

REPORT OF THE CHAIRMAN OF ECTEL
TO THE COUNCIL OF MINISTERS
FOR THE YEAR ENDED 30TH SEPTEMBER, 2002

ECTEL Headquarters
Vide Boutielle, Castries, St. Lucia

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Introduction

This Report covers the period October 2001 – September 2002. The Report provides a summary of the major activities of ECTEL over the last year during which energies were focused on the issuance of Licences, Finalization of an Interconnect Regime in Dominica, Recruitment of key staff, Procurement of Spectrum Equipment, Development of Price Cap Regime, Training of NTRC Commissioners and Staff and the Preparation of the Numbering Plan.

Regular and Special Meetings

The following meetings of the Board were held:

- Seven regular Board Meetings in various member states
- A Special Session in early January in St Lucia to address the issuance of Individual Licences to new entrants;
- Special Sessions in St Lucia and Grenada to address Administrative and Legal Procedures relating specifically to Interconnection, Tariffs and Pricing,

Licensing Issues:-

ECTEL reviewed 135 applications for Licences for Fixed Telecommunications Networks and Services and Public Mobile Network and Services that were received by the deadline of January 30th 2002. In respect of the issuance of Licences the Board made the following recommendations:

- that licencees should be required to produce a performance bond of specific value with time frames for network build out and commencement of operations;
- that in evaluating applications for Individual Licences a total Score of 65 points should be used as the minimum level required to satisfy the legal, technical, financial and social criteria;
- that a limited number of licences should be issued, having regard to technical, economic and other considerations;
- that the Council of Ministers give due cognizance to the policy objectives of achieving liberalization across ECTEL Member States as a single economic and telecommunications space.

At a meeting in St. Kitts, the Board advised that six applicants satisfied the established criteria for the award of a Fixed Public Telecommunications Network and Services.

These are:-

Company Name

1. Digicel Ltd
2. Outremer Telecom (OTM)
3. TransWorld Telecom Caribbean Ltd
4. Gensat Americas S.A.
5. St. Kitts-Nevis Cable Communications Ltd
(SKN& Nevis)

At the same meeting, the Board also advised that five applicants met the criteria for Public Mobile Telecommunication Network and Services,

These are:-

1. Digicel Ltd
2. AWS Caribbean Holdings Inc.

3. TransWorld Telecoms Caribbean Ltd
4. CariGlobe Telecoms Ltd
5. Gensat S.A.

Council subsequently recommended the issuance of the following Licences:

- Ø Mobile/Cellular licences would be issued to Digicel and AWS Caribbean Ltd (AT&T).
- Ø A Fixed Public Network & Services as well a Public Mobile/Cellular Licence would be awarded to GENSAT Americas.
- Ø St. Kitts/Nevis would issue a Fixed Public Network & Services to The Cable, and a Mobile/Cellular Network & Services to CariGlobe.

Meanwhile, GENSAT Americas has ceased operations in the Region.

ECTEL is currently reviewing and will make recommendations on several applications for Internet Network and Services and for Submarine Cable. With regard to applications for submarine cable, two companies WIN-I and Blue Stream have been shortlisted. An additional criterion which focuses on environmental issues was included to the evaluation criteria. The criteria had to be published. We expect to complete the evaluation of the two applicants for Submarine Cable Licences shortly.

Several issues arise out of the process of the award of Licences. These include:-

- § The issuance of licences has not been harmonized throughout the ECTEL Member States.
- § The various annexes to the Cable & Wireless Licences are still to be included in their licences.
- § A mechanism for the collection of fees, particularly spectrum fees is still to be established, though Cable & Wireless, Marpin, GNP of Grenada, The Cable, CariGlobe and TWTC have already been issued licences.

- § Some new entrants claim that some of the service requirements and the licence fees are too onerous.
- § Some countries are yet to issue licences to new providers.

Establishment of an Interconnect Regime for C&W and Marpin and other ECTEL Member States

To obtain interconnection, the Act requires that a provider must be declared dominant, the Dominant Provider must submit a Reference Interconnect Offer (RIO), and the parties must establish a commercial agreement subject to the approval of the Regulator. This process is now in train though Cable and Wireless has raised objection to the Company being declared dominant in the areas of the unregulated services.

Cable and Wireless cites the OECS/C&W Agreement of 17th May 2002 noting which services are to be regulated and unregulated. Our Legal Advice suggests that the May 2002 Agreement cannot take precedence over the law, and the Regulator should decide which services will be regulated once the provider has been properly declared dominant.

With regard to the Cable & Wireless/Marpin Interconnection Matter, ECTEL after long deliberation, recommended approval for an Interconnection rate of 10.1cents and a Interconnect retail rate of 14¢ to Cable & Wireless for calls between Cable and Wireless customers and Marpin. Marpin's retail rate is 13cents. The ADC was a source of contention for ECTEL even though Marpin publicly expressed readiness to pay the ADC, while recognizing that the Cable & Wireless's claim for an ADC was questionable. Interconnection became a reality on 1st August, 2002.

Organisational Strengthening and Capacity Building

All members of the current Board of ECTEL have received training in Regulation of the Telecoms Sector. The NTRCs have received training for staff

and commissioners and ECTEL has also arranged for its staff to receive further training. Recently, training sessions were held in Dominica, St. Lucia and Grenada for NTRC Commissioners, ECTEL and NTRC staff. While the St. Lucia session, facilitated by CARANA, covered a broad range of interest groups and attracted Attorneys General, Senior Officials of the Ministries of Education and Health, Personnel of Bureaux of Standard, that session focussed on legal, tariff and other regulatory issues.

Also, ECTEL in conjunction with USAID/CARANA, has developed a training program, which focuses on the administrative procedures and the requirements of NTRCs, ECTEL and Ministries of Telecommunications for meeting the obligations of the legislative framework.

OECS Telecoms Reform Project:

While the OECS Telecoms Reform Project should have ended in September 2002, extension was sought and obtained to facilitate the purchase of Spectrum Management and Monitoring Equipment. The Spectrum Equipment should be available in January 2003. Training of staff in the use of the equipment will begin shortly thereafter.

Governments approved a further amendment to the Loans and Credit Agreements with the World Bank to allow for an extension of the Project and a reallocation of resources to the Goods Category.

Counterpart funds continue to be a critical issue and while both St. Kitts/Nevis and St. Lucia continue to meet their commitments, the other countries particularly Dominica, have built considerable arrears to the Project. Recently however, funding was provided by Dominica for a short-term extension of the Technical Consultant to focus on the Price Cap Regime and the Numbering Plan.

Operations of ECTEL/Special Country Assistance

In February this year, the Organization assumed responsibility for staff recruitment through the signing of a Memorandum of Understanding between ECTEL, the OECS Central Secretariat and the World Bank. A comprehensive set of staff rules have also been adopted. Meanwhile a Draft Policy and Administrative Manual has been circulated to Board Members for consideration at a subsequent meeting. Also an Outline of a Corporate Plan, which will guide the work of ECTEL over the next five years, has been prepared. The draft is being revised and will be submitted to Council at a subsequent meeting.

Member States have provided special assistance through provision of services of experts from their countries. Grenada provided the services of Dr. Spencer Thomas Economist/Finance Specialist on an as required basis; St. Kitts/Nevis provided the services of Mr. Cosbert Manchester, Technical Specialist; St. Lucia assigned Spectrum Specialist Mr. Perry Mason.

The Secretariat/Directorate now operates with the following technical staff:

- ü Managing Director
- ü Legal Counsel
- ü Senior Economist
- ü Technical Specialist
- ü Spectrum Consultant
- ü Human Resource/Administrative Manager
- ü Accountant

A few other positions remain vacant while the tenure of the Spectrum Consultant and Technical Specialist have ended. The Government of St Lucia has however agreed to a further extension for Mr. Perry Mason while other arrangements were made for the extension of Mr Manchester's assignment.

In keeping with the directive of Council the post of Managing Director was advertised and the Board will report to Council on the Recruitment Process and submit its recommendation.

NTRC/ECTEL Relations

Concerns continue to exist regarding the functioning of the NTRC's and to this end an Audit of the functioning of the NTRC's was conducted by the Secretariat. The major areas of concern continue to be:

- § The level of financing and sources of funds for the NTRC Operations
- § The physical facilities available to the NTRC.
- § The support staff for effective functioning of the Secretariat.
- § Training for the Secretariat staff and commissioners.

The Audit concluded that:

The NTRC's have varying levels of preparedness and the operations of some commissions are of particular concern to the Board.

As reported in August, the NTRCs have expressed disappointment with the delays experienced in receiving responses to requests made to the ECTEL Secretariat/Directorate; although it is now clear that some matters referred to ECTEL should properly be for the attention of the NTRCs. A matrix of outstanding issues has been prepared with various tasks assigned to members for the Management Team. We anticipate that this change will result in quicker processing of matters emanating from the NTRCs.

Legislative and Regulatory Framework

Eight of the most critical regulations, have been passed in all Member States with the exception of Grenada. These Regulations are:

1. Telecommunications (Licencing and Authorization) Regulations 2002
2. Telecommunications (Interconnection) Regulations 2002
3. Telecommunications (Spectrum Management) Regulations 2002
4. Telecommunications (Private Network Licencing) Regulations 2002
5. Telecommunications (Terminal equipment) Regulations 2002
6. Telecommunications (Numbering) Regulations 2002
7. Telecommunications (Tarriff) Regulations 2002
8. Telecommunications (Fees) Regulations 2002

In the case of Grenada, work is now being finalised to ensure early presentation of these Regulations for Cabinet's approval. Universal Service and Quality of Service Regulations have been identified as priority. These are receiving the attention of our Legal Counsel.

Critical to the completion of the Regulatory Framework is the drafting of required amendments to the Legislation and Regulations. In administering the Legislation, the need for amendments has been recognized, key of which is the lack of adequate penalties for offences. Other issues identified are illegal possession of equipment, contradictions in roles and functions of various entities, power of the NTRCs to enforce Interconnection Regime. Regulations to provide a clear framework for dispute resolution is also urgently required.

Consultancies have been contracted to prepare legislation on Anti-Competitive Behaviour. Another critical area is the Public Consultation Process. A Paper is being prepared for the consideration of Council as such consultations are highly desirable and necessary especially on the issue of Dominance.

Preparatory work has been initiated for legislation in the areas of Broadcasting and E-Commerce. This is being done under the USAID/CARANA Program of Assistance. The Telecoms Act makes provision for the technical aspects of Broadcasting. However, programming and content would fall to a Broadcast Act.

Price Caps

The Agreement signed between the Contracting States and Cable & Wireless West Indies in May 2002 requires that the Secretariat and the Board treat the development of the Price Cap Regime with the highest priority. A three member Team led by the Senior Economist Dr. Anderson Reynolds, Legal Counsel, Mr. Derick Redman and Mr. Cosbert Manchester, Technical Consultant has completed preliminary work on the Price Cap.

It is necessary to note that May 2002 Agreement envisaged that the Regime would be available within nine months but this has been delayed through the absence of the requested data and information from Cable & Wireless. Cable & Wireless St. Kitts has been particularly tardy in this regard. Recently the Board directed that the attention of Chief Executive Officer, Errald Miller, be drawn to this matter of the delay in submission of data by various Cable & Wireless Business Units.

USAID/CARANA

USAID is providing assistance in the amount of US\$2Million over a two-year period. This assistance is being provided through a broad range of consultancy services to be delivered by the CARANA Corporation. This involves assistance in providing technical support for regulatory issues, drafting of regulations and training of regulators. Support has also been provided through the delivery of laptop computers and LCD projectors to all NTRCs and ECTEL.

Spectrum Management Monitoring Equipment

A contract has been awarded to an Israeli firm - Tadiran Electronic System for the provision of spectrum management and monitoring equipment at a cost of approximately EC\$8.1M. The Company concluded discussions with the Secretariat regarding delivery schedules for the equipment. Delivery of equipment is now expected by the end of this year.

The losing bidder TCI, an American firm, has been provided with a detailed explanation in response to the Company's query regarding the disqualification of its bid.

The Board has reviewed the Spectrum Management Plan. The Plan is being revised to incorporate the comments and observations of Member States, NTRCs and the Board. Thereafter, the revised version will be presented to the Council for approval. We anticipate that this can be done at this Meeting of Council or shortly thereafter.

Administrative and Staffing Issues

The period has also been one of consolidation. Completion of an Interconnection Agreement between Marpin and Cable & Wireless was achieved but we have also seen delays in the achievement of key project targets. It is now necessary to place critical attention on the financial sustainability of the organization and to complete the recruitment of the staff complement approved by Council.

This will enhance the Organization's capacity to provide the advice and recommendations expected by Member States. Also, during that period, the Staff Rules were prepared and adopted by the Board. Job Descriptions, advertisements and a few critical staff positions were filled. These included the Senior Economist and the Legal Counsel. Vacancy Announcements have been

prepared for the Information Systems and Documentation Manager and the Administrative Assistant.

The 2002/2003 Budget has been approved. Meanwhile, the Annual Work Plan for the same period will be presented at this Council Meeting. The Budget assumes three telecommunications providers in each state paying an agreed level of fees for spectrum. However, some countries continue to experience resistance from these new providers for the level of fees proposed.

Accession of New Members

The Secretariat, in conjunction with the World Bank, commissioned a study to examine the possibility of other countries joining ECTEL. The initial report indicates strong interest from Antigua/Barbuda and the dependant territories of Anguilla, BVI and Montserrat. The other CARICOM Countries have expressed a preference to establish working relations.

There is also an initiative to form an Association of Caribbean Regulators to coordinate activities. The Caribbean wide utility regulators body will be known as *"The Organization of Caribbean Utility Regulators (OCUR)*. Trinidad has offered to host the Secretariat and ECTEL has indicated its intention, subject to the approval of Council, to seek membership in that regional body. The annual fee is \$1500.

Numbering Plan

The Numbering Plan has been completed and makes provision for the management of numbers from a central office. The Contracting States have been asked to designate ECTEL as the Managing Agency.

National Directories and Intellectual Property Rights

A request has been made to the NTRC of Dominica, by Cable & Wireless and Marpin Telecoms for publication of a joint telephone and services directory. This issue of intellectual property rights over information in the Directory is a subject of interest to ECTEL and is being researched. Prospects for a Regional Directory to serve the Contracting States is also of interest, and seem to offer some revenue potential.

Appreciation

Permit me to express thanks to Council for the confidence shown in appointing me as Chairman for 2001/2002. It was an intense period. I therefore record my sincere thanks and appreciation for the support from the Members of Council, the Honourable Reginald V. Austrie who allowed the time, Board Members, Management and Staff.

Council is asked to consider and note the Report of the Board for the period ended September 2002.

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ELIUD T. WILLIAMS
CHAIRMAN

9^h October 2002