

Draft Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector

Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)

This summary is intended to provide a brief, readable overview of the selected sections of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” services include telecommunications services.

Objectives and Guiding Principles (See section 3)

The objectives of this regulation are to ensure that:

- ▶ Residents have reasonable quality of service regardless of their location
- ▶ Consumers can make free emergency telephone calls
- ▶ People with disabilities or specific have access to electronic communications services
- ▶ net neutrality exists, meaning that customers can access and use any internet content, applications and services they choose, as long as that content does not violate public policy or basic rights
- ▶ customers receive a written contract from Licensees (such as telephone and internet service providers) that includes details of prices and fees and how they can cancel the contract
- ▶ There are good procedures for the resolution of customers’ complaints and disputes
- ▶ Residents can get all relevant information on the services that they need
- ▶ Advertising and sales practices do not mislead or take advantage of consumers
- ▶ Customers are not unfairly limited in their choices of services or by unnecessary contract terms
- ▶ Personal data that consumers give to Licensees is kept private and confidential

The Regulations are based on the following guiding principles (see section 4):

- ▶ promoting the consumer as active, well-informed and rational in the marketplace
- ▶ promoting the conscientious provision of service by Licensees
- ▶ ensuring transparency by Licensees, while providing consumers with the information they need make reasonably informed decisions
- ▶ maximizing the socio-economic benefits to everyone from electronic communications services, while respecting and guarding consumers’ rights and privacy

- ▶ supporting a regulatory environment in which all stakeholders, including consumers, are able to adapt to changing market conditions.

Disclosure and Publication of Information by Licensees (See sections 5, 6, 7)

- ▶ Licensees must provide consumers with full, clear and true information (for free) about their services, without leaving out important terms, before consumers sign a contract – both online and printed (section 5).
- ▶ Operators must publish their prices, including all fees; a description of the services, standard rates and discount, usage charges, maintenance service charges, quality of service commitments and refund policy (sections 6 and 7).

Operator Hotline (See section 8)

- ▶ Operators must provide a free hotline (telephone service) so that consumers can submit complaints (section 8).
- ▶ When consumers call them, operators must provide full information about offers, services and products relevant to the consumer's questions (section 8)
- ▶ Operators must prohibit 900 type charges or allows consumers to disconnect from those calls. Operators cannot charge for calls to it (section 8).

Customer Contracts (See sections 9, 10, 11, 12, 13)

- ▶ The Commission may require a Licensee to submit its draft customer contract for approval by the Commission, and can require changes to the draft contract. The approved contract must replace any existing terms of contracts used by the Licensee (section 9).
- ▶ A Licensee must make its standard form contract available and provide a free copy to customers. Licensees cannot require a customer to pay a fee for services or products that the customer has not ordered or charge a customer except for the charges specified and agreed to by the customer. Customer contracts must be clear, easily understandable and easily accessible by consumers (see section 10).
- ▶ The contracts must include a description of the service to be provided, all charges and fees (including fees if the customer terminates the contract), minimum service quality standards, complaints code, dispute resolution process and bill payment terms and all other information stated in section 11 (see section 11).

- ▶ Customer contracts cannot unfairly lock-in customers and must include fair provisions to allow the customer to cancel the contract under fair conditions. This means a Licensee cannot automatically renew a contract without the customer's agreement or charge the customer unfair fees to end a contract before the minimum contract period. A Licensee cannot tie its services together in a way that forces the customer to purchase services that the customer does not require or provide a group of customers more favourable prices that are not justified by differences in cost if that customer obtains a service that it does not require (see section 12).
- ▶ A customer may cancel a contract at any time, effective one day after the Licensee receives cancellation notice from the customer or on the date the customer requests. When the contract provides a subsidized device (for example, a smartphone at a discounted cost), there are limits to the early cancellation fee that the customer must pay. The Regulation also sets rules for trial periods, and requires extended trial periods for people with disabilities (see section 13).

Billing (See sections 14, 15)

- ▶ Licensees must give customers accurate information concerning their service charges, and ensure that customers can verify any charges and direct debit authorization details. These sections also specify how often and in what form bills should be provided to customers (see section 14).
- ▶ For plans with pre-set usage limits (for example, plans where customers could be charged if they exceed their voice minutes, or SMS texts, or data usage), Licensees must notify customers when the customer reaches 80% and 100% of his or her usage, so that the customer can avoid unwanted usage overages, and allow customers to automatically prevent the usage limit being exceeded (see section 15).
- ▶ Licensees can charge customers who conduct sales by phone or internet a per minute charge after the first minute, may charge for value added services and may collect charges for another Licensee for goods or services provided by that Licensee (see section 16).

Prepaid (See sections 17, 18)

- ▶ Every Licensee must publish on its website the terms and conditions of a prepaid service provided, sold, resold, issued or distributed by the Licensee or its distributor (see section 17).

- ▶ Section 18 sets limits on the charges customers must pay for prepaid services and prohibits a Licensee from providing fewer minutes or charging higher rate per minute or megabit of data than promoted. The Licensee cannot 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” (section 18).

Advertising and Promotions – Unfair Commercial Practices (see sections 19-26)

- ▶ A Licensee cannot make misleading advertising claims, and must provide clear advertisements and appropriate disclaimers. A Licensee must use fair sales practices. The Licensee must include all important conditions, limitations, qualifications or restrictions about an offer in any advertising, needed for the the consumer to make an informed choice and not be misled (section 19).
- ▶ A Licensee cannot use promotional or advertising headlines that create an overall impression that is then limited or changed by the fine print terms and conditions in a way that makes it unlikely or impossible that the consumer could reasonably obtain the price or benefits offered through ordinary use of the service. A Licensee cannot use the term “unlimited” regarding usage, unless ordinary use really is unlimited and there are no exclusions. Similarly, the Licensee cannot use the terms “no exceptions”, “no exclusions”, “no catches” or similar without appropriate disclosure unless there are really no exceptions to the offer. A Licensee cannot make headline statements about offer prices, unless they also prominently display any exclusions from the offer. A Licensee cannot make unqualified headline representations about ongoing prices for data usage allowances when the price for the data usage will likely increase within a reasonable period when the consumer uses it (see section 19)
- ▶ A Licensee cannot make advertising claims about broadband speed, network coverage and other performance of their services unless the Licensee can prove those claims. Section 19 also lists other important unfair commercial practices that Licensees may not use (see section 19).
- ▶ All advertisements must clearly present the main message and all main terms clearly, ensure that any disclaimers do not negate the main message and terms, and take into account the typical amount of time consumers are able to view and / or hear the advertisement (see section 20 and 24).

- ▶ Any special promotions must clearly include all important limitations, including any limitations, as well as the end date for the promotion and any special eligibility requirements (section 21).
- ▶ Text advertisements of price or dollar value for plans must prominently display certain key information about pricing (see section 22).
- ▶ Any disclaimer must be clear and understandable (see section 24).
- ▶ Licensees must ensure that their sales representatives are appropriately trained to promote and sell their services in a fair and accurate manner to assist consumers in making informed purchasing decisions. They must monitor their sales representatives to assess their interaction with consumers and take actions to address emerging or systemic deficiencies in sales conduct. They must also monitor complaints about the sales conduct of their representatives and take steps to address repeated problems (see section 25)

Access to emergency services and for persons with special needs (section 26)

- ▶ Licensees must provide free of charge access to emergency services.

People with Special Needs (section 27)

- ▶ Licensees must provide information about products and services they offer specifically for consumers with physical disabilities and other special needs. Licensees must also provide training to its sales representatives on how to interact appropriately with disadvantaged or vulnerable consumers and ensure that people with special needs are able to access their offices and complaint handling processes. A customer with a physical disability or other special needs must be able to nominate someone else to interact with the Licensee about their account. For other related provisions, see section 27.

Principles and requirements relating to protection of customer data and privacy. (sections 26, 27)

- ▶ A Licensee must protect information it holds related to its customers and their communications and cannot collect, use, retain or advertise any customer information unless the customer's prior written approval is obtained, or as permitted by law. A Licensee must ensure that all customer information submitted to it is accurate, complete and valid for use. A Licensee must take all reasonable steps to ensure that consumer

communications are kept confidential, and my not intercept, monitor or alter the content of a customer communications, except with the clear agreement of the customer or if permitted or required by law (see section 29).

Net Neutrality (See section 28)

- ▶ A Licensee must respect net neutrality, meaning that users must have access to all content and applications regardless of the source and without favouring, degrading, interrupting, interception, blocking access or throttling speeds to websites or content. A Licensee cannot discriminate between service providers on routing of traffic or access to its services. (see section 28).

Complaints Handling Processes (See sections 29, 30, 31, 32 and 33)

- ▶ The customer has the right to communicate with a Licensee regarding concerns about its services or products or to complain about its services, products or any related matter. These complaints or queries may be made by way of customer assistance telephone numbers, email, fax or letters, using a complaint form that must be available from the Licensee (see section 31). Licensees must provide (at its own expense) a toll free customer care and assistance service telephone number for all its services that is available 18 hours a day (see section 32).
- ▶ Licensee must implement a complaint handling process that is consumer focused, easy to use and is free of charge, with certain limited exceptions. Any proposed resolution of a complaint must be accepted by a consumer or former customer before a Licensee is required to implement it. A Licensee cannot cancel a consumer's telecommunications service solely because because the consumer chooses to pursue options for external dispute resolution, after being unable to resolve the complaint with the Licensee (see section 33).
- ▶ A Licensee must show fairness, courtesy, objectivity and efficiency in management of complaint, in the ways stated in section 34 (see section 34). Where a Licensee does not believe that the complaint can be resolved in 15 working days, (or within 2 working days for urgent aspects of an urgent complaint), the Licensee must advise the consumer or former customer before working day 15 (or working day 2 for urgent complaints) of (among other things) the reasons for the delay, timeframe for resolution, options for dispute resolution if the delay is expected to be 10 or more further working days, any

delays to promised timeframes and any resolution. Section 34 also states that, where a consumer is dissatisfied with timeframes, progress or resolution of a complaint, or asks about his options to pursue a complaint further, the Licensee must inform that person of the Licensee's internal escalation process and options for external dispute resolution (see section 34). See sections 33 -34 for further details about requirements for a Licensee's complaints handling process and management.

- ▶ A Licensee must carry out an analysis at least every six months of its complaint information to prevent complaints caused by systemic issues from recurring. A Licensee must also monitor complaints to identify emerging issues requiring more attention, and address those issues as soon as practicable (see section 34).
- ▶ Licensees must keep a record of complaints (and retain the information for at least two years), including detailed specified information and the resolution (if any) of each complaint. The Licensee cannot disclose this information, except as needed to manage the complaint with relevant authorities or with the express agreement of the consumer (see section 35).

Compliance and Publication (See section 37)

- ▶ The Commission may issue written orders or directions to a Licensee to compel compliance with these Regulations (section 37).
- ▶ If the Licensee refuses to obey an order, decision or direction, the Commission may apply to a judge of the High court for an order to comply in addition to costs and other relief the Court may allow. A Licensee that does not comply with these Regulations, or any order or decision of the Commission under these Regulations is violating the terms and conditions of its license. If the Licensee does not provide information requested by the commission under these Regulations, the Licensee commits an offence under the Electronic Communications Act. (see section 37).
- ▶ The Commission must publish its orders, decisions or directions under these Regulations on its website. (see section 38).

Amendment of the Telecommunications (Dispute Resolution) Regulations

- ▶ The existing Telecommunications (Dispute Resolution) Regulations are amended in several ways to align with these Regulations (see section 38).