

**EASTERN CARIBBEAN
TELECOMMUNICATIONS AUTHORITY
("ECTEL")**

**Determination on Recommendations to the
National Telecommunications Regulatory Commissions**

on

**Regulatory Measures applicable to selected Regulated
and Unregulated Retail Services in ECTEL Member
States**

September 27, 2021

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1 Introduction

In this document, the Eastern Caribbean Telecommunications Authority (“ECTEL”) sets out its determinations (the “Determination”) on a public consultation process it initiated in 2019 on a series of recommended regulatory measures to be implemented by the National Telecommunications Regulatory Commissions (“NTRCs”). In this Determination, ECTEL finalizes its recommendations to the NTRCs.

On 28 August 2020 ECTEL issued the Consultation Document titled “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Regulatory Measures” (the “Consultation Document”) to undertake a market review of two sets of services in the ECTEL Member States (“MS”).

The first set includes a number of retail fixed services provided by Cable & Wireless Limited (“C&W”) that have been subject to *ex ante* price regulation by means of a series of price cap plans (“PCPs”) since 2004, the most recent of which was finalized in 2015 (the “2015 PCPs”). These services are referred to as “Regulated Services”. As it has done in past PCP reviews, ECTEL undertook a market assessment process with the objective of determining an appropriate, updated multi-year regulatory regime for C&W’s Regulated Services – referred to as the proposed new retail price regulation regime (“RPRR”) in the Consultation Document. In this context, the purpose of the market assessment process was to evaluate the need, if any, for *ex ante* price regulations for C&W’s Regulated Services. The market assessment process did not consider or evaluate dominance designations for C&W’s Regulated Services, though had the market assessment results suggested that such an exercise was potentially warranted, ECTEL would have recommended that a dominance review process be conducted as a follow-up to this consultation.

The second set includes retail mobile services and pay TV services, which are referred to as “Reviewable Unregulated Services”. These services have not been subject to *ex ante* price regulation to date because they have not been included in any PCP and no service provider(s) in the corresponding relevant markets has been designated as dominant. These services have traditionally not been the subject of *ex ante* price regulation in the Caribbean region or internationally. Consequently, the purpose of this first market review of mobile and pay TV services was to assess the extent of competition in these markets as well as to consider introducing specific safeguards to protect the interests of consumers. To this end, ECTEL developed the Telecommunications (Mobile Consumer Safeguards) Guidelines (the “Guidelines”) proposed in the Consultation Document. As in the case of Regulated Services, the purpose of the mobile and pay TV market assessments was not to evaluate or determine individual or joint dominance; however, had the results of the market assessments suggested a dominance review was potentially warranted, then ECTEL would have recommended that such a process be conducted as a follow-up to this consultation.

Based on the market assessments included in the Consultation Document, ECTEL proposed a series of recommended regulatory measures to be implemented by the NTRCs. For the Regulated Services offered by C&W and, as applicable, its affiliate Columbus Communications, ECTEL proposed the RPRR to replace the existing 2015 PCPs. For the Reviewable Unregulated Services, ECTEL proposed the Guidelines. Based on the market assessment results, ECTEL did not find

any reason to recommend follow-up dominance reviews for any of the Regulated and Reviewable Unregulated Service markets.

The objective of the Consultation Document was to seek interested parties' comments on ECTEL's market assessment, and the proposed RPRR and Guidelines. In response, the following parties submitted comments:

- C&W¹
- NTRC Dominica
- NTRC St. Vincent & the Grenadines (“SVG”)
- Government of Grenada Legal Drafting Unit (“Grenada LDU”)

In addition, the following parties submitted reply comments:

- Digicel Group (“Digicel”)
- C&W
- NTRC SVG

In this Determination, ECTEL provides a summary of and responds to parties' comments and reply comments (“Submissions”) on the Consultation Document. Parties offered a wide range of comments and raised a variety of issues in the Submissions that, in some cases, were outside the scope of the present consultation process. For the purpose of this Determination, ECTEL has focused on comments and issues of direct relevance to the matters addressed and proposals discussed in the Consultation Document. As a consequence, where a specific claim or argument is not addressed in this Determination, it should not be interpreted to imply either ECTEL's agreement or disagreement, but rather that it was considered not directly relevant, given the scope of the present consultation process. Taking into account the Submissions, the purpose of this Determination is to modify, as necessary, and finalize ECTEL's proposed recommendations to the NTRCs for the RPRR and the Guidelines.

The balance of this Determination is structured as follows:

- **Section 2** summarizes and responds to comments on the preliminary market assessment and associated findings applicable to C&W's Regulated Services.
- **Section 3** summarizes and responds to comments on the preliminary market assessment and associated findings applicable to the Reviewable Unregulated Services.
- **Annex A** sets out ECTEL's final recommended RPRR.
- **Annex B** sets out ECTEL's final recommended Guidelines.

¹ Since its merger with Columbus Communications, C&W trades under the brand name “FLOW”; however, throughout this Determination, ECTEL refers to C&W using its company rather than trade name.

2 C&W's Regulated Services

In their Submissions, parties raised a variety of issues and concerns relating to the market assessment methodology, relevant market definitions, market assessment results as well as proposed *ex ante* price regulations applicable to C&W's Regulated Services set out in the Consultation Document. These issues and concerns are addressed in this section, and in each case, ECTEL provides its associated determinations with supporting rationale.

2.1 Market Assessment Methodology

The market assessment methodology relied on by ECTEL consisted of two steps: (i) the definition of the relevant markets in question, and (ii) the analysis of the degree of competitiveness of each of the defined markets. ECTEL used the results of the market assessments to design an appropriate multi-year regulatory regime for the Regulated Services generally, and the specific type of *ex ante* pricing constraints, if any, that should be applied to each particular service(s). This “streamlined” approach builds on and follows best-practice experience in other comparable jurisdictions. The market definitions and market assessment criteria used for the present market assessment also conform with those used in the past by ECTEL.²

As noted, ECTEL's market assessment process did not include consideration or an evaluation of dominance designations for C&W's Regulated Services. That said, had the market assessment results suggested that such an exercise was potentially warranted for one or more of C&W's Regulated Services, then ECTEL would have recommended that a dominance review process be conducted as a follow-up to this consultation. No such recommendations were made in the Consultation Document on a preliminary basis with respect to C&W's Regulated Services, and none are made in this Determination.

Parties' Submissions

In its comments, C&W took issue with ECTEL's “streamlined” market assessment approach, and more specifically, ECTEL's decision not to review C&W's existing fixed services dominance designation (i.e., Regulated Services). C&W argued that ECTEL should acknowledge that the existing designations are almost two decades old and may not accurately describe current market conditions. Therefore, C&W suggested that ECTEL should undertake a review of C&W's existing dominance designations.

C&W also acknowledged that it participated in a “Negotiation Process” with ECTEL to reach an agreement on a draft market assessment and proposed RPRR; however, while it agreed that the proposed RPRR included some improvements compared to 2015 PCPs, it remains of the view that it is nonetheless suboptimal, flawed and overly burdensome. In its view, an RPRR of any form is unwarranted.

² ECTEL Consultation Document, *Recommendation to the National Telecommunications Regulatory Commission to consult on: Recommended Price Caps Plan for the Regulation of Price Capped Retail Services provided by LIME*, October 24, 2014 (“2015 PCP Consultation Document”).

ECTEL's Response and Determinations

As explained in the Consultation Document, ECTEL adopted a streamlined market assessment approach so that it could focus on the ongoing need, if any, for *ex ante* pricing constraints on C&W's Regulated Services. ECTEL recognizes that C&W's deemed dominance designations are indeed almost two decades old, and that to date ECTEL has not reviewed these designations. Based on the results of past market assessments, however, ECTEL has not identified any significant changes in market conditions that would indicate that a more detailed analysis possibly leading to a change in the designation of dominance for C&W for some or all of the Regulated Services was appropriate or necessary. ECTEL's current market assessment results are similar to and lead it to the same conclusions as in its past reviews of C&W's Regulated Services. Consequently, ECTEL sees no need for or any reason to recommend a dominance review as a follow-up to this consultation process.

The finalized Recommended RPRR involves a very limited number of *ex ante* pricing constraints on a subset of the Regulated Services. As set out in the Consultation Document, C&W holds a virtual monopoly in the markets subject to pricing constraints. In any event, any significant changes in market conditions during the course of the RPRR would be captured by the Automatic Adjustment Mechanism ("AAM") which, if triggered, would have the effect of automatically eliminating many of the proposed *ex ante* price constraints in the RPRR.

ECTEL otherwise disagrees with C&W's portrayal of the proposed new RPRR as suboptimal, flawed and overly burdensome. To the contrary, ECTEL considers that the RPRR is efficient given it is narrowly-focused and light-touch in nature and, with the AAM, subject to automatic revision if and when market conditions change significantly.

2.2 Defined Relevant Markets – Regulated Services

Under the market assessment approach, and consistent with past practice, ECTEL adopted a set of eight defined relevant markets for the Regulated Services under consideration:

- Market #1: Residential Access at a Fixed Location
- Market #2: Business Access at a Fixed Location
- Market #3: Domestic Calls from a Fixed Location
- Market #4: International Calls from a Fixed Location
- Market #5: Broadband Internet Access at a Fixed Location
- Market #6: Domestic Private Leased Circuits ("DPLC")
- Market #7: International Private Leased Circuits ("IPLC")
- Market #8: Data Services

ECTEL identified two issues with respect to these proposed relevant market definitions. The first was whether fixed and mobile voice access and calling are in the same or separate relevant markets. For the reasons set out in the Consultation Document, ECTEL continues to be of the view that fixed and mobile are more complements than substitutes, and therefore, fall into separate relevant markets. The second was whether fixed and mobile broadband data services are in the same or

separate relevant markets. Here as well, for the reasons set out in the Consultation Document, ECTEL considers these services to be in separate relevant markets.

Parties' Submissions

In its comments, C&W disagreed with ECTEL's conclusion that fixed and mobile voice access and calling services are complements rather than substitutes. C&W disagreed with each of the reasons provided by ECTEL for its position, namely that (i) differences in functionality are relevant, (ii) prices of mobile services are typically higher than fixed services, (iii) the trends in fixed versus mobile penetration support ECTEL's position, and (iv) available consumer survey information supports ECTEL's position. C&W also argued that ECTEL relied on artificial and flawed notions of "direct" and "indirect" substitutes in reaching its conclusion. In addition, C&W claimed that ECTEL failed to consider market contestability and technology trends such as the emergence of over-the-top ("OTT") voice over Internet protocol ("VOIP") services.

In its comments, NTRC SVG agreed that fixed and mobile services are substitutes. However, it also noted that mobile service prices generally tend to be higher than fixed service prices which, in its view, is due to the lack of regulation and/or competition in the mobile market.

On the other hand, in its reply comments, Digicel disagreed with C&W's position that mobile and fixed services are substitutes. Digicel noted that C&W failed to cite any examples of other jurisdictions where such a finding has been made in support of its position.

ECTEL's Response and Determinations

ECTEL acknowledges that the question of whether fixed and mobile access and/or calling services are complements or substitutes has been debated for some time. In this regard, ECTEL notes that C&W cited a 2011 BEREC Report³ in its comments in support of its position that ECTEL's approach and conclusions on the question are incorrect. However, contrary to C&W's assertions, the BEREC report in fact supports ECTEL's approach and conclusions. The BEREC reports states that there "are a number of reasons why the majority of [National Regulatory Authorities] do not include fixed and mobile services in the same retail market including: (i) the existence of different characteristics between fixed and mobile offers (e.g., differences in price, bandwidth, mobility and usage limitations); and (ii) the existence of different preferences and different usage patterns between fixed and mobile services users"⁴ (emphasis added). This statement is fully consistent with ECTEL's approach and conclusion on the question.

ECTEL also disagrees with C&W's suggestion that contestability is relevant to the question of fixed and mobile substitutability. In fact, in its comments, C&W suggests that mobile operators could readily expand into the provision fixed wireless services. However, the fixed access and calling service markets are already defined to include wireline and fixed wireless services. The provision fixed wireless services does not play any role in the assessment of whether fixed and mobile services are substitutes.

³ Body of European Regulators for Electronic Communications ("BEREC"), BEREC Report on Impact of Fixed-Mobile Substitution in Market Definition, BoR (11) 54, 8 December 2011.

⁴ Ibid., page 3.

ECTEL also notes that it has in fact taken into account the availability of OTT VOIP services in its market definition analysis. In ECTEL's view there are significant calling feature and quality differences that make these services more complements rather than substitutes for fixed access and calling services. For example, they require a broadband access connection (which raises cost relative to only a fixed access line) and limit outbound and inbound calling capabilities (e.g., a local fixed line telephone number is not included with a free OTT service such as WhatsApp).

Consequently, ECTEL continues to be of the view that fixed and mobile services are complements rather than substitutes and, accordingly, that fixed and mobile access and calling services fall into separate relevant markets. As implied by Digicel in its comments, this classification remains common practice among regulators today in the Caribbean region and internationally.

Lastly, ECTEL notes that C&W also took issue with the concepts of "direct" and "indirect" substitutability used in the Consultation Document. These terms were simply meant to reflect the "degree" of substitutability or complementarity. These are no different from the Fixed-Mobile Substitution ("FMS") concepts discussed in the 2011 BERC report cited by C&W which, for instance, states that:

Even where FMS is not sufficient to define a single market including fixed and mobile, it may be the case that FMS provides a degree of price constraint which should be considered in the three criteria test for imposing ex-ante regulation assessment, in the SMP assessment and, in the event that SMP is found, it may be considered in deciding the appropriate ex ante obligations to impose.⁵ (emphasis added)

This is the approach followed by ECTEL. It proposed a light-handed, targeted set of *ex ante* price constraints under the RPRR that reflects existing market conditions – including indirect or a degree of pricing pressure from mobile services – and can also be automatically adjusted through the AAM should new entry occur in the fixed services market.

2.3 RPRR and Markets #1 - #4 – Fixed Access and Calling

As outlined in the Consultation Document, ECTEL considers that C&W continues to hold a virtual monopoly in the provision of residential and business fixed access services as well as domestic and international calling from a fixed location in all MS. The only significant source of actual/potential competition appears to be from Digicel via fixed wireless technology. Otherwise, ECTEL did not consider indirect competition from mobile and OTT VOIP services to be sufficient to significantly constrain C&W's market power.

On this basis, ECTEL proposed that C&W's fixed access and calling services should continue to be subject to *ex ante* price constraints within the context of the broader RPRR. For these services, the price constraints would involve a narrowly-targeted, inflation-based price cap on residential and business basic fixed access services as well as domestic calling from a fixed location. International mobile calling rates were set as a price ceiling for international calling rates. In

⁵ Ibid., page 50.

addition, the existing free 100-minute off-peak call allowance in the 2015 PCPs was proposed to be maintained for residential basic fixed access and MS-wide rate harmonization requirements were also proposed to be maintained. Lastly, an AAM was proposed that, if triggered, would result in the elimination of these *ex ante* price constraints, where applicable.

Parties' Submissions

C&W argued that the proposed *ex ante* price constraints are unnecessary since the previous price constraints established under the 2015 PCPs were largely non-binding – i.e., it claimed that fixed access services rates have generally remained at or below the 2015 PCP constraints. C&W suggested an alternative approach may be preferable such as a “targeted requirement to provide fixed line access to the homes of low-income elderly” which, in its view, would be far more effective at dealing with these price concerns and spare the industry the expense of these price cap proceedings and the associated implementation.

In its comments, NTRC Dominica noted that it failed to understand why indirect competition from mobile and OTT VOIP would result in different regulatory treatment of domestic versus international basic fixed calling rates. NTRC Dominica also suggested that the existing basic fixed access and calling rate harmonization obligations across MS may no longer be necessary.

ECTEL's Response and Determinations

ECTEL acknowledges C&W's suggestion that the proposed targeted price caps under the RPRR could be replaced by an alternative obligation to provide affordable basic fixed access and calling services to a designated group of eligible customers (e.g., based on income and/or age-based eligibility criteria). However, ECTEL considers that establishing such a regime would in and of itself be time consuming and costly. Plus, ongoing administration of such a regime could be complex and costly as well. ECTEL's remains of the view that targeted price caps as set out in the RPRR are appropriate. Moreover, the RPRR provisions applicable in Markets #1 to #4 could be eliminated entirely should the AAM be triggered.

ECTEL also acknowledges NTRC Dominica's concerns regarding the different treatment of domestic and international calling from a fixed location under the RPRR. In ECTEL's view, OTT VOIP calling provides greater competitive pressure on prices for international than for domestic calling; while such services can be readily used for international calls, they are far less practical for local calling (e.g., to a local bank, pharmacy, school or, for that matter, receiving calls from those same local sources). In any event, the RPRR places a price cap on both basic fixed domestic and international calls, with the first tied to inflation and the second tied to mobile rates. ECTEL considers these price caps along with the associated price harmonization requirements, to be appropriate given C&W's preponderant position in these markets.

Accordingly, ECTEL has determined to maintain the price constraints and related harmonization requirements pertaining to Markets #1 through #4 under the RPRR.

2.4 Automatic Adjustment Mechanism (“AAM”)

As discussed in the Consultation Document, Digicel’s expected CARCIP-supported build out and launch of extensive fibre networks in Grenada, Saint Lucia and St. Vincent and the Grenadines has the potential to change ECTEL’s market assessment conclusions for Markets #1 to #5 in these the three MS (i.e., the CARCIP Beneficiary MS).⁶ Since the timing of the launch of these new fibre-based services was unknown at the time of the writing of the Consultation Document, ECTEL proposed that an AAM should be built into the RPRR so that it could be quickly be adjusted if there is clear evidence that Digicel had launched new fibre-based services and achieved a threshold-level of market penetration. ECTEL also proposed the AAM could be equally applied to all five MS.

Under the AAM, ECTEL would collect fixed voice services market data from both Digicel and C&W for each MS immediately prior to the launch of the RPRR and every six months thereafter, as necessary. In Digicel’s case, the AAM-related data would include the number of its residential and small business fixed voice access customers, if any, served using new fibre-based network facilities. In C&W’s case, the AAM-related data would also include the number of its residential and small business fixed voice access customers together with any evidence C&W may be able to provide demonstrating Digicel’s entry into the fixed voice services market (e.g., marketing or advertising materials). The AAM would be applied on an MS-specific basis and would be triggered if (i) Digicel’s fixed voice access customer base surpassed a pre-established threshold of 2% of the population in respective MS and/or (ii) if C&W’s fixed voice access customer base decreased by more than 10% and there is also evidence of Digicel’s entry in the market (e.g., via marketing or advertising materials).

For any MS where the AAM is triggered, the price cap constraints on C&W’s standalone basic residential and small business services would be removed along with the associated additional regulatory obligations (i.e., free minute allowance and harmonization obligations, as applicable) – i.e., it would apply solely to Markets #1 through #4.

Parties’ Submissions

In its comments, NTRC Dominica suggested that the AAM should operate in both directions. In other words, if Digicel’s subscriber base drops below the established trigger threshold, then the proposed RPRR should automatically re-engage.

For its part, NTRC SVG suggested that the AAM may be unnecessary in the case of St. Vincent and the Grenadines since it believes that Digicel⁷ already offers fixed voice and broadband services over fibre facilities, and has done so since 2019.

In its reply comments, Digicel argued that the trigger threshold of 2% of the population for the

⁶ Digicel is launching these fixed networks pursuant to the World Bank’s “Caribbean Regional Communications Infrastructure Program” (“CARCIP”) Project that provided Grenada, Saint Lucia and St. Vincent and the Grenadines (the “CARCIP Beneficiary MS”) with funding to upgrade and expand national and international connectivity.

⁷ Through Digicel Grenada Cable Company Ltd, not Digicel SVG.

AAM is too low. By way of example, it noted that if Digicel passed 10% of premises and reached 20% penetration in that footprint, then its overall market share would be 2%. However, Digicel added that this would still leave 90% of the market uncontested and C&W with 98% market share. On this basis, Digicel suggested that ECTEL reassess the trigger point thresholds to ensure that they do not result in premature lifting of obligations designed to protect the market.

ECTEL's Response and Determinations

In response to NTRC Dominica, after the AAM is triggered in a given MS, ECTEL considers that it would be unnecessary to continue reassessing the AAM every six months to determine if Digicel's subscriber base may have fallen back below the trigger threshold. Doing so would be a costly exercise. There would be little reason to believe that Digicel would stop or reverse its rollout of fibre-based fixed services once its fibre-network build out is completed.

ECTEL notes that if Digicel has indeed already launched its CARCIP-supported fibre services in St. Vincent and Grenadines that would be picked up by the AAM prior to the start date of the RPRR in that MS and, if found to be the case, would trigger the AAM.

In response to Digicel's comments, ECTEL notes that the AAM trigger mechanism is based on population, not premises. Therefore, once Digicel reaches a customer penetration rate of 2% of the population, it could well have likely reached a household or premises penetration rate of 5% or more. In addition, once Digicel has fully deployed its new fibre-based network, ECTEL considers that there would be little reason for Digicel to slow or stop its rollout at only 10% of premises. And further still, given that C&W prices its services on a national rather geographic basis in each MS, once Digicel establishes a foothold, there would be little reason to maintain price constraints on C&W as specified under the RPRR.

Accordingly, ECTEL has determined to maintain the AAM as proposed in the Consultation Document.

2.5 Flow-through of Mandated Changes in Interconnection Rates

As explained in the Consultation Document, ECTEL considers that the recent mandated reductions in fixed and mobile call termination rates (i.e., "FTR" and "MTR", respectively) implemented over the period 2018 to 2020 should be treated as exogenous or Z-factors under the RPRR. Therefore, these interconnection rate changes should "flow-through" as reductions to C&W's corresponding retail domestic basic fixed-to-fixed ("FTF") and fixed-to-mobile ("FTM") call rates. The details of the proposed flow-through requirement are described in the Consultation Document. This process is very similar to that followed in 2010 when reductions in the wholesale interconnection rates were included in the 2010 PCPs. ECTEL notes that, as in 2010, only partial flow-through of the interconnection rate changes is proposed under the RPRR – i.e., 64% in the case of the MTR and 43% in the case of the FTR – and the corresponding reductions in retail FTM and FTF would be phased in over first 2 years of the RPRR. Importantly, the proposed flow-through obligation is independent of the AAM.

Parties' Submissions

C&W argued that interconnection rate reduction flow-through proposal is flawed in numerous ways. First, it claimed that competitive pressure would force retail FTF and FTM rates to fall to costs on their own, making mandated reductions unnecessary. Second, C&W argued that ECTEL failed to demonstrate that the proposed flow-through reductions would not potentially reduce retail FTF and FTM rates below cost. Third, C&W noted that fixed access and call rates are set jointly and, therefore, it would be bad regulatory policy to require reductions in calling rates without considering potential impacts on access rates. In sum, C&W argued that ECTEL should simply acknowledge that fixed calling is subject to competitive pressures and it should, therefore, drop the proposed flow-through requirement entirely.

ECTEL's Response and Determinations

ECTEL does not agree with C&W that competitive pressure would be sufficient to flow-through some or, for that matter, any of the mandated reductions in wholesale interconnection costs. This view is supported by ECTEL's market analysis findings for the domestic calling market in all MS. In addition, ECTEL sees no reason that partial flow-through of the mandated wholesale interconnection rates would potentially drive C&W's retail FTF and FTM rates below cost. C&W offered no support for its concern in this regard. As well, under a partial flow-through mechanism, ECTEL sees no reason for any cross effects on pricing of fixed access service rates.

Therefore, ECTEL considers that the flow-through obligation set out in the Consultation Document should be maintained as proposed.

2.6 Market # 5 – Fixed Broadband Internet Access

As outlined in the Consultation Document, given Cable & Wireless Communications PLC's ("CWC") acquisition of Columbus International Inc., which included its Caribbean region Columbus Communications cable operations (trading under the "FLOW" brand name), jointly C&W and Columbus Communications hold a virtual monopoly in the provision of broadband Internet services in Grenada, Saint Lucia and St. Vincent and the Grenadines. Once Digicel launches its CARCIP-supported fibre-based broadband services in these same three MS, ECTEL considers that C&W and Columbus Communications' virtual monopoly will begin to erode. With respect to Dominica and St Kitts and Nevis, ECTEL found that C&W faces a reasonable degree of competition in the broadband Internet service markets in these two MS.

Taking its market assessment findings into account, ECTEL proposed in the Consultation Document that a light-handed regulatory approach would be appropriate for fixed broadband Internet services, so as not to dampen incentives for the continued significant investments in broadband infrastructure while, at the same time, to promote increased broadband penetration and ensure the affordability of "basic" broadband services. To this end, ECTEL proposed that C&W and Columbus Communications be required to provide a basic broadband offer ("BBO") at a reasonably affordable price in each MS impacted by CWC's acquisition of Columbus: Grenada, Saint Lucia and St. Vincent and the Grenadines.

The resulting C&W and Columbus Communications BBO that was finalized through the Negotiation Process and was presented in the Consultation Document would consist of the following service characteristics:

- i) it would be available on a standalone basis (i.e., it could be purchased on an unbundled basis);
- ii) it would be offered with unlimited monthly usage (i.e., without a monthly data usage cap);
- iii) it would provide minimum download/upload speeds of 10 Mbps/1Mbps, respectively;
- iv) the monthly retail price of the service would not exceed \$99 (VAT included);
- v) it would be available to both new and existing customers; and
- vi) customers on other existing broadband plans who wish to switch to the BBO would not be subject to any early termination fees.

As indicated in the Consultation Document, the above-noted proposed minimum broadband speeds are not intended to limit the actual speeds that may be offered. C&W and Columbus Communications would be free to and, indeed, encouraged to offer faster BBO download and/or upload speeds at the outset of the RPRR and over time. Additionally, C&W and Columbus Communications would be free to and, as well, encouraged by ECTEL to price the BBO below the \$99 (VAT included) ceiling. Lastly, BBO availability and pricing harmonization constraints were also proposed for the three affected MS – i.e., Grenada, Saint Lucia and St. Vincent and the Grenadines. The BBO and these additional regulatory obligations would remain in place for the full term of the proposed RPRR, regardless of whether the AAM may be triggered.

Otherwise, with the existence of competitive alternatives in Dominica and St. Kitts and Nevis, ECTEL did not propose to introduce *ex ante* price regulations or the BBO under the proposed RPRR in these MS. That said, ECTEL indicated that it may review and re-evaluate the BBO in the future, and consider extending the obligation to all broadband services providers in all MS.

Parties' Submissions

C&W objected to the proposed BBO and claimed that it is unnecessary due to existing competitive pressures from mobile broadband, the related competition for broadband services, such as data, DPLC and IPLC services, and the impending deployment of Digicel's fibre-based fixed network in the CARCIP Beneficiary MS. According to C&W, there is sufficient competition and contestability to prevent excessive pricing, making any price controls or basic service requirements unwarranted. That said, C&W added that should the BBO stand, once the AAM is triggered, the obligation should be either eliminated or imposed on Digicel.

NTRC Dominica stated that the BBO should also apply to Dominica and St. Kitts and Nevis. It added that the minimum broadband offer available in Dominica had recently increased from \$89.00 to \$95.00 per month (VAT exclusive). However, the service is not available on a standalone basis. Broadband subscribers are required to also purchase fixed voice access service for an additional \$24, increasing the overall price to \$119 or, including VAT, \$136.85. On this basis, NTRC Dominica argued that the proposed BBO should also apply in Dominica.

NTRC Dominica also noted that geographic coverage and availability of broadband services can vary across a MS. In some areas only a single service provider may exist. In such cases, the broadband service provider should be declared dominant and, therefore, subject to price and other forms of regulation.

NTRC Dominica also suggested that the minimum download and upload speeds for the BBO should be 10/3 Mbps not 10/1 Mbps, since higher upload speeds are required for video calling and online learning. Similarly, consistent with St. Vincent and the Grenadine's Draft National Broadband Plan dated 2017, NTRC SVG suggested that the minimum download and upload speeds for the BBO should be much higher still at 50/20 Mbps.

In its reply comments, C&W responded to each of the above-noted points. First, with regard to NTRC Dominica comments about geographic areas where only a single broadband service provider may operate, C&W noted that the fixed broadband service market is defined on a national, not local geographic basis. It added that fixed broadband prices are national in scope (i.e., prices are the same in all areas) which, according to C&W, implies that the pricing outcomes for the most competitive areas drive pricing for all areas in the country. Second, in regard to NTRC SVG's BBO speed proposal, C&W considers that it is unrealistic to assume that, given the current costs of broadband service provision, the market could deliver a 50/20 Mbps service at a price point below \$100. To achieve such a target at this point in time, C&W claimed that government subsidies would be required.

In its reply comments, NTRC SVG agreed with C&W that should Digicel's entry trigger the AAM, then the BBO obligation should be imposed symmetrically on both C&W and Digicel.

ECTEL's Response and Determinations

ECTEL disagrees with C&W's claims there is sufficient competition in the broadband markets in Grenada, Saint Lucia and St. Vincent and the Grenadines to make the proposed BBO unnecessary. As discussed in the Consultation Document, ECTEL does not consider mobile broadband to be a substitute for fixed broadband services at this time. Further, ECTEL does not consider data, DPLC and ILPC services to be substitutes for fixed broadband services, and C&W failed to explain how or why they could be viewed as substitutes. As explained in the Consultation Document, ECTEL considers that data, DPLC and ILPC services fall into separate relevant markets. Otherwise, ECTEL agrees that once Digicel launches its fibre-based broadband services in the CARCIP Beneficiary MS, then C&W and Columbus Communications would begin to face competitive pressure in the fixed broadband services market. The AAM is intended to track Digicel's broadband service deployment progress in this regard.

Under the proposed RPRR, the BBO obligation would fall on C&W and Columbus Communications given their current virtual monopoly position in the broadband service markets in the three noted MS. While the proposed BBO obligation on C&W and Columbus Communications would not be affected by the triggering of the AAM, in ECTEL's view, its existence should put pressure on Digicel to offer a competitive alternative to C&W and Columbus Communications' BBO. In that way, consumers would benefit from a choice of mandatory BBO

from C&W and Columbus Communications and a market-driven BBO equivalent offered by Digicel.

That said, ECTEL agrees with C&W that ideally such an obligation should be applied in a symmetric manner. For this reason, ECTEL plans to review the BBO obligation in a follow-up consultation process, which would include at a minimum a re-evaluation of the terms and conditions of the BBO, the application of the obligation to other licensed operators in addition to C&W and Columbus Communications, and the extension of the obligation to all MS (as requested by NTRC Dominica). ECTEL notes that such an exercise would be consistent with the new Electronic Communications (“EC”) Bill and associated EC (Retail Tariff) Regulations.

ECTEL also agrees with C&W that it would not be appropriate or necessary to consider sub-national geographic areas as part of its broadband market assessment as suggested by NTRC Dominica. ECTEL’s established market definitions are national in scope, and ECTEL agrees that service pricing is typically national in scope as well. That said, as noted above, ECTEL intends to review the BBO in the future with a view to expanding it to all MS as well as additional broadband service providers beyond C&W and Columbus Communications.

In response to NTRC Dominica and NTRC SVG’s suggestions that BBO speeds be increased, ECTEL notes that specified speeds are intended as “minima”. ECTEL considers that BBO speeds can and should ideally exceed the proposed minimum levels, especially ongoing improvements in broadband technology. That said, ECTEL intends to leave the “minima” as specified but, as noted, intends to review the BBO obligation as a follow-up to this proceeding.

2.7 Markets #6, #7 and #8 – DPLC, IPLC and Data

As discussed in the Consultation Document, ECTEL’s preliminary market assessment results indicated that C&W faces a reasonable degree of competition in the relevant markets for DPLC, IPLC and data services in all five MS. The primary, if not sole, source of competition comes from Digicel in each MS. In fact, in some cases, ECTEL found that Digicel appears to hold a greater market share than C&W. Therefore, on a preliminary basis, ECTEL found that there is no need for *ex ante* price regulation of the Regulated Services in any of these three defined relevant markets.

However, ECTEL also explained in the Consultation Document that it is aware of complaints relating to the wholesale segments of these relevant markets, where third-party operators have faced difficulties accessing these services not just from C&W, but also Digicel. In this regard, ECTEL considers that denial of reasonable service requests or excessive pricing of services in these relevant markets, especially when requested by a competing operator, could be viewed as potential anti-competitive conduct. While ECTEL considers that any such complaints could be addressed under the relevant anti-competitive conduct provisions of the applicable Telecommunications Acts and Regulations, ECTEL also indicated that it may also undertake a review of the wholesale segments of these relevant markets as part of a future process to determine whether there is a need to establish wholesale service obligations to ensure that alternative sources of competition are not hampered or blocked.

Parties' Submissions

NTRC Dominica claimed that alternative sources of competition have indeed been hampered and/or blocked in Dominica from a wholesale perspective. It noted that filing complaints can be ineffective since doing so could jeopardize small operators' relationships and negotiating positions with C&W or Digicel. According to NTRC Dominica, for this reason, small operators are reluctant to follow this course when denied access to or faced with excessive pricing of wholesale services offered by C&W and Digicel. Consequently, NTRC Dominica believes that there is a clear need to establish wholesale service obligations.

Further, to better promote competition in broadband markets, NTRC Dominica also suggested that ISPs should not be allowed to own or operate subsea cables. It suggested that submarine cable operators or internet backhaul operators should operate on an independent basis and that ECTEL should investigate whether divestiture of ISPs into separate entities responsible for wholesale subsea or backhaul services and retail Internet services may be appropriate and necessary.

ECTEL's Response and Determinations

ECTEL acknowledges NTRC Dominica's comments on the need for regulations pertaining to wholesale services. ECTEL recognises the importance of fair and reasonable access to wholesale services and facilities for the establishment and promotion of broader-based competition. Consequently, ECTEL agrees that a review of wholesale markets in the MS should be undertaken in the future to determine whether new regulations should be established for wholesale domestic and international services and facilities. Such a process would be consistent with the new EC Bill and associated EC (Submarine Cable Landing Station) (Access and Interconnection) Regulations.

2.8 RPRR Administrative Matters

In Section 6.1 of the Consultation Document ECTEL set out a number of administrative elements that would be applicable under the proposed RPRR. Among other things, these included a tentative start date of December 1, 2020, with subsequent annual updates of the price cap index ("PCI") scheduled for April 1st each following year. In addition, ECTEL proposed that the duration of the RPRR be four (4) years, after which it would expire, unless it is either renewed or replaced.

Parties' Submissions

In regard to these provisions, C&W suggested that ECTEL avoid the use of an initial bridge period (i.e., partial first year under the new regime) and start the new RPRR on April 1st to simplify the administration of the regime. As well, C&W suggested that the duration of the new RPRR be reduced to three (3) years, with an option for a maximum one-year extension. In support of this proposal, C&W claimed that much is likely to change in the next few years with the advent of 5G, Digicel's rollout of fibre-based broadband services and the relentless march of OTT players in a wide range of service markets.

NTRC SVG questioned how a single RPRR could apply to both C&W and Columbus Communications since customers make monthly payments to separate companies, either C&W or

Columbus Communications.

ECTEL's Response and Determinations

With regard to the first of C&W's suggestions, ECTEL notes that a start date of 1 April 2021 is no longer feasible due to the timing of this Determination. ECTEL does not consider delaying the start date to 1 April 2022 to be practical or reasonable. Therefore, a first-year bridge period is unavoidable. Bearing in mind the issue date of this Determination and allowance of sufficient time to implement the RPRR, ECTEL now recommends that the start date for the new RPRR be 1 November 2021. Annual updates to the PCI would occur each subsequent April 1st for the duration of the RPRR.

As to the duration of the new RPRR, ECTEL sees little difference between 4 and the 3 + 1 years proposed by C&W. Therefore, ECTEL considers that a 4-year term remains appropriate, after which it would expire, unless it is either renewed or replaced. As discussed above, should the AAM be triggered beforehand, significant elements of the RPRR could be eliminated before the 4-year term expires in any event.

In response to NTRC SVG's question about the application of the new RPRR to both C&W and Columbus Communications, ECTEL notes that the RPRR applies to C&W's Regulated Services as in the case of past PCPs. In the case of Market #5 (broadband Internet Access), the BBO obligation applies to both C&W and Columbus Communications, as agreed to by C&W in the Negotiation Process phase of the consultation process. Otherwise, in the event C&W transferred provision of one or more of its Regulated Services subject to *ex ante* price constraints (e.g., in Markets #1 to #4) to Columbus Communications, then ECTEL would review the circumstances of the transfer and, as necessary, determine if the applicable *ex ante* price constraint(s) should also be transferred from C&W to Columbus Communications.

3 Reviewable Unregulated Services

In their Submissions, parties raised a variety of issues and concerns relating to the relevant market definitions and market assessment results as well as proposed Guidelines applicable to the Reviewable Unregulated Services set out in the Consultation Document. These issues and concerns are addressed in this section and, in each case, ECTEL provides its associated determinations with supporting rationale.

The Reviewable Unregulated Services, numbered as Markets #9 and #10, are as follows:

- The mobile services market is defined to include mobile voice and data services, since these two mobile services are generally sold together (and to some degree can be viewed as substitutes).
- The fixed pay TV services market is defined to include subscription-based TV services provided at a fixed location, regardless of delivery technology (e.g., cable, copper, fibre or fixed wireless).

3.1 Mobile Services Market

Based on its preliminary market assessment, ECTEL found that the mobile service markets in most MS are duopolistic, with the exception of Grenada where a third service provider exists. Despite this largely duopoly market structure, the degree of competitive rivalry appeared to be relatively strong in all MS. Consequently, ECTEL found that there is no need or justification for *ex ante* mobile service price constraints at this time and, therefore, did not recommend that a follow-up dominance review be undertaken for mobile services. ECTEL otherwise found on a preliminary basis that a limited number of specific safeguards (as set out in the proposed Guidelines) were necessary to address certain mobile service pricing and marketing practices of significant concern to mobile consumers.

Parties' Submissions

In its comments, NTRC Dominica suggested that ECTEL needs to consider whether “joint” dominance may exist in the mobile services market. It noted that the fact ECTEL found that mobile consumer safeguards were necessary is an indication of some degree of market failure. NTRC Dominica suggested, therefore, that guidelines should be developed to assess joint dominance and, once established, those guidelines should be used to reassess the mobile market.

NTRC Dominica also questioned whether mobile voice and data services should be considered as substitutes and, therefore, part of a single market. It suggested that while mobile services are typically sold on a bundled basis, it argued that they should each also be available on a standalone basis. More generally, NTRC Dominica also expressed concerns with what it viewed as significant and unexplainable differences between in-bundle and out-of-bundle (“OOB”) data prices. It also expressed concerns with the manner in which mobile plans are structured.

NTRC SVG asserted that mobile markets in the MS need to be price regulated. In support, it provided historical price trend that showed significant declines in mobile termination rates while prepaid OOB calling rates had increased. On this basis, it suggested mobile prices are above competitive levels.

In its reply comments, C&W disputed NTRC Dominica and NTRC SVG assertions of joint dominance in the mobile market and, as a result, the need for price regulation of mobile services. C&W claimed that it and Digicel have a long history of aggressive competition, which has provided substantial benefits to consumers. C&W also asserted that, contrary to NTRC Dominica and NTRC SVG's perception of the mobile markets, the relative value of mobile services to consumers continues to increase, with mobile services providing more and more data and bandwidth for generally the same data prices over time.

In addition, C&W disputed NTRC Dominica concerns with the structure of mobile service plans, including relative in-bundle and OOB rates. C&W noted that its mobile plans are very similar to those available elsewhere in the region as well as in North America, Europe, and elsewhere.

Lastly, Digicel also strongly disagreed with NTRC Dominica and NTRC SVG assertions of joint dominance in the mobile services market. Digicel claimed there is strong competition between Digicel and Flow, which is reflected in the ECTEL's analysis provided in the Consultation Document.

ECTEL's Response and Determinations

ECTEL acknowledges NTRC Dominica and NTRC SVG's concerns regarding the mobile service pricing and packaging and, more generally, the degree of competition in the market given its largely duopolistic structure. However, based on its market assessment summarized in the Consultation Document, ECTEL found there appears to be a reasonable degree of competition between C&W and Digicel at this time.

For instance, the historical price comparisons provided by NTRC SVG were too narrowly focused to support its excessive pricing claim, since they focused solely on prepaid OOB call rates. In comparison, prepaid and postpaid in-bundle call allowances have increased over time and, consequently, the implicit in-bundle per-minute call rates have fallen and, moreover, are a fraction of OOB call rates. As well, as noted by C&W, mobile data speeds and in-bundle data allowances have increased considerably over time, which has resulted in increased data usage and lower effective data rates.

At this time, ECTEL's market assessment findings suggest that a dominance review is also not warranted at this time and, accordingly, ECTEL is not recommending that a dominance review be conducted as a follow-up to this proceeding. That said, ECTEL considers that further monitoring and assessment of competitive conditions in the mobile service markets in the MS is required as a follow-up to this proceeding. Pursuant to the new EC Bill and associated EC (Retail Tariff) Regulations, the findings of this exercise may warrant the recommendation of *ex ante* regulatory measures for mobile services in response to concerns such as those raised by NTRC Dominica and NTRC SVG.

Otherwise, for the reasons provided in the Consultation Document, ECTEL considers that the implementation of the proposed Guidelines is appropriate at this time for protecting the interests of mobile service consumers. These are addressed below.

3.2 Mobile Consumer Safeguards

While the Consultation Document found that there was no need or justification for *ex ante* mobile service price regulation, it did propose a number of specific safeguards to mitigate the negative effects on retail consumers of “bill shock” from unexpectedly high mobile invoices or rapid credit or credit advance depletion (the “Proposed Safeguards”). ECTEL developed the proposed Guidelines to give legal effect to the Proposed Safeguards.

The Proposed Safeguards were made up of six of the thirteen short-listed pricing/marketing practice “elements” that ECTEL considered in the Consultation Document (#1, #3, #4, #5, #7 and #8). They include both national and roaming usage notification and out-of-bundle (“OOB”) usage safeguards. ECTEL otherwise did not find that safeguards should be established for the other seven short-listed elements (#2, #6, #9, #10, #11, #12 and #13) at this time, but as noted above, ECTEL expects to undertake subsequent reviews of mobile services on a periodic basis, at which point it would review these and other matters, as appropriate. For ease of reference, the full set of thirteen pricing/marketing practice elements considered by ECTEL is provided in Table 1.

Table 1: Initial Review of Mobile Pricing and Marketing Practices	
Elements	Proposed Safeguard
#1. National Usage Allotment Notification	YES
#2. Access Regime for Roaming	No
#3. Roaming Usage Allotment Notification	YES
#4. Access Regime for National OOB Usage	YES
#5. National OOB Usage/Rates Notification	YES
#6. National OOB usage Limit/Cap	No
#7. Access Regime for Roaming OOB usage	YES
#8. Roaming OOB Usage/Rates Notification	YES
#9. Roaming OOB usage Limit/Cap	No
#10. Availability of Rollover	No
#11. Timing of New Prepaid Plan for Rollover	No
#12. Durability of Rollover	No
#13. Rollover Sequencing	No

Parties’ Submissions

C&W was generally supportive of the Proposed Safeguards, and noted that it already has in place some elements of the Proposed Safeguards while claiming that others “are not technically possible at this time”. Specifically, in the latter case, C&W indicated that while it already notifies mobile customers of their level of in-bundle usage, including notifying customers when they have exhausted their in-bundle usage allowance, C&W claimed that it does not have the technical ability (at this time) to notify or inform such customers of their options to continue service on an OOB basis (e.g., agree to overage rates, purchase an add-on or top-up, or renew or change plan, etc.)

when it provides usage level notifications. As an alternative, C&W suggested that if technical constraints limit a licensee's ability to notify customers of their service continuation options after reaching 100% in-bundle national or roaming usage, then the default should be for the licensee to discontinue service (the "Alternative C&W Safeguards"). However, C&W added that customers would be free to ensure service is in fact continued on their own initiative by, for instance, purchasing an add-on or renewing their plan. C&W suggested that the Alternative C&W Safeguards would "achieve ECTEL's objectives of consumer protection". In its comments C&W also provided specific drafting revisions to the proposed Guidelines to give legal effect to the Alternative C&W Safeguards.

NTRC SVG provided comments on several of the Proposed Safeguards. With respect to Element #2, NTRC SVG suggested that an additional safeguard should be established to require licensees to formally ask customers, when outside their home territory, to "opt in" rather than "default" into roaming as is currently the practice. NTRC SVG supported the Proposed Safeguard for Element #4, but suggested that this should go further, by allowing the user to choose an OOB limit "within the boundaries of their available limit or credit amount chosen". Lastly, NTRC SVG considered that Element #13 should be added as a Proposed Safeguard because, in its view, the principle that "rolled over minutes" be used before "any new minutes" should be codified.

NTRC Dominica provided detailed comments on the Proposed Safeguards, generally noting that, in its view, they did not go far enough because they did not regulate the relevant mobile prices. For instance, NTRC Dominica stressed that "more focus should be placed on determining a reasonable price" for mobile services and claimed that some OOB prices are "insanely exorbitant". Otherwise, while NTRC Dominica supported the Proposed Safeguards relating to Element #4 and #5, but also suggested that OOB limit or cap also be included in the Proposed Safeguards (i.e., as contemplated under Element #6) to provide greater protection for consumers. NTRC Dominica was generally supportive of Elements #7 and #8 but, as above, noted that they did not go far enough because they did not regulate OOB roaming prices. Lastly, NTRC Dominica argued that Elements #10 to #13 should be included as Proposed Safeguards.

The Grenada LDU proposed a series of drafting edits to the Guidelines. None of these edits involved substantive changes to the Proposed Safeguards, but rather were proposed for clarification and completeness purposes.

In reply, C&W responded to NTRC Dominica and SVG. With respect to NTRC SVG, C&W noted that it already provides customers with a roaming notification as contemplated under Element #2; however, it added that for the technical reasons provided in its initial comments, it is unable to provide customers with an "opt-in" roaming option or, for that matter, notify roaming customers who have exhausted their in-bundle roaming usage of their options to continue roaming usage at this time. For this reason, it proposed the Alternative C&W Safeguards whereby a "disallow" approach (as described in the Consultation Document) would apply as the default. C&W also noted that technically C&W cannot limit credit after roaming has begun. Lastly, C&W noted that it already implements the rollover sequencing as set out in Element #13. With respect to NTRC Dominica, C&W noted that it concurs with some of its comments on the technical feasibility of the Proposed Safeguards, which is the motivating factor for the proposed Alternative C&W Safeguards. C&W argued that the price regulation of mobile services that was proposed by NTRC

Dominica was inconsistent with international regulatory practice and would indeed lead to higher prices.

In Digicel's reply it noted that it "supports the general consumer protection principles" that underpin the Proposed Safeguards, many of which have already been implemented by the sector. Digicel agreed with C&W that some of the Proposed Safeguards may not be technically possible because they require different system capabilities that require an interplay of a number of factors, including a number of foreign roaming correspondents. Digicel claimed that the timeline and cost for implementing some of the Proposed Safeguards "is not trivial" and would likely require specific capital expenditures. Digicel stated that the Alternative C&W Proposals are a reasonable basis for a further engagement with ECTEL with a view to the identification of a set of safeguards "that balance consumer protection, cost and practicality of implementation and timeline to deployment".

In its reply, NTRC SVG stated that it does not believe that C&W is unable to notify users in real time of OOB usage. However, NTRC SVG agreed with the proposed Alternative C&W Safeguards that service be discontinued if no new OOB plan has been selected once the bundle allocation has been exhausted. NTRC SVG disagreed with C&W proposal that the notification threshold be revised from 80% to 75%. NTRC SVG also disagreed with C&W's proposal that in the case where it cannot technically notify users of their OOB usage options, that users may be notified of their options in this regard at the time the user signs up for the service because users will likely forget such information. NTRC SVG instead recommended that notification of OOB usage options be required.

NTRC SVG included much of NTRC Dominica's text of its comments related to Element #4 and added that "per second charges for OOB and in bundle usages should be reviewed". Similarly, NTRC SVG included much of NTRC Dominica's text of its comments related to Element #7 and #8, adding that the Proposed Safeguards do not address the issue of whether roaming charges should apply in respect to users from one MS travelling to another MS. With respect to Grenada LDU, NTRC SVG had a number of comments. First, it noted that the "Guidelines should cover both rates and usage". Second, it stressed that the preferred approach to OOB data should be "opt in" rather than current "default" and that in the case the user buys a new data bundle, it would lead to usage of that new data bundle rather than OOB usage.

ECTEL's Response and Determinations

ECTEL's determinations may be grouped under three broad categories: 1) the call for mobile price regulation by NTRC Dominica and NTRC SVG; 2) the C&W claim that it cannot technically comply with certain aspects of the Proposed Safeguards and consideration of the proposed Alternative C&W Safeguards; and 3) other matters in relation to specific Proposed Safeguards. We deal with each of these issues in turn as follows.

On the first issue, as stated in its responses and determinations in the previous section, ECTEL acknowledges NTRC Dominica and NTRC SVG's concerns regarding certain mobile service prices that are the subject of the Proposed Safeguards. As stated above, however, ECTEL's market assessment findings suggest that a dominance review is not warranted at this time and, accordingly

there is no economic or legal justification for *ex ante* mobile price regulation at this time.

On the second issue, ECTEL notes that while C&W acknowledges that it currently notifies users of in-bundle usage levels, including notifying them when they have exhausted their usage allowance, C&W otherwise claims it does not have the technical ability (at this time) to notify such users of their options to continue service when it provides usage level notifications. ECTEL is somewhat skeptical of this claim. On one hand, C&W states that it can notify customers of their in-bundle usage levels while, on the other, it claims it has no technical means of informing customers of their continued service options by, for instance, adding a link to its website or the customer's online account or provide short codes to select an option to continue service. To the degree this technical limitation exists, ECTEL considers that it to be short term in nature and the Proposed Safeguards would provide an incentive to quickly address the shortcoming. Under the current circumstances, therefore, ECTEL considers that on balance the proposed Alternative C&W Safeguards to be as favourable to users' interests as the Proposed Safeguards and, therefore, has revised the Guidelines to reflect this determination (see Annex B).

In this respect, Table 2 provides a summary of the specific aspects of the Proposed Safeguards that address OOB notifications and service continuation options as contemplated in the Consultation Document and also taking into account parties' comments, including the Alternative C&W Safeguards. The table considers the technical feasibility of the safeguards as well as the impacts on users under alternative safeguard scenarios.

For starters, ECTEL notes that there were three approaches summarized in the Consultation Document with respect to OOB usage after users have exhausted their in-bundle usage allocation, i.e.:

- i) OOB usage “**disallowed**”, requiring users to purchase a new plan/add-on;
- ii) OOB usage allowed, users are “**defaulted**” into OOB usage; or
- iii) OOB usage allowed, users are provided choice to “**opt-in**” to OOB usage.

The current situation (Column #A in Table 2) is one where, independent of any technical capabilities, the user is defaulted into OOB usage (Column #A, Item #3a of Table 2) and incurs OOB charges (#3b) unless the user purchases an add-on, renews service or chooses some other option to continue service (#4). The intent of the Proposed Safeguards was to move away from this “default” approach to either an “opt-in” or “disallow” approach. In the Consultation Document (Column #B), ECTEL proposed an “opt-in” approach based on the assumption that an opt-in approach was technically feasible. As noted, C&W has claimed that it is not technically feasible at this time, which lead to the proposed Alternative C&W Safeguards which are based on a disallow approach. ECTEL considers an opt-in approach to be optimal and, therefore, it remains the “primary” approach included in the revised Guidelines, as set out in the ECTEL Determination (Column #C). However, the “secondary” disallow approach (Column #D) is also available if OOB option notifications (#2a) is not technically feasible at this time as under the proposed Alternative C&W Safeguards. Provision for the disallow approach is therefore also included in the revised Guidelines. ECTEL is of the view that this dual approach provides a reasonable balance that achieves ECTEL's primary objective of mitigating the negative effects on retail consumers of “bill shock” from unexpectedly high mobile invoices or rapid credit or credit advance depletion.

Table 2: Summary for the Proposed Safeguards relating to OOB Usage Notifications and Service Continuation Options (Elements #4 and #7)					
		Current Situation	Proposed Safeguard	ECTEL Determination	
Items	Notifications/ Technical Feasibility	#A	#B	#C	#D
#1a	In-bundle usage notification	Yes, Voluntary	Yes, Mandatory		
#1b	Is #1a Technically Feasible?	Yes	Yes		
#2a	OOB options notification	Unknown	Yes, Mandatory		
#2b	Is #2a Technically Feasible?	Unknown	Assumed	Yes	No
SCENARIOS					
	User Actions/Effects	#A	#B	#C	#D
#3a	What happens if User does “nothing” when notified?	Defaults into OOB	Service discontinued		
#3b	OOB Charges	Yes (by default)	Only if OOB option selected when notified	No notifications, no OOB	
#4	May user purchase an add-on, renew, etc.?	Yes, user initiated	Only if other option selected when notified	Yes, user initiated	
#5	Type of Regime, as per ConDoc	“Default”	“Opt-in”	“Disallow”	

On the third and final issue, ECTEL notes that some of the parties commented on specific Proposed Safeguards and on the proposed Guidelines. On the latter, ECTEL has revised and simplified the Guidelines to take into account the above-noted determination and the comments received on the legal text of the Guidelines, as well as added the necessary definitions of terms. In response to the NTRC SVG’s comment that Element #2 should be “opt-in” rather than “default”, ECTEL confirms that this is indeed the case, given that the applicable access regime for roaming is captured under in Element #7, which is covered by the revised Guidelines. With respect to the NTRC SVG’s proposal to establish additional safeguards to limit or cap national and roaming usage/expenditures to a level different than applicable general credit or credit advance levels, ECTEL considers this proposal to be disproportionately complex. In ECTEL’s view, the existing general credit and credit advance limits serve as adequate safeguards at this time, especially when considered in the context of the revised Guidelines that address concerns with Elements #4, #5, #7 and #8). Regarding NTRC SVG and NTRC Dominica suggestions that additional safeguards be established rollover-related marketing practices (Elements #10 to #13), ECTEL notes that, as set out in the Consultation Document, operators are generally complying with these elements on a commercial basis, a situation that does not generally hold in the majority of the other jurisdictions scanned. In this instance, ECTEL’s approach in this matter is to not regulate what is already being provided on a commercial basis unless the issue is of a high priority or ECTEL considers that there is a possibility that the operators will change their commercial approach. ECTEL does not consider the case at hand meets those criteria.

3.3 Pay TV Services Market

As outlined in the Consultation Document, C&W and Columbus Communications jointly hold a virtual monopoly in the provision of pay TV services in Grenada, Saint Lucia and St. Vincent and the Grenadines. At the same, ECTEL noted that Digicel could enter these same markets with its fibre-based services in the near future, which would provide a strong competitive alternative for consumers. In addition, ECTEL found that C&W's acquisition of Marpin in Dominica resulted in it holding significant market share in that MS as well. Otherwise, ECTEL found that C&W faces considerable competition in St. Kitts and Nevis, which is currently also served by The Cable and Digicel.

More generally, ECTEL also recognized that video consumers have an increasing range of competitive alternatives available beyond pay TV. These include a growing number of free and subscription-based online video services (e.g., Netflix, Amazon Prime, Apple TV, Disney+ and YouTube). As well, other traditional TV options exist such as over-the-air and satellite TV. Further still, pay TV services can be considered as more discretionary rather than essential in nature. For these reasons, ECTEL found that there is no need or justification for *ex ante* pay TV service price constraints and, moreover, that there is also no reason to recommend that a follow-up dominance review be undertaken for pay TV services at this time. That said, ECTEL indicated that it intends to monitor pay TV pricing and marketing practices to determine whether any regulatory measures, including consumer protection safeguards, may be necessary in this market in the future.

Parties' Submissions

In its comments, NTRC Dominica noted that the OTT video services ECTEL mentioned in the Consultation Document as competing alternatives to fixed pay TV services are IP-based services provided over the operators' broadband Internet services. NTRC Dominica considered that there is a possibility that an operator could prioritize its own IPTV services and, in the process, throttle or block competing OTT video services. It suggested that ECTEL should put measures in place that would prohibit and, should they occur, penalize such practices.

In its reply comments, Digicel addressed NTRC Dominica's concerns of potential traffic shaping by citing the CANTO Code of Practice on Safeguarding the Open Internet, to which Digicel and C&W are signatories, that requires that operators "save for objective and transparent reasons traffic management will not selectively target the content or application(s) of specific providers within a class of content, service or application".

ECTEL's Response and Determinations

ECTEL notes that NTRC Dominica's noted Internet traffic management concerns are outside the scope of this proceeding. In any event, issues relating to traffic management practices are addressed in ECTEL's draft Net Neutrality Regulations. As well, as noted by Digicel, they are also addressed under the CANTO Code of Practice on Safeguarding the Open Internet.

ECTEL otherwise notes that no parties commented specifically on ECTEL's proposals for

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treatment of fixed pay TV services as outlined in the Consultation Document. Accordingly, ECTEL has decided to maintain its proposed recommendations with respect to the treatment of pay TV services as set out therein.

Annex A – Recommended RPRR

INTRODUCTION

This document establishes the obligations, provisions and procedures constituting the Eastern Caribbean Telecommunications Authority’s (“ECTEL”) recommended retail price regulation regime (“RPRR”) applicable to Regulated Services provided by Cable & Wireless [*ECTEL Member State*] (referred to herein as “C&W”), a company duly licensed in [*ECTEL Member State*] and having its registered office situated at the [*ECTEL Member State*].

Grenada, Saint Lucia and St. Vincent and the Grenadines

In addition, the RPRR also as applies to C&W’s affiliated company, Columbus Communications [*ECTEL Member State*] Limited, a company duly licensed in [*ECTEL Member State*] and having its registered office situated at the [*ECTEL Member State*].

The Regulated Services included in the RPRR are as follows: retail residential and business fixed voice access and domestic and international calling, broadband Internet access, domestic and international private leased circuits (“DPLC” and “IPLC”, respectively) and data services.

This RPRR replaces any price cap plan previously approved and adopted by the NTRC of [*ECTEL Member State*] that may be in effect.

1. DURATION AND TERM OF RPRR

This RPRR takes effect on [November] 1, 2021 and has a term of four (4) years as follows:

- i) Partial Year 1: [November] 1, 2021 to March 31, 2022
- ii) Year 2: April 1, 2022 to March 31, 2023
- iii) Year 3: April 1, 2023 to March 31, 2024
- iv) Year 4: April 1, 2024 to March 31, 2025

The RPRR expires as of April 1, 2025, unless ECTEL determines and recommends that it be either renewed or replaced.

2. RPRR PROVISIONS BY REGULATED SERVICE CATEGORY

2.1 General Price Cap Index

For those Regulated Services that are subject to a price cap index (“PCI”) constraint, the PCI is specified in the following form:

$$PCI = I - X \pm Z$$

where:

$I =$ *Inflation Factor* (calculated as the previous year's change in the consumer price index for the applicable ECTEL Member State as calculated and published by the Eastern Caribbean Central Bank)

$X =$ *Productivity Offset Factor*

$Z =$ *Exogenous Factors* (such changes operating costs that are outside of C&W's control and are material in magnitude)

2.2 Fixed Voice Access from a Fixed Location

Two (2) separately targeted PCIs apply to C&W's retail residential and business standalone basic fixed voice access services:

- i) Residential standalone basic fixed voice access: PCI cap with $X = 0$.
- ii) Business standalone basic fixed voice access: PCI cap with $X = 0$.

Associated RPRR Provisions:

- a) C&W must provide "standalone" residential and business basic fixed voice access services.
- b) Unused PCI headroom may be carried forward and used in subsequent price cap periods.
- c) The maximum allowed residential or business standalone basic fixed price increase in any one price cap period is 5%.
- d) *Residential Service Free Minute Allowance:* Residential standalone basic fixed voice access must include a minimum of 100 free off-peak (i.e., evenings and weekends) on-net fixed-to-fixed ("FTF") call minutes.
- e) *Residential Harmonization Obligation:* The lowest monthly residential standalone basic access line rate must be equal to or more than 77% of the highest monthly residential standalone basic access line rate in any other ECTEL Member State.
- f) *Business Harmonization Obligation:* The lowest monthly business standalone basic access line rate must be equal to or more than 90% of the highest monthly business standalone basic access line rate in any other ECTEL Member State.

Note that the PCI constraints and associated RPRR provisions set out in this Section 2.2 may be eliminated prior to the end of the RPRR term if the Automatic Adjustment Mechanism ("AAM") is triggered. The AAM is described in Section 4 below.

2.3 Domestic and International Calling from a Fixed Location

Two separately targeted PCIs apply to C&W's retail domestic standalone basic fixed-to-fixed ("FTF") and fixed-to-mobile ("FTM") call services:

- i) Domestic standalone basic FTF calls: PCI cap with X = 0.
- ii) Domestic standalone basic FTM calls: PCI cap with X = 0.

Associated RPRR Provisions:

- a) C&W must provide “standalone” basic FTF and FTM call services.
- b) Unused PCI headroom may be carried forward and used in subsequent price cap periods.
- c) The maximum allowed FTF or FTM price increase in any one price cap period is 5%.
- d) *Domestic FTF Call Rate Harmonization Obligation:* The lowest domestic FTF weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTF weekday/evening/weekend rate in any other ECTEL Member State.
- e) *Domestic FTM Call Rate Harmonization Obligation:* The lowest domestic FTM weekday/evening/weekend rate must be equal to or more than 65% of the corresponding highest FTM weekday/evening/weekend rate in any other ECTEL Member State.
- f) *International Call Price Ceiling:* Each fixed international direct dial (“IDD”) per-minute call price must be equal to or less than the corresponding mobile IDD per-minute call price charged by C&W.

Note that the PCI constraints and associated RPRR provisions set out in this Section 2.3 may be eliminated prior to the end of the RPRR term if the AAM is triggered.

Note also that a Z-factor related to ECTEL-mandated interconnection rate reductions applies to C&W’s retail domestic standalone basic FTF and FTM service rates. The details of the associated interconnection rate reduction flow-through obligation is set out in Section 3 below.

2.4 Fixed Broadband Internet Access

[Dominica and St. Kitts and Nevis]

There are no pricing constraints or provisions applicable to C&W’s retail fixed broadband Internet access services.

[Grenada, Saint Lucia and St. Vincent and the Grenadines]

C&W and Columbus Communications are obligated to make available to a Basic Broadband Offer (“BBO”) that satisfies the following minimum requirements:

- i) available on a standalone basis (i.e., available on an unbundled basis);
- ii) offered with unlimited monthly usage (i.e., without a monthly data usage cap);
- iii) minimum download / upload speeds of 10 Mbps / 1Mbps, respectively;
- iv) a monthly retail price of no greater than \$99 (VAT included);
- v) available to both new and existing customers; and
- vi) customers on other existing broadband plans who wish to switch to the BBO would

not be subject to early termination fees.

Associated RPRR Provisions:

- a) *BBO Availability Harmonization Obligation:* a basic fixed broadband service offer meeting the established BBO characteristics must be made available in all ECTEL Member States, where a BBO obligation applies.
- b) *BBO Price Harmonization Obligation:* The highest monthly rate (VAT included) for the BBO must be no more than 10% higher than the lowest monthly rate standalone basic fixed broadband service in any other ECTEL Member State where a BBO obligation applies.

Note that the BBO obligation and associated RPRR provisions are not subject to the AAM and, therefore, remain in place for the full term of the RPRR regardless of whether the AAM is triggered.

2.5 DPLC, IPLC and Data Services

There are no pricing constraints or provisions applicable to C&W's retail DPLC, IPLC or Data services.

3.0 INTERCONNECTION RATE REDUCTION FLOW-THROUGH OBLIGATION

ECTEL's review of interconnection costs completed in 2018 resulted in significant reductions in interconnection rates – i.e., the mobile termination and fixed terminations rates (“MTR” and “FTR”, respectively) – in each MS over the three-year period, 2018 to 2020.⁸ These mandated FTR and MTR rate reductions, which are cost-based, are eligible Z-factors in the case of C&W's retail domestic standalone basic FTM and FTF call services. The flow-through rate reduction obligations with respect to C&W's retail domestic standalone basic FTM and FTF services resulting from the mandated reductions in MTRs and FTRs are set out in Tables 1 and 2, respectively, for each MS.⁹ As indicated in the tables, the required reductions are to be implemented in two steps, the first taking place on the effective date of the RPRR and the second on the first day a of second year of the RPRR.

⁸ ECTEL, *Recommendation to National Telecommunications Regulatory Commissions on Cost Oriented Interconnection Rates in the ECTEL Member States*, April 2018.

⁹ Note that the flow-through obligation does not require full flow-through the mandated MTR and FTR reductions, but rather 64% and 43%, respectively.

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Table 1 – C&W MTR to FTM Flow-Through Obligation				
<i>(¢/minute)</i>				
ECTEL Member State	Current FTM	November 1, 2021 FTM	April 1, 2022 FTM	Total FTM Reduction
DOM	40.0	30.0	25.0	-15.0
GND	40.0	30.0	25.0	-15.0
SKN	40.0	30.0	25.0	-15.0
SLU	40.0	30.0	25.0	-15.0
SVG	40.0	30.0	25.0	-15.0
Average	40.0	30.0	25.0	-15.0

Table 2 – C&W FTR to FTF Flow-Through Obligation				
<i>(¢/minute)</i>				
ECTEL Member State	Current Peak FTF	November 1, 2021 Peak FTF	April 1, 2022 Peak FTF	Total FTF Reduction
DOM	7.0	6.0	5.5	-1.5
GND	7.0	6.0	5.5	-1.5
SKN	7.0	6.0	5.5	-1.5
SLU	7.0	6.0	5.5	-1.5
SVG	7.0	6.0	5.5	-1.5
Average	7.0	6.0	5.5	-1.5
	Off-Peak FTF	Off-Peak FTF	Off-Peak FTF	Total FTF Reduction
DOM	4.0	3.0	2.5	-1.5
GND	4.0	3.0	2.5	-1.5
SKN	4.0	3.0	2.5	-1.5
SLU	4.0	3.0	2.5	-1.5
SVG	4.0	3.0	2.5	-1.5
Average	4.0	3.0	2.5	-1.5

Note that the interconnection rate flow-through obligation is not subject to the AAM and, therefore, must be fully implemented regardless of whether the AAM is triggered.

4.0 AUTOMATIC ADJUSTMENT MECHANISM (“AAM”)

The purpose of the AAM is to determine if the PCI constraints and associated RPRR provisions applicable to C&W’s retail residential and business fixed voice access and calling services, as set out in Sections 2.2 and 2.3 may be eliminated as of the effective date or during the term of the RPRR.

4.1 AAM Trigger Mechanisms

The AAM trigger consists of two components – the Digicel and C&W Components – both of which will be considered simultaneously to determine whether or not the AAM is triggered. The Digicel and C&W Components are as follows:

i) Digicel Component

Principle: Direct quantitative evidence from Digicel that it has entered the residential and small business fixed voice service markets.

Trigger Threshold: Digicel residential and small business fixed voice service customer base equal to or greater than approximately **2%** of the population of the MS in question, as set out in Table 3.

ECTEL Member State	Population	Digicel Residential and Small Business Fixed Voice Subscriber Count
DOM	72,000	1,450
GND	111,000	2,200
SKN	52,000	1,050
SLU	182,000	3,600
SVG	110,000	2,200

Subscriber Data Definition:

- a) Residential fixed services including (a) standalone fixed voice and (b) bundled fixed voice (e.g., with broadband Internet and/or pay TV) subscribers; and
- b) Small business fixed services including (a) standalone fixed voice, (b) bundled fixed voice (e.g., with broadband Internet and/or pay TV) subscribers.

ii) C&W Component

Principle: Indirect qualitative and quantitative evidence from C&W that Digicel has entered the residential and small business fixed voice service markets.

Trigger Thresholds:

- a) Observed Entry: Corroborating evidence either in the form of Digicel advertising or postings on Digicel’s website that Digicel offers residential and small business fixed voice services; and
- b) C&W Subscriber Loss: Evidence of a minimum 10% reduction in C&W’s residential and small business fixed voice service subscriber base relative to December 31, 2020.

4.2 AAM Administration

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The data required for the Digicel and C&W Components of the AAM shall be collected by ECTEL on behalf of the NTRCs one month prior to the effective date of the RPRR and every six months thereafter, as necessary. The results of the Digicel and C&W Components of the AAM shall be assessed by ECTEL simultaneously. In the event the Digicel and C&W Components generate contradictory results for a given MS, then ECTEL shall investigate the discrepancy, as necessary, and do its best to resolve or determine the reason(s) for the difference in results. Where no resolution is found, ECTEL shall place greater weight on the Digicel Component of the AAM. In other words, if the Digicel Component trigger is met, but not the C&W Component trigger, the AAM would be triggered. In the reverse instance, the AAM would not be triggered.

Practically, the AAM assessment process shall, as necessary, work as follows:

One month before the RPRR takes effect:

- 1) The NTRC shall determine whether to trigger the AAM at the outset of the RPRR based on an ECTEL written determination of whether the AAM trigger conditions are met at the time the RPRR is to take effect.

Biannually once the RPRR is in effect (for those MS where the AAM not yet triggered):

- 2) The NTRC shall not trigger the AAM if ECTEL has confirmed in writing that it has determined that the AAM trigger conditions are not met.
- 3) The NTRC shall trigger the AAM if ECTEL has confirmed to it in writing that it has determined that the AAM trigger conditions have been met.
- 4) The NTRC shall trigger the AAM if it has not received any confirmation in writing from ECTEL regarding the status of the AAM trigger conditions. However, in such an instance, should circumstances delay ECTEL’s ability to assess the AAM trigger conditions, ECTEL shall inform the applicable NTRCs of this fact and, accordingly, pause the AAM process briefly, until the issue causing the delay is rectified.

To ensure full transparency as to the status of AAM assessment process, ECTEL shall keep both C&W and Digicel informed in writing of its biannual AAM trigger assessments, findings and related directions to the NTRCs, as applicable.

A summary of the AAM administrative procedures and timelines to be conducted for each MS, as necessary, is provided in Table 4.

Table 4 –AAM Administrative Procedures and Timelines	
Date	Action
<i>One Month Prior to the New RPRR taking effect</i>	
Start of Month -1	<i>Initial Digicel and C&W Component Data Collection:</i> ECTEL issues RFIs to Digicel and C&W for the specified AAM data. ECTEL assesses data received and follow-ups with Digicel and/or C&W.

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Before end of Month -1	<i>Initial AAM Trigger Assessment:</i> Based on the RFI responses, ECTEL determines whether AAM trigger conditions are met, and issues written confirmation to the NTRCs as to whether the AAM should or should not be triggered.
Day 1 of RPRR	RPRR takes effect with or without the AAM triggered as per ECTEL's Initial AAM Trigger Assessment.
<i>Biannual AAM Trigger Assessments during course of the RPRR (as necessary)</i>	
Start of Month 6	<i>Digicel and C&W Component Data Collection (as necessary):</i> ECTEL issues RFIs to Digicel and C&W for the specified AAM data. ECTEL assesses data received and follow-ups with Digicel and/or C&W.
Before end of Month 6	<i>AAM Trigger Assessment (as necessary):</i> Based on the RFI responses, ECTEL determines whether AAM trigger conditions are met, and issues written confirmation to the NTRCs as to whether the AAM should or should not be triggered.
Month 7	AAM exercised in any MS where ECTEL has determined that the AAM trigger conditions are met or ECTEL has not issued written confirmation to the NTRC; otherwise, the AAM is not triggered.
Beginning of Month 12	ECTEL repeats the Digicel and C&W Component data collection, as necessary.
Before end of Month 12	ECTEL conducts AAM trigger assessment and provides written confirmation to the NTRCs as to whether the AAM should or should not be triggered, as necessary.
Following RPRR Years	Biannual process repeats, as necessary.

5.0 REPORTING REQUIREMENTS

On August 15, 2021 and on March 15th thereafter (or the closest business day in each case), for the duration of the RPRR, C&W is required to file an RPRR Compliance Report, that would include:

- i) an update of all applicable price cap indices, along with all underlying data used for the calculations;
- ii) a demonstration and confirmation of compliance with all PCI constraints and additional RPRR provisions, including harmonization requirements, relating to retail residential and business basic fixed voice access and calling services;
- iii) a demonstration and confirmation of compliance with the interconnection flow-through obligation;
- iv) [*Grenada, Saint Lucia and St. Vincent and the Grenadines*] a demonstration and confirmation of compliance with the BBO obligation and related harmonisation requirements; and
- v) provision of audited statutory annual financial statements covering C&W's own and, as applicable, subsidiary/affiliated operations.

Annex B – Recommended Guidelines

1.0 Introduction

These Telecommunications (Mobile Consumer Safeguards) Guidelines (the “Guidelines”) are intended to mitigate the negative effects on retail consumers of “bill shock” from unexpectedly high mobile invoices or rapid credit or credit advance depletion.

The current telecommunications legislative framework, the applicable provisions of which are presented for each Contracting-State in Schedule A, provides that on ECTEL’s recommendation, a National Telecommunications Regulatory Commission (“Commission”) may publish guidelines on any aspect of the corresponding Retail Tariff Regulations.

2.0 ECTEL Recommended Action by NTRCs

ECTEL hereby recommends that each Commission:

- a. Publish on the Commission’s website the Guidelines by [Date].
- b. On publication on its website, the Commission should also make available the Guidelines to the public at the Commission’s office during business hours or make available to a person on payment of the prescribed fee.
- c. On publication on its website, the Commission should also direct Digicel and C&W to submit within 60 days to ECTEL, with a copy to the Commission, their proposed amended retail tariff terms and conditions to comply with the Guidelines.
- d. ECTEL will review the proposed amended retail tariff terms and conditions within 30 days and determine whether they are consistent with the Guidelines and will notify the service provider and the Commission of the Effective Date.

REGULATORY INSTRUMENTS

[ECTEL CONTRACTING STATE]

No. [XX] of 2021

Telecommunications (Mobile Consumer Safeguards) Guidelines

Gazetted [Date]

Coming into force [Date]

The National Telecommunications Regulatory Authority hereby issues the following [Telecommunications/Electronic Communications] (Mobile Consumer Safeguards) Guidelines in accordance with the applicable [Telecommunications Act/ Electronic Communications Act¹⁰] and Retail Tariff Regulations¹¹ in [ECTEL Contracting State]:

1. **Citation.** These Guidelines may be cited as the Telecommunications / Electronic Communications (Mobile Consumer Safeguards) Guidelines 2021.
2. **Commencement.** The Telecommunications/ Electronic Communications (Mobile Consumer Safeguards) Guidelines is deemed to come into force on [Date].
3. **Interpretation.** In these Guidelines –
 - a) **“Act”** means [Telecommunications / Electronic Communications Act]
 - b) **“Add-on”** means an electronic communications service or combination of electronic communications services that can be purchased and added to an existing electronic communications service or bundle.
 - c) **“Bundle”** means a combination of electronic communications services, whether regulated or unregulated, provided by a licensee under a combined rate or rate formula where the offering of one or more electronic communications services within the combination is contingent on acceptance of the entire combination;

¹⁰ Telecommunications Act in all Contracting States: Commonwealth of Dominica - Telecommunications Act, No. 8 of 2000 (as amended); Grenada - Telecommunications Act, Cap. 315C (as revised); St. Kitts and Nevis - Telecommunications Act, Cap. 16.05 (as revised); Saint Lucia - Telecommunications Act, Cap. 19.09 (as revised); St. Vincent and the Grenadines-Telecommunications Act, Cap. 418 (as revised).

¹¹ Each Contracting State has approved its Telecommunication (Retail Tariff) Regulations by various dates: Commonwealth of Dominica S.R.O. No. 40 of 2012; Grenada S.R.O. No. 54 of 2014; St. Kitts and Nevis S.R.O. No. 21 of 2015; Saint Lucia SI. No. 110 of 2015; St. Vincent and the Grenadines S.R.O. No. 23 of 2004.

- d) “**Bundle Allowance**” means the combination of calls, text messages, data or any other electronic communications service that is assigned to a retail customer for a fixed charge and a set time period;
- e) “**Credit Advance**” means a loan from a licensee that allows customers to use an electronic communications service;
- f) “**Retail Customer**” means a person, other than a licensee who —
 - (i) is obliged to pay periodically or on demand for an electronic communications service; or
 - (ii) has entered into an agreement for the provision of an electronic communications service;
- g) “**Licensee**” means a person holding a licence specified under section [XXX] of the [Act]
- h) “**Mobile Roaming Service**” means a mobile electronic communications service outside the network of a licensee within [Contracting States}/mobile electronic communications service provided outside the network of a licensee but within another Contracting State
- i) “**Mobile Service**” means an electronic communications service provided by means of an electronic communications network, used to provide an electronic communications service that—
 - (i) permits a customer to move continuously between places (including places accessing that network through different mobile base facilities) during the provision of a single cell; and
 - (ii) does not require physical contact between that network and the customer equipment;
- j) “**Out-of-Bundle**” means the offering of an electronic communications service, whether regulated or unregulated, by a licensee on a stand-alone basis where the rate is independent of the rate of any other electronic communications service;

4. National Usage Safeguards

- a) A Licensee shall notify a retail customer whether the retail customer is using a Mobile Service within a Bundle Allowance or Out-of-Bundle.
- b) If a retail customer is using a mobile service out-of-bundle, the licensee shall notify

- the retail customer, by text message or other electronic means, of the rate for the mobile service.
- c) If a retail customer is using a Mobile Service within a Bundle Allowance, at a minimum, the Licensee shall notify the retail customer, by text message or other electronic means, when the retail customer reaches no less than 75% and 100% of the Bundle Allowance.
 - d) If a retail customer has exhausted the Bundle Allowance for a Mobile Service, the Licensee shall notify the retail customer, by text message or other electronic means, of the available options to continue that Mobile Service, and the price of each available option.
 - e) The options referred to under sub-clause (d) may include the option to-
 - i. discontinue the use of the Mobile Service;
 - ii. purchase an Add-on for the Mobile Service;
 - iii. purchase another Bundle for the Mobile Service;
 - iv. use the Mobile Service on an Out-of-Bundle basis;
 - v. use a Credit Advance to continue using the Mobile Service; or
 - vi. any other option the Licensee makes available to the retail customer.
 - f) If a retail customer does not select any option under sub-clause (e), then the Licensee shall notify the retail customer, by text message or other electronic means, that the Licensee shall discontinue that Mobile Service.
 - g) After any discontinuation of a Mobile Service under sub-clauses (e) and (f), the retail customer may select to continue that Mobile Service with the Licensee by selecting any of the applicable available options under sub-clause (e).

5. Roaming Usage Safeguards

- a) A Licensee shall notify a retail customer whether the retail customer is using a Mobile Roaming Service within a Bundle Allowance or Out-of-Bundle.
- b) If a retail customer is using a mobile roaming service out-of-bundle, the licensee shall notify the retail customer, by text message or other electronic means, of the rate for the Mobile Roaming Service.
- c) If a retail customer is using a Mobile Roaming Service within a Bundle Allowance, at a minimum, the Licensee shall notify the retail customer, by text message or other electronic means, when the retail customer reaches 80% and 100% of the Bundle Allowance.
- d) If a retail customer has exhausted the Bundle Allowance for a Mobile Roaming Service, the Licensee shall notify the retail customer, by text message or other

- electronic means, of the available options to continue that Mobile Roaming Service, and the price of each available option.
- e) The options referred to under sub-clause (d) may include the option to-
 - i. discontinue the use of the Mobile Roaming Service;
 - ii. purchase an Add-on for the Mobile Roaming Service;
 - iii. purchase another Bundle for the Mobile Roaming Service;
 - iv. use the Mobile Roaming Service on an Out-of-Bundle basis;
 - v. use a Credit Advance to continue using the Mobile Roaming Service; or
 - vi. any other option the Licensee makes available to the Customer.
 - f) If a retail customer does not select any option under sub-clause (e), then the Licensee shall notify the Customer, by text message or other electronic means, that the Licensee shall discontinue that Mobile Roaming Service.
 - g) After any discontinuation of a Mobile Roaming Service under sub-clauses (e) and (f), the Customer may select to continue that Mobile Roaming Service with the Licensee by selecting any of the applicable available options under sub-clause (e).

National Telecommunications Regulatory Commission [Date], 2021

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Schedule A - Applicable Provisions of the Legislative Framework in each Contracting State that empowers the NTRC to issue and enforce the Telecommunications (Mobile Consumer Safeguards) Guidelines

Contracting-State	Legislation	Regulation/Section	Applicable Provision
Commonwealth of Dominica	Telecommunications (Retail Tariff) Regulations S.R.O. No. 40 of 2012	Regulation 2 (Interpretation)	“tariff means the rates, terms and conditions applicable to a telecommunications service”
		Regulation 4 (2)(k)	“... the Commission has the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers appropriate.”
		Regulation 49	“The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.”
	Telecommunications Act, No. 8 of 2000 (as amended)	Section 15 (1)	“The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed.”
		Section 15 (2)	“Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.”
	Grenada	Telecommunications (Retail Tariff) Regulations S.R.O. No.54 of 2014	Regulation 2 (Definition)
Regulation 4 (2)(k)			“... the Commission has the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers appropriate.”
Regulation 49			“The Commission may from time to time, and after consultation with ECTEL, provide guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.”
Telecommunications Act, Cap. 315C (as revised)		Section 14 (1)	“The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed.”
		Section 14 (2)	“Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.”
St. Kitts and Nevis		Telecommunications (Retail Tariff) Regulations S.R.O. No. 21 of 2015	Regulation 3 (Definition)
	Regulation 5 (2)(k)		“... the Commission shall have the authority to make such orders and issue such directions to a telecommunications provider in respect of tariffs as it deems appropriate.”
	Regulation 50		“The Commission may from time to time, and after consultation with ECTEL, publish

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Contracting-State	Legislation	Regulation/Section	Applicable Provision
			guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.”
	Telecommunications Act, Cap. 16.05 (as revised)	Section 17 (1)(r)	“The Commission shall perform the following functions, that is to say, perform such functions as may be conferred on it by regulation made under this Act or by any other enactment.”
Saint Lucia	Telecommunications (Retail Tariff) Regulations S.I. No. 110 of 2015	Regulation 2 (Interpretation)	“tariff means the rates, retail price, terms and conditions applicable to a telecommunications service”
		Regulation 4 (2)(n)	“... the Commission shall, after consultation with ECTEL- make decisions and issue directions to a telecommunications provider in respect of tariffs as the Commission considers appropriate;”
		Regulation 36	“The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.”
	Telecommunications Act, Cap. 19.09 (as revised)	Section 15 (1)	“The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined, and on other matters as prescribed.”
		Section 15 (2)	“Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.”
St. Vincent and the Grenadines	Telecommunications (Retail Tariff) Regulations S.R.O. No. 23 of 2004	Regulation 3 (Interpretation)	“tariff means the rates, terms and conditions applicable to a regulated service”
	Telecommunications Act, Cap. 418 (as revised)	Section 13 (1)	“The Commission may, on the recommendation of ECTEL provide guidelines as to the cost and pricing standards on which the reasonableness of the rates, terms and conditions of interconnections will be determined and on other matters as prescribed”
		Section 13 (2)	“Guidelines determined by the Commission under subsection (1) shall be available to the public at the office of the Commission during business hours or made to available to a person on payment of the prescribed fee.”