

PUBLIC NOTICE

NOTIFICATION OF THE MODIFICATION OF ALL INDIVIDUAL LICENCES AND FREQUENCY AUTHORISATIONS AND ECTEL'S RESPONSES TO INITIAL COMMENTS RECEIVED ON MODIFIED INDIVIDUAL LICENCES AND FREQUENCY AUTHORISATION TEMPLATES

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

To the National Telecommunications Regulatory Commission to Consult on –
ECTEL's responses to comments received from initial responses on the Revised Individual Licence Templates and Frequency Authorisation.

1. The National Telecommunications Regulatory Commission is in receipt of this notification of the Modification of Individual Licences and Frequency Authorization templates, for the submission of comments on responses to comments revised on the Individual Licence templates and Frequency Authorisation for its Member States.
2. In light of the submissions received, the licences have been further modified and comments on the proposed modifications can be submitted to the National Telecommunications Regulatory Commission during the period **Thursday, June 1st 2017 until Friday 30th June 2017**.
3. Notification for commencement date for the Revised Licences and Frequency Authorisation is **1st October 2017**
4. All responses and comments should be written and sent by post, fax or e-mail **no later than 4:30pm** on the due date to: -

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ECTEL
P.O. Box 1886
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NOTIFICATION OF MODIFICATION OF INDIVIDUAL LICENCES AND FREQUENCY AUTHORIZATIONS

Commencing in December of 2016 and continuing into 2017, the National Telecommunications Regulatory Commission (NTRC) in the ECTEL Contracting States, sent out correspondence informing holders of Individual licences, that the Minister acting on the recommendation of ECTEL proposed modifications to the following Individual licences and Frequency Authorisation:

The Provision of –

1. Fixed Public Telecommunication Networks and Services;
2. Internet Network and Services;
3. Public Mobile Telecommunications Networks and Services;
4. Submarine Cable Landing;
5. Subscriber Television; and
6. Frequency Authorization.

The Regulator has had an opportunity to examine comments received, which can be summarized as follows:

1. The reason for the modification of licences and frequency authorizations was requested.
2. The legal basis for the proposed modifications was sought.
3. Whilst consent to the modifications was given by some providers, objection was raised to specific provisions being included in the licences such as “net neutrality”, “number portability”, “change of control”, and “electronic communications service”, was said to be undefined by law.
4. Lack of clarity with respect to who is making the decision and scope of the decision.
5. The new licence conditions are ultra vires the Telecommunications Act.
6. The conditions are unreasonable.
7. Public interest not satisfied, despite Minister’s powers to amend licences without consent in the public interest.

Reasons for the modifications

Electronic communication is an essential public service in St. Kitts and Nevis. The current licences have failed to address the changing regulatory needs of the sector, including convergence of networks, competition or number portability in St. Kitts and Nevis. There are therefore deficiencies to be addressed which can adequately be addressed through the modification of licences. The purpose of the licence is to create legal certainty for all, and to act as a binding contract between the investor and the government. Licences specify the rights and obligations of operators and what the government expects from them and investors in the sector. An amendment to all licences creates a level playing

field for competition and engenders transparency, as the licensing decision is based on criteria published in advance taking into account the views of the existing operators and allowing the terms and conditions of the licence to be "fine-tuned".

The only limitation on the Minister's ability under the Telecommunications Act, to amend the terms and conditions of a licence relates to "statutory terms". It is in the spirit of relevance, non-discrimination, transparency and due process that holders of Individual Licences have been informed of the proposed modifications to their licences and have been given an opportunity to consent or comment.

The current deficiencies in Individual licences in addition to those mentioned above, include but are not limited to the following:

- (i) The need for clarity in relation to the renewal process for all Individual licences. Currently licencees set out a renewal procedure which states that the Licensee is to write to the Minister. This has been interpreted to mean that the Licensee is able to write a letter to the Minister stating the desire to renew and that this will suffice. There is a need therefore, to provide clarity as there are "forms" provided under the Telecommunications (Licensing and Authorisation) Regulations to be used for renewal of licences.
- (ii) The need to maintain an "open internet" to ensure access to electronic communication services to the public, in St. Kitts and Nevis. This has resulted in a definition of "net neutrality" being included in the Licences. This definition has been further modified as a result of comments received, to date, from:

"net neutrality" means the principle that an electronic communications network and licensees treat all data on the internet the same, not intercepting, interrupting, blocking, degrading, or discriminating by user, content, site, platform, application, type of attached equipment, mode of electronic communications or source or destination of electronic communications;

to

"net neutrality" means the principle that an electronic communications network and licensees permit all data over the internet by not interrupting, throttling, blocking or degrading such data.

- (iii) Convergence of services, has rendered it necessary for licences to address not only telecommunications, but electronic communications in St. Kitts and Nevis. The definition of "electronic communications" includes telecommunications. This will

enable the sector to address developments in the sector in areas such as cyber security, and “over the top services” amongst others.

- (iv) Number portability and consumer protection are also areas which current licences have failed to address. Both these matters give customers greater choice. Consumer protection clearly defines rights and obligations of operators when dealing with customers and increases confidence in the regulatory framework.
- (v) Provisions on “Change of Control” have become necessary to ensure that the Regulator is able to undertake due diligence on those who hold and operate Individual licences within the sector. Recent mergers have brought to light the need for such conditions in licences. To do otherwise would leave the sector open to abuse from money launders and limit the powers of the Regulator in its regulation of the sector.
- (vi) The provisions relating to “significant Interest” also enable the Regulator to be aware of the changes in the company and shareholding of Operators.
- (vii) The use of scarce resources such as radio frequency is also matter of concern in particular the use of 700MHz to facilitate the availability of broadband in the ECTEL Contracting States. It is therefore necessary to put greater controls in place for the use of spectrum generally and for its forfeiture, reassignment etc.

Legal Basis for the modifications

- (viii) Within the legal framework of the ECTEL Contracting States a procedure has been sent out under PART II of the Telecommunications Act No: 2 of 2000 as amended of the St. Kitts and Nevis, addresses “Licensing of Telecommunications Providers”. Within this framework the modification of licences is addressed. Section 12 of the Telecommunications Act, No 2 of 2000 as amended of the St. Kitts and Nevis, Regulation 20 of Telecommunications (Licensing and Authorisation) Regulations S.R.O. 2 of 2002 and within the terms and conditions of Licences, which state as follows:

Modification of licences and authorisations

Section 12.— (1) A licence granted under this Act may, on the recommendation of the Authority, be modified where the Minister and the Licensee by agreement in writing, agree to modify the licence.

(2) Notwithstanding the provisions of subsection (1) of this section and subject to any special conditions concerning modification of the relevant licence, the Minister may on the recommendation of the Authority, modify any licence without the agreement of the

licensee if the modification is necessary in the public interest or for reasons of national security.

(3) The Minister may, after consultation with the members of the relevant class and on the recommendation of ECTEL, modify a class licence.

(4) The Minister may, on the recommendation of ECTEL and where the Minister and the frequency authorization holder agree in writing modify the frequency authorization if the Minister is of the view that the modification is necessary in the public interest or for reasons of national security.

Further under Regulation 20 of the Telecommunications (Licensing and Authorisation) Regulations S.R.O. 2 of 2002 of St. Kitts and Nevis;

Variation, Revocation or Suspension

Section 20.- (1) Where the Minister proposes to vary, or revoke or suspend a licence or frequency authorization, he shall notify the licensee or authorization holder—

(a) of the reasons for the proposed variation, revocation or suspension; and

(b) specify a period of not less than 30 days from the date of the notice within which representation with respect to the proposal may be made.

Terms of the Licence

Clause 5 - Duration and Renewal

Clause 5.4: "On granting a renewal of the Licence the Minister may vary the terms of the Licence if the Minister considers it necessary to do so".

Clause 8 - Modification, suspension and revocation

Clause 8.1: "This licence shall be subject to modification, variation, suspension and revocation according to Sections [-] of the Act".

Clause 8.2 "In deciding whether to agree to an amendment proposed by the Licensee, the Minister shall give due consideration to any submission received from the Licensee and other interested parties in relation to the proposed amendment".

No other obligations have been placed upon the Minister

In light of these regulatory provisions, the Minister acting on the Recommendation of ECTEL notifies you of the proposed modifications to Individual licences. These

modifications are to take effect on **1st October 2017**. You are invited to consent or comment on these, modifications under the provisions of the Telecommunication Act, No:2 of 2000 as amended of St. Kitts and Nevis and its Regulations.

In light of the submissions received, the licences have been further modified as indicated above and comments on the proposed modifications can be submitted to the National Telecommunications Regulatory Commission during the period **Thursday, June 1st 2017 until Friday 30th June 2017**.

The amended individual licences and frequency authorisation, are available on the website for review.