



**RESPONSE TO ECTEL's POLICY RECOMMENDATION**

on

**THE REGULATION OF VOICE over INTERNET PROTOCOL  
(VoIP) IP TELEPHONY REGULATION**

May 2009

BY E-MAIL TO: [Consultation@ectel.int](mailto:Consultation@ectel.int)

June 23, 2009

## **Introduction**

LIME is pleased to be provided the opportunity to participate in the consultation on the treatment of VoIP services in the ECTEL member states.

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.

### **1. ECTEL recommends that VoIP be regulated under the existing regulatory regime.**

No. ECTEL's recommendations appear to seek to regulate technology rather than services. This is not technology neutral, and is incompatible with ECTEL's promotion of technology neutrality in this Discussion Paper. ECTEL is also seeking to perpetuate regulation, reasoning that when LIME transitions completely to VoIP from circuit switched technology, ECTEL would need a basis on which to continue to regulate LIME. This is not a proper basis for regulation. LIME strongly opposes the regulation of technology or services for no other purpose than to perpetuate regulation of the Company.

Nor does LIME agree that VoIP needs to be regulated at all in the ECTEL markets given that i) the technology should not be regulated and ii) ECTEL / NTRCs are unable to regulate international VoIP providers, like Skype and Vonage, who compete with locally licensed providers.

ECTEL has cited instances where there have been differences between LIME and holders of ISVR licences regarding the termination of VoIP calls, in the domestic markets, in violation of the current ISVR licence. In LIME's view a new type of license is the only action required. Alternatively, the ISVR licensee could simply apply for an individual licence – a course of action that has been available to the ISVR licensees all along. Regulation is not

the answer. Further, regulation is disproportionate in the context of the problem highlighted.

ECTEL also contrast the ‘plethora of regulations’ imposed on traditional fixed line service with the lack of regulation on VoIP. A plethora of regulations have mushroomed with regards to fixed line service across the world because of an absence of choice in the provision of voice service at the time these regulations were developed. These regulations had their genesis decades ago. In this Consultation Paper, ECTEL acknowledges that VoIP is a substitute for fixed voice service, albeit in ECTEL’s view, it is not a perfect substitute and LIME maintains that mobile is also a substitute for fixed voice service. The need for continued regulation of LIME’s fixed voice services is, therefore, unclear. The need to impose asymmetric regulation on new VoIP services is even less clear. In addition in some markets cable operators are now providing voice services.

The only aspect of mobile service that is and ought to be regulated are Mobile Termination Rates (MTRs) and this is because in order to communicate with a customer on a third part mobile network one’s call has to terminate on the network to which that customer is subscribed. There is no alternative but to terminate on the network to which the customer is subscribed which makes the market for termination on mobile networks a monopoly market. Since the early part of this century, regulators have been intervening to establish cost based MTRs in order to safeguard competition and customers. In March 2009, ECTEL itself established MTRs based on a LRIC methodology.

However, it is to be noted that the market for mobile call origination is not regulated, because customers have choice between mobile networks as well as fixed and VoIP in order to make voice calls. Mobile service is regulated only to the extent that there was a market failure with regards to the market for mobile call termination, where it then became appropriate for the regulator to intervene.

ECTEL has not identified a market failure in the VoIP market. VoIP operates in a competitive market. Customers have choice, a fact that ECTEL has acknowledged in its

Consultation Document. Customers can choose to make a voice call using either a fixed line or mobile/ wireless or VoIP. What ECTEL has identified as issues are:

#### Problem1

ISVR licencees are terminating calls on LIME's network, that is VoIP calls, for which they are not licenced.

#### Solution 1

The solution has been available all the time. The person wishing to terminate overseas calls in an ECTEL member state can simply acquire an individual licence and seek interconnection with the other network operators using the standard terms and conditions and rates as exist in the market. Alternatively, ECTEL can establish a new class of licence, which it appears to be proposing here. The danger with this approach is that the new licence will simply repeat the same mistakes as the old licence – the limitations on the class licence holder will be unclear, and the new class licence will end up attracting service providers who expect all the privileges of an individual licence but who do not want to pay the associated fees.

#### Problem 2

Customer may not be aware of the limitations of their VoIP service including whether or not emergency services are available.

#### Solution 2

Limitations of the service can easily be specified in the Terms and Conditions of the service. ECTEL has proposed that the terms and conditions regarding the service be enshrined in the licence of service based providers and that:

- Access to emergency services be discretionary for service type VoIP providers in the short term.
  
- Both service type and facilities based providers are required to provide clear information to customers about the limitations of the VoIP service offered such

as unavailability of the service if the broadband connection fails or there are power outages.

LIME agrees with ECTEL that full information regarding the limitations of the service is absolutely necessary for customers to make an informed choice for themselves and their families and that all service providers must be obliged to provide this information to their customers. In fact, while ECTEL does not acknowledge it, LIME has been specifying the limitations of its VoIP service in the terms and conditions for its NetSpeak service from the very first day that LIME provided the service. LIME did this, not because of any regulations requiring it, but as a socially-responsible corporate citizen of the ECTEL member states.

Both problems identified by ECTEL are proportionately resolved by the above solutions. Given the availability of proportionate solutions to resolve the two problems identified, there is no basis for ECTEL to seek to regulate VoIP, which LIME agrees is a technology and not a service. Services ought to be regulated, not technologies.

However, as discussed further below, ECTEL has not properly characterized the VoIP services that are or could be available in the ECTEL member states, and as a result appears to seek to regulate on the basis of licences issued, and not on the basis of the characteristics of the services themselves.

**2. ECTEL recommends that VoIP providers be categorized into two broad categories, namely:**

- (i) facilities based providers who under the current system would be individual licensees entitled to own, maintain and operate a telecommunications network, and**
- (ii) service based providers who lease network elements from locally licenced network operators/individual licensees, to resell services.**

No. This is too simplistic a division, as it does not recognize the fundamental differences between what the CRTC called Category 1, 2 and 3 VoIP services. ECTEL's proposal would significantly disadvantage facilities-based operators like LIME, simply because they happen to hold an individual licence, and not because of any reason related to the nature of the service being provided. A VoIP service does not become a substitute for traditional PSTN service simply because the provider also happens to provide PSTN services.

LIME's NetSpeak service is a "nomadic" service, and essentially identical to the service provided by Vonage and similar unlicensed entities. ECTEL has acknowledged that Vonage is present in the ECTEL member states and, therefore, competes with the PSTN and VoIP services of duly licensed entities like LIME. Unfortunately, ECTEL has not acknowledged that, if its recommendations are adopted, three different providers of identical nomadic VoIP services would be subject to three different levels of regulation: (1) LIME's service would be subject to full PSTN regulation, simply because LIME also operates a PSTN; (2) a Vonage or Net2Phone reseller would be subject only to service provider regulation; and (3) Vonage and Net2Phone will continue to be free of any regulation. This is inequitable because the level of regulation would bear no connection to the characteristics of the service or to the characteristics of the market.

LIME submits that ECTEL's proposed classification of VoIP providers can only work if ECTEL acknowledges that only services akin to the CRTC's Category 3 VoIP services ought to be considered for full PSTN regulation and even so LIME is not proposing regulation of VoIP services. In other words, VoIP services ought to be regulated based on the nature and characteristics of the service itself, not based on what other licences the service provider might happen to hold. Otherwise, ECTEL would be establishing a regulatory framework that disadvantages those companies that happen to operate a PSTN in addition to a nomadic VoIP service.

**3. ECTEL recommends that VoIP specific obligations be imposed on individual licensees using existing licences.**

No. This is not necessary. LIME is licensed to provide voice service irrespective of the technology used. LIME provides Terms and Conditions which governs its NetSpeak service, and these already address many of the concerns raised by ECTEL.

**4. ECTEL recommends that service based/class licence VoIP providers be regulated via means of a new, VoIP/IP Telephony class licence (a draft of which is attached to this document.)**

Yes. LIME agrees that a license is required for those service providers who are offering this service. On reviewing the licence, LIME's comment is that the rights and obligations of the VoIP Service Providers is unclear.

To be noted is that the licence fees for the VoIP/IP licence should be in line with those paid by service providers who provide voice service over fixed networks otherwise there will not be a level playing field.

At paragraph 5.2 ECTEL states that *'[it] anticipates the possibility that some existing licensees will be desirous of migrating from one type of licence to the new VoIP / IP Telephony licence. In particular, ISVR or other licensees...'*. It could be interpreted, on reading of paragraphs 5.2 and 5.3, that licensees who currently hold ISVR licences could have one licence a VoIP/ IP licence that also allows ISVR. For the avoidance of doubt it must be made clear that the ISVR licence will continue to remain a separate category of licence and the VoIP / IP licence will be a category of licence separate from ISVR.

**5. ECTEL recommends that it should forebear from regulating peer to peer social networks and internet telephony services (i.e. these services should be unregulated.)**

Yes. LIME agrees in principle.

However, ECTEL has failed to define “internet telephony services”. LIME’s NetSpeak service is a nomadic VoIP service that relies on broadband access to the public Internet. As such, LIME’s customers can travel anywhere in the world and access LIME’s NetSpeak VoIP service wherever there is a suitable broadband connection. LIME submits that this service appears to fall squarely within the usual meaning of “internet telephony services” and therefore, under this recommendation, ought to be completely unregulated. However, this would not be consistent with ECTEL’s other recommendations that any VoIP services of any kind provided by a person who operates a PSTN ought to be regulated to the same standard as the PSTN.

While LIME does not recommend ECTEL regulate technologies, as opposed to services, LIME believes that ECTEL must do a more complete examination of the types of VoIP services that are being offered today. Stating that holders of individual licences will be subject to greater regulation of their VoIP service, merely because they happen to hold an individual licence, is inappropriate.

**6. ECTEL recommends that VoIP providers should be provided with geographical numbers without discrimination.**

Yes. LIME has no disagreements with geographic numbers being assigned to providers. It should be noted that once customers of the VoIP providers are assigned geographic numbers they may expect to make calls anywhere in their country and this may not necessarily be the case. VoIP services tend to be focused almost exclusively on the international call market and not the domestic call market.

**7. ECTEL recommends that the allocation of numbers should be facilitated by the regulator as opposed to incumbent network operators.**

Yes. LIME agrees that the regulator should assign the numbers and not the incumbent network operators. However, LIME notes that the recommendation in fact ought to be that the regulator should assign the numbers and not the underlying provider of network

services. The incumbent network operator is no longer the only network operator, and ECTEL's recommendations should reflect that.

**8. Subject to ECTEL's ability to make appropriate recommendations into the future, ECTEL recommends that no obligations on number portability be imposed at this time on either category of VoIP provider.**

Yes. LIME agrees that number portability on VoIP service should not be imposed at this time.

**9. ECTEL recommends that service based VoIP providers be treated as customers of incumbent PSTN operators required to negotiate commercial agreements to provide services.**

LIME submits that ECTEL's recommendation is likely to create new disputes among licensees. Class licence holders are not typically retail customers. The latter do not originate calls overseas and seek to terminate them in the ECTEL member states. Rather, they originate calls within the ECTEL member state (i.e. an outgoing service) and receive calls originated on third party networks. However, the VoIP Class Licence holders are almost certain to want to terminate traffic originated on their own network and on overseas networks. This hybrid status, licence holder but "customer", is not workable.

**10. ECTEL further recommends that agreements between service based VoIP providers be subject to regulatory review and approval by the NTRCs and ECTEL.**

No. It is not clear on what basis the NTRCs would review these agreements. ECTEL has acknowledged that these would not be interconnection agreements. Therefore the Interconnection Regulations would not apply. Nor would they be standard retail services, given that the "customer" is not a standard retail customer. Therefore the Retail Tariff Regulations would not apply.

**11. ECTEL recommends that no rules should be developed to regulate IP to IP calls in the short to medium term.**

Yes. LIME agrees that IP to IP calls should remain unregulated, irrespective of the network, technology or provider in question.

**12. ECTEL recommends that the provision of access to emergency services be discretionary for service type VoIP providers in the short term.**

ECTEL needs to further clarify its policy . The important issue here is that all service providers are obliged to advise their customers of the limitation of their service. LIME's NetSpeak service, for example, is not location specific. Accordingly, the information provided to the emergency services call centre is the registered address of the customer, not the physical location of the customer. As a socially-responsible service provider, we have advised customers of this limitation of the service from day one.

However, the mere fact that LIME holds an individual licence for fixed networks and services does not mean that LIME's NetSpeak service can automatically provide location-specific information, as is usually expected of a traditional PSTN service. ECTEL's policies must acknowledge that nomadic VoIP services are in effect non-facilities based services, even if provided by facilities-based providers, and ought to be regulated as such. It is too simplistic to say a nomadic service provided by an individual licence-holder will be regulated in one way and an identical nomadic service provided by a class licence-holder will be regulated in another way.

**13. ECTEL recommends that both categories of VoIP provider be required to provide clear information to customers about the limitations of VoIP services in the event of, for example, the failure of the broadband connection or power outages.**

Yes. LIME agrees. LIME notes that it has advised its NetSpeak customers of these limitations of its VoIP services from the start of the service, voluntarily, without the need for regulations.

**14. ECTEL recommends that no new or extra Quality of Service standards be imposed over and above existing standards already required of individual licensees and resellers in existing legislation in force in ECTEL states.**

Yes. LIME agrees.

**15. ECTEL recommends that facilities based/individual licensees should be required to provide directory enquiry services for subscribers of other licensees.**

LIME has no disagreement, once a commercial agreement can be arrived at.

**16. Providers should be fixed with a general obligation to work closely with law enforcement agencies where requested.**

Yes. LIME agrees. LIME notes, however, that this does not mean that the technical capabilities required by law enforcement agencies will necessarily exist, or that they must be developed at the VoIP service provider's expense, if they do not.

**17. ECTEL does not recommend the adoption of any specific rules on security of VoIP services at this time.**

Yes. LIME agrees.

**18. ECTEL recommends that existing rules on privacy protection applicable to all existing licensees should be extended to VoIP providers.**

Yes. LIME agrees. Inasmuch as voice services use VoIP technology the existing privacy protection rules are applicable.

## **Conclusion**

LIME disagrees that there is any need to regulate VoIP beyond Solution 1 and Solution 2 discussed above, and assigning the appropriate numbering resources. LIME also submits that ECTEL's proposed recommendations will introduce inequities in the marketplace and unfairly disadvantage individual licence holders.

Please send any communication in relation to this consultation to:

Melesia Sutherland Campbell

[melesia.Campbell@time4lime.com](mailto:melesia.Campbell@time4lime.com)

876 936 2860 (O)

876 919 1731 (M)

876 511 7874 (F)

Frans Vandendries

[frans.vandendries@time4lime.com](mailto:frans.vandendries@time4lime.com) .

345 747 3644 (O)

345 916 0831 (M)

345 949 1876 (F)

**END**