

CONSULTATION DOCUMENT

**Recommendation of the Eastern Caribbean Telecommunications Authority
("ECTEL")**

**To the National Telecommunications Regulatory Commission to consult on
Draft Telecommunications Universal Service Fund Guidelines**

Comment on Comments

January 18, 2008

1. On December 11, 2007 the National Telecommunications Regulatory Commission received a submission from ECTEL containing ECTEL's recommendation for Draft Telecommunications Universal Service Fund Guidelines for [Member States].
2. A copy of the Consultation Document on "*Draft Telecommunications Universal Service Fund Guidelines*" is available on the ECTEL website (www.ectel.int) and copies can be made available upon request at the National Telecommunications Regulatory Commission.
3. The Initial Comments period was set for December 17, 2007 to January 16, 2008.
4. ECTEL received comments from:
 - a. Cable & Wireless
 - b. Digicel
 - c. Karib Cable / Kelcom International
 - d. Marpin
 - e. NTRC Dominica
 - f. NTRC St. Vincent and the Grenadines
5. These initial comments are hereto attached and ECTEL now invites comment to these comments.
6. The Comment on Comments period will run from January 22, 2008 to February 12, 2008.

7. Following the Comment on Comments period, the Directorate will consider all comments received and then present revised Guidelines to the ECTEL 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 February 12, 2008** to: -

Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
Email: 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:



CABLE & WIRELESS

Cable & Wireless

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Castries
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Mr. Eliud T. Williams
Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia

January 16th, 2008

Dear Mr. Williams,

Re: Consultation on Draft Telecommunications Universal Service Fund Guidelines

C&W is pleased to provide its comments on the Draft Telecommunications Universal Service Fund Guidelines (the "Guidelines"). C&W thanks ECTEL for the opportunity to provide its views, and hopes that its comments will be of assistance to ECTEL and the NTRCs in their deliberations on this important issue.

The following comments are filed on behalf of each of the Cable & Wireless operating companies in the ECTEL Member States (Cable & Wireless St. Kitts and Nevis Limited, Cable & Wireless Dominica Limited, Cable & Wireless (St. Lucia) Limited, Cable & Wireless St. Vincent and the Grenadines Limited, and Cable & Wireless Grenada Limited).

Generally speaking, C&W found the Guidelines to be well written and comprehensive. However, we did have the following comments and concerns.

- Section 2 – USF Targets for Telecommunications Sector Development – page 4, sub-clause 2. C&W suggests that if USF funds are used to fund mobile telephone service expansion, it must be done in a manner that does not distort competition. That is, funds should only be directed to projects that would not otherwise be

undertaken. Funds should not be directed towards construction of towers where existing towers can be used, etc.

- Section 3 – Fund Accounting – Collection of Fund Contributions - page 7. There is reference here to “except where an exemption has been duly granted . . .” This suggests that certain providers may be exempted from the requirement to pay into the USF. Consistent with our position in previous submissions to ECTEL and the NTRCs, C&W believes that it would not be appropriate to exempt providers from the USO requirement. Not only is this contrary to the express language of the Act which states that “Every telecommunication provider shall contribute to the Universal Service Fund”¹, but it also decreases the amount of funds available to support USF projects. Further, if particular providers are exempted, this also raises the possibility of unfair treatment from a competitive standpoint as any provider that is not required to pay into the USF will have a lower cost base than its competitors that are required to make USF contributions. If certain providers are not required to contribute to the USF, this fact must be made public in order to maintain the degree of transparency and fairness required by the Act.
- Section 3 – Fund Accounting – Fund Bank Accounts - page 7. This section notes that “all bank accounts shall be managed in accordance with financial management policies and procedures approved by the Commission”. At the least, in addition to the other measures covered off in the Guidelines, these policies and procedures should require that:
 - All funds should be held in interest-bearing accounts;
 - No pledge or other liability should be permitted to be made against USF funds;
 - All cheques should require multiple signatures by authorized signatories;
 - Regular reconciliations must be made with bank statements
- Section 3 – Fund Disbursements – Funds for Administrative Expenses – page 7. C&W supports the requirement that the operating budget for the Fund not exceed 10% of the annual budget of the Fund.
- Section 3 – Reports and Audits – page 9. In the closing sentence of this section the Guidelines note that the Fund Administrator must prepare and provide periodic progress and other reports necessary for “an annual audit of the USF accounts and records”. C&W believes that the scope and nature of this audit should be set out in further detail. Whereas it is mentioned tangentially in several places in the regulations (the above-referenced sentence, the last bullet in the middle of page 8) no where do the Guidelines categorically state that there shall be an annual audit carried out by an independent auditing firm. C&W believes that this requirement is essential to ensuring public confidence in the Fund as well as the proper financial management of public funds.

¹ See subsection 44(2) of the St. Lucia Telecommunications Act. The same provision appears in each Act.

- Section 4.1 - Operating Plan – page 10. The second paragraph in this section notes that, once approved, the operating plan shall be made available to interested parties. The first paragraph notes that the operating plan will set out which types of projects the USF will seek to fund as well as the intended allocation of resources for the coming year. These matters will be of considerable concern to providers seeking to bid on fund projects, and as such, there may be an issue of timing here. If the operating plan is set by the Commission but then is only shared with providers, providers will have no opportunity to provide input into plan before it is set. C&W believes that it would be appropriate to engage interested provider prior to the plan being set in order that they can provide inputs into such matters as the priorities for the Fund and how resources are to be allocated. C&W believes that this input could prove valuable for the Commissions in setting the priorities for the Fund.
- Section 5.1 - Submission of Fund Projects. In the opening paragraph of this section, the Guidelines note that “at the beginning of each operating year” the Fund Administrator will initiate the process of identifying projects for the Fund. C&W seeks clarification as to whether identifying projects will only be done once per year at the start of the year, or whether there will be flexibility to identify additional projects during the course of any given year. If a need arises during the year after the budget has been allocated, how will this be dealt with?
- Section 6 – Evaluation of Bids – page 19. In the third paragraph under this heading, the Guidelines note that the Administrator prepares a written report which names the winning bidder. It is not clear from this paragraph who selects the winning bidder whether it is the Commission or the Administrator. This should be made clear.
- Section 7 – Implementation and Monitoring – page 23. As a general comment, C&W notes that the Service Contract will have to be flexible enough to allow for unforeseen circumstances which may impact on the implementation of a fund project.
- Section 8 – Disputes and Protests – page 25. As a general comment, C&W notes that where a dispute has been filed, it should be made clear that interested parties will be given an opportunity to comment on the matter in dispute..

Once again, C&W thanks ECTEL for the opportunity to give its views on the issues in this consultation. Should you have any questions or comments about C&W's positions, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink that reads "Geoff Batstone". The signature is written in a cursive, flowing style.

Geoff Batstone
Vice President, Regulatory Matters

c.c. Chief Executives, C&W
NTRCs

Digicel™

Expect More, Get More

**Digicel (St. Lucia) Limited's Response
to the invitation by**

**NATIONALTELECOMMUNICATIONS REGULATORY
COMMISSION (NTRC)**

**to Comment on the Recommendation of the Eastern Caribbean
Telecommunications Authority (ECTEL) on**

“DRAFT Telecommunications Universal Service Guidelines”

January 16, 2008

Introduction

Digicel (St. Lucia) Limited (“Digicel”) welcomes the opportunity to respond to this consultation and thereby to seek to contribute to the continued successful development of the Universal Service Fund in St. Lucia. Digicel believes that the ECTEL Draft Telecommunications Universal Service Guidelines constitutes an important document, and that it raises succinctly a coherent and efficient process for the implementation of Universal Service.

DIGICEL’s Commitment And Proposed Modification

Digicel notes that the draft Universal Service Guidelines propose, at pages 16, 21, and 22, that sole procurement is one option that may be employed in certain circumstances for the award of contracts for Fund projects. Digicel is pleased to go on record in strong support of the objectives and vision of Universal Service.

Accordingly, Digicel wishes to state that it would wish to be considered for all projects. As Digicel’s portfolio of service offerings continue to grow, Digicel has come to the view that there should not be a single project for which Digicel could not be considered an “economically feasible source for a service”, as contemplated in Section 6.5, at page 21 of the draft.

Therefore, Digicel would respectfully request that favourable consideration be given to deleting the concept of sole source procurement from the guidelines. Digicel is of the view that sole source procurement is a concept that need no longer be considered as a result of the robust entry

of competitors such as Digicel into telecommunications markets in St. Lucia.

Conclusion

Digicel is most pleased to have been accorded the opportunity to participate in this public consultation process. Digicel strongly supports the development of robust Universal Service in St. Lucia, and looks forward to participating in the implementation of Universal Service in telecommunications. Furthermore, Digicel looks forward to further opportunities to participate in consultative processes in related areas of public policy development.



16th January 2008

The Managing Director
ECTEL
PO Box 1886
Vide Boutielle
CASTRIES
St. Lucia

**Re: Telecommunications Universal Service Guide Lines Draft December 2007 –
Consultancy**

Our Comments:

1. General – Terms like must, could, should, may need to be replaced in the document. This is a guideline document not a discussion document.
2. General - Given that the Telecommunications Act does not specify cable television service as a universal service it could be interpreted that cable television is exempt from contributions to the Universal Service Fund. However should this not be the case then the relevant items below apply.
3. General - What compensation should a telecommunications provider expect for having already provided services in areas or under the constraints defined in the guide as to be covered by the USF?
4. Page 1 para 2 Telecommunication Act is 2001 not 2000.
5. Page 1 para 2 Telecommunications (Universal Service) Regulations (2007) According to the SVD NTRC website and the notes accompanying this consultation has not been passed so cannot be (2007).
6. Page 1 para 4 Superfluous – just repeats the table of contents headings
7. Page 2 2.1 para 1 Subsections should include (c) Cable TV and existing (c) and (d) should change to (d) and (e) respectively
8. Page 2 2.1 para 4 Subsection (b) should readservices, including voice telephony and Internet access **and Cable TV**, as
9. Page 3 2.2 First line Commission – what/which Commission? Are we to assume the NTRC?
10. Page 3 2.2 First para last line should refer to seven (7) categories and not 6.

11. Page 3 2.2 Should include iii **Access to Basic Cable TV Service** The commission may utilize fund resources to help support CATV network and service expansion in those areas where such deployment may not be fully commercially viable for the private telecommunications market alone.
12. Page 3 and Page 4 2.2 renumbering from iii onwards as a result of the new item iii
13. Page 3 2.2. i Remove women – this is gender biased and discriminatory
14. Page 4 2.2 vi. Include information content **and/or video content** and/or applications
15. Page 4 2.3 para 2 Remove costly – isn't this is what USF is for?
16. Page 5 2.3 3 IncludeInternet access points in **all** towns and
17. Page 5 2.3 Add 5 **Basic Cable TV Access:** Every household in the country should have the option of subscribing to Cable TV service at prevailing, affordable tariffs.
18. Page 5 2.3 Renumber 5 onwards as a result of the additional para 5
19. Page 5 2.3 Current para 5 include, ideally with broadband access **and Cable TV** in as
20. Page 5 2.3 Current para 8 replace indigent with disadvantaged in all cases
21. Page 6 3.1 Bullet 2 Telecommunications (Universal Service Fund) Order – does this exist? If not when is it to be produced?
22. Page 6 3.1 Should include text that refers to adjusting the USF Contributions dependent upon the status of the account
23. Page 6 3.2 i. para 1 should include a comma after grants in the last line
24. Page 6 3.2 i. para 1 What provisions are currently in place to support the statement about additional funds.
25. Page 6 3.2 i. para 3 Fund Administrator – who is this and how are they selected – note there is no mention found in the draft USF regulations document. The Fund Administrator appears to have carte blanche. The Fund Administrator minimum qualifications have to be stipulated.
26. Page 6 3.2 1 para 3 include and Payments can only be made to telecommunications providers in the State and only those telecommunications providers specified by the Minister
27. Page 7 3.2 i. Last paragraph what section of the Act is being referred.
28. Page 7 3.2 ii. One of the financial management policies must be to ensure that maximum interest revenue is generated from funds on deposit
29. Page 7 3.2 ii. One of the financial management policies must be to ensure that the contribution to the USF by the telecommunications providers is reduced when there are funds on deposit
30. Page 7 3.3 i How was 10% determined and what value in EC\$ does this represent
31. Page 7 3.3 i It is noted that the operating budget is 10% of the annual budget of the Fund but that there are separate budgets for Fund Projects and Operations. 10% of what needs clarifying.
32. Page 8 3.3 i. First bullet point – what is the staffing level?
33. Page 8 3.3 i. Fourth bullet point – needs to be capped at 10% of Administration Budget

34. Page 8 3.3 i. Fifth bullet point – needs to be capped at 10% of Administration Budget
35. Page 9 3.4 The Annual USF report must be made available to the telecommunications providers
36. Page 9 3.4 Include **and the annual report with the USF element clearly broken down will be made available on the commissions web site for inspection by any person who may wish to inspect it.**
37. Page 10 4.1 Include The Commission **in consultation with a steering committee that includes representatives of each of the telecommunications providers that are contributing to the USF.....**
38. Page 10 4.1 First paragraph change current operating year to upcoming operating year
39. Page 10 4.1 Second paragraph – how will the plan be made available for inspection and who are the interested parties.
40. Page 10 4.1 Second paragraph – what influence have the telecommunications providers got on the plan?
41. Page 11 4.2 paragraph 2 include **for Fund Projects and Operations and these budgets will be signed off by the steering committee.**
42. Page 12 5.1 First line replace At with Before – or the year will be spent planning and not implementing
43. Page 12 5.1 para 2 payments for projects can only be made to telecommunications providers in the State so remove and other interested parties
44. Page 12 5.1 para 2 change could be done through to will be done through
45. Page 12 5.1 para 3 Application Forms for Project Proposal. Information required appears to be written from the Fund Administrators point of view rather than the telecommunications service providers point of view. Needs re-writing.
46. Page 12 5.1 para 3 how will the Application Forms for Project Proposal be made available to telecommunications providers
47. Page 13 5.2 para 3 – ad hoc committees. Who will be able to provide value to the decision but not have an interest in the project?
48. Page 13 5.2 para 3 – replace his with their - discriminatory
49. Page 14 last paragraph. What is the ratio of negative NPV to subsidy? It is clear from this that the Fund will only subsidise the total cost of a project. Where is the arbitration between the cost from the Commissions point of view and the telecommunications providers point of view?
50. Page 16 6.1 Last para. The Commission the objectives of the USF and the concept of emergency procurements do not line up. Emergency procurement not required.
51. Page 18 Public notification Under this heading interested parties and firms to be replaced by telecommunications providers
52. Page 18 Public notification Last line under this heading. Why charge a fee to the telecommunications providers who are already paying into the USF?

53. Page 19 Last line. Results of the evaluation must not include information that would provide competitors with a data advantage.
54. Page 21 Timetable 16 weeks indicates that projects that are considered within the year would only have 8 months to complete within the year.
55. Page 22 The need for emergency procurements requires explanation.
56. Page 24 7.2 What process is in place for the post project review and the feedback loop into the follow on projects
57. Page 25 Section 8 Disputes and Protests need an arbitration process outside of the Commission

Regards,

Cc Ms Holly Anya Hughes GM (Ag)
Mrs. Jankie Glass, General Manager

Len Hornsey
Operations and Business Development Manager

COMMENTS FROM Marpin Telecoms and Broadcasting Ltd (in Receivership)

Greetings,

With respect to the Universal Service Guidelines, the following comments and observations arise:

1. Perhaps a mixed company should be formed to lend itself to the impartiality of the project to any one telecommunications provider. The mixed company should therefore be flexible enough to incorporate representative facets of every relevant industry player.
2. If a contract has been awarded to one provider and another provider suddenly has a more suitable contribution to the execution of the same, would it be impossible for that other provider to make that contribution?
3. This project should necessarily form part of an advisory committee to the National EOC on a continual (perhaps biannual) basis especially in the event of a natural or similar disaster.
4. There should be ample provision made for continuous research and development. Technology is continuously moving and if this project is to oversee "tele-centers" of any kind be it commercial or otherwise the US Project must be kept abreast as to the various ways in which the system could be used for malice or otherwise undermined.
5. This project should either already be or seriously consider aligning itself to the nationalist approach of the ICT development project. In particular, it should pay close attention to the juridical aspect of the same.
6. This project could be considered able to and may be allowed to generate income by its own accord rather than depend on the contributions fund. The focus here is the marketing of Dominica's telecommunications based services outside of Dominica.

Regards,

Lindsay George, B.Sc.
Manager
IS and Teletraffic Department
Marpin Telecoms and Broadcasting Ltd (in Receivership)

3 USF MANAGEMENT, ADMINISTRATION, ACCOUNTING

This section describes the management structure and administrative responsibilities for the USF within the Commission, including the accounting procedures required to collect, maintain, and disseminate the funds.

3.1 Fund Account Management

The Fund shall be managed by the Commission, in accordance with the Regulations and these Guidelines. In the administration of the Fund the Commission shall ensure that:

- the USF remains fiscally sound, and confirm revenue, cost, and financial performance projections;
- the collection of USF Contributions from telecommunications providers in accordance with the Telecommunications (Universal Service Fund) Order;
- timely disbursement of subsidy and other eligible payments as per service contracts and USF's certifications according to payment milestones;
- USF's financial accounts and records are maintained;
- USF Annual Report is prepared

3.2 Fund Accounting

The following sections provide guidelines for the Fund accounting procedures, including fund financing, fund account management, collection of fund contributions, fund administration financing, fund disbursements, reports and audits.

i. Collection of Fund Contributions

The USF shall be financed primarily by the monies collected from telecommunications providers as stipulated in the Telecommunications (Universal Service Fund) Order. Additional funds may be received from direct Government appropriations, or in the form of grants donations, or other contributions made by individuals or legal entities.

The collection of USF contribution from telecommunications providers shall become effective on the date set by the Telecommunications (Universal Service Fund) Order issued by the Minister

The Fund Administrator shall have the responsibility to monitor and ensure that payments are made in accordance with the Telecommunications (Universal Service Fund) Order.

The Fund Administrator shall maintain a record of the USF Contributions due to the USF and collected from all telecommunications providers, indicating:

- The verified gross revenues by year;
- The amount of USF Contribution due for the current year;
- The USF Contribution amounts collected;
- USF Contribution amounts outstanding.



National Telecommunications Regulatory Commission
St. Vincent and the Grenadines

Ref. No. COR/ECTEL

January 17, 2008

Mr. Eliud T. Williams
Managing Director
ECTEL
Vide Boutielle
P. O. Box 1886
St. Lucia

Dear Sir

Consultation on the USF Guidelines

The Commission having reviewed and discussed the consultation document wishes to comment as follows:

1. Item 3 page 4. Should remove the reference to dial up connections. This is a particular technology that is specific to a certain type of network. Notwithstanding this, it is also a technology that is being phased out. The Commission is of the view that we should try to keep the guidelines document as open as possible and not to try to favor a particular technology/network over another.
2. The Commission has a concern with the use of the term "Commission" in the document. In some instances it is being used to represent the NTRC as a whole (Commissioners and staff) while at other times it is being used to represent the Commissioners alone. The same issue appears in the USF regulations. This can cause problems in the management of the USF. For example the second paragraph on page 7 reads "*The fund administrator shall notify the Commission promptly regarding any USF...*" Since the Fund Administrator works for the NTRC it

would seem that this section is looking at the Commission as being the Commissioners. As such instead of the Fund Administrator notifying the person in charge of the day to day operations of the NTRC (the Director) he is to notify the Commissioners directly. This also brings us back to the same issue of the USF administrator reporting to both the Commissioners and the Director as is outlined in the USF regulations. This can only lead to problems in the management of the fund and the management of the NTRC staff on a whole.

3. As the Commission has outlined on previous occasions it has a problem with the figure of 10% being used in the last paragraph on page 7 for all countries. It is the view of the Commission that each country should have a different figure based on the expected revenue into the fund and the expected annual administrative expenses for each country. This amount has to cater for not only the annual salary for the USF administrator but also the other related expenses that would be incurred with this new position of which all of these expenses should be catered for from the administrative expenses related to managing the fund. These would include cost of office space, electricity, office equipment, stationary, telecom costs, etc. It would be unfair for these additional expenses to be covered under the existing budgets of the NTRCs. Please note that the Commission is not making the point that 10% is not enough, the point that is being made is that 10% might be enough for some states (might actually be too much) but it might not be enough for some states.
4. First paragraph under the “Evaluation of Bids” section on page 19. The Commission is of the view that the sentence that refers to “...*co-opt independent evaluators...*” should be removed from the document. This gives the impression that the Commissioners or staff of the NTRC may not be independent evaluators. The USF regulations already have provisions to make sure that the USF Administrator would not have conflicts with matters before him. The section also needs to be clearer on who exactly should be responsible for the evaluation of the bids. The Commission believes this should be the responsibility of the USF

Administrator or a committee made up of the USF Administrator and other staff/Commissioners of the NTRC. It sees no need for independent evaluators since it is expected that the Commission to always act in a non-bias way not only on USF matters but all other regulatory matters that it is responsible for.

The Commission wishes to express our appreciation for being given an opportunity to comment on this consultation document.

Sincerely yours

Apollo Knights
Secretary/Director
NTRC

Cc Mr. Jason Hamilton -Chairman/Board of ECTEL
Mr. Isaac Solomon- Director/Board of ECTEL