

# CABLE AND WIRELESS

Response to ECTEL Consultation on

## Recommendation to Amend the Telecommunications (Fees) Regulations of the ECTEL Member States for New Satellite Services

## 1. INTRODUCTION

**1.1** Cable and Wireless Limited dba Flow is pleased to provide comments on “ **Recommendation to Amend the Telecommunications (Fees) Regulations of the ECTEL Member States for New Satellite Services**”, (the Consultation Document) published November 30, 2021.

**1.2** This response is made on behalf of Cable & Wireless (St. Lucia) Limited ; Cable & Wireless (St. Kitts and Nevis) Limited ; Cable & Wireless (Grenada) Limited; Cable & Wireless (Dominica) Limited; Cable & Wireless (St.Vincent and the Grenadines) Limited.

**1.3** Flow expressly states that failure to address any issue raised in the Consultation Document does not necessarily signify its agreement in whole or in part with any position taken on the matter by ECTEL or respondents. Flow reserves the right to comment on any issue raised in the Consultation Document at a later date.

**1.4** The responses contained herein are preliminary because of the lack of sufficient time provided for response as the document was published on the cusp of the Christmas season.

**1.5** Please send all responses to this Consultation Document and any matters arising to Melesia Sutherland at [melesia.sutherland@cwc.com](mailto:melesia.sutherland@cwc.com); and Opal Neil at [opal.neil@cwc.com](mailto:opal.neil@cwc.com).

## 2. MEANINGFUL CONSULTATION

2.1 ECTEL published The Consultation Document ‘**Recommendation to Amend the Telecommunications (Fees) Regulations of the ECTEL Member States for New Satellite Services**’ on November 30, 2021 on the cusp of the Christmas season, a traditionally popular and well-known time for vacation leave, and requesting initial comments by December 14, 2021 when many members of staff would be on vacation leave. Publishing the Consultation Document on the cusp of the holiday season and requesting responses in the midst of the season is tantamount to impairing the Company’s legal right to be heard and the meaningfulness of the consultation.

2.2 Nor did the Commission give any indication in an annual workplan, a notice or otherwise that it intended to publish a Consultation Document on “**Recommendation to Amend the Telecommunications (Fees) Regulations of the ECTEL Member States for New Satellite Services**” so that the Company could be aware of the proposed Consultation Document and make the necessary internal plans for the deployment of resources to support the consultation and provide feedback to the Commission during a holiday period.

2.3 Flow’s letter to the NTRC St. Kitts, dated December 9, 2021 and copied to the Commission states:

Given the nature of the subject for consultation, we consider that more time is needed to prepare a robust response for submission of initial comments, and therefore final comments. We are also mindful that the response times to the Consultation is within the holiday period, during which various key staff members are unavailable because of scheduled vacation leave.

We are therefore requesting an extension of time to January 31, 2022 for initial comments, and February 7, 2022 for comments on comments.

2.4 The Commission’s response by way of Public Notice, dated December 15, 2021 follows:

**PUBLIC NOTICE**

**Extension of Initial Period for Comments on  
Recommendation of the Eastern Caribbean Telecommunications Authority  
("ECTEL")**

**To the National Telecommunications Regulatory Commission to Consult on –  
Amendment to the Telecommunications (Fees) Regulations of the ECTEL Member States for new Satellite Services  
15th December 2021**

1. The National Telecommunications Regulatory Commission is in receipt of this notice from ECTEL for an extension of the period for initial comments on the submission from ECTEL to the National Telecommunications Regulatory Commissions on the **Amendment to the Telecommunications (Fees) Regulations of the ECTEL Member States for new Satellite Services**
2. Appreciating that the consultation document was relatively inextensive, ECTEL proposed an initial period for comment of **two weeks**.
3. Recognising the importance of the Amendments to the Telecommunications (Fees) Regulations for new Satellite Services in the ECTEL Member States, ECTEL encourages all stakeholders to provide their comments on the consultation document.
4. Noting the interest expressed, and considering requests received thus far during this consultation, ECTEL has decided that the deadline for submission of initial comments be extended to **Wednesday 12th January 2022** to allow interested parties more time to submit comments.
5. The period for reply comments will now run from **Monday 17th January – Monday 31st January 2022**
6. All responses to the Consultation Documents or correspondence in relation to this consultation should be written and sent via e-mail **no later than 4:30 pm** on the due date to: -

Managing Director

ECTEL

P. O. Box BW395, Gros Islet, LC01 601 Saint Lucia

Fax: 1-758-458-1698

Email: [consultation@ectel.int](mailto:consultation@ectel.int)

**2.5** The Commission extended the timeframe for response to more or less the end of the holiday period, still insufficient time for Flow and short of the time Flow requested. The Commission surmised, at paragraph 2 of the Public Notice that “*..the consultation document was relatively inextensive*”. That the Document is “*inextensive*” is indeed the concerning aspect of the Consultation Document.

**2.6** Therefore Flow submits this response as a preliminary response to the Consultation Document given that ECTEL has not provided sufficient time for a more extensive response.

### **3. COMMENTS ON CONSULTATION DOCUMENT**

**3.1** At paragraph 1.1 of the Consultation Document ECTEL establishes that one of its main priorities is to:

*“...improve access to electronic communications/ telecommunications services, especially reliable broadband services in the five (5) ECTEL Member States. Under Article 4 of the ECTEL Treaty, ECTEL is mandated to promote the introduction of advanced electronic communications/telecommunications’ technologies and an increased range of services in its Member States. Advanced electronics communications technologies can take several forms, including terrestrial fixed networks, terrestrial mobile networks and satellite communications networks.”* (emphasis added)

**3.2** ECTEL states that the purpose of the Consultation is to :

*3.1 “... review and make recommendations on the best regime to be adopted by ECTEL in the pricing of radio frequency applications for satellite communications and an appropriate fee structure for Very Small Aperture Terminal (“VSAT”) and Satellite Earth Station (“SES”) services in the ECTEL Member States”.*

**3.3** With regards to the regulation of satellite services, at paragraph 1.5 of the Document, ECTEL states:

*1.5 Therefore, it is important that the licensing and regulatory structure of the ECTEL Member States be responsive to facilitate the entry into the ECTEL Markets, to cater for a wide range of advanced electronic communications' systems, including the modern NGSO satellite constellations. Although the Member States have started the legislative reform with the introduction of a new Electronic Communications Bill and suite of new regulations, ECTEL has recognised that some of the current regulations under the Telecommunications Act<sup>1</sup> may need to be updated to cater for the newer technologies in the interim.*

**3.4** With regards to licensing of satellite providers, ECTEL states at paragraph 2.3 of the Document that:

*2.3 "...Further, some of these NGSO satellite operators have expressed interest in obtaining licences for Earth-based satellite facilities known as gateways, to meet the capacity demands of satellite constellations, by providing backhaul services".*

**3.5** With regards to fees for spectrum for satellite services, ECTEL states:

*2.4 The current Fees Regulations require revision, as they do not prescribe fees for the more recent mobile-satellite delivery systems and services. ECTEL has recognised that the Fees Regulations will require amendments to cater for the newer satellite services. Therefore, ECTEL has undertaken research to determine how other regulators are managing the newer frequency bands for satellite services.*

*2.5 Presently, there are limitations in the Fees Regulations for satellite services, as it only prescribes spectrum fees for Satellite Earth Stations in the C and Ku bands and Very Small Aperture Terminals, also in the C and Ku bands. With the advancement of satellite communications technology in the last two decades, many new services such as NGSOs using Ka,*

*V and L bands among others, have been deployed, which now require amendments to the current Fees Regulations to address these new satellite services in the short term, while we await the implementation of the more all-encompassing Electronic Communications legislative framework.*

*4.6.1 Based on the Telecommunications (Fees) Regulations in each Member States, operators of satellite communications services are charged for the spectrum, provided that they have ground-based stations/facilities in an ECTEL Member State. There is also an annual licence fee associated with the ground station, however this licence fee is dependent on the nature of the licensed service granted to the satellite communications operator.... It is important to highlight that Ka band spectrum and other radio frequency bands associated with newer satellite communication services are currently not included in the Fees Regulations in any of the ECTEL Member States.*

**3.6** ECTEL concludes:

*5.2 From this analysis, ECTEL concludes that there is no standard pricing structure for use of spectrum by satellite communications services and that the current Fees Regulations in the ECTEL Member States are deficient, in that there is no allowance made for the more modern satellite communications services such as Ka band and V band. Therefore, to facilitate a more robust and responsive regulatory framework which addresses the newer satellite communications' technologies, ECTEL recommends the following to its Member States:*

- 1. That the current fee structure be maintained for SES and VSAT applications for the C and Ku bands; and*
- 2. That the current Schedule 3- Frequency Authorisation Fees) of the Telecommunications (Fees) Regulations in all the ECTEL Member States be amended immediately, to include two (2) new fee subcategories as follows:*
  - a. Very Small Aperture Terminal (VSAT) Other (VST Other); and*

*b. Satellite Earth Station Other (SES Other).*

<b>Description</b>	<b>Spectrum Fees</b>	
	<b>Application</b>	<b>Annual</b>
<i>VSAT Other</i>	<i>XCD 1,000</i>	<i>XCD 12,000/frequency pair</i>
<i>SES Other (annual licence)</i>	<i>XCD 1,000</i>	<i>XCD 12,000/frequency pair</i>

**Table 5: Proposed Amendment to Schedule 3 of Telecommunications (Fees) Regulations f or ECTEL Member States**

**3.7** There are a number of issues germane to the consideration of introduction of new fees for spectrum for advanced satellite services. These are as follows:

**3.7(l) Legal Framework**

**3.7(l)(i)** Fees for spectrum for the use of NGSOs do not exist in isolation from the legal framework for provision of service. The Consultation Document establishes that there is no licensing or regulatory regime or any fee structure for NGSOs nor is there a license type in any of the ECTEL countries for a gateway as mention in paragraph 2.3 of the Consultation Document. Any fee then that ECTEL arrives at for spectrum for the use of NGSOs must lack coherence because there is no framework which provides a reference for the value of the spectrum such as established by a licensing regime. In order for frequencies to be assigned to any NGSO, that NGSO must be licensed to provide a service in country. Flow is not aware of any licence type currently available to an NGSO and without a type of licence, frequencies cannot be deployed for use by the NGSOs. This consultation then on fees for spectrum is premature because there is no regime to inform the value of the spectrum.



**3.7(I)(ii)** It is worth noting that in India, the NGSO, Starlink, was prohibited from providing service in the country because it had no licence or authorization to offer satellite broadband in the country<sup>1</sup>.

### **3.7(I)(iii) Non-Discriminatory Terms**

Clause 17 of The Telecommunications (Licensing and Authorisation) Regulations, 2002, states that the terms of all licences and authorisations must be non-discriminatory. Terms are non-discriminatory if : 17(2):

- (a) telecommunications providers of similar types of telecommunications networks are treated similarly.
- (b) The licence or authorization does not favour any one telecommunications provider or class of telecommunications providers; and
- (c) The issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market.

Flow believes that the application of these principles is also relevant to the determination of spectrum fees for companies providing service in similar markets as inferred by the Commission at paragraph 1.1 of the Consultation Document so that it is evident that spectrum fees for NGSOs are not discriminatory to any providers or the market in general.

### **3.7(II) Spectrum Fee Benchmark**

The Consultation Document does set out the fees charged in some countries for use of spectrum by satellite providers. However, ECTEL would have to go further to identify methodologies, philosophies and frameworks which determined the price of the spectrum to satellite providers in order to achieve the stated purpose of the consultation to “*make recommendations on the best regime...*” Stating prices, where they are comparable, does not rise to the standard of a regime which in this case would be the

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<sup>1</sup> [Starlink India head Sanjay Bhargava steps down, firm refunds deposit money after DoT rap | Business News \(timesnownews.com\)](https://timesnownews.com/Starlink-India-head-Sanjay-Bhargava-steps-down-firm-refunds-deposit-money-after-DoT-rap/)

method used to arrive at the fees and not just the fees alone. Spectrum prices in other countries have to be evaluated within the relevant framework and methodology.

Finally, Flow could not identify the steps that ECTEL took to arrive at the spectrum fee of US\$12,000 per frequency pair per annum. Accordingly, the proposed fee lacks transparency. Further, note is made that the individual frequency is not identified in the subcategory proposed by ECTEL which is incompatible with the current structuring of the Telecommunications (Fees) Regulation, 2007.

## **5. CONCLUSION**

**5.1** Flow thanks ECTEL for the opportunity to participate in this Consultation.

**5.2** Flow anticipates that ECTEL will consider its comments and find that a comprehensive approach to licensing NGSOs will result in the determination of transparent, sustainable spectrum fees for NGSOs which are evidently non-discriminatory.

**5.3** Flow's response is preliminary because of the lack of sufficient time provided by ECTEL to prepare a more comprehensive response.

**END**