

RESPONSE TO ECTEL'S CONSULTATION DOCUMENT

on

ASSESSMENT OF THE ACCESS DEFICIT SCHEME

June 2009

BY E-MAIL TO: Consultation@ectel.int

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LIME

Landline | Internet | Mobile | Entertainment

INTRODUCTION

LIME is pleased to be provided the opportunity to further contribute to the deliberations on the Access Deficit (“**AD**”).

LIME has been having ongoing discussions with ECTEL on the matter of Access Deficit Charges {“**ADCs**”), having met with ECTEL as recently as May 27, 2009 on the matter. LIME is hopeful that a very fundamental issue will be resolved coming out of its response, specifically whether the model that will be used to calculate the AD will be either the EAM or the LRIC model (but it cannot be both).

LIME expressly states that failure to address any issue raised in this consultative document does not necessarily signify its agreement in whole or in part with ECTEL’s position on the issue. LIME reserves the right to comment on any issue raised in this consultation at a later date. Please note that we have not been able to answer a number of questions listed in Annex A by this date. We will endeavour to do so by Monday, 27 July 2009.

Nor does LIME warrant that any future event of a commercial nature or otherwise, represented in this response, will in fact materialize or that any existing commercial positions conveyed in this response will remain unchanged in the short or the long term.

LIME has structured its response in three parts:

Section 1 EAM, FAC model Vis –à-Vis LRIC, Incremental Cost Model.

Section 2 Price Cap Plan and Rebalancing

Section 3 Response to Other Questions

SECTION 1

EAM, FAC model Vis –à-Vis LRIC, Incremental Cost Model.

In the consultation document, ECTEL has conveyed serious reservations regarding the veracity of the ADC produced using the long-run incremental cost (“**LRIC**”) model because the previous EAM model, which uses a Fully Allocated Cost (“**FAC**”) approach, produced a lower AD than the LRIC model. It would appear this is not the result that ECTEL anticipated. LIME had advised ECTEL that the AD, which was produced by the EAM model, has been based on outdated fully allocated cost data compared with the more current and forward-looking data which was used in the calculation of the interconnection service prices.

In arriving at the current AD, LIME used the same LRIC methodology and model approved by ECTEL which was used to produce Mobile Termination Rates (“**MTRs**”). On March 13, 2009 the MTRs and other interconnections rates produced by the LRIC model were approved by the ECTEL Council of Ministers (the “**Decision**”) on ECTEL’s recommendation. The Decision states that ‘...*These recommendations represent the culmination of the public consultation process on ECTEL’s proposed LRIC model*’. If the LRIC model is acceptable for producing MTRs then it must also be acceptable for producing the AD. This is only reasonable and logical.

The use of LRIC models, in general, has been widely accepted to produce cost based rates. It however does not mean that LRIC rates will in all cases be lower rates than delivered by FAC models like the EAM. There is little merit in comparing the outcome of the EAM model with the outcome of the LRIC model. The outcomes will necessarily be different because of the differences in methodology applied by the two models (differences with which ECTEL is familiar, given ECTEL’s long efforts to develop the LRIC model). ECTEL’s conclusion that ADCs are volatile or worse yet non-existent is premised on a flawed approach.

There should be no halfway house. ECTEL will need to choose either the EAM or the LRIC model, but cannot use one model to determine one set of costs and the other model to determine another set of costs. Since LRIC models are widely regarded as more efficient, LIME would not expect that ECTEL would choose another option and in this regard the fundamental issue is to ensure that LIME's inputs are consistent with the agreed LRIC methodology.

As such the following questions posited by ECTEL are not consistent with a LRIC model:

Question 6.2 - Explain whether “incremental” costs should or should not exceed historical embedded costs for an AD calculation.

Question 6.6 – Explain if LIME has used the EAM model to determine an access deficit for any Caribbean jurisdiction in the past 5 years, provide the name of the Caribbean jurisdiction, and explain if an access deficit is being recovered in that jurisdiction based on the EAM model (or explain if the access deficit recovery was rejected in that jurisdiction). Parties should address any AD calculations in other jurisdictions and how the issues impact the determination of an AD for the ECTEL member states.

and the following questions in Annex A:

Question 6.1 (Annex A) – Provide a reconciliation and explain why the AD for “Access” service produced by LIME’s current AD calculation is significantly greater than the AD for “Access” service produced by the 2003 EAM, and explain why the two different calculations produce varying AD results for all other services by addressing the following:

a) Explain all inputs, assumptions, and changes in calculation methods that caused the AD for “Access” and other regulated services to be greater under LIME’s current AD model, including differences related to revenues, expenses, capital inputs,

WACC, depreciation rates, fill factors, network design assumptions, “incremental” versus “embedded” costs, and other matters.

b) Explain if changes in LIME’s residence and business access lines and related revenues (as well as other revenues/volumes) from 2003 to the present impacted the AD calculation for “Access” service.

c) Explain if decreases in LIME’s actual productivity over the price cap period lead to significant increases in costs which caused the increase in the AD for Access service over this period under LIME’s current AD calculation.

d) Explain if LIME’s current AD calculation include certain one-off expenses, or other types of extraordinary or non-recurring costs that were not included in the 2003 EAM, and provide a description and the amounts for these costs.

e) Explain if LIME’s current AD calculation identifies or treats “common/overhead” costs in a different manner than the 2003 EAM. Explain and show the methodology differences and the amounts of common/overheads costs for both LIME’s current AD calculation and the 2003 EAM.

Question 6.3 (Annex A) - Explain and show LIME’s method for allocating incremental common/overhead costs between all regulated services in the AD calculation (and explain how this method varies from the method used in the 2003 EAM), and such calculation should also show the impact of allocating common/overhead costs that are not included in the AD calculation, such as for: a) unregulated services; and b) regulated services not included in the current AD calculation, such as Leased Circuits, Data, etc. It is likely that such allocation method needed to consider all “costs” (including unregulated costs), as part of its underlying allocation calculation so these detailed calculations should be provided. In addition, provide related revenues (and other underlying allocation components) for all services if revenue was used as the allocation basis. Provide a reconciliation of

the incremental common/overhead costs to the related underlying financial statement amounts for LIME's current AD calculations.

Question 6.5 (Annex A) – Explain and show LIME's method for allocating all costs (besides common/overhead costs) between PSTN regulated services in the AD calculation, and all unregulated services and other regulated services (including those regulated services not included in the current AD calculation, such as Leased Circuits, Data, etc.) that are not included in the AD calculation. Explain how this allocation varies from the 2003 EAM. Provide a reconciliation of the incremental costs to the related underlying financial statement amounts.

Question 6.7 (Annex A) - Explain why the incremental costs in LIME's current AD calculation result in higher costs than a FAC-driven model/2003 EAM (which uses historical embedded costs from the financial statements). Explain why “incremental” costs exceed “historical embedded” costs and rationalize this explanation via economic theory and other justification. Other parties can explain why “incremental” costs should or should not exceed historical embedded costs for an AD calculation.

Question 6.15 (Annex A) – Explain why a greater percentage of total costs are allocated/assigned to regulated services (versus unregulated services) under LIME's current AD calculation, compared to the 2003 EAM, and explain the reason for this shift in costs.

Question 6.16 (Annex A) – Given the significant differences in cost and how costs are allocated between services for LIME's current AD calculation and the 2003 EAM, explain which model is deemed to be more accurate and reasonable in the determination of AD, and explain why this is the case. Explain why incremental costs used in LIME's current AD calculation are more accurate and reasonable to use in the determination of AD compared to embedded/historical costs from an EAM model, or explain if an EAM model is more accurate and reasonable for AD

calculations. Explain why the EAM model continues to be prepared by LIME and filed with regulators in other Caribbean nations if incremental costs are considered to reflect a more accurate calculation of an AD.

Question 6.17 (Annex A) – Explain if LIME has used the EAM model to determine an access deficit for any Caribbean jurisdiction in the past 5 years, provide the name of the Caribbean jurisdiction, and explain if an access deficit is being recovered in that jurisdiction based on the EAM model (or explain if the access deficit recovery was rejected in that jurisdiction). Other parties should address any AD calculations in other jurisdictions and how the issues impact the determination

Question 6.33 (Annex A) – LIME should explain and show how it was able to financially absorb the significant increase in the AD for “Access” service from the amounts shown in the 2003 EAM to the amounts shown in the current AD calculation. The AD is significantly influenced by changes in revenues, costs, and cost allocation among services. LIME should explain how changes in revenues and costs (which impacted the AD calculation) also impacted the financial operations from the 2003 EAM to the current AD calculation. Also, LIME should indicate if it was primarily the “cost allocation issue” that impacted the increase in the AD, so that LIME’s financial operations were not substantially impacted by the increase in the AD calculation.

LIME’s Response

It is not relevant or practical to compare the AD determined using an EAM versus that determined using a LRIC model. And it is erroneous to determine one part of a company’s costs using one model and another using another model. This will result in inconsistencies and missing or double-counted costs.

SECTION 2

Price Cap Plan and Rebalancing

LIME has always maintained that rebalancing is the solution to the AD, and that ADCs are a transitional mechanism for recovery of the AD until full rebalancing is achieved. LIME notes that rather than take the view that LIME has been restrained from rebalancing by regulation, ECTEL has taken the view that LIME did not (and presumably should have) maximally rebalance the tariffs for business access. Yet the business access service is closer to being rebalanced than the residential access service, in as much as business rates are higher than residential rates. However, LIME was restricted by regulation from even minimal rebalancing of the tariffs for residential access service, even though those tariffs are far from recovering the associated costs of providing the service.

LIME notes that, in its response dated June 19, 2009 to the consultation document titled '*Assessment of the Current Price Cap Plan*'¹, LIME proposed that:

Only Two Baskets in the PCP being Capped and Unregulated. Capped basket should consist of a limited number of services such as residential and business line rental, connection and reconnection and associated value added and enhanced services. To the extent that other services should even be in the PCP these should be in the unregulated basket.

All Going-in Rates to be Cost-Oriented. The prices included in the Capped basket ought to be set at cost-oriented levels using the retail LRIC model as the measure of costs. This would have the advantage of eliminating any distortions in the market created by mandated below-cost prices, and would eliminate the need for ADCs. If ECTEL is not willing to consider cost-oriented rates on the effective date of the new Price Cap Plan, LIME is willing to consider a transition period to increase the rates that are currently below cost, in increments towards costs. However, this would mean ADCs

¹ At pp. 30-31.

would continue to be required, but these could be phased out in lock-step with the increases in prices.

This position on the Price Cap Plan (“PCP”) is relevant to LIME’s answers to questions 7.3, 7.4, 7.8 and 8.6 posed by ECTEL in the current consultation on ADCs.

Question 7.3 – Provide documentation to show that LIME is financially harmed in a significant manner by the absence of an AD recovery method or in the absence of flexibility to increase prices for residential/business access lines services to recover the AD, and provide financial statement results and examples of public statements asserting this harm. If such information is provided, show the actual earned ROR on capital plant investment, as well as profit levels, for regulated services, unregulated services and all combined services over the price cap period.

Question 7.4 – LIME should provide the positive financial and operational impact that an AD recovery mechanism would have on LIME, including impacts on cash flow, profits, and ROR on capital plant investment to the extent this can be determined. LIME should assume a scenario that all of its claimed AD is allowed to be recovered in a manner that LIME most prefers.

Question 7.8 - Assume under a new price cap plan that LIME is given flexibility to increase prices for residential//business rental access lines by \$5 million and that LIME implements these price increases. Address the following:

a) Explain if LIME would immediately offset the \$5 million increase in prices of regulated services with equivalent price reductions of \$5 million for International service (and other alleged competitive services), explain why or why not.

b) If residential/business rental access line service is subsidized by International services (and other services), and if prices for International services are maintained at artificially high (or at elevated prices which do not allow LIME to compete), explain

why LIME would not immediately reduce prices for International services given these assumptions.

c) If LIME already earns a high ROR on plant investment for International services and all services combined, and LIME elects to keep the \$5 million in price increases to further increase its profits (without any offsetting price reductions to International service or other services), explain how this benefits LIME, consumers, and the competitive arena. Also, explain how this action justifies LIME's claims that International service subsidizes local rates and does not allow LIME to establish competitive market prices for International service (or other alleged competitive services).

d) If LIME retains the \$5 million without any offsetting reductions in prices for other services, explain how this benefits LIME from a competitive and financial standpoint and explain why this should not be viewed as a windfall to LIME.

Question 8.6 – LIME should explain how much it would increase residential and business rental and connection prices for the next five years if given such flexibility to increase these prices, LIME should provide the prices that it would propose for each of the five projected years.

LIME's Response

As noted above, LIME proposed in its June 19, 2009 response to the consultation document titled '*Assessment of the Current Price Cap Plan*' that all rates going into the new PCP should be rebalanced "going in". Therefore LIME would not be rebalancing in the new PCP but would start the new PCP with the rates at the level where they need to be, that is rebalanced and covering the associated costs of providing the services.

The objective of a PCP is to mimic the market. This means that LIME would keep all productivity gains. Conversely, if the Company is not as productive as the PCP anticipated,

then the Company similarly has to absorb the loss. Therefore if LIME in fact earns a high ROR, this is by definition because the Company has increased its productivity, and it is entitled under the PCP to keep that ROR. This is how the PCP is intended to work. In practice, though, the opportunities to “keep” ROR are limited due to competitive pressures in all markets where LIME operates, which either would force down LIME’s prices or force LIME to increase the value of what it provides to customers for the same price.

LIME notes that the stated intent of the PCP is both to allow customers to benefit from efficiencies by way of lower prices and to allow the service provider to earn a reasonable underlying rate of return. The Retail Tariff Regulations stipulate at regulation 5(f) that:

price regulation for regulated services should take account of the interest of telecommunications providers in earning a fair return on prudently made investment

LIME continues to operate with an Access Deficit throughout the ECTEL member countries. The extent of the deficit has been facilitated by the current PCP which has not allowed LIME to rebalance residential access service prices over its five (5) year term. The Company submits that it must have an opportunity to earn a fair return on each service, not just the overall PCP. Rebalanced going-in rates must be agreed for any new PCP. However, clearly with rebalanced rates there will be no AD, and therefore no need for ADCs.

With respect to question 7.8 in particular, ECTEL presumes a windfall for LIME. However, there would be no “windfall”. Any increased revenues resulting from increased access service prices will reduce the cross-subsidy required from revenues from LIME’s other services. These other services, though, are subject to downward pricing pressures because of competition, and reducing the cross-subsidy to access services will give LIME flexibility to reduce those other prices. Any so-called “windfall” will, therefore, be competed away.

With respect to question 8.6, LIME is presently in discussions with ECTEL regarding the appropriate prices for residential and business rental and connection services in the context

of the proceeding to establish the new PCP. LIME believes that PCP proceeding is the more appropriate one for these matters.

Question 7.2 – Respondents should address the scenario addressed at Section 7.1. First, assume LIME is given the opportunity to reduce the AD via increased upward pricing flexibility for residential/business access line services in a new price cap plan. Second, assume that an ADC is implemented to recover the AD in part from competitors. Third, assume that LIME does not use its new increased pricing flexibility to increase prices for residential/business access line service because of alleged competition for these services (or due to other reasons).

a) In this case, explain if the ADC that is paid by competitors/other providers acts as a subsidy from competitors to LIME that allows LIME to maintain lower prices for access line service and thus helps keep LIME from losing these access line customers to mobile or cable competitors.

b) Explain if this scenario which identifies an AD and implements an ADC provides any significant or determinable benefits over a scenario that does not identify or implement any ADC. Explain and quantify benefits to LIME, competitors/other providers, and to consumers under this scenario.

LIME's Response

With respect to the first part of the question, LIME submits that the question implicitly, and incorrectly, assumes the ADC would not be changed under the terms of the hypothetical scenario. An AD is not just a “deficit”, but a deficit created as a result of below-cost pricing mandated by a regulatory authority for public policy reasons. Viewed in this light, the ADC that is paid by the other operators is not a “subsidy” for LIME's access line services, but rather represents the recovery of LIME's investments in the access services which LIME is required to price below cost for public policy reasons. If the regulatory authority were to

provide upward pricing flexibility, then clearly the scope of the AD would be changed. If limited upward pricing flexibility were granted, then part of the AD would be eliminated and the ADC would have to be adjusted accordingly. Taking it to its logical conclusion, and consistent with the definition of AD in the new Interconnection Regulations and LIME's position elsewhere in this submission, the AD (and any ADC) would be eliminated if complete upward pricing flexibility were to be granted such that LIME could price its services to cover its costs.

In other words, the ADC is not a subsidy from competitors to LIME that helps keep LIME from losing these access line customers to those competitors, as the question posits. It is a necessary element of a regulatory framework which sets prices below cost for social or public policy reasons.

With respect to the second part of the question, LIME is of the view and wishes to reiterate its position that it would much prefer a deregulated industry where there are no restrictions on any of the prices for any of its services. LIME would be able to set prices subject only to market forces, and all competitors in the market would be operating on a level playing field knowing that prices are determined based on market forces and internal efficiencies. In this scenario, there would be no need for an ADC, and other operators would not be required to contribute to the recovery of an AD. Consumers would be able to experience the full benefits of competition, which bring new innovative services, new and improved technologies, greater efficiencies, and ultimately lower prices to the market.

However, if an AD is created as a result of below-cost prices mandated by a regulator for public policy reasons, then there is a corresponding obligation to establish a mechanism to recover that AD. If there were an AD without a mechanism to recover it, for example via an ADC, LIME would be unable to make a reasonable return on those services. This would tend to discourage investment in new services and technologies, which is clearly not beneficial to the economy or to consumers.

In other words, a scenario that creates and identifies an AD, and implements an ADC, provides clear and determinable benefits over a scenario that creates and identifies an AD but does not implement an ADC. That said, an even better scenario is one that does not create an AD in the first place.

Accordingly with regards to the following questions 8.2 and 8.9 posed by ECTEL:

Question 8.2 – Respondents should address any alternatives for the removal or elimination of existing ADC charges, including a potential phase-out or phase-down of the ADC (glidepath approach) and an immediate elimination of the ADC (flash-cut approach).

Question 8.9 – Respondents should address how the implementation of any further ADC should be monitored by ECTEL on an on-going basis.

LIME's Response

The approach taken to eliminate ADCs will depend on the timeframe for rebalancing. If ECTEL agrees to rebalanced rates going into a new PCP, then ADCs can be eliminated immediately on giving the required notice, which is as close to a “flash-cut approach” as can be used. Otherwise if rebalancing is a process that will take place over time, then eliminating ADCs will also be a process and will have to be informed by a “glidepath”, that is, a gradual transition to zero.

Of course, the alternative approach to eliminate ADCs is the “deregulatory” approach. As ECTEL is aware, the definition of AD in the new Interconnection Regulations relies upon the concept of regulatory pricing restrictions.

“access deficit” means the difference between the costs incurred by the incumbent fixed public network operator for providing domestic telecommunications services, whose prices are

regulated, and the maximum revenue that the operator can secure for providing those services under price regulation;

In other words, no claim for an AD can be made for a service whose prices are not constrained by regulation. ECTEL and the NTRCs can easily eliminate the question of ADCs by deregulating LIME's residential and business access services, and allowing the market to determine the appropriate level of prices. LIME submits that this approach is available to ECTEL at this time, given the evolution of the telecommunications markets in the ECTEL member countries over the last five years. With the existence of competing service providers in the mobile and fixed line markets where LIME operates, LIME is of the view that ECTEL and the NTRCs do not need to substitute their judgment for that of the market, and that the interests of consumers will be well protected.

Question 8.3 – Respondents should identify any existing laws or precedent that would prevent ECTEL or the NTRCs from immediately cancelling any ADCs in existing contracts between LIME and other providers.

LIME's Response

Most of the Telecommunications Acts of the ECTEL member countries (the "**Acts**") include the following provision which states that:

A telecommunications provider providing an interconnection service in accordance with this section shall impose reasonable cost based rates, and such other reasonable terms as the Commission, may, on the recommendation of ECTEL determine.²

The Acts also state that:

² Dominica Act s. 46(7); Grenada Act s. 45(7); St Lucia Act s. 46(7); St Vincent and the Grenadines Act s. 44(2)(f). The equivalent for the St Kitts and Nevis Act appears to be s. 28(7).

*The cost of establishing any interconnection to the telecommunications network of another telecommunications provider shall be borne by the telecommunications provider requesting the interconnection.*³

The new Interconnection Regulations⁴ also state that:

- (1) *The Commission shall acting on the recommendation of ECTEL, determine upon its own motion or upon an application by any person, the interconnection rate of any person who provides or offers to provide interconnection.*
- (2) *Interconnection rates shall be cost oriented and imposed in a transparent manner and shall identify clearly:*
 - (a) *charges for interconnection service*
 - (b) *any contribution to the access deficit of the interconnection provider where applicable.*

The Act and the Interconnection Regulations are clear that where rates are cost based / cost oriented then ECTEL is obliged to uphold such rates and on that basis could not immediately cancel any ADCs in existing contracts.

Question 8.10 – Respondents should generally address their preference for a Universal Service Fund or the existing method of paying for ADCs, and generally identify the benefits or problems with both approaches.

LIME's Response

A Universal Service Fund (USF) is not meant to fund an Access Deficit (AD) but to fund the provision of fundamental services to customers who would not otherwise be able to afford those services, either through a direct subsidy to the customer or inducement to a

³ Dominica Act s. 48(1); Grenada Act s. 47(1); St Kitts and Nevis Act s. 30(1); St Lucia Act s. 48(1); St Vincent and the Grenadines Act s. 46(1).

⁴ These are subsections (1) and (2) of the following Interconnection Regulations: Dominica 11; St Vincent and the Grenadines 12.

service provider, to provide what would otherwise be an uneconomic service in itself. A USF is not meant to fund services that are uneconomic because of a public policy decision, which is the case with ADCs. LIME's preference is for rebalancing and ADCs as a transitional mechanism until rebalancing is achieved.

Regarding the following questions, LIME's response is as follows:

Question 4.1 – Have any respondents changed their positions, or do they now agree with ECTEL's proposed AD definition and guidelines (when considering the additional information provided by ECTEL)?

LIME's Response

LIME is very concerned that ECTEL's proposal does not appear to be based on a reasonable and balanced approach. Rather, it appears that in ECTEL's view any LIME service that generates a profit, and as few non-LIME services as possible, ought to be used to cross-subsidize the below-cost prices on LIME's access services, whether or not those profitable LIME services are subject to competition or bear any connection whatsoever to the PSTN, and whether or not those non-LIME services benefit from the below-cost pricing being imposed on LIME.

An AD is created when a regulator imposes below-cost prices on an operator. This is usually done for pro-social or public policy reasons, in other words, reasons which benefit society as a whole. If irrational, below-cost prices are to be imposed on an operator for the benefit of society as a whole, then the society as a whole, including any competitors of that operator, ought to bear the burden.

ECTEL's proposal to include in the AD calculation any LIME service that is both regulated and generates a profit, would have the effect of maximizing LIME's share of the burden and, as a necessary consequence, minimizing anyone else's share of that burden. This is because,

even before determining the burden to be shared by society, ECTEL would deduct from the AD any other profits that it can find. This is unfair and unreasonable.

LIME submits that the appropriate approach that ECTEL ought to follow is to determine:

1. the services that ought to be priced below cost by regulatory fiat;
2. the amount of the deficit, that is, the difference between the costs and revenues associated with those services; and
3. the best method for society as a whole to share the burden of that deficit.

With respect to the first item, ECTEL appears to have determined that the below-cost services are LIME's residential and business line rental services, as they provides access to the Public Switched Telephone Network ("**PSTN**"). As ECTEL states in the consultation document, the relevant services consist of "access lines (installation/rental), plus other regulated domestic services that require "access" to the PSTN".⁵

With respect to the second item, the relevant revenues, therefore, are those associated with LIME's residential and business line rental services, that is, the monthly rental charge and the connection and reconnection charges. As explained elsewhere in this submission, LIME submits that the deficit ought to be determined by reference to a single common cost model that is used to determine other related interconnection charges. The most appropriate model is the LRIC model, as that determines the costs of a forward-looking efficient operator, not necessarily LIME's costs. The burden of the AD ought not to exceed that which would be experienced by an efficient operator. In other words, the AD ought to be defined as the difference between the LRIC costs of providing PSTN access services and the revenues from the mandated below-cost monthly line rental, connection and reconnection fees.

In addition, ECTEL is well aware that almost all, if not all, of LIME's services are subject to competition. Competition results in lower and cost-based prices, which mean a lowered ability for LIME to cross-subsidize internally ECTEL's public policy based pricing policies.

⁵ See page 12 of the consultation document.

In fact, requiring LIME to cross-subsidize access service prices from profits generated by unconnected services will put LIME at a serious competitive disadvantage, as it will force upon LIME the draconian choice of high prices for those unconnected services (with the resulting loss of customers and market share) or, if LIME lowers its prices to meet the competition, financial losses passed on to investors (because the AD still needs to be paid for, and the profits of the unconnected services have disappeared).

That said, LIME is willing to accept ECTEL's proposal that the relevant services are "access lines (installation/rental), plus other regulated domestic services that require "access" to the PSTN". However, the only regulated domestic services that require "access" to the PSTN are domestic calling services (i.e., fixed-to-fixed, fixed-to-mobile, etc.), voicemail and CLASS services. Broadband DSL services, leased circuit and data services do not require access to the Public Switched Telephone Network, as none of them are connected to public switched telephone (i.e. voice) services. The size of the AD, therefore, should be determined solely by comparing the costs of providing access lines, domestic calling services, voicemail and CLASS services, with the revenues generated by those services. LIME notes that even this approach contains inherent risks as, if customers choose to transfer their voice calling requirements from LIME's landline network to other networks, but to retain their LIME access line for incoming calls,⁶ the cross-subsidy from the voice calling services will cease to exist, and LIME will end up without internal or external funding support for a below-cost price mandated for public policy reasons.

The issue, then, is how best to address the third item: how to ensure all players that benefit from access and society as a whole help fund the below-cost prices being imposed by ECTEL on LIME. Deducting LIME's profits from the AD even before deciding how to share the AD among all operators (including LIME) is not the fairest approach, and suggests ECTEL has not suggested a fair distribution of the burden of ECTEL's pricing policies. It is far more appropriate to take the unadjusted AD, as determined above, and divide it by an industry-wide denominator.

⁶ LIME has seen this trend take place in other markets. For this reason, LIME would prefer deregulation or full rebalancing to any form of internally- or externally-funded ADC.

However, LIME continues to believe that the best and only reasonable long-term approach to the AD is to deregulate all of LIME's prices and to let the market determine prices.

Question 5.1 - Do the respondents believe that any unregulated services should be included in the AD calculation, and why?

LIME's Response

An AD is created when a regulator imposes below-cost prices on an operator. This is reflected in the definition of AD in the new Interconnection Regulations:

“access deficit” means the difference between the costs incurred by the incumbent fixed public network operator for providing domestic telecommunications services, whose prices are regulated, and the maximum revenue that the operator can secure for providing those services under price regulation;

Unregulated services are, therefore, not relevant to the calculation of an AD.

Further, it would be inappropriate to include any unregulated services in an AD calculation. Including them in an AD calculation would essentially be requiring those services to contribute to covering the AD associated with a regulated service. However, these services are, by definition, subject to competition. Including them in the AD calculation would artificially inflate the cost-base of those unregulated services (when provided by the regulated operator), and would put that operator at a competitive disadvantage. Dictating below-cost prices distorts the normal operation of the applicable market. It would be wrong to compound that distortion by artificially increasing the cost-basis of other services and as a result distorting those other markets. We believe that the public interest and consumers will not be well served by preventing competition from operating fairly and freely.

SECTION 3

Response to Other Questions

Question 5.2 - Do the respondents believe the following services should or should not be included in the calculation of an access deficit, such as other fixed/local services including valued added services, voicemail, ADSL, national payphone, operator assistance, domestic and international directory query, emergency services, fixed-to-fixed, fixed-to-mobile/LIME, fixed-to- mobile/Other Mobile Carriers, ISDN, regulated portion of any bundled services, and any other services? Explain why or why not?

LIME's Response

LIME is of the view that the recovery of its investments in the Access Network will be significantly diminished if other profitable local fixed services are included in the calculation of the “access deficit”. LIME believes that it should be noted that the distribution of Access lines is significantly greater on the residential side compared with the business segment and that the deficit is further widened due to the freezing of Residential line rental prices under the current Price Cap Plan. Therefore, the inclusion of these local fixed services serves to impair LIME's ability to recover its cost. It is from this perspective that LIME would rather propose a system of re-balancing as a more effective method of cost recovery, similar to what occurred the other jurisdictions in the Caribbean within which LIME operates, or the removal of the cap on the residential line rental and of the restrictions on local call usage charges.

As noted above in our response to question 4.1, LIME is prepared to include in the calculation of the AD “access lines (installation/rental), plus other regulated domestic services that require “access” to the PSTN”, in other words, line rental services, domestic calling services, voicemail and CLASS services.

Question 5.3 - Can respondents provide any specific examples of recent access deficit calculations in other jurisdictions, and explain how regulated and unregulated services were treated, and provide a list of services included in the calculation of the access deficit?

LIME's Response

As noted elsewhere, LIME's AD, and recovery of that AD, has been an issue only in the ECTEL member states, as a result of regulatory determinations.

Question 6.1 – Explain whether it would be reasonable to use revenues as an allocator for common/overhead costs in the AD calculation.

LIME's Response

The use of Revenues as a method of allocating common/overhead cost is not unusual in telecommunications regulation. However while it is widely accepted as a useful approach, the main flaw is that it tends to penalize higher revenue earning services and to apply minimal costs to new services.

Question 6.3 – Should the regulated portion of services that are included in bundled services be reflected in the AD calculation, if so how should they be reflected in the AD calculation?

LIME's Response

The only portion of bundled services that should be allowed in the AD calculations are line rental services, domestic calling services, voicemail and CLASS services. The sale of these bundles would increase the demand quantities and associated costs for the underlying

elements (e.g. the sale of a bundle which includes voicemail would increase the number of voicemails sold and the associated costs by one). .

Question 6.4 – Regarding LIME’s current AD calculations, under Constraint 3 for each ECTEL member state, LIME is asked to explain and provide supporting documentation and calculations for the six-month competitor/other party volumes for MTF, Directory Inquiry, International Termination, Emergency Service, Transit, and other relevant services. LIME should also provide the source for these six-month volumes and provide updated actual volumes. Other parties/competitors should provide these related revenues and volumes for their respective companies for each of the ECTEL member states for the most recent 2 year period.

LIME’s Response

The most recent submission of LIME’s AD calculations approved by ECTEL does not include any consideration for a Constraint 3 for each member state.

Question 6.5 - Explain if discounts, promotions, or price concessions should be netted against revenues (or treated as expenses) in LIME’s current AD calculation.

LIME’s Response

For the purposes of an AD calculation it is not be necessary to net off discounts, price concessions and promotions against revenues. However it should be noted that discounts, promotions or price concessions are considered legitimate business expenses in providing the access services. It is therefore necessary for these expenses to be netted off against revenues in the Company’s statutory accounts.

Question 6.7 – Explain if LIME has used incremental costs (and a similar LRIC model inputs) to determine an access deficit for any Caribbean jurisdiction in the past 5 years, provide the name of the Caribbean jurisdiction, and explain if an access deficit is being recovered in that jurisdiction based on incremental costs (or explain if the access deficit recovery was rejected in that jurisdiction). Parties should address any AD’s based on incremental costs in other Caribbean jurisdictions.

LIME’s Response

LIME has not used incremental cost to determine an AD in any Caribbean jurisdiction in the past five (5) years. It should be noted that in most other Caribbean jurisdictions where LIME operates, LIME has been permitted to substantially rebalance all of its prices and, as a result, reduce if not eliminate any AD. ECTEL has taken a different approach and that is why an AD is required.

Question 6.8 – LIME’s current AD calculation applies a certain mark up percentage to both “Access” service and “Other Regulated Services” as an apparent surrogate for costs related to marketing, advertising, billing, collection, and other customer service operations. Should competitors or other providers reimburse LIME for its advertising/marketing costs (that are used to market against other competitors/providers), especially if an ADC is implemented that would recover part of these costs from competitors/other providers.

LIME’s Response

The mark up percentage applied in the AD calculations represents what is a reasonable proportion of cost that is reflective of the retail costs incurred by the service.

LIME also submits that these costs are relevant and should be included in the AD calculation. All of these costs are incurred in providing the line rental, domestic calling,

voicemail and CLASS services, and do not disappear simply because ECTEL and the NTRCs have decided to impose below-cost prices on some of the services.

LIME further submits that, if there are in fact other competitors/providers, as posited by ECTEL in the question, the interests of consumers and of society can be best served by allowing competition to occur. In other words, ECTEL should forbear from regulating the market. ECTEL should deregulate those services, allow the market to determine the prices, and thereby make the issue of an AD and its recovery obsolete and irrelevant.

Question 6.9 – Explain if LIME’s current AD calculation should be updated to reflect more recent interconnection rates.

LIME’s Response

The interconnection rates and the AD calculations were arrived at using the same LRIC model with the latest available data and so both are equally current. Both models were submitted to ECTEL.

Question 6.10 – LIME’s AD calculation appears to use “regulatory” costs (instead of statutory/audited financials) as the underlying basis (or starting point) for incremental costs. Explain why regulatory costs are appropriate to use for calculating an AD.

LIME’s Response

The Local Service Deficit Calculations (LSDC) is based on the ECTEL-approved LRIC model. The costs used in this model calculation are largely hypothetical as the data is associated with a model based on forward looking costs. Statutory costs are generally not used in LRIC models as the view is that these costs are less than efficient.

Question 6.11 – It would appear that LIME’s current AD calculation uses “economic” depreciation rates in the calculation of costs. Explain why “economic” depreciation is appropriate to use in an AD calculation, versus “regulatory” depreciation or depreciation from the audited financial statements.

LIME’s Response

Economic depreciation is the standard form of depreciation used in LRIC models because it supports the forward- looking nature of the LRIC approach. This, along with other assumptions on methodology, was agreed with ECTEL during the LRIC consultation.

Question 6.12 – If LIME’s current AD calculation includes “inflation” and “productivity” factors applied to certain costs, explain why these same factors are appropriate in today’s economy, or explain if these factors should be updated. Explain why such factors should be used in an AD calculation.

LIME’s Response

The existing retail PCP is fundamentally affected by inflation and specified productivity factors. LIME references its response dated June 19, 2009 to the consultation document titled ‘*Assessment of the Current Price Cap Plan*’ which contains LIME proposal regarding the PCP.

Question 6.13– If LIME’s current AD calculation includes the same WACC that was used in the LRIC model, explain why this WACC is reasonable in today’s economic environment.

LIME's Response

LIME has used the agreed and existing WACC in the LRIC model. It is reasonable in today's economic environment as similar parameters affect the determination of this measure.

Question 7.7 – Explain why it is consistent and reasonable for LIME to voluntarily price certain services below incremental costs when it is to the benefit of LIME (which creates an increased AD), yet LIME proposes to recover such “voluntary” access deficits, along with any other access deficits, in the form of an ADC from competitors and from potential increase prices for residential/business access line service if this additional flexibility is granted. Please reconcile the inconsistency between creating increased access deficits, yet seeking recovery or relief of such access deficits from competitors and/or consumers.

LIME's Response

It is not at all clear to what services ECTEL might be referring or whether this is a purely hypothetical situation. However, there is no “inconsistency” to be reconciled, as the circumstances leading to the deficits are quite different. In ECTEL's hypothetical example, the price would be set below incremental cost because of competitive pressure. Thus, the “deficit” would be created by the normal workings of a competitive market.

In the case of LIME's access services, the price is not set by reference to competition, but rather by NTRC fiat. This is why the new Interconnection Regulations define “access deficit” as “the difference between the costs incurred by the incumbent fixed public network operator for providing domestic telecommunications services, whose prices are regulated, and the maximum revenue that the operator can secure for providing those services under price regulation.” If the result is a loss-making service, the regulator becomes responsible for ensuring the regulated operator earns a reasonable return.

LIME also notes that the “deficit” referred to in ECTEL’s example is not an “access deficit”. LIME is seeking to recover the access deficit created by ECTEL’s pricing policies, and not another “deficit” created by the market.

Question 8.4 – LIME should provide a list of competitive or other services for which its prices exceed those of its competitors in the ECTEL member states and in the Caribbean region, or for which LIME does not believe its current prices are competitive (although they may not be above the prices of its competitors) with its competitors in the ECTEL member states and in the Caribbean region. In each case: a) provide the name of the service and provide LIME’s price in the respective jurisdiction; b) provide the name of the competitor and the competitor’s price in the respective jurisdiction. This information should be provided for International service, Mobile service, Internet, Leased Circuits, and any other applicable services.

LIME’s Response

An AD is determined by comparing revenues to costs, not revenues to other revenues (this is the essence of the definition of “access deficit” in the Interconnection Regulations. Further, it is not likely that such a list of prices will provide any useful information. Competitors will invariably price their services below the prices of the incumbent operator for the equivalent services, in order to attract customers to their services. Where a competitor could not price below the incumbent, for example, because the incumbent is required by regulatory fiat to price below cost, the competitor can and will choose not to enter the market. LIME is prevented by regulation from having this same choice.

Question 8.5 – Regarding the previous question and competition in the ECTEL member states, provide LIME’s quantification of the dollar reduction in revenues that would be necessary for LIME’s prices to be competitive with its competitors for all applicable services. In addition, provide LIME’s current prices, the competitor’s

current prices, and LIME's proposed prices that would be necessary to compete with the competitor.

LIME's Response

Please see response to question 8.4

Question 6.2 (Annex A) – Provide the working Excel spreadsheets and all supporting work papers, inputs, and assumptions for LIME's current AD calculations provided with LIME's September 17, 2008, consultation comments (provide all work papers and Excel documents for both scenarios calculated by LIME). Explain and show how revenues, volumes, and costs were identified for regulated services of LIME.

LIME's Response

The cost model underlying the AD calculations that were submitted to ECTEL on September 17, 2008 was not the model ultimately approved by ECTEL. The relevant LRIC model was approved by ECTEL in March 2009. We would ask why the AD ought to be determined using a cost model that differs from that approved by ECTEL.

Question 6.6 (Annex A) – LIME's current AD calculation does not provide revenues for unregulated services and other regulated services (such as Leased Circuits, Data, etc.). Therefore, provide a list of all unregulated and regulated services which have not been included in LIME's current AD calculation, and provide related revenues amounts and service descriptions (and explain if the services are unregulated). Provide the comparable revenues that would be included in an AD calculation for these services, and provide these revenues for the most recent 12-month period. Show these regulated and unregulated revenues both "gross" and "net" of any applicable discounts, promotions, or concessions that were offset against the revenues in the

financial statements (an example would be concessions/discounts for Mobile service that were offset against revenues in the financial statements).

LIME's Response

See response to question 5.1

An AD is created when a regulator imposes below-cost prices on an operator. This is reflected in the definition of AD in the new Interconnection Regulations:

“access deficit” means the difference between the costs incurred by the incumbent fixed public network operator for providing domestic telecommunications services, whose prices are regulated, and the maximum revenue that the operator can secure for providing those services under price regulation;

Unregulated services are, therefore, not relevant to the calculation of an AD.

Regarding regulated services that are not included in AD this is so because these are not call conveyance type services, and not connected with the line rental services that are forced by regulatory fiat to bear an AD. It would be inappropriate to force completely services which may be subject to competition, to bear any portion of the AD. Further, services such as Data services are not translated into units that are measurable for the purposes of AD.

Question 6.8 (Annex A)– LIME's current AD calculation includes a column of costs referenced as “Retail” costs, and items 51 and 54 of the LRIC model (pages 16 and 17 of the LRIC model Draft Manual) appear to indicate that such costs might include overhead/common costs and they are treated as a mark-up to the network operating costs. Explain if these “Retail” costs in the AD calculation are the same as those described in the LRIC Manual, or explain any differences.

LIME's Response

The treatment of the retail costs in the AD calculation is consistent with the methodology described in the LRIC Manual

Question 6.9 (Annex A) – Provide all documentation to show that unregulated services and all other regulated services (such as those other regulated services that are not included in the AD calculation) would have been allocated a reasonable amount of costs under LIME's current AD calculations. Show total costs allocated to regulated and unregulated services in a manner consistent with LIME's current AD calculation, and reconcile the regulated and unregulated costs to total amounts in LIME's financial statements.

LIME's Response

See responses to questions 5.1 and 6.6.

See also the LRIC manual which contains the full details of the methodology applied in the AD calculations.

Question 6.12 (Annex A) – Regarding LIME's current AD calculations,, under Constraint 2 for each ECTEL member state, explain and provide supporting documentation and calculations for the average revenue per minute of MTF, International Termination, and International Origination.

LIME's Response

The most recent submission of LIME's AD calculations approved by ECTEL does not include any consideration for a Constraint 2 for each member state.

Question 6.13 (Annex A) – Regarding LIME’s current AD calculations, under Constraint 3 for each ECTEL member state, explain and provide supporting documentation and calculations for the six-month competitor/other party volumes for MTF, Directory Inquiry, International Termination, Emergency Service, Transit, and other relevant services. Provide the source for these six-month volumes and provide updated actual volumes. Other parties/competitors should also provide these related revenues and volumes for their respective companies for each of the ECTEL member states for the most recent 2 year period.

LIME’s Response

The most recent submission of LIME’s AD calculations approved by ECTEL does not include any consideration for a Constraint 3 for each member state.

Question 6.14 (Annex A) - Explain if there were discounts, promotions, or price concessions that were netted against revenues (or treated as expenses) in LIME’s current AD calculation, and provide both the gross revenues and the offsetting discount/promotion amounts for each service for the same time period as the AD calculation. Explain why LIME disagrees to any imputation of such amounts to the revenues of the AD calculation.

LIME’s Response

The data in the AD calculation represented gross revenues hence there was no netting off of discounts, promotions or price concessions.

CONCLUSION

LIME submits that the deliberations on the AD, and how to recover it, are now at the crucial stage. With the approval of the LRIC model by ECTEL, there is now a proper cost basis for determining the AD. ECTEL must now determine its approach to rebalancing, that is, whether it will be:

- Deregulation of LIME's access services, to allow competition to further develop.
- Full rebalancing through the new Price Cap Plan and no ADCs.
- ADCs only and no rebalancing.
- A glide path for rebalancing employing both Price Cap Plan and ADC approaches.

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