

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: -

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

NTRC St. Vincent and the Grenadines

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 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.

Reason for the modifications

Electronic communication is an essential public service in St. Vincent and the Grenadines. The current licences have failed to address the changing regulatory needs of the sector, including convergence of networks, competition and number portability in St. Vincent and the Grenadines. 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. Vincent and the Grenadines. 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. Vincent and the Grenadines. 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.

Legal Basis for the modifications

- (vii) Within the legal framework of the ECTEL Contracting States a procedure has been sent out under PART IV of the Telecommunications Act of Saint Vincent and the Grenadines No: 1 of 2001, to address "Licensing of Telecommunications Providers". Within this framework the modification of licences is addressed. Sections 37 and 38 of the Telecommunications Act, No 1 of 2001 of Saint Vincent and the Grenadines, Regulation 25 of Telecommunications (Licensing and Authorisation) Regulations and within the terms and conditions of Licences, which state as follows:

Modification licences and authorisations

Section 37.— (1) The Minister may, on the receipt of a recommendation from ECTEL modify-

- (a) an individual licence where he and the Licensee agree in writing.
- (b) a class licence following appropriate consultation with members of the relevant class.
- (c) a frequency authorization where he and the licensee agree in writing.

- (d) a licence or frequency authorization without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for reasons of national security.

Section 37. (2) A licensee who seeks a modification of a licence shall apply in the same manner as he did for the initial licence.

Suspension and revocation of licences and authorization

Section 38— (1) The Minister may suspend or revoke a licence, or vary a non-statutory term and condition of that licence if it is not a statutory term or condition by a notice in writing served on the licensee.

Further under Regulation 25 of the Telecommunications (Licensing and Authorisation) Regulations 2007 of Saint Vincent and the Grenadines;

Revocation of licence

Section 25. — (1) Where the Minister proposes (herein called the "proposal") to vary, suspend or revoke a Licence or frequency authorization, he shall notify the licensee or frequency authorization holder-

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

(b) of the date on which the variation, suspension or revocation is proposed to take effect, and the period within which representation on 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:1 of 2001 of Saint Vincent and the Grenadines and its Regulations as amended.

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.