

# CONSULTATION DOCUMENT

Recommendation of the Eastern Caribbean Telecommunications Authority  
(“ECTEL”)

To the National Telecommunications Regulatory Commission to consult on  
Draft Interconnection Code

## Comment on Comments

April 16, 2009

1. On March 23<sup>rd</sup> 2009 the National Telecommunications Regulatory Commission received a submission from ECTEL containing ECTEL’s recommendation for Draft Interconnection Code for [Member States].
2. A copy of the Consultation Document on “*Draft Interconnection Code*” is available on the ECTEL website ([www.ectel.int](http://www.ectel.int)) and copies can be made available upon request from the National Telecommunications Regulatory Commission.
3. The Initial Comments period was set for 24<sup>th</sup> March 2009 to 14<sup>th</sup> April 2009.
4. ECTEL received comments from:
  - a. *Cable & Wireless/LIME*
5. The initial comments are hereto attached and ECTEL now invites comment to these comments.
6. The Comment on Comments period will run from 20<sup>th</sup> April to 4<sup>th</sup> May 2009.
7. Following the Comment on Comments period, the Directorate will consider all comments received and then present the revised Interconnection Code to the Council of Ministers with a recommendation for their adoption in the ECTEL Member States.
8. All responses to this Consultative Document should be written and sent by post, fax or email **no later than 4: 30 pm on 4<sup>th</sup> May 2009** to: -

Managing Director  
ECTEL  
P.O. Box 1886  
Vide Boutielle  
CASTRIES  
St. Lucia

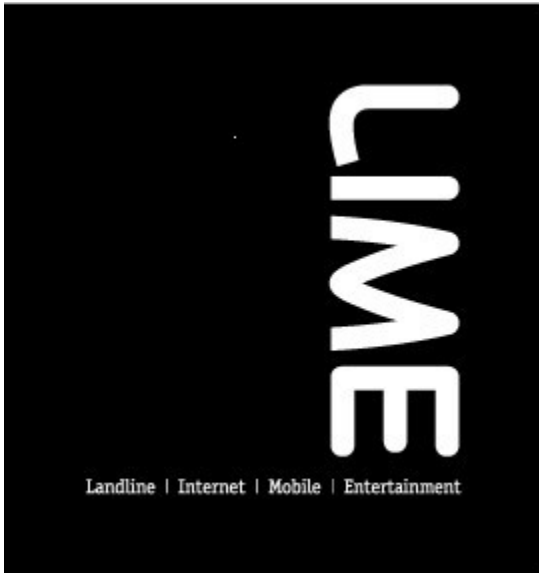
Fax: 1-758-458-1698

Email: [consultation@ectel.int](mailto: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.

*The following are the comments submitted during the initial consultation period:*



**RESPONSE TO ECTEL'S  
CONSULTATIVE DOCUMENT**

on

**DRAFT INTERCONNECTION CODE**

BY E-MAIL TO: [Consultation@Ectel.Int](mailto:Consultation@Ectel.Int)

April 14, 2009

## **1. Introduction**

LIME thanks ECTEL for extending the opportunity to comment on the Draft Interconnection Code (the Code), the stated intent of which is to encourage completion of interconnection negotiations as early as possible and to minimize the delays occasioned by disputes. This response is made by and on behalf of all LIME business units in the ECTEL countries (collectively, "LIME").

LIME reserves the right to further comment on the Code. Any failure by LIME to address any matter raised in the Code does not represent agreement in whole or in part with that particular matter.

If one accepts that the new Interconnection Regulations empower the proposed Interconnection Code, it should be noted that this amended regulation is not in force in most of the ECTEL countries. Therefore the Interconnection Code will have no relevance to most of the ECTEL states.

It is submitted however that there are several elements to the Interconnection Code which are ultra vires the Telecommunications Act itself since the Code seeks to provide powers which exceed those which fall under the Act. One such power is the ability of ECTEL to recommend the suspension or termination of licences.

Without prejudice to the foregoing LIME comments on the Code as follows:

## **2. *The Matter of Local Loop Unbundling in the Code***

In its rationale for the Code, ECTEL advised that '*The Code is not a set of regulations, or a statutory instrument . Rather it is a document outlining a set of standards and guidelines of behaviour for regulated companies...The Code is to be read as part of the Interconnection and the Access to Facilities Regulations respectively.*'

LIME agrees that the Interconnection Regulations do allow ECTEL to issue an Interconnection Code '*to give purpose and effect to [the Interconnection] Regulations...*' However LIME is of the considered view that aspects of the Code may be ultra vires the

Interconnection Regulations and the Telecommunications Act. Indeed section[15] of the Act provides for the Commission to provide ‘guidelines’ on the terms and conditions of interconnection. The details set out in the Code appear to go far beyond ‘terms and conditions’ since it also addresses negotiations, and other issues such as disputes which are already provided for by regulation.

Interconnection is defined under the Telecommunications Acts in the ECTEL countries as *‘the connection of two or more separate telecommunications systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface’*. Infrastructure Sharing is defined as *‘the joint utilization of a particular physical structure, segment, element,, or feature of the entire infrastructure’*.

ECTEL is seeking to treat infrastructure sharing as a component of interconnection. LIME disagrees with this approach. In addition this is not the approach taken in the industry. In all existing cases LIME has concluded interconnection agreements without the sharing of facilities (which is settled as commercially-negotiated arrangements under separate contracts). The Telecommunications Acts in ECTEL countries also recognize a distinction between Interconnection and Infrastructure Sharing.

The Code specifies at paragraph 3 (b) (ii):

*Without limiting sub-paragraph (i), unless the Commission, on application of such dominant interconnection provider, determines to the contrary, offer access to local loops and to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop.*

Paragraph 3 (b) (iv), (v) and (vi) of the proposed Code also make reference to the Local Loop. Regulation 9 of the revised Interconnection Regulations, addresses *‘Access to Facilities’*. It is not clear that ‘facilities’ under the Interconnection Regulations includes the Local Loop. Local Loops are not used in or necessary to the interconnection of two networks. Any provision dealing with Local Loops is therefore outside the scope of the Interconnection Regulations and does not properly belong in the Interconnection Code.

In any event, access to the Local Loop is properly classified as infrastructure sharing and in this regard ECTEL has issued draft '*Access to Facilities Regulation*' which, inter alia, would incorporate the Local Loop, which however was not specifically addressed in that proceeding. That proceeding is now in the 'Comments on Comments' stage.

From the responses to the draft '*Access to Facilities Regulation*', it is evident that providers believe that the definition of access is overly broad and that any access to facilities should be the subject of commercial negotiations and prices. Further it has been proposed that ECTEL should issue a consultation on any infrastructure for which it is proposing sharing. Even so, LIME's local loop is not essential to the service of any operator as it is clear from the easy entry of cable operators into the fixed telecommunication markets that LIME's copper loop infrastructure is not necessary nor essential, for participation in the voice or internet access downstream markets. One can also look at the St Vincent market where the cable operator has not even interconnected with LIME.

Consistent with its response to the draft '*Access to Facilities Regulation*' LIME holds the view that access to infrastructure other than those physically required to provide interconnection should be determined by wholesale commercial negotiations between parties and should not be included within the Interconnection Agreement nor be included in the Interconnection Code or legislation related to interconnection.

### **3. Timeframe for Negotiating Interconnect Agreements**

It is LIME's experience to date that the sixty (60) days and no more than ninety (90) days, as proposed by ECTEL, represents a very short duration of time to conclude interconnection agreements. In LIME's experience, it takes an average of four (4) months or one hundred and twenty (120) days for an interconnection agreement to be concluded. ECTEL's proposed timeframe therefore places operators in an invidious position. Since the average time for concluding the agreement is four (4) months LIME proposes that the one hundred and twenty (120) days should be the outside timeframe for concluding the agreement.

For the most part, in those few cases where LIME has executed such agreements with Other Licenced Operators (OLOs) in sixty (60) days or less, it is our observation that such providers have been unable to provide a Final Forecast as required under the Interconnection Agreement required for LIME to define and cost the Optical In Span Joining Service. Otherwise the OLO has not been able to make the initial payment for the Optical In Span Joining Service. In fact, many such operators have not proceeded to establish any network in accordance with their licenses in the respective markets. In other words, the hasty completion of those agreements was not effective in bringing services to the market any quicker because the real issue is that the operators were unprepared to go to market.

LIME recommends that at least one hundred and twenty (120) days seems a more reasonable timeframe within which to conclude interconnection agreements, except where there is an NTRC/ECTEL approved RIO, in which case the OLO should be directed to accept and agree to the RIO or show cause to the NTRC why it should not be required to accept the terms contained therein.

In more recent times LIME has seen ambiguous ISP licenses, where the new entrant OLO , of its own accord, interprets its licence as permitting it to be provided with interconnection and to terminate international traffic to the PSTN, where that is not the intent of the licence. LIME urges the NTRCs to ensure that licences are clear, unambiguous and explicit regarding those services permitted to the licensee such that when a request for interconnection is made there is no undue delay where clarification has to be sought and obtained.

#### ***4. Dominance***

Without prejudice to its comments on any proceeding on dominance, it is clear that any declaration of dominance in the market for call termination cannot be limited to any one PSTN (Public Switched Telephone Network) only but must also be applied to all PSTN, including the network of the cable operators, as well as all PLMN (Public Land Mobile

Network) operators, as all Network Operators are dominant on their own network for call termination.

## **5. Dispute Resolution**

The Telecommunications (Dispute Resolution) Regulations (the Dispute Resolution Regulations) at section 3(3) states that :

*Where a dispute arises between two telecommunications providers on matters related to a duly executed interconnection agreement or a reference interconnection offer, the parties to the dispute shall, prior to seeking redress under these regulations, first exhaust such dispute resolution process as may be incorporated in the said interconnection agreement or reference interconnection offer.*

The Dispute Resolution Regulations at section 3(4) states that:

*Subject to sub-regulation (3), where there is conflict between these Regulations and any other Regulations in relation to an issue provided for pursuant to these Regulations, these Regulations shall prevail.*

LIME is in full agreement with section 3(3) of the Dispute Resolution Regulations. This is a safeguard against the dispute resolution process being manipulated through the lodging of frivolous complaints and matters for which the remedies under the RIO or interconnection agreement have not been exhausted. Without such a safeguard, unacceptable behaviour can be expected, where a party could make unreasonable requests deliberately with the intent of provoking a dispute.

ECTEL must maintain this approach otherwise the NTRCs could be at risk of being inundated with matters that otherwise could have been resolved commercially. LIME draws reference to OFCOM which, a few years ago, had to raise the standard it used to define a complaint. This of course resulted in fewer but more meritorious complaints, since the

frivolous ones did not meet the standard and the ones actually addressed had to meet the more demanding standard.

ECTEL must also establish that there are some matters which will not be accepted as disputes. For example LIME has had instances where OLOs have sought non-carrier-class means to establish interconnection, even though interconnection affects the quality of service that LIME provides to its own customers. These issues have become the subject of disputes. These non-carrier-class means include PRI ISDN circuits, even in markets where they do not exist, and microwave links and ADSL for interconnection. These are not acceptable means of interconnection for the delivery of public traffic and are not facilitated by LIME. Such means of interconnection should not be accepted by ECTEL either. Further LIME cannot provide carrier grade quality of service using retail connections.

Disputes can also be expected when there is fundamental difference in choice of technology for establishing interconnection. Operators must do their due diligence before acquiring equipment and LIME will not interconnect with equipment which will harm its network and interfere with service availability and quality.

Additional cases where concluding negotiations have been delayed include cases where the OLO has chosen deliberately to use Optical Line Terminating Equipment from a manufacturer other than that recommended by LIME, and then argues that there is a disparity in pricing between its own choice and that provided by LIME for equipment LIME utilizes on its own end of the Joining Service. However, as ECTEL can appreciate, interoperability of equipment used on either side of the Joining Service is critical, and this can be a significant issue where the OLO chooses to use different manufacturers or equipment not fit for carrying public traffic.

Clearly there are many factors that can delay the completion of an interconnection agreement and lead to dispute. LIME encourages ECTEL to consider the merits of its arguments regarding matters that should not be accepted as disputes.

LIME has an established Dispute Resolution procedure in its interconnection agreement which provides that if a dispute cannot be resolved within fifteen (15) calendar days, the parties can agree to refer the matter to the NTRC for resolution.

### **Interim Interconnection**

LIME has had the experience in one market where the Regulator imposed an Interim Interconnection Agreement (IIA) on the parties to provide temporary interconnection. Soon thereafter there was an order to implement permanent interconnection. It was LIME's experience that the OLO in this instance took 2 years (of a 5 year agreement) to put its infrastructure in place for this permanent interconnection. The OLO took the view that it was satisfied with the temporary, low cost, non-carrier grade type of interconnection mandated by the Regulator, and made numerous technical excuses as to why the more permanent solution could or should not be effected. Unfortunately, the low-cost, non-carrier grade interconnection also led to other quality of service issues.

On this basis, LIME strongly disagrees with this approach and the NTRC should either leave the parties to reach and conclude agreement, or having agreed to a RIO in markets where this is mandated, require of the new entrant OLO to accept the RIO. In any event where an IIA is made, a provision must be made for the temporary, non-carrier grade connection to be disconnected as soon as there is agreement on permanent interconnection.

Please direct matters related to this consultation to Melesia Sutherland Campbell at [melesia.campbell@time4lime.com](mailto:melesia.campbell@time4lime.com) and Frans Vandendries at [frans.vandendries@time4lime.com](mailto:frans.vandendries@time4lime.com).

**END**