



Submission

To

Eastern Caribbean Telecommunications Authority (ECTEL)

Digicel's Submission in relation to

the Revised and Updated Electronic Communications

(Quality of Service Regulations)

January 2023

No. 1/2023

Submitted by



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INTRODUCTION

Digicel welcomes this opportunity to make these submissions to the Eastern Caribbean Telecommunications Authority ('ECTEL') in respect of the proposed Revised and Updated Electronic Communications (Quality of Service) Regulations.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the Consultation Document under reply or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part with ECTEL or with any party on those issues; nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

We thank you for inviting Digicel to provide its comments on the Consultation Document and of course are available for any questions you may have.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to (e-mail being preferred means of communication): -

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Comments on Consultation Process

Digicel is very concerned that ECTEL has published the Consultation Document utilizing legislation that has not yet come into effect as its legal basis. Further Digicel has not seen a recent draft of the proposed Electronic Communications Bill and therefore is unclear what is contained in that proposed Bill or whether any changes have been made since a copy was last made available to it. Digicel submits that it is procedurally incorrect for ECTEL to proceed in the manner set out in the Consultation Document and that consequently the Consultation Document and the proposals set out therein are void and are not capable of being implemented. The comments provided by Digicel herein are submitted without prejudice to this position and we hereby reserve our rights in this regard.

Questions to Providers

Regulation 6 – Geographical Scope: (new regulation included)

1. **Question 1: Do you consider it reasonable to define a national level reporting area, comprising the entirety of each individual state, in the draft revised and updated regulations? Should the reports also cover any sub-national areas?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. Regulation 6 in the revised and updated Regulations is a new provision that accommodates variations in the geographical scope of ECTEL Member States. Under this provision, the NTRC in each Member State will determine the geographical scope for the application of the regulations, based on a recommendation from ECTEL. ECTEL will undertake a public consultation before submitting its advice and recommendation to the NTRC.
- b. Given the relative size of the ECTEL Member States, defining a national level reporting area comprising the entirety of each individual state is a reasonable approach, as it simplifies the reporting process for applicable licensees and ensures consistency in reporting across the entire country.

- c. We do not see any basis for the inclusion of sub-national areas as this will require additional resources from operators, for very little gain.

Regulation 7 – Monitoring Quality of Service: (new regulation included)

2. **Question 2: Do you find it useful that NTRCs monitor the licensees' QoS parameters? Do you agree with the provisions set out in the Regulations regarding QoS monitoring by the NTRCs? Would you propose any modifications to those provisions?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. The potential benefit of this measure must be weighed against the cost of implementing same, as monitoring of these requirements will require significant resources from the NTRC's or any third parties they hire.
- b. It is unclear from the document whether information gathered from monitoring exercises will be used in enforcement and compliance action against operators. If so, it is imperative that these exercise are carried out in an open and transparent manner and that data can be audited and interrogated as needed. Any proposed methodology should undergo industry consultation.

3. **Question 3: Do you find the definition of monitoring parameters reasonable?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

The definition of monitoring parameters in the revised and updated regulations appears to be reasonable and consistent with international best practices.

Regulation 8 – Publication of Quality of Service Information: (new regulation included)

4. **Question 4: Do you find the publication process of results to be reasonable?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Digicel has no objection to the publication of quality of service information, provided that the regulation is amended to define a statutory process to deal with the following situations:

1. No information resulting from measurements conducted by the NTRC should be published unless it has been reviewed and accepted by the operator.

2. An operator should be entitled to call upon the NTRC to promptly remove any information resulting from measurements conducted by the NTRC should it believe same to be erroneous;
3. An operator should be entitled to object to the publication of quality of service measurements on the basis of confidentiality.
4. A fair and transparent objection process should be provided for.

Regulation 9 – Service Level Agreement: (amended - previously regulation 8)

5. Question 5: Do you find the process outlined in this regulation reasonable?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. Yes, the process outlined in the revised and updated regulation is a reasonable approach to ensure that feedback is received from all relevant stakeholders. Such a process is essential to promote transparency, accountability, and stakeholder engagement. It also ensures that the views and concerns of licensees, consumers, and other interested parties are taken into account.

Regulation 10 – Record keeping: (no amendments made)

6. Question 6: Do you find the proposed record keeping period reasonable?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. Digicel respectfully submits that the onus is on ECTEL to justify why these records must be kept for a period of 18 months, especially when the vast majority of reference territories either do not prescribe a record keeping period or define a period of less than 12 months. It is not adequate justification to say that the previous regulations mandated it, and so it must remain.
- b. Digicel submits that this requirement should either be deleted or the time frame reduced to six months.

Regulation 11 – Submission of Reports to the Commission: (amended)

7. Question 7: Do you find a period of three (3) months reasonable for reporting QoS parameters?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

A reporting period of three months seems reasonable for reporting QoS parameters, considering it aligns with international best practices and is consistent with the practice in many benchmark countries.

8. **Question 8: Do you find it reasonable to require that the report on QoS performance should be submitted within a month from the end of the reporting period?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. Given the additional requirements for the report being introduced by the amended regulation, Digicel believes that a longer period of time should be given to operators to compile and submit same

9. **Question 9: Do you find the information required in the QoS reports reasonable?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

No. The additional information being requested is very voluminous and will create a significant operational burden on operators. Digicel believes that ECTEL has not adequately justified the imposition of this burden on operators. ECTEL should clearly set out the deficiencies on the previous process and show how these deficiencies are impairing the exercise of their regulatory functions.

Regulation 12 – Accountable Officer: (new regulation included)

10. **Question 10: Do you consider the obligation imposed on licensees to assign a senior accountable officer as a contact person reasonable?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Digicel has no objection to this requirement.

Regulation 13 – Verification of reports: (new regulation included)

11. **Question 11: Do you find the process to verify the qos report useful and complete? Would you propose any modifications to the process or the associated provisions?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. Digicel strenuously objects to the inclusion of this provision as it is as it is extremely onerous in nature and the time frames prescribed for the operator to provide information are unreasonable. ECTEL has also failed to justify why it believes this amendment should be introduced.
- b. If this amendment is to be retained, it should include provisions for the involvement of an independent auditor in the verification process, as is done in some benchmark countries. This can provide an additional level of assurance and impartiality in the verification process.

Regulation 14 – Force Majeure: (amended - previously regulation 12)

- 12. Question 12: Do you find the definition of Force Majeure in regulation 3 reasonable? Do you agree with the proposed provisions and the procedure required for licensees to obtain a Force Majeure exemption as stipulated in regulation 14?**

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Digicel strenuously objects to the amendments to this provision as it is extremely onerous in nature and the time frames prescribed for the operator to provide information are unreasonable. ECTEL has also failed to justify why it believes this amendment should be introduced.

Regulation 15 – Advance Notice of Interruption: (amended – previously regulation 14)

- 13. Question 13: Do you find the advance notice of planned interruptions reasonable?**

Please support your answer and any suggestions with relevant information and internal or best practice references.

- a. Providing advance notice of planned interruptions is an important aspect of ensuring transparency and fairness in the provision of telecommunications services to customers. It allows customers to plan their activities accordingly and minimize the inconvenience caused by network interruptions.
- b. However, Digicel believes that there should be language to allow for a shorter period of notice where extenuating circumstances exist.

Regulation 16 – Commission to issue Guidelines: (new regulation included)

14. Question 14: Do you consider the proposed regulation reasonable?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Digicel objects to the inclusion of this provision on the basis that the language is broad and vague, and that it only provides for consultation between the NTRC and ECTEL and not with operators and other key industry stakeholders.

Regulation 17 – Compliance and enforcement: (amended - previously regulation 15)

FIRST SCHEDULE: (included with proposed prescribed forms under regulation 14)

15. Question 15: Do have any suggestions on the Force Majeure Certificate and Force Majeure Non-Certificate prescribed forms?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

- a. In general, it is important that these forms clearly outline the details of the Force Majeure event, including the specific event, its duration, and any exemptions or submissions by the licensee. The forms should also specify the reasons for a Non-Certificate and any recommendations by the NTRC.
- b. It may be helpful to review the prescribed forms of other regulatory bodies or industries to ensure that they include all necessary information and are in line with best practices. Additionally, it may be useful to consult with industry experts and stakeholders to gather feedback and make any necessary improvements to the forms.
- c. Overall, the goal of the Force Majeure Certificate and Non-Certificate forms should be to provide a clear and standardized process for licensees to report Force Majeure events and for the Commission to evaluate and respond to such reports. However this process should not be unduly onerous for operators.

SECOND SCHEDULE: (amended - previously only schedule in QOS regulations)

Parts A – D: (amended and now reflect Parts A – F)

16. Question 16: Do you agree with the exclusion of the above-mentioned parameters from the QoS Regulations?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Yes, Digicel is in agreement with the exclusion of these parameters

17. Question 17: Should any other parameter be excluded from the QoS Regulations?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

Digicel submits that the following matters should be excluded from these regulations as they are subjective and also fall outside of the statutory definition of “quality of service”:

- Overall satisfaction
- Satisfaction with enquiry services
- Satisfaction with billing performance

18. Question 18: Do you have any other comments on the proposed revised and updated draft Electronic Communications (Quality of Service) Regulations, which have not been discussed previously?

Please support your answer and any suggestions with relevant information and internal or best-practice references.

As stated above, Digicel wishes to express its concern that the basis of this consultation exercise is a bill and not a statute that is in force i.e. the Electronic Communications (“EC”) Bill. It is our view that it is procedurally incorrect to proceed with this consultation unless and until the EC Bill becomes law. The foregoing comments are submitted without prejudice to this position and we hereby reserve our rights in this regard.