member States requires that where it is technically feasible, a telecommunications provider provides access to its facilities, including towers and underground facilities, to another telecommunications provider for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service. The Act further requires that access to such facilities be on such terms as are applicable to interconnection and on such terms and conditions as are agreed between providers or failing agreement, on terms as determined by the Commission.

In furtherance of the provisions of the Act, the ECTEL has recommended Telecommunications (Access to Facilities) Regulations to the Member States. These regulations provide further details on the rights and obligations of telecommunications providers in respect of access to facilities or infrastructure sharing.

In accordance with the Act and proposed regulations the Directorate now proposes guidelines to be used by Commissions to set the rate for access to facilities where providers fail to reach agreement on rates. These guidelines are narrow in scope and relate solely to the setting of rates for access to facilities.

Where there is failure to agree on other terms in relation to access to facilities, the proposed Telecommunications (Access to Facilities) Regulations gives the Commission the power to resolve any matter in accordance with procedures to be determined by the Commission.

The attached guidelines address the following:

- (a) Policy considerations in support of access to facilities.
- (b) The legal basis for access to facilities in the ECTEL Member States.
- (c) A proposal for determining the rate for access to facilities.

Eastern Caribbean Telecommunication Authority

Guidelines for Pricing Access to Facilities in the ECTEL Member States

Consultation Paper

1 Introduction

It is well established that in the capital intensive telecommunications sector, infrastructure sharing or allowing a telecommunications provider access to the facilities of another provider is essential for promoting a competitive and vibrant sector. Recognizing this, the Telecommunications Act in the ECTEL Member States mandates that where it is technically feasible, a telecommunications provider shall provide access to its facilities, including towers and underground facilities, to another telecommunications provider for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

Access to facilities for mobile operators is particularly important in the ECTEL Member States where, as in a number of developing countries, mobile phone service is the main form of access to telephony and in some cases the internet for customers. The main focus of this paper is therefore to present ECTEL's draft recommendations on how to resolve issues related to the pricing of access to mobile infrastructure.

Such is the importance of access to facilities that the ITU's Eighth Global Symposium for Regulators was focused on infrastructure sharing. During the symposium, a number of policy considerations were identified and presented to support the case for allowing access to facilities or infrastructure sharing.

One of the policy considerations identified was promoting the rapid and efficient deployment of networks. In a number of instances, the sharing of infrastructure can significantly reduce the overall cost of network deployment. This is especially important in less populated and economically challenged environments. The lower cost of deployment increases the chances of more affordable prices being offered to customers. Sharing also facilitates access to bottleneck facilities as the control of such facilities by dominant infrastructure providers can impede competition and stifle market growth and development.

Another important policy consideration is that the sharing of infrastructure lessens the impact of ICTs on the environment. There are a number of public health and environmental issues related to the erection of mobile transmission facilities which can be minimized by sharing.

While there are a number of positive outcomes from sharing infrastructure, a delicate balance must be struck as sharing can both enhance and hinder competition. Access to important facilities can encourage market entry by lowering barriers to entry such as the cost of network deployment. However too

much sharing can result in underinvestment and limited infrastructure based competition. For this reason it is important that the terms of sharing, including pricing, be such that it recognizes the need to strike a balance between reducing the barriers to market entry through infrastructure sharing and the need to promote investment in infrastructure to enhance the overall competitiveness of the telecommunications and ICT sector.

2 Purpose of the Consultation

In accordance with the Act and proposed regulations the Directorate now proposes guidelines to be used by Commissions to set the rate for access to facilities where providers fail to reach agreement on rates. These guidelines are narrow in scope and relate solely to the setting of rates for access to facilities.

Where there is failure to agree on other terms in relation to access to facilities the proposed Telecommunications (Access to Facilities) Regulations gives the Commission the power to resolve any matter in accordance with procedures to be determined by the Commission.

The consultation document outlines ECTEL's draft recommendations to Commissions on how the pricing of access to facilities can be determined in cases where telecommunications providers fail to reach agreement on the pricing of shared infrastructure.

For the purposes of these guidelines ECTEL will focus on the method for determining the compensation in relations to access to passive facilities and in particular mobile towers, sites and associated structures. If necessary, ECTEL will recommend guidelines for compensation for access to other facilities, as necessary, in the future.

3 Legal Basis for providing access to facilities

The Telecommunications Act in the ECTEL Member States defines infrastructure sharing as “the joint utilization of a particular physical structure, segment, element, or feature of the entire infrastructure” and defines infrastructure as “facilities, submarines cables and landing sites, towers, sites and underground facilities”. The Telecommunications Acts also outline the obligations and responsibilities of parties wishing to enter into an infrastructure sharing arrangement.

In Particular Section 50 of the Act requires that

(1) Where access to telecommunications towers, sites and underground facilities is technically feasible, a telecommunications provider (the first provider) must, upon request, give another telecommunications provider (the second provider) access to a telecommunications tower owned or operated by the first provider, or to a site owned, occupied or controlled by the first provider, or to an eligible underground facility owned or operated by the first provider, for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

(2) A telecommunications provider, in planning the provision of future telecommunications services, must cooperate with other telecommunications providers to share sites and eligible underground facilities.

(3) Access to sites, towers or eligible underground facilities pursuant to this section shall, mutatis mutandis, be on such terms as set out in sections 46 to 48 above, and otherwise on such terms and conditions as are agreed between providers or, failing agreement as determined by the Commission.

4 Type of facilities sharing

Facilities to be shared by telecommunications providers can be categorized as passive or active. The passive elements usually includes the non-electronic components of the telecommunications networks such as physical space on ground, tower masts, shelters and cabinets containing air conditioning and power supply units as well as security. Such network elements are usually not considered strategic by providers and are therefore easy to share. In the ECTEL Member States the focus of access to facilities is providing access to passive facilities.

Active facilities are those network elements that can be managed by providers and includes antennas, transmission systems, spectrum, switching systems and others. Arrangements for active sharing are generally much more complex than for passive sharing.

5 Models of facilities ownership

Where access to facilities is mandated it is important to establish who owns the asset to be shared. A number of ownership models have emerged in the telecommunications sector. In the simplest case, the facilities are owned by one operator and other operators seek access to those facilities by agreement. In

another case operators can choose to enter into a joint venture arrangement to build and operate the facilities to be shared. A third option is that independent “pure-play” infrastructure companies may emerge or come into a market to provide facilities to all providers in the market.

At this point the model that is most prevalent in the ECTEL Member States is the one in which the facilities are owned by one operator and other operators may seek access to these facilities.

6 Determination of the charges for access to facilities

As with the case for the rates for interconnection, the Telecommunications Act in the ECTEL Member States requires that the rates for infrastructure sharing be cost oriented, reasonable, arrived at in a transparent manner having regard to economic feasibility and be sufficiently unbundled such that providers seeking to share infrastructure with the owner of such infrastructure do not have to pay for network components that they do not require.

ECTEL has recommended new Telecommunications (Access to Facilities) Regulations to its Member States which were developed after a public consultation process. These regulations contemplate that a public network operator shall make available prices for access to and use of facilities it owns. The regulations also contemplate that compensation for co-location and other forms of infrastructure sharing will be determined by negotiations between the operator that owns the facility and the operation seeking access to the facility. However, in cases where operators are unable to reach agreement regarding compensation for the access to facilities, the Commission will be empowered to impose rates based on costs.

ECTEL is therefore proposing an approach to be taken by Commissions in determining the rates for access to facilities in the case where providers fail to reach agreement. For the purposes of these guidelines ECTEL will focus on the method for determining the compensation in relations to access to passive facilities and in particular mobile towers, sites and associated structures. If necessary, ECTEL will recommend guidelines for compensation for access to other facilities in the future.

The approach proposed by ECTEL is guided by the pricing principles outlined in the European Commission’s Recommendation (2010/572/EU) which recommends the use of cost oriented rates. This is in line with the Acts in force in the ECTEL Member States.

ECTEL proposes that the rates for access to facilities be set such that they reflect costs effectively borne by the owner of the infrastructure. In determining such rates the Commission should take into account the actual useful life of the infrastructure and any economies of deployment enjoyed by the owner. Also the proposed rates should, as far as possible, capture the true value of the infrastructure including any applicable depreciation.

To reach a reasonable decision on an appropriate rate for access to its facilities, the Commission will require information from the owner of the infrastructure. Using the work of Victor Font et al. (2009) and Ashima Verna et al. (2010), ECTEL suggests that the main cost components associated with tower operations are site rental; energy and fuel costs, depreciation and cost of capital and operating and maintenance costs which include insurance, repairs and maintenance, security and taxes. The owner of the facilities will be required to provide, at the minimum, the information identified and any other information requested by the Commission to allow it to reach a decision.

ECTEL proposes that the monthly rate to be charged for access to facilities be determined based on the annual cost of access and the number of providers who will use the facilities including the owner of the facilities.

The following equations are proposed to determine the cost of access:

Equation 1 Annual cost of access = Site rental + operating cost + depreciation + cost of capital

Equation 2 Maximum monthly cost of access = $(1/12) \times (\text{Annual cost of access} / \text{number of users})$

Calculation of depreciation

The telecommunications sector is a capital intensive sector; therefore it is important that the depreciation method used be efficient to allow the provider to recoup the cost of the asset being depreciated during the economic life of that asset. The reduction in value of an asset is determined by wear and tear on the asset as well as by the development of newer more efficient replacements due to technological advances. In the case of the non-electronic passive facilities to be shared in the ECTEL Member States, ECTEL proposes that the main determinant of loss of value will be wear and tear. As such it is proposed that straight line depreciation be used in determining the annual depreciation of the assets when determining the cost of access.

Data to be provided by telecommunications provider

In setting a rate for access to facilities, ECTEL proposes that the Commission be guided by the calculation of the annual cost of access as presented in Equation 1. The telecommunications provider that owns the facilities to be shared will therefore be required to submit information to the Commission to allow the Commission to determine the annual cost of access to the facilities based on that equation. The information submitted by the telecommunications provider must be accompanied by supporting documents to allow the Commission to evaluate the reasonableness of that information. Such supporting documentation would include rental lease for site; energy and fuel bills, insurance bills, proof of the value of the asset, asset life, cost of capital and any other information to support the operating costs associated with the asset.

Request for Comments

ECTEL invites comments from interested parties on any aspect of these proposed guidelines.

References

<http://www.knowledgeportalcfn.com/wp-content/uploads/2010/01/24764836-Tower-Sharing-WHITE-PAPER.pdf>

http://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR08/discussion_papers/Camila_session4.pdf

http://www.deltapartnersgroup.com/our_insights/whitepapers/tower-sharing-in-the-middle-east

<http://www.ictregulationtoolkit.org/en/Section.3445.html>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF>