

[ECTEL CONTRACTING STATE]

DRAFT

**MOBILE ELECTRONIC
COMMUNICATIONS (ROAMING
SERVICES) BILL**

EXPLANATORY NOTE
MOBILE ELECTRONIC COMMUNICATIONS
(ROAMING SERVICES) BILL

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 and one schedule.

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 electronic 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 a customer 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 postpaid subscriber and licensee to agree to a cap

30 March 2017

amount for charges that a postpaid subscriber may incur for mobile services including roaming services. The clause also 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 billing cap or the prepaid balance. A licensee is allowed to suspend a postpaid customer's roaming services when the postpaid subscriber 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. A licensee is also required to make its network available for emergency calling services to a customer accessing roaming services.

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 protect a customer from inadvertent roaming 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

30 March 2017

not regulated on the charges the licensee may charge another licensee or provider, then 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 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 providers 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, 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 contravenes provisions of the Bill is liable to a fine not exceeding \$20,000 and in the case of a continuing offence a fine not exceeding \$1000 for each day the offence continues after conviction.

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.

30 March 2017

**MOBILE ELECTRONIC COMMUNICATIONS
(ROAMING SERVICES) BILL**

DRAFT

ARRANGEMENT OF CLAUSES

CLAUSE

1.	Short title and commencement	7
2.	Interpretation	7
3.	Application	9
4.	Roaming notification	9
5.	Retail roaming charges	9
6.	Emergency calling	10
7.	Inadvertent roaming	10
8.	Wholesale roaming agreements and charges	11
9.	Fair use	11
10.	Functions of Commission	12
11.	Taxation	12
12.	Offence	13
13.	Power to amend Schedule	13
14.	Regulations	13

Schedule: ECTEL Contracting States

30 March 2017

DRAFT

I ASSENT

[L.S.]

Governor-General.

Date.

[ECTEL CONTRACTING STATE]

No. of 2017

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 —

30 March 2017

Short title and commencement

1. (1) This Act may be cited as the Mobile Electronic Communications (Roaming Services) Act [20 []].

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

Interpretation

DRAFT

2. In this Act —

“**billing cap**” means a limit on the amount of charges that a postpaid subscriber may incur for electronic mobile communications services including roaming services;

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

“**customer**” includes a postpaid subscriber and a prepaid subscriber;

“**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] or a network of a provider in another ECTEL Contracting State in which the customer is roaming;

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

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

30 March 2017

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

“**postpaid subscriber**” means a person who contracts for mobile electronic communications services and is billed after his or her use of the services;

“**prepaid subscriber**” means a person who contracts for mobile electronic communications services by purchasing credit or blocks of usage time;

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

- (a) that provides mobile electronic communications service to the public; and
- (b) whose public 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 the network of a licensee 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

30 March 2017

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

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

DRAFT

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 to a customer —

- (a) information on roaming charges by electronic means or otherwise; and
- (b) 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.

30 March 2017

(2) A postpaid subscriber and a licensee may agree on a billing cap for electronic mobile communication services including roaming services.

(3) A licensee shall notify a postpaid subscriber when that subscriber has reached the prescribed percentages of the billing cap agreed to under subsection (2).

[(4) A licensee shall notify a prepaid subscriber when that subscriber has reached the prescribed percentages of his, her or its credit balance.]

(5) A licensee may suspend the roaming services of a postpaid subscriber when that subscriber has reached the billing cap agreed to under subsection (2).

(6) 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 —

- (a) automatically notify a person who is accessing roaming services on the network of a licensee of the emergency services number in [ECTEL Contracting State]; and
- (b) make its network available for emergency calling to a person who is accessing roaming services.

(2) A licensee shall —

- (a) provide a customer who is accessing roaming services access to the emergency services number in [ECTEL Contracting State] free of charge; and
- (b) not charge a customer for calls made to an emergency services number whilst the customer is roaming in another ECTEL Contracting State.

Inadvertent roaming

7. A licensee shall —

- (a) make available to a customer information on the possibility of inadvertent roaming and on how to avoid inadvertent roaming;

30 March 2017

- (b) take reasonable steps to—
 - (i) protect a customer from inadvertent roaming, and
 - (ii) prevent a customer from incurring charges for inadvertent roaming; and
- (c) not engage in traffic-steering techniques which will result in inadvertent roaming to the detriment of a customer.

DRAFT

Wholesale roaming agreements and charges

8. A licensee shall —

- (a) consider a reasonable request for a wholesale roaming agreement from another licensee or a provider and shall not enter into a wholesale roaming agreement unless the agreement is approved by the Commission acting on the recommendation of ECTEL;
- (b) ensure that mobile electronic communication services provided to a customer of a provider are of no less quality than the mobile electronic communication services provided to the customer of a licensee;
- (c) not agree to wholesale roaming charges higher than the prescribed charges; and
- (d) not engage in traffic-steering techniques as a result of a wholesale roaming agreement that will result in a customer incurring higher charges for roaming services.

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 the network of a licensee or provider for purposes other than periodic travel.

30 March 2017

(3) A fair use policy may stipulate a cap on the amount of roaming services —

- (a) a customer may use on the network of a licensee or provider at the regulated rate; or
- (b) a licensee may provide another licensee or provider 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 of 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) Part [] of the Telecommunications Act, [] Cap [] shall apply to a dispute under subsection (1) (f).]

OR

[(2) Part 10 of the [Electronic Communications Act, Cap []] shall apply to a dispute under subsection (1) (f).]

30 March 2017

(3) 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. (1) A licensee who fails to comply with this Act commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 and in the case of a continuing offence a fine not exceeding \$1000 for each day the offence continues after conviction.

(2) In proceedings for an offence under subsection (1) it is a defence for a licensee to show that —

- (a) reasonable steps were taken to comply with the relevant provision; or
- (b) it was not possible to comply with the relevant provision.

Power to amend Schedule

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;

30 March 2017

-
- (e) an agreement for a billing cap for mobile electronic services and procedures that should be followed where a customer wishes to continue the provision of roaming services after a billing cap is reached;
 - (f) the percentages of an agreed billing cap 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.

DRAFT

30 March 2017

SCHEDULE
(Section 2)

ECTEL CONTRACTING STATES

DRAFT

30 March 2017

[ECTEL CONTRACTING STATE]

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

DRAFT

[Passed in the [House of Assembly] this day of , 2017.

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

Passed in the [Senate] this day of , 2017.

[President of the Senate].