

Digicel

The Bigger, Better Network.

Submission to the NTRC

Concerning VoIP

June 23, 2009

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1 INTRODUCTION

Digicel thanks the NTRC and ECTEL for the opportunity to comment on this important matter.

Digicel does not wish to comment on all of the 18 points raised. Digicel's main concern is that fees or taxes that are imposed within the sector must be designed so as not to advantage certain types of licensee or service provider over their competitors. We discuss this issue in more detail below.

For ease of reference, Digicel is minded to agree with Specific Recommendation 1 but to disagree with certain implications that appear to arise in relation to Specific Recommendation 2, although until further detail is provided we cannot be categorical in our opinion. In the event that we do not change our view once we see the detailed regulations, Digicel would not be entirely in agreement with Specific Recommendation 9 either, given the commonality this recommendation has with Recommendation 2.

In this response, Digicel does not comment on other Specific Recommendations.

2 NON-DISCRIMINATORY FEES AND TAXES

Digicel focuses its attention in this document to the response to Specific Recommendations 2 and 9.

The use of more than one licence class that can be used to provide a service or competing service creates an acute risk of bypass and discrimination. Digicel believes that this seems likely to be the case in regard to VoIP. This can happen if: (a) services are provided by a licensee (call it a Type 1 licensee) that provides infrastructure but also services that compete with licensees in a different class that do not provide their own network but sell retail services using the wholesale product (Type 2 licensee) or sells a different product which nevertheless serves as a substitute for consumers with the product sold by the Type 1 licensee, and (b) fees or tax rules are significantly different for the two classes.

More specifically, where a Type 1 licensee sells IP bits to firms that do not provide their own infrastructure but then provide services that compete with the Type 1 licensees, discrimination would appear to arise.

Take the example of universal service taxes which is levied on Type 1 licensees according to “*gross revenues less whole payments to other licensees*”.¹ They would incur universal service tax liabilities for the additional wholesale revenues for IP bits per period sold to Type 2 non-infrastructure service providers.

Type 2 service providers do not pay any universal service taxes except to the extent Type 1 providers pass them through in their wholesale prices. However, Type 1 providers incur universal service tax liabilities for the value added at the retail service level which they sell in competition with the Type 2 class licensed service providers.

Type 2 licensees, however, face not universal tax liability themselves – especially not at the retail level. It seems likely that Type 2 licensees would contribute indirectly to the universal service liabilities of Type 1 licensees through their wholesale purchases which would be passed through in their retail prices. However, a Type 1 licensee’s retail prices would reflect the stack of revenues – wholesale and retail.

It would incur a liability on the wholesale bits sold to Type 2 licensees and a liability on its own retail IP sales margin which Type 2 licensees would avoid. Where it this occurs it would be discriminatory.

Digicel respectfully suggests that one way to avoid this is to use the same license no matter whether or not a firm wants to provide its own network or not. Wholesale payments to other licensees are netted off for all parties; universal service liabilities and other taxes that were raised on turnover such a licence fees would arise with own wholesale and retail services.

¹ Where universal service or license taxes are levied on the section and not specified as a line item on end-users bills but are solely the responsibility of licensees, “*gross revenues less whole payments to other licensees*” is generally accepted as the least distortional means of assigning tax liabilities.