

CONSULTATION DOCUMENT

**Recommendation of the Eastern Caribbean Telecommunications Authority
("ECTEL")
To the National Telecommunications Regulatory Commission to consult
on
Draft Mobile Electronic Communications (Roaming Services) Bill and Draft Mobile
Electronic Communications (Roaming Services) Regulations**

No. 4 of 2016

November 2016

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendations on the following:
 - (i) Draft Mobile Electronic Communications (Roaming Services) Bill
 - (ii) Draft Mobile Electronic Communications (Roaming Services) Regulations
 - (iii) Proposal for Roaming Pricing in the ECTEL Contracting States
2. A copy of the draft Bill, Regulations and Proposal are attached to this Consultative Document.
3. The initial comments period will run from **25th November to 20th December 2016**.
4. The Comment on Comments period will run from **22nd December 2016 to 13th January 2017**.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the
 - (i) Draft Mobile Electronic Communications (Roaming Services) Bill
 - (ii) Draft Mobile Electronic Communications (Roaming Services) Regulations
 - (iii) Proposal for Roaming Pricing in the ECTEL Member States

to the Council of Ministers for its recommendation for adoption in the ECTEL Member States.

6. All responses to this Consultative Document should be written and sent by post, fax or e-mail to:-
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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.

Suggested Guidelines for Responses to Consultations

In order to promote faster processing of views expressed and to reduce administrative lag in ECTEL's public consultation processes, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below. ECTEL would therefore be grateful if commenting parties could please observe these guidelines where possible.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address and telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 4) Where possible, comment documents should be submitted in PDF format.
- 5) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 6) Where parties are commenting on specific provisions of legal language, alternative language should be proposed where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments.

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL)

Consultation on

**Draft Mobile Electronic Communications (Roaming Services) Bill and Draft Mobile Electronic
Communications (Roaming Services) Regulations**

In ECTEL MEMBER STATES

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1. Introduction

After the liberalization of the sector and the signing of the ECTEL Treaty, a policy decision was taken not to regulate mobile retail services as it was deemed that these services were subject to sufficient competition¹. This policy was also extended to roaming rates within the Contracting States. A recent analysis conducted by ECTEL on voice and data roaming within the ECTEL Contracting States has concluded that in some cases, large premiums were being paid by customers to access roaming² services while traveling throughout the ECTEL Contracting States. In particular, the study noted that the premium charged ranged from 32% to over 200% of the cost of an in-country mobile-to-mobile (MTM) on-net call.

The presence of the premium on roaming services in the Contracting States fails to promote fair pricing and competition in the ECTEL Contracting States. In order to foster competition, market integration and to ensure affordable roaming prices for customers, ECTEL has embarked on a process of developing a framework for the regulation of mobile roaming services. This framework includes a model Roaming Bill and Regulations for enactment in ECTEL Contracting States. One of the major objectives of the legislation is to set the terms for the provision of voice, short messaging service (SMS), multimedia messaging service (MMS) and data services while roaming within the Contracting States. Among other things, it is envisaged that once passed, the roaming legislation will address the prohibitive costs of roaming and provide the framework for regulating the mobile electronic communications network for roaming.

¹ ECTEL Board Paper: An Assessment of the rates for mobile services in the ECTEL Member States. Presented at the 64th Board Meeting.

² ECTEL Board Paper: An Assessment of Voice and Data Roaming within the ECTEL Member States.

**Mobile Electronic Communications (Roaming Services)
Regulations**

**2. Mobile Electronic Communications
(Roaming Services) Bill**

Mobile Electronic Communications (Roaming Services) Regulations

2.1 Background to Mobile Electronic Communications (Roaming Services) Bill

This activity is in response to a specific request made to and approved by the Area Representative for the International Telecommunication Union (ITU) Area Office for the Caribbean (AOC). Pursuant to a decision of the Council of Ministers of the Eastern Caribbean Telecommunications Authority (ECTEL), the Regulatory Authority was mandated to develop the appropriate legislation to effect a reduction in roaming rates in its ECTEL Contracting States.

As such ECTEL has recommended a model *Mobile Electronic Communications (Roaming Services) Bill* for enactment and that appropriate supporting Regulations be made in the ECTEL Contracting States, as required.

The legislation's specific objective would be to ensure the provision of roaming services for mobile electronic communications service at reasonable rates to customers.

The legislation would seek, amongst other things, to regulate retail charges or rates that customers may be charged for roaming services, as well as charges between licensees and providers for wholesale roaming services.

2.2 Explanatory Note

This Bill provides the framework for the protection of consumers against unfair prices, the provision of insufficient information and unexpected charges for roaming services and for the regulation of roaming rates for roaming services within an ECTEL Contracting State. This Bill is comprised of 14 clauses.

Clause 1 of the Bill contains the Short Title and provision for the Commencement of the Bill.

Clause 2 of the Bill sets out definitions of terms used in the Bill, such as: “Commission,” “inadvertent roaming”, “mobile electronic communications services,” and “public mobile communications network”.

Clause 3 of the Bill provides that the Bill applies to all providers licensed in [ECTEL Contracting State] and provides a grace period of six months for licensees to take any administrative steps necessary to comply with the Bill.

Clause 4 makes it mandatory for a licensee to notify a customer when the customer is roaming and include information for the customer on the charges for roaming services. The clause also requires a licensee to make information on roaming services and charges sufficiently available to customers and where there are changes to charges those changes would be brought to the attention of a customer.

Clause 5 provides for the regulated rates that a licensee may charge a customer and for a customer and licensee to agree to a cap amount for charges that a customer may incur in one billing cycle. The clause also

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provides that a customer shall be notified in regards to his or her expenditure when the customer has reached the prescribed percentage of the agreed cap. A licensee is allowed to suspend a customer's roaming services when the customer reaches the agreed cap.

Clause 6 provides a customer access to emergency calling services free of charge when roaming and prohibits a licensee from charging a customer for emergency calls and another licensee a premium for roaming calls made to the local emergency services number by that provider's customer in [ECTEL Contracting State].

Clause 7 deals with inadvertent roaming. Inadvertent roaming is defined as the unintended use of a public mobile electronic communications network in a neighbouring state by a customer intending to use his or her service provider's network in [ECTEL Contracting State] or a provider's network in another ECTEL Contracting State in which he or she is roaming. Inadvertent roaming occurs when a mobile phone switches to a network of a neighbouring state without the customer entering that state's borders. The clause requires a licensee to take reasonable steps to avoid a customer incurring inadvertent roaming charges and prohibits a licensee from engaging in traffic-steering techniques, which will result in inadvertent roaming to the detriment of a customer.

Clause 8 provides for the regulation of wholesale roaming agreements and roaming charges between licensees and providers, which will have a direct impact on the retail rates charged to a customer. If a licensee is not regulated on the charges the licensee may charge another licensee or provider and the object and purpose of the Bill may be defeated.

Clause 9 provides for a fair use policy, which may include a cap on the amount of roaming services a customer may access. The 'fair use

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policy' is intended to prevent abusive or anomalous usage of regulated retail roaming services by roaming customers, such as the use of roaming services by roaming customers in an ECTEL Contracting State other than that of their service provider for purposes other than periodic travel. If a fair use policy is implemented usage which exceeds that of fair use may be charged an unregulated rate, which may be higher than the regulated rate.

Clause 10 sets out the functions of the Commission which include advising the Minister on regulated charges for roaming services, reviewing proposed wholesale agreements between licensees and other providers and making recommendations, resolving disputes in regards to roaming services and monitoring inadvertent roaming.

Clause 11 provides that Value Added Tax may be charged on roaming charges in accordance with the Value Added Tax Act, [] [No [] of []/Cap []].

Clause 12 provides for offences under the Bill and stipulates that a licensee that contravene provisions of the Bill is liable to a fine of 3% of the annual gross revenue for the previous year.

Clauses 13 and 14 provide for the Minister to amend the Schedule of the Act and to make regulations, respectively. The Schedule contains the ECTEL Contracting States.

**MOBILE ELECTRONIC COMMUNICATIONS
(ROAMING SERVICES) BILL****2.3 Arrangement of Clauses**

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Schedule: ECTEL Contracting States

**Mobile Electronic Communications (Roaming Services)
Regulations**

**2.4 Bill to Provide for the Regulation of Mobile
Electronic Communications Roaming Services**

**Mobile Electronic Communications (Roaming Services)
Regulations**

[L.S.]

I ASSENT

,
Governor-General.

Date.

[ECTEL CONTRACTING STATE]

No. of 2016

A BILL to provide for the regulation of mobile electronic communications roaming services rates by a provider of mobile electronic communications services and for related matters.

Commencement

BE IT ENACTED by the [], as follows —

Short title and commencement

1. (1) This Act may be cited as the Mobile Electronic Communications (Roaming Services) Act [2016].

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act —

“**Commission**” means the National Telecommunications Regulatory Commission established under [section 8 of the Electronic Communications Act, 20[] [No. [] of []];

“**customer**” means a person who —

(a) has contracted for the supply of mobile electronic communications services from a licensee;

(b) purchases a prepaid telephone card for the supply of mobile electronic communications services from a licensee to the extent of the value of the purchase at any given time;

“**ECTEL**” means the Eastern Caribbean Telecommunications Authority established under Article 2 of the Treaty;

“**ECTEL Contracting State**” means a State listed in the Schedule;

“**electronic communications service**” means a service provided wholly or partially by the conveyance of signals on an electronic communications network;

“**inadvertent roaming**” means the unintended use of a public mobile electronic communications network in a neighbouring state by a customer intending to use a public mobile electronic communications network in [ECTEL Contracting State];

“**licensee**” means a person holding a licence granted under the Electronic Communications Act, [20 [], No.[] of [20 []];

“**licensee network**” means the public mobile electronic communications network of a licensee to which a customer is subscribed;

“**Minister**” means the Minister responsible for electronic communications;

“**MMS**” means multimedia-messaging service and includes a telecommunications messaging service of long text, graphics, photos, audio clips, video clips, or a combination of long text, graphics, photos, audio clips, video clips;

“**mobile electronic communications services**” means electronic mobile voice, messaging and data communications services;

“**national roaming**” means the use by a licensee of another licensee’s network to provide services in a geographic area in [ECTEL Contracting State] where the licensee may not have coverage;

“**provider**” means a person, in another ECTEL Contracting State —

- (a) that provides mobile electronic communications service to the public; and
- (b) whose mobile electronic communications network a customer who is roaming may access for mobile electronic communications service;

“**public mobile electronic communications network**” or “**network**” means an electronic communications network used for the provision of electronic mobile voice, messaging or data communications service to the public;

“**roaming**” means the use of mobile electronic communications services outside a licensee’s network but within another ECTEL Contracting State;

“**SMS**” means short messaging service and includes a text messaging telecommunications service;

“**traffic-steering**” is the process by which a licensee or provider directs or steers a customer to a particular network whilst the customer is roaming;

“**Treaty**” means the Treaty establishing the Eastern Caribbean Telecommunications Authority signed at St. George’s, Grenada on 4th of May, 2000 and includes that Treaty as amended from time to time; the text of which is set out in

the Schedule to the Eastern Caribbean Telecommunications Authority Act, [Cap []];

“**wholesale roaming**” means the sale and purchase of mobile electronic communications services by an agreement between licensees for the provision of roaming service on a wholesale basis.

Application

3. (1) This Act applies to a licensee who provides access to a public mobile electronic communications network for roaming services.

(2) A licensee to which this Act applies shall, within [six] months after the commencement of this Act ensure compliance with the Act.

Roaming notification

4. (1) A licensee shall automatically notify a customer when the customer is roaming.

(2) A notification under subsection (1) shall be free of charge and shall include information to the customer on any charges for —

- (a) making and receiving a call;
- (b) sending and receiving a SMS;
- (c) sending and receiving a MMS; and
- (d) data.

(3) A licensee shall provide a customer with information on roaming charges by electronic means or otherwise.

(4) A licensee shall provide a customer with updated information on roaming charges without undue delay if there is a change in the charges.

Retail roaming charges

5. (1) A licensee shall charge a customer roaming charges no less favourable than the charges specified in the Regulations.

(2) A customer and a licensee may agree on a billing cycle cap for mobile electronic communication services.

(3) A licensee shall notify a customer when the customer has reached the prescribed percentage of the billing cycle cap agreed to under subsection (2).

(4) A licensee may suspend the roaming services of a customer when the customer reaches the billing cycle cap agreed to under subsection (2).

(5) A licensee shall make available to a customer information on roaming services available and the applicable charges for the services.

Emergency calling

6. (1) A licensee shall automatically notify a person who is accessing roaming services of the emergency services number in [ECTEL Contracting State].

(2) A licensee shall —

(a) provide a person who is accessing roaming services access to the emergency service number in [ECTEL Contracting State] free of charge; and

(b) not charge a provider in another ECTEL Contracting State a premium for roaming calls made to the local emergency services number by that provider's customer in [ECTEL Contracting State].

(3) A licensee shall not charge a customer for calls made to an emergency services number whilst roaming in another ECTEL Contracting State.

(4) A licensee shall make its network available for emergency calling to a customer's provider, notwithstanding a wholesale roaming agreement.

(5) A licensee shall make its network available to another licensee through national roaming for emergency calling.

Inadvertent roaming

7. (1) A licensee shall take all reasonable steps to protect a customer from inadvertent roaming.

(2) A licensee shall make available to a customer information on the possibility of inadvertent roaming and on how to avoid inadvertent roaming.

(3) A licensee shall take reasonable steps to protect a customer from paying roaming charges for inadvertent roaming.

(4) A licensee shall not engage in traffic-steering techniques which will result in inadvertent roaming.

Wholesale roaming agreements and charges

8. (1) A licensee shall consider a reasonable request for a wholesale roaming agreement from another licensee or a provider licensed in an ECTEL Contracting State.

(2) Where a wholesale roaming agreement exists a licensee shall grant the other licensee or provider access to all network elements and associated facilities, relevant services, software and information systems, necessary for the provision of roaming services to its customer.

(3) A licensee shall not agree to wholesale roaming charges higher than the prescribed charges.

(4) A licensee shall reduce retail roaming charges to reflect a reduction in wholesale roaming charges.

(5) A licensee shall not use traffic steering techniques as a result of a wholesale roaming agreement to the detriment of a customer.

Fair use

9. (1) A licensee, with the approval of the Commission, may stipulate a fair use policy as a condition to a wholesale roaming agreement.

(2) The objective of a fair use policy is to prevent abusive usage of regulated retail roaming services by a customer on a licensee's or provider's network for purposes other than periodic travel.

(3) A fair use policy may stipulate a cap on the amount of roaming services a customer may use on a licensee's or provider's network at the regulated rate.

[(4) Notwithstanding section 5, a licensee may charge a customer for roaming services at an unregulated rate where a cap under subsection (3) has been exceeded.]

[(5) Notwithstanding section 8, a licensee may charge another licensee or provider unregulated wholesale roaming charges where a cap under subsection (3) has been exceeded.]

Functions of Commission

10. (1) The Commission shall –
- (a) monitor and supervise compliance with this Act;
 - (b) advise the Minister on regulated charges for roaming services;
 - (c) review and, with the recommendation of ECTEL, approve or disapprove wholesale roaming agreements between licensees and providers;
 - (d) monitor and collect information on inadvertent roaming and take steps to mitigate the problem;
 - (e) investigate and resolve an unresolved dispute arising under this Act between a customer and a licensee concerning roaming services;
 - (f) provide guidelines, on the recommendation of ECTEL, as to the costing and pricing methodology to be used for the regulation of roaming charges; and
 - (g) refer to ECTEL any dispute arising under this Act between licensees and providers.
- (2) In the performance of its functions under this Act the Commission shall consult ECTEL.

Taxation

11. Roaming charges shall be subject to Value Added Tax at the rate specified in the Value Added Tax Act, [Cap []].

Offence

12. A licensee who fails to comply with this Act commits an offence and is liable on summary conviction to a fine not exceeding 3% of its annual gross revenue for the previous year.

Power to amend Schedules

13. The Minister may on the recommendation of ECTEL, by Order published in the *Gazette*, amend the Schedule.

Regulations

14. (1) The Minister may on the recommendation of ECTEL, make regulations as necessary or expedient to give effect to this Act.

(2) Without limiting the generality of subsection (1) the Minister may on the recommendation of ECTEL, make Regulations providing, in particular, for or in relation to –

- (a) retail and wholesale roaming charges;
- (b) the costing and pricing model to be used for roaming charges;
- (c) wholesale roaming agreements;
- (d) the procedure, form and threshold for customer notifications;
- (e) an agreement for a billing cycle cap for services and procedures that should be followed where a customer wishes to continue the provision of roaming services after a billing cycle cap is reached;
- (f) the percentages for an agreed billing cycle cap and at which an automatic notification is sent to a customer with roaming services; and
- (g) the standard and form of information that should be made available to a customer on roaming services and charges.

SCHEDULE*(Section 2)***ECTEL CONTRACTING STATES**

1. Commonwealth of Dominica
2. Grenada
3. Saint Lucia
4. The Federation of Saint Christopher and Nevis
5. Saint Vincent and the Grenadines

[Passed in the [House of Assembly] this day of , 2016.

[Clerk/ Speaker] of the [House of Assembly].

Passed in the [Senate] this day of , 2016.

[President of the Senate].

**Mobile Electronic Communications (Roaming Services)
Regulations**

**3 Statutory Instrument - Mobile
Electronic Communications (Roaming
Services) Regulations**

[ECTEL CONTRACTING STATE]

STATUTORY INSTRUMENT 20[], No []

MOBILE ELECTRONIC COMMUNICATIONS (ROAMING SERVICES) REGULATIONS 20[]

3.1 Arrangement of Regulations

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Schedule 1: Retail Roaming Pricing Model

Schedule 2: Wholesale Roaming Pricing Model

Schedule 3: Roaming Services and Charges Information Model

**Mobile Electronic Communications (Roaming Services)
Regulations**

[ECTEL CONTRACTING STATE]

STATUTORY INSTRUMENT 20[], No []

**3.2 Mobile Electronic Communications (Roaming Services)
Regulations**

[]

In exercise of the power conferred under section [14] of the Mobile Electronic Communications (Roaming Services) Act, 20 [] No [] of 20[] the Minister responsible for electronic communications, makes these Regulations:

Citation

1. These Regulations may be cited as the Mobile Electronic Communications (Roaming Services) Regulations, 20[].

Interpretation

2. In these Regulations—

“**Act**” means the Mobile Electronic Communications (Roaming Services) Act, 20 [] (No [] of 20[]); and

“**signature**” includes an electronic and a telephonic signature.

Roaming charges

3. (1) Retail roaming charges referred to in section 5 of the Act shall be calculated by using the pricing model in Schedule 3.

(2) Wholesale roaming charges referred to in section 8 of the Act shall be calculated by using the pricing model in Schedule 2.

Wholesale roaming agreements

4. (1) A wholesale roaming agreement referred to in section 8 of the Act must include provisions in regard to —

- (a) the agreed wholesale roaming charges in accordance with the Act;
- (b) the period of the agreement;
- (c) fair use volumes agreed to between the parties to the agreement;
- (d) services being provided by each party to the agreement;
- (e) management and access to roaming services;

Mobile Electronic Communications (Roaming Services) Regulations

-
- (f) requirements and conditions of access to network elements and associated facilities, relevant services, software and information systems, necessary for the provision of roaming services;
 - (g) handling of charging, billing and accounting;
 - (h) suspension of services to a customer;
 - (i) the termination of the agreement;
 - (j) liability of the parties to the agreement;
 - (k) amendments or changes to the agreement; and
 - (l) the law governing the agreement.

(2) The parties shall review a wholesale roaming agreement when required, but at least annually.

Notifications

5. A notification referred to in sections 4, 5 and 6 of the Act, by a licensee to a customer, shall—
- (a) be free of charge;
 - (b) be in an electronic format such as a SMS;
 - (c) remain available by the licensee for the customer to review when required;
 - (d) contain the time and date it is sent by the licensee; and
 - (e) automatically be sent to the customer upon the condition being met requiring notification.

Billing cycle cap

6. (1) A licensee and a customer may agree to a billing cycle cap for —
- (a) voice and messaging services;
 - (b) data services;
 - (c) roaming voice and messaging services;
 - (d) roaming data services; or
 - (e) services referred to in sub paragraphs (a) and

Mobile Electronic Communications (Roaming Services) Regulations

(2) In considering a billing cycle cap a licensee may make a credit check on the customer and have regard to the customer's—

- (a) account balance;
- (b) on-time bill payment;
- (c) average monthly bill;
- (d) deposit, or credit if any, being held; and
- (e) duration of service with the licensee.

(3) A customer may request a licensee to review a billing cycle cap and agree by signature to any changes to that cap.

(4) A customer may make a request to a licensee under subregulation (3) —

- (a) in person at a customer service location of the licensee,
- (b) in writing or electronic form to the licensee; or
- (c) over the telephone with a customer service representative of the licensee;

(5) A licensee shall send a notification to a customer at the following thresholds of the billing cycle cap—

- (a) seventy percent;
- (b) ninety percent; and
- (c) one hundred percent.

(6) A licensee may suspend all or some of roaming services provided to a customer when the billing cycle cap is reached.

(7) If service is suspended under subregulation (6), the licensee may resume the service of a customer if the customer —

- (a) makes a payment to the satisfaction of the licensee;
or
- (b) makes a request, subject to approval, for an increase of the billing cycle cap.

(8) Regulations 2 and 3 shall apply to a request made under subregulation 7(b).

Mobile Electronic Communications (Roaming Services) Regulations

Information to be made available to customers

7. (1) A licensee shall make the information referred to in section 5(5) of the Act available to a customer in a format similar to Schedule 1.

(2) A licensee shall make the information referred to in subregulation (1) available to a customer through —

- (a) a customer service location;
- (b) telephonic customer service;
- (c) the licensee's website;
- (d) SMS service; and
- (e) the licensee's social media sites.

(3) A licensee shall update information in the media referred to in subregulation (3) immediately and without undue delay if any changes to charges are made.

Mobile Electronic Communications (Roaming Services) Regulations

SCHEDULE 1

(Regulation 7)

ROAMING SERVICES INFORMATION KEY

Roaming service	Maximum Price (EC\$)	
	Pre-paid customers	Post-paid customers
Making call within the visited country		
Making call to home country		
Making call to another ECTEL Contracting State		
Making call to non-ECTEL Contracting State		
Receiving call from within the visited country		
Receiving call from home country		
Receiving call from another ECTEL Contracting State		
Receiving call from a non-ECTEL Contracting State		
Sending SMS within the visited country		
Sending SMS to home country		
Sending SMS to another ECTEL Contracting State		
Sending SMS to a non-ECTEL Contracting State		
Receiving SMS from within the visited country		
Receiving SMS from home country		
Receiving SMS from another ECTEL Contracting State		
Receiving SMS from a non-ECTEL Contracting State		
Sending MMS within the visited country		
Sending MMS to home country		
Sending MMS to another ECTEL Contracting State		
Sending MMS to a non-ECTEL Contracting State		
Receiving MMS from within the visited country		
Receiving MMS from home country		

4 Explanatory note for proposed approach to setting roaming prices in the ECTEL Member States

Background

The Eastern Caribbean Telecommunications Authority (ECTEL) has conducted research to explore and develop a pricing regime for roaming within the Contracting States. This note presents ECTEL's recommendation for a regime to regulate roaming rates within the Member States. In developing the regime for roaming in the Contracting States, ECTEL drew extensively on work done by the European Commission, the Gulf Cooperation Council and the South African Development Community in regulating high roaming rates within their territories. The recommendation for roaming rates focuses on the approaches adopted by the European Commission and the Communications Regulators' Association of South Africa.

Roaming Pricing Strategies

In the quest to develop appropriate prices for mobile roaming, ECTEL explored the option of implementing regulation at the wholesale and retail levels. Cantero³ (2011) argues that regulation at both levels is necessary where each level is characterized by the absence of (sufficient) competition. Cantero (2011) further notes that reductions in wholesale prices are likely to foster retail price reductions since high wholesale prices usually serve as an obstacle to competition at the retail level. In effect, the simultaneous regulation of wholesale and retail prices is necessary in an environment of limited competition where operators may have little incentive to pass savings from lower wholesale prices to retail prices⁴.

(a) Regulating Roaming Prices at the Wholesale Level

According to Cantero (2011), operators will charge retail customers a price which reflects wholesale roaming costs and a mark-up for retail costs. It is therefore imperative that wholesale roaming prices are regulated to ensure that they are cost based, to encourage competition and to keep retail prices down. Such regulation may involve setting wholesale price caps or cost-orientation obligations. Price cap regulations typically entail adjusting the

³ Based on a presentation by David Bernal Cantero: International Mobile Roaming setting price: achievements and experiences, at Regional Seminar on Costs and Tariffs for Member Countries of the Regional Group for Asia and Oceania (SG3RG-AO) March 2011.

⁴ See GSR 2012 Discussion Paper: International Mobile Roaming Services: A Review of Best Practice Policies.

Mobile Electronic Communications (Roaming Services) Regulations

prices of an operator against a price cap index which represents the overall inflation rate, the production efficiencies of the operator relative to the average operator and the relative inflation on the operator's input prices. In practice, mobile wholesale price caps are normally set at a level which is a percentage of national mobile termination rates as these rates directly affect the retail prices charged⁵. In the case of the ECTEL Member States, it is proposed that the wholesale roaming prices be set using a price cap which reflects a multiplier of the national mobile termination rates of the ECTEL Member States.

(b) Regulating Roaming Prices at the Retail Level

To be effective, a roaming price regulatory regime must ensure the pass through of wholesale savings to retail prices. As the evidence from the European Union shows, a wholesale price cap may not be totally effective in attaining reductions in retail roaming prices, as operators may opt to adjust prices to meet the requirements of the cap but not reduce prices below the cap⁶. It would therefore be necessary to constantly monitor retail prices to ensure that wholesale prices are being passed through to retail prices. Alternatively, the regulatory regime may include retail price regulation in addition to the wholesale price regulation.

To avoid the market distortions that may result from the introduction of only wholesale roaming price regulation ECTEL also proposes the introduction of retail price regulation for roaming services. Of the options available, the Home Pricing or Roam Like You Are Home option is proposed for regulating roaming prices at the retail level. Under that approach, when travelling within the ECTEL Member States, roaming prices are pegged to a customer's home prices for comparable mobile services.

For example, a Saint Lucian customer who is roaming in St Kitts and Nevis and making a call within that country would be charged a price that does not exceed the price of making a similar call if the customer was back home in Saint Lucia. There would be no charge for incoming calls. ECTEL notes that a similar approach is currently being used by at least one mobile operator in the ECTEL Member States.

Conclusions

To ensure competition and affordable retail roaming prices, ECTEL is proposing regulation of wholesale and retail roaming prices through the introduction of a price cap mechanism at the wholesale level (using the multiplier of national mobile termination rates) and through the adoption of a Home Pricing or Roam Like You Are Home option at the retail level.

⁵ GSR 2012 Discussion Paper: International Mobile Roaming Services: A Review of Best Practice Policies.

⁶ GSR 2012 Discussion Paper: International Mobile Roaming Services: A Review of Best Practice Policies.

Mobile Electronic Communications (Roaming Services) Regulations

This price regulation regime for roaming is expected to have the following benefits:

- promote competition and fair pricing of mobile roaming services;
- promote transparency and comprehensibility of roaming rates for customers;
- facilitate the monitoring of wholesale and retail roaming prices; and
- increase consumer surplus more than the regulation at the wholesale only or retail only level.