

PUBLIC NOTICE

NOTIFICATION OF THE MODIFICATION OF ALL INDIVIDUAL LICENCES AND FREQUENCY AUTHORISATIONS AND

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

**To the National Telecommunications Regulatory Commission to Consult on
– Minor Modification of Individual Licences and Frequency Authorisations**

1. The National Telecommunications Regulatory Commission is in receipt of this notification of the Minor Modification of Individual Licences and Frequency Authorisations, and requests comments and responses on the modified Individual Licences and Frequency Authorisations.
2. Comments on the proposed modification can be submitted to the National Telecommunications Regulatory Commission during a four (4) week period from **11th June, 2019 until 10th July, 2019.**
3. All comments and responses should be written and sent by post, fax or e-mail **no later than 4:30pm** on the due date to: -

[Address of NTRC]

[Fax number of NTRC]

Email: [\[email of NTRC and consultation@ectel.int\]](mailto:[email of NTRC and consultation@ectel.int])

All comments should be clearly marked **"Comments on Modification to Individual Licences and Frequency Authorisations Consultation Paper"**.

Commonwealth of Dominica

NOTIFICATION OF MODIFICATION OF INDIVIDUAL LICENCES AND FREQUENCY AUTHORISATIONS

The National Telecommunications Regulatory Commission in the ECTEL Contracting States, sent out correspondence informing holders of Individual licences and frequency authorisations, that the Minister acting on the recommendation of ECTEL proposed a minor modification to the following Individual licences and frequency authorisations:

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 current Electronic Communications (EC) Bill and its Regulations having incorporated input from stakeholders, were approved by the Council of Ministers at its 33rd Council of Ministers' Meeting. However, since the EC Bill was approved by the Council of Ministers, ECTEL has found it necessary to make changes to the draft, recognising the transitional period the sector will encounter during the implementation of the new EC legislative framework.

In the recent past, ECTEL had advised the Commissions and the service providers that there was an ongoing review of the current licensing framework and draft EC legislative framework, with subsequent advice to be rendered to the Council of Ministers on the way forward.

The Commission is therefore pleased to inform of the unanimous decision by Special Resolution of all five (5) members of the Council of Ministers consenting to the implementation of a proposed minor modification to all Individual licences and frequency authorisations in each Contracting State.

The proposed Minor Modification to Individual Licences and Frequency Authorisations:

ECTEL recommends that a minor modification to all Individual Licences and Frequency Authorisations be made, which will be in line with section 39 of the Telecommunications Act (No. 8 of 2000) as amended and to vary existing Individual Licences and Frequency Authorisations by regulation 19 of the Telecommunications (Licensing and Authorisation) Regulations (S.R.O. 7 of 2002).

The proposed minor modification is to insert the following “Change of Law” provision:

“Notwithstanding any provision to the contrary, where the Act is amended, or repealed and replaced, the amendments or the new Act as the case may be, shall apply to this licence and this licence shall, immediately upon the coming into force of the amendments or new Act, be read as if the licence were issued under and in accordance with the provisions of the amended or new Act”.

The necessity for the insertion of the “Change of Law” provision in all Individual licences and frequency authorisations, is a consequence of the new law that will come into force in all ECTEL Contracting States before the end of 2019. This new law will be the EC Act (once promulgated and in force) and Regulations made under the EC Act. The function of this new provision within the Individual licences and frequency authorisations, is to make special provision for the application of the EC Act and its Regulations, to circumstances relating to licences, which would have existed at the time when the EC Act and its Regulations become the new legal framework.

Revision of provisions in the Electronic Communications Bill

In order to align the Change of Law provision with the draft EC legislative framework, ECTEL has revised the “Repeal and Savings” provision and added a new “Transitional” provision into the EC Bill. The proposed provisions are as follows:

“133. Repeal AND savings

- (1) The Telecommunications Act [No. 8 of 2000] is repealed.**
- (2) Notwithstanding subsection (1) —**
 - (a) any subsidiary legislation made under the repealed Act shall, in so far as it is not inconsistent with this Act, remain in operation until revoked or replaced by subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act; and**
 - (b) any act done, or any decision, appointment, other matter made under the repealed Act, shall be deemed to have been done or made under this Act.**
- (3) A person authorised to operate a telecommunications network or provide a telecommunications service or use radio frequencies as at the date of entry into force of this Act, is deemed to be operating an electronic communications network or providing an electronic communications service or using radio frequencies under a licence issued under this Act.**
- (4) A declaration of dominance or consent to dominance under the Telecommunications Act [No. 8 of 2000], is a determination of**

significant market power at the date of the entry into force of this Act.

134. TRANSITIONAL

- (1) Notwithstanding any other provision in any other law, a person authorised to operate a telecommunications network or provide a telecommunications service or use radio frequencies as at the date of the entry into force of this Act, may continue to operate an electronic communications network or provide an electronic communications service or use such radio frequencies for a period of one (1) year after the commencement of this Act, as if they had been granted a licence under this Act.**
- (2) After the period of one (1) year, the person in subsection (1) is required to apply for a grant of a licence with new terms and conditions in accordance with this Act and Regulations made under this Act."**

The purpose of the Repeal and Savings provision is to revoke the Telecommunications Act in the respective Contracting States, so that it ceases to have effect, once the EC Act is passed into law and is in force. However, despite this Repeal provision, the 'Savings' aspects in the provision, is to preserve or 'save' any act done, decisions made, or licences granted under the repealed Telecommunications Act.

The introduction of the Transitional provision is to facilitate the change from one statutory regime to another. Thus, the transitional provision will allow for a smoother transition from the current legislative framework under the Telecommunications Act, to the new legislative framework under the EC Act (once promulgated and in force).

The EC Bill contains substantive amending and repealing provisions, therefore it was necessary to include a Transitional provision within the EC Bill to regulate the coming into operation of those provisions and modify the effect during the period of transition, which is one (1) year. Therefore, it should be noted that the Transitional provision has a temporary operation and would become inoperable one (1) year from the date the EC Act comes into force in each Contracting State.

Before the one-year transitional period has ended in each Contracting State, all service providers will be required to apply for a new licence under the new licensing framework. These new licence templates will be developed, to include new terms and conditions, in line with the new EC legislative framework.

Legislative provisions under the Telecommunications Act (No. 8 of 2000) and Telecommunications (Licensing and Authorisation) Regulations (S.R.O. 7 of 2002) of the Commonwealth of Dominica

Telecommunications Act

Section 39—

- (1) The Minister may, on the receipt of a recommendation from ECTEL modify an individual licence where he and the Licensee agree in writing.*
- (2) The Minister may, on receipt of a recommendation from ECTEL modify a class licence following appropriate consultation with members of the relevant class.*
- (3) The Minister may, on receipt of a recommendation from ECTEL, modify a frequency authorisation where he and the licensee agree in writing.*
- (4) The Minister may, on receipt of a recommendation from ECTEL modify a licence or frequency authorisation 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.*
- (5) A licensee who seeks a modification of a licence shall apply in the same manner as he did for the initial licence.*

Telecommunications (Licensing and Authorisation) Regulations

Regulation 19—

- (1) Where the Minister proposes to vary, or revoke or suspend a licence or frequency authorisation, he shall notify the licensee or frequency authorisation holder—*
 - (a) of the reasons for the proposed variation, revocation or suspension; and*
 - (b) specify a period of not less than two months from the date of the notice within which representation with respect to the proposal may be made.*

Terms of the Licence and Frequency Authorisations

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 39 and 40 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 and Frequency Authorisations. You are invited to consent or comment on the proposed modification under the provisions of the Telecommunication Act (No.8 of 2000) of the Commonwealth of Dominica.

An example of a modified Individual Licences and Frequency Authorisation is available on the website for review.