Digicel comments on responses to the Public Consultation

by

ECTEL

on

“PROPOSED CHANGES TO REGULATION 17(c) OF THE DRAFT ELECTRONIC COMMUNICATIONS (CONSUMER PROTECTION) REGULATIONS (SPECIFIC RULES ON CONSUMER PROTECTION IN THE ELECTRONIC COMMUNICATIONS SECTOR)”

27th November 2020

We thank you for the opportunity to provide our comments on the previous submissions on consultation document “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Measures for Retail Services in the ECTEL Member States” dated 28th August 2020 (the “Consultation”). .

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the draft Regulations 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 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.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to: -

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Introduction.

The Consultation covers proposed regulatory market interventions in three main areas. These are a market review and assessment of the fixed and mobile markets in the 5 ECTEL Member States, issues relating to consumer transparency and issues concerning prepaid service termination relating to account inactivity.

These comments deal with the responses to the proposed changes to draft Electronic Communications (Consumer Protection) Regulations (Specific Rules on Consumer Protection in the Electronic Communications Sector)

Four respondents have made submissions as part of the first round of the consultation process and Digicel wishes to provide its comments and observations on thesesubmission.

Digicel's comments are structured thematically and deal with multiple initial inputs on the same issue in aggregate.

Aspects of ECTEL's proposals in respect of SIM lifecycle have significant impacts on billing and care systems. In addition the proposals on treatment of residual credit at point of termination are likely to be difficult to implement and give rise to new jeopardies in respect of fraud. The proposals in respect of refund or transfer of unused credit may have implications in respect of the VAT regime.

Digicel's comments are set out in more detail below.

COMMENTS ON THE CONSULTATION DOCUMENT "PROPOSED CHANGES TO REGULATION 17(c) OF THE DRAFT ELECTRONIC COMMUNICATIONS (CONSUMER PROTECTION) REGULATIONS (SPECIFIC RULES ON CONSUMER PROTECTION IN THE ELECTRONIC COMMUNICATIONS SECTOR)"

General

In respect of Flow's general comments in respect of the proposed changes to the Regulations Digicel agrees that a prior discussion with service operators would have provided ECTEL with information that its proposals in respect of cash refunds or remittance of residual credit to the Accountant General are unworkable.

Digicel believes that it would be more appropriate for Flow to address the specific issues raised by the NTRC of Dominica in respect of aspects of Flow's terms and conditions. However we would make the general comment that pre-paid and post-paid accounts are also used to pay for services provided by third parties. The most obvious one is roaming services where the service provider is dependent on information from foreign networks to implement its charging. Issues with the foreign network may result in delays on the provision of the necessary billing information. Similarly we are seeing increasing use of mobile subscriptions to effect charging for unlicensed content and other value added services provided by third parties providers. Delays in the provision of charging information by these third parties due to technical or other issues may result in situations where the application of charges to accounts are also delayed.

Comments regarding clarity of proposals

A number of the respondents have pointed out ambiguity or scope for multiple interpretations of the detail of the ECTEL proposals. Digicel would agree with the broad thrust of these comments.

ECTEL's proposals appear in part to conflate a pre-paid account subscription with pre-paid service plans. The subscription is in effect the creation of a user profile or account on the operator's care and billing systems. This profile is associated with a specific E.164 number that has been assigned to a SIM provisioned and active on the operator's network.

For pre-paid accounts there is an associated "wallet" which is recharged with credit with a nominal face value denominated in local currency. This recharge can be purchased usually with a matching one to one between the real value of the purchase and the nominal value applied to the pre-paid wallet. However bonus credit is sometimes offered by way of promotion for either locally or foreign purchased recharge. This means that at any time the value of nominal credit may in fact be in excess of the actual purchase cost.

Service plans are time and volume bounded allotments of services which are sold in bundles. The cost of these bundles is charged for by way of decrements to the pre-paid wallet associated with the account. Such plans are time bounded with a validity typically no longer than 1 month. Even where there is “roll-over” of allotments this is usually linked to having an active plan.

Plan activations are usually considered to be chargeable activity events on accounts for the purposes of account lifecycle. Plans therefore will have expired long before the issue of account termination comes into play.

In this context notions of unused allotments in relation to subscription expiry or termination are simply not relevant. In particular the provisions of Regulations 20(4)(c), 20(4)(d), 21(b) and Regulation 23 would never be engaged.

Digicel notes that the ambiguity in ECTEL’s use of the term subscription has led to Flow providing submissions in relation to Regulations 20.3 and 20.6 which appear to refer to service plans.

Regulation 20

The NTRC of Dominica has raised a question in respect of Regulation 20.1 and the NTRC of Grenada has offered alternative wording for Regulations 20.1 and 20.2

Digicel would comment as follows:
Pre-paid accounts are in the main open ended in duration and typically have an activity trigger to keep them open. In this regard there is no general supply of time-bounded “subscriptions” in the market save for potential promotions for example relating to inbound roamers etc.

ECTEL’s own proposals for a 3 month activity cut-off for account deactivation in practice imposes the 3 month minimum term and the provisions of 20.1 appear to be redundant and un-necessary.

In respect of 20.2 it might be more expedient to recast this as an exception allowing the ability to abridge the 3 month activity cut-off in Regulation 21.3 in respect of subscriptions activated on the basis of promotions which include a time bounded account duration.

Digicel has previously outlined its observations on Regulations 20(4)(c) and 20(4)(d).

Both Flow and the NTRC of Grenada have commented on Regulation 20.6. Digicel believes that ECTEL's original proposal and the comments have not addressed that practical difficulties of ECTEL's proposal.

The effect of terminating an account is to remove it from active billing and care systems and to deactivate the associated SIM and E.164 number on the network. It also has the effect of terminating any contractual relationship with the customer in respect of that account. ECTEL's proposal would require operators to refashion their care and other systems to allow retrieval of the account information from a terminated account and confer on the customer post termination contractual rights that were not part of their original agreement with the service provider.

Digicel cannot discern any practical benefit from forcing these costs on providers in circumstances where customers have had notice of the termination of in-active accounts. If these customers have not taken action to avoid termination during the notice period it is difficult to identify a need to provide further opportunity for them to take action after the period has expired.

Regulation 21

A number of the respondents have raised issues in relation to Regulation 21. Digicel would like to offer the following observations:

ECTEL has not set out any reasoning for its choice of a $10.00 cut-off. Depending on market offerings this amount is likely to be sufficient to purchase a plan or in the alternative could be used for pay as you go calls and texts. Since the introduction of number portability inactive accounts with amounts at or in excess of this level do not represent customers who have switched networks and have abandoned their old account on their old network. Given the role of the tourism industry in the ECTEL Contracting States it is likely that a proportion of the pre-paid accounts with residual balances in excess of the proposed cut-off are related to SIMs purchased by visitors for use during their stay. In the light of these factors there seems to be little point in maintaining a balance threshold at any level and the sole use of an in-activity trigger is likely to be more than adequate for most scenarios.

Digicel notes that customers with large account balances who receive termination notices are likely to be more incentivised to respond and to initiate activity on their account. Removing this cohort from the termination process may in fact be more damaging to consumer welfare as they will not receive the notifications.

Regulation 22

A number of the respondents have commented on Regulated 22.

While Flow has touched on some of the practical issued with ECTEL proposal none have substantively engaged with the practicalities of either cash refunds or credit transfers.

Operators do not have IT or POS systems which are designed to handle cash outflows. The development and deployment of such systems is likely to be complex and costly to meet the requirements of audit and fraud control.

Integrating these with pre-paid billing systems to provide triggers for balance decrement and balance transfer is also going to be complex and costly.

Some level of ID validation will be required in respect of cash refunds and ECTEL has made no proposals in this regard.

ECTEL has not made any proposals regarding the handing of nominal residual credit values which are less than the original purchase value due to the application of promotional credit.

Digicel notes that during the industry discussion on number portability in which all NTRCs, ECETL and the external expert consultants engaged by ECTEL all parties agreed that residual pre-paid account balances at time of porting would be forfeit. The unanimous acceptance of this is a reflection that all parties recognised the impracticality of refunding residual cash balances at account termination.

Flow in its response to proposed regulation 22.2 identifies a taxation issue. However its analysis is incomplete.

Mobile service providers do not take cash "deposits". From a tax point of view they sell top-up "vouchers" either virtual or physical with a nominal face value. In some of the ECTEL member states VAT is payable at the point of sale of these vouchers in some VAT is payable when the voucher is activated and applied to a pre-paid account. In addition, some vouchers are sold in third countries such as the US to diaspora, who can then apply them to domestic pre-paid accounts as gifts. Digicel notes that neither the original consultation nor the initial responses address this aspect of the top-up market. Even though the values are low there is a risk that a “cash out” option for residual credit purchased in a foreign jurisdiction could inadvertently bring the purchase of credit by diaspora into the ambit of financial service remittance legislation in the originating country. ECTEL should verify that this is not the case before proceeding with its proposals to confirm that they would not jeopardise the wider benefit of purchase of credit by diaspora.

The fact that VAT is reckonable on top-up voucher sales means that any refund of residual credit balance would also involve a refund of the VAT element. While a detailed analysis of the individual VAT regulations in each Contracting State would be required Digicel believes that this VAT refund would reduce the overall VAT returns made my operators to the respective tax authorities. Similarly voucher sales are recognised as revenues for the purposes of corporation tax and refunds would reduce this. ECTEL’s proposals do not assess the impact on exchequer revenues of the refund mechanism.

The proposals in respect of remittances to the Account General of unclaimed residual balances are similarly lacking analysis of the potential impacts on exchequer revenues. In jurisdictions where VAT is reckonable at point of sale of vouchers then remittance to the Account General of the full VAT paid amount would in effect be a form of double taxation. Such remittances would also have the effect of reducing operator revenues for the purposes of corporation tax. This means that the residual benefit to governments would be far lower than the headline residual balances.

The proposals in respect of transfer of residual balance between accounts also has the potential to reduce the level of sales of new top-up vouchers. This also would have adverse impacts on exchequer VAT receipts.

Overall ECTEL’s proposals will therefore be funded by a combination of both the operator and the tax authorities. Depending on the balance between refunds, transfers and remittance to the Account General there are some scenarios where the funding will primarily fall on the tax authorities.

Digicel also notes that refunds and remittances of residual prepaid credit would reduce the gross service revenues reckonable for the purposes of regulatory fees. And although less material it would also be the case that ECTEL, the NTRC and the USF would also in effect partially fund these through decreased levels of service provider contributions.