NATIONAL TELECOMMUNICATIONS
REGULATORY COMMISSION
ST. VINCENT & THE GRENADINES

Ref No.: *Cor/ECTEL*

November 23, 2020

Mr. Andrew Millet
Managing Director
ECTEL
5th Level, Baywalk
Rodney Bay
Gros Islet
Saint Lucia

Dear Mr. Millet,

Re: Consultation on Regulatory Instruments

Your email dated November 4, 2020 refers.

Having reviewed the Consultation document, our NTRC has the following comments in bold.

- NTRC DOMINICA:

A. Changes to consumer protection Regs

1. ECTEL's proposal: Page 18- Section 20 (2) Part V LIFE CYCLE OF A PREPAID SUBSCRIPTION read as
   If a licensee has a special promotion, a prepaid subscription may expire within 3 months from the date on which the electronic communications service is first used by a retail customer.

   Dominica's comments: *The NTRC is unclear as to what happens in the case where the licensee does not have a special promotion. Note if the service is never used, then the* *service will not expire. The NTRC would like to know why the service must expire and why 3 months is deemed suitable and not 1 year.*

We agree that one (1) year is sufficient before a prepaid subscription expires.

2. ECTEL's Proposal on page 6 Section 2. CHARGES FOR PRE-PAID SERVICE:

   1. You pre-pay for the Service by topping-up Your Account with Us. You do this by purchasing additional Cards or via electronic or self "TopUp" systems. Your pre-payments are not repayable by Us nor is interest payable on any credit You have with Us. Each time the Service is used by You (or by someone else using the Equipment), the Call Credits You have purchased are reduced in accordance with the usage charges. You agree that Our records determine how much Your account is topped- up and the rate of use of the Service.

   2. In the event that usage charges or Service Fees are not applied in real time and We subsequently become aware of such use of the Service We shall subtract the usage charges from Your Account at such later time.

   3. You agree to pay Our rental charges if You rent Equipment from Us.

   4. You agree to pay Our reactivation charge, as set out in Our current Tariff Sheet, if You reactivate the Service in accordance with Clause 6.3 above.

Dominica's Comment: Page 17 Section 2 *This clause in FLOW's terms and conditions is particularly problematic. If the billing of prepaid customer is not real time or the customer is not alerted in near real time, the customer has no way of knowing when he is in operating within the bundle or operating out of bundle. This inherently leads to a most detrimental situation for the consumer. All the safeguards, ECTEL are advocating for including alerting the consumer at 60% consumption and 80% consumption will be meaningless. It is absolutely critical that the billing for mobile services be real time or near real time. If the providers cannot guarantee that then the structure of the bundles being offered needs to be reevaluated.*

Further erroneous billing is also a real and present problem and currently. We have seen evidence of Flow unfairly billing a post paid consumer. We have requested data from FLOW to ascertain the extent of the erroneous billing but to date FLOW has not supplied the required information. At least the post paid customer had a record of this error and scrutinized his bill. Consider the case of a prepaid consumer where no bill is presented and CDR records may not be made available to them on requests. This is a serious concern that isn't addressed by ECTEL's proposals and should be.

We agree with the above points made by NTRC Dominica.

3. ECTEL's proposal: Page 18- Section 20 (2) Part V LIFE CYCLE OF A PREPAID SUBSCRIPTION read as

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   Dominica's comments: *The NTRC is unclear as to what happens in the case where the licensee does not have a special promotion. Note if the service is never used, then the service will not expire. The NTRC would like to know why the service must expire and why 3 months is deemed suitable and not 1 year.*

We agree with this point as think 1 year is suitable and 3 months should not be deemed suitable.

A. <u>Regulated and Unregulated Services</u>

1. ECTEL's Proposal on page 3 Section 2.2 Reviewable Unregulated Services

   This is ECTEL's first market assessment of retail mobile services and retail pay TV services. As noted above, no operator in those markets has been deemed or found to be dominant and hence these services are not subject to ex ante price regulation. In this review ECTEL is not proposing to declare any operator as dominant in either of these markets and, as a consequence, consider the need for ex-ante retail price regulation for either retail mobile or retail pay TV services at this time.

   However, based on input from the NTRCs and its own experience, ECTEL is aware of a number of mobile service pricing and marketing practices that raise significant concerns for mobile users in the MS. ECTEL is also aware of numerous other jurisdictions that have introduced consumer safeguards to protect the interests of consumers. Based on its analysis of mobile service pricing and marketing practices, ECTEL is of the preliminary *view that a number of mobile consumer safeguards are necessary and appropriate at this time.*

The legal and institutional framework for the implementation of any such safeguards to address such concerns in relation to Unregulated Services is different from the above-noted process for Regulated Services wherein ECTEL makes a recommendation for adoption by the NTRC. The Telecommunications Act4 (the "Act") in all ECTEL MS (except St. Kitts and Nevis) gives a general power to the NTRCs to provide guidelines on matters as prescribed. The Act in St Kitts and Nevis gives a general power to the NTRC to perform any functions under the Regulations made under the Act. Further, the Act is supplemented by Regulations5 which provide for a number of options in this regard, but the general approach is reflected in the Second Vintage Regulations, as set out in the Dominica 2012 Regulations:

2. tariff means "the rates, terms and conditions applicable to a telecommunications service;"

4. (1) Subject to these Regulations, the Commission has the authority to regulate the rates, terms and conditions of telecommunications services offered by a telecommunications provider.

(2) Without limiting the generality of subsection (1), the Commission has the authority to (k) make such orders and issue such directions to a telecommunications provider in respect of tariffs as it considers appropriate; and

(3) Prior to the exercise of any of the powers of the Commission under sub regulation (2), the Commission shall consult ECTEL.

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.

With respect to the First Vintage Regulations applicable in St. Vincent and the Grenadines, the provisions are not the same as the provisions in the other the four (4) MS. However, one of the purposes of ECTEL as outlined in the ECTEL Treaty, is to promote harmonised policies on a regional level for electronic communications in all the MS.

Based on ECTEL's analysis of the mobile service pricing and marketing practices included in Section 5 below, ECTEL has proposed a set of Mobile Consumer Safeguards be *introduced by the NTRCs pursuant to the Regulations. As discussed above, the NTRCs have an option to give legal effect to such a proposal either via an Order or issuance of Directions or Guidelines, after consultation with ECTEL. With this in mind, ECTEL is proposing a draft NTRC Guidelines to give legal effect to the proposed Mobile Consumer Safeguards. The draft NTRC Guidelines is included in Annex 4.*

- Dominica's Comment Page 2 section 2.2- *This is ECTEL's first market assessment of retail mobile services and retail pay TV services. As noted above, no operator in those markets has been deemed or found to be dominant and hence these services are not subject to ex ante price regulation.*

  The NTRC believes that ECTEL needs to consider the fact that there might be joint Significant Market Power in the mobile market and looking for a single dominant operator might not address the market failures. The fact that ECTEL needs to implement market safeguards is an indication that some sort of failure does exists. In order to treat with this matter holistically the NTRC believes some mechanisms or guidelines need to be developed to assess joint Significant Market Power in the ECTEL states.

Would joint significant market power mean that there is competition in the market?

2. ECTEL's proposal on Page 6 Section 3.2.2 Relevant Market Definition Issues:

   ECTEL has identified two major issues regarding the proposed relevant market definitions.

   Whether fixed and mobile voice access and calling are in the same relevant markets. As in the case of the PCP 2015 consultation process, ECTEL continues to be of the view that fixed and mobile access and calling should primarily be considered as complements rather than substitutes and, therefore, fall into separate relevant markets. There are several factors that support this view. First, from a functional perspective, fixed access services do not provide the capability of mobility, which is the primary distinguishing feature of mobile access services. This difference in technical functionality represents a significant differentiating factor between the two services. Second, mobile service plan prices generally tend to be higher than fixed service prices and, as result, limit their substitutability with fixed access and calling services. Third, while mobile penetration has increased significantly in the MS (as elsewhere), fixed penetration has remained relatively stable. Fourth, as noted in ECTEL's PCP 2015 consultation paper, survey evidence in the Caribbean region suggests that consumers tend to consider fixed and mobile services as *complements rather than substitutes. Therefore, taking all of these factors into account, ECTEL considers that mobile and fixed access and calling services fall into separate relevant markets. That said, ECTEL also recognizes that mobile services provide indirect competitive pressure on fixed services and has reflected this fact in its proposed New RPRR for fixed access and calling services.*

Whether fixed and mobile broadband are in the same relevant market. A similar question can be asked about whether fixed and mobile broadband services are complements or substitutes and, therefore, fall into separate relevant markets or the same relevant market. As in the case of fixed and mobile voice access and calling, ECTEL is also of the view that fixed and mobile broadband services are complements rather than substitutes because of their functional differences and, more importantly, their pricing differences. The current prices of mobile broadband services generally far exceed fixed broadband services when the average monthly usage levels of fixed broadband users are taken into account. There is little reason to expect the price gap between fixed and mobile broadband services will disappear in the coming months or, for that matter, years. Therefore, ECTEL considers that mobile and fixed broadband services fall into separate relevant markets.

- Dominica's comment on Page 2 Section 3.2.2: Relevant Market Definition Issues
  There is little reason to expect the price gap between fixed and mobile broadband services will disappear in the coming months or, for that matter, years. Therefore, ECTEL considers that mobile and fixed broadband services fall into separate relevant markets.
  The NTRC has seen recent offers from the Telecommunications providers where data over mobile networks is comparably priced with data of fixed networks. The commission believes the real question to be asked is why is the cost of a bit so much more expensive over the cheaper mobile network, especially since the cell sites are increasingly being backhauled through fixed network infrastructure.

We agree with this based on the disparity in mobile and fixed data pricing.

3. ECTEL's Proposal on Page 12 Section 3.7.3 Relevant Market #6 & #8

In the case of the markets for DPLCs, IPLCs and data services (i.e., Markets #6, #7 and #8), there appears to be a reasonable degree of competition between the two main service providers, C&W

and Digicel. In addition, the product and service lines between these three markets are increasingly blurring given advances in technology and the fact that business customers often purchase these services jointly rather than separately. For this reason, business customers often tend to rely on a single service provider for these services. Consequently, ECTEL is of the preliminary view that there appears to be no need to regulate retail prices on an ex ante basis in these markets (i.e., Markets #6, #7 and #8).

That said, ECTEL is aware of complaints relating to difficulties faced by third-party operators who wish to purchase these services on a wholesale basis from C&W and Digicel (especially international connectivity services). While ECTEL is not proposing any specific measures in this proposal to address such concerns, it may consider introducing other regulatory measures to ensure that third-party operators are provided with timely and reasonably priced wholesale access and to domestic and international connectivity services.

- Dominica's comment on Page 4 section 3.7.3: *That said, ECTEL is aware of complaints relating to difficulties faced by third-party operators who wish to purchase these services on a wholesale basis from C&W and Digicel (especially international connectivity services). While ECTEL is not proposing any specific measures in this proposal to address such concerns, it may consider introducing other regulatory measures to ensure that third-party operators are provided with timely and reasonably priced wholesale access and to domestic and international connectivity services.*

  The direct integration of subsea cables to internet service providers is the largest hindrance to competition in markets #5, #6, and #8. This has forced Digicel to acquire major subsea operations just so that they could participate in this space. Small ISPs do not have the capital or financing mechanisms to do the same and as a result are subjected to grossly unfair wholesale internet prices.

  NTRC Dominica is of the view that the internet market needs to be disaggregated. ISPs should not own or operate subsea cables. Submarine cable operators or internet backhaul operators should operate as a distinct independent market. ECTEL should spend some time and resources looking towards divestiture of the internet services companies into separate entities responsible for subsea or backhaul services (wholesale) and retail services (ISP). In *fact, the companies already operate in this fashion as local ISPs are told that they have to contact carrier services in order to arrange for backhaul services to the internet.*

Isn't the reason for a price cap is to control prices that are not subjected to effective market competition?

4. Page 10, section 5.2. - The manner in which mobile plans are issued seem to be grossly unfair to the consumer. The consumer is constrained in both time and value. In other words, the consumer must use x amount of data within y time to obtain the full value of the package. Should the consumer use more than X MB of data within y time the consumer will be charged a highly inflated rate. Further if the consumer uses (X minus some amount) data but y time elapses he does not realize the full value of his plan and the cost for Data during that period rises. The only time the customer receives the value for which he has paid for is if he consumes X amount of data in exactly y amount of time. A feat that is humanly impossible. Every plan period the consumer is thus robbed of value.

There should be consistency across the member states with regards to the implementation of rollover minutes.

5. ECTEL's Proposal on page 32 Out-of-Bundle National Usage

   National prepaid and postpaid plans have specific daily/weekly/monthly durations and national usage allotments. ECTEL notes that usage in excess of such allotments is subject to user-specific available credit limits/balances established by service providers and users. Separate from any such user-specific credit limit-related caps, three elements of concern in this regard relate to how such excess usage is treated.
   Three matters arise in this respect:

   Element #4 relates to whether operators in effect disallow out-of-bundle ("OOB") national usage by requiring users to purchase a new plan/add-on for any excess usage or, alternatively, if they allow OOB national usage, whether users are "defaulted" into it or are provided a choice to "opt-in".

Element #5 relates to whether users are notified by their service provider they are accessing OOB national usage and, if so, what the applicable OOB usage rates are.

Element #6 relates to whether operators impose any OOB national usage caps/limits separate from any user-specific credit limit-related caps.

For Element #4, ECTEL notes that, as set out in Table 13, C&W and Digicel both generally have a "default" regime whereby users are defaulted into OOB national usage. The one exception is the "disallow" regime for data services for Digicel SLU. There is some variation as well in Jamaica, where C&W has a "default" regime for all services, but Digicel has "opt-in" for voice/SMS in most plans and "disallow" for data for all plans, suggesting that this may be technically and commercially feasible for C&W and Digicel in the other four MS. The surveyed international regulatory practice is mixed as well, with HK requiring "disallow" for data and RSA requiring "opt-in" for all services. Based on the available evidence, there is generally a mixed approach with respect to the commercial practice for incurring OOB national usage.

Nonetheless, ECTEL considers that OOB national usage raises significant bill-shock concerns for mobile consumers and, therefore, on a preliminary basis, ECTEL considers a mobile consumer safeguard is necessary and appropriate in this case and therefore, ECTEL proposes that a mobile consumer safeguard be established that would require mobile consumers to formally "opt-in" for OOB national usage before they are able to use and, consequently, be charged for OOB national usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Element #5 is closely related to Element #4. As shown in Table 13, there is some variation between and within C&W and Digicel with respect to the notification of users when they begin OOB national usage. Generally, C&W and Digicel do not notify users they are accessing national OOB usage or of the applicable rates. Digicel does notify and prompt users to purchase more data in postpaid plans and in Grenada and Saint Lucia for prepaid data usage, suggesting this may be technically and commercially feasible for C&W and Digicel across all MS. The practice in Jamaica mirrors that of the access regime, where Digicel provide such notification (depending on the plan and type of services) but C&W

does not. Three of the other international jurisdictions surveyed have usage and/or rates notification requirements.

For the same reasons applicable in the case of Element #4, ECTEL considers that a mobile consumer safeguard is necessary and appropriate in this case to protect consumer interests. Therefore, ECTEL proposes that a Mobile Consumer Safeguard be established that would require mobile consumers be notified of applicable OOB national rates before they begin making use of OOB national usage and, consequently, be charged for such usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

Element #6 is also related to Element #4. ECTEL notes that, as set out in Table 13, that neither C&W nor Digicel have established general caps or limits on OOB national usage charges, other than those implied by any user-specific credit limits/balances, with the notable exception of the 60MB/day cap on OOB data usage by Digicel in Grenada. Only one of the surveyed international jurisdictions, Canada, sets a mandated cap on OOB data usage charges. While ECTEL is of the general view that such OOB usage charge caps could help protect consumers from potential bill- shock concerns, proposed Mobile Consumer Safeguards #3 and #4 should provide adequate initial protection in this regard. Consequently, ECTEL is of the preliminary view that requirement for mandated caps on OOB national usage charges are not necessary at this time.

- Dominica's comment Page 13, Section 5.3.3 Out-of-Bundle National Usage – *As stated earlier it appears that ECTEL doesn't seem to concern itself with the out of bundle charges for mobile data. In bundle charges can be as low as 1c per Mega Byte (MB) and out of plan charges can be as high as $1.00 per MB. This is a 999,900% increase in price. The logic used to come up with this increase is bewildering and the fact that ECTEL doesn't consider this insanely unfair to the consumer is even more perplexing.*

  Providers are supposed to provide cost-based pricing. On the face of it either 1 cent per MB is grossly underpriced or $1.00 per MB is insanely exorbitant. Either way ECTEL would serve the consumers well to ascertain what the cost of bit should be and why there is such a colossal discrepancy between in plan prices and out of plan prices.

  Further both providers price out of plan data at this incredulous cost. This shows some level of tacit collusion and drives the point further that joint dominance should be considered for the mobile market. ECTEL should review the guidelines around joint Dominance for the US, *Canada and EU market and make a determination on how best we can implement such safeguards for our market.*

We do agree that much data can be consumed in one second especially with regards to OOB charges. We are not sure how an OOB cap would work but a review of the per second charges for OOB and in bundle usages should be reviewed.

6. ECTEL's proposal on page 34 Section 53.4 Out-of-Bundle Roaming Usage:

National prepaid and postpaid plans have specific durations, national usage allotments and sometimes roaming usage allotments. In these plans, roaming usage, if available, is provided on either an in-plan basis (i.e., a defined allotment) or PAYGO basis (sometimes with a PAYGO allotment limit). Separately, users may purchase prepaid or postpaid roaming plans/add-ons, which have specific durations and roaming usage allotments. ECTEL notes that usage in excess of such allotments is subject to user-specific available credit limits/balances established by service providers and users. Separate from any such user-specific credit limit-related caps, there are three elements of concern from ECTEL's perspective, which relate to how such excess roaming usage is treated:

Element #7 relates to whether operators in effect disallow OOB roaming usage by requiring users to purchase a new plan/add-on for any excess usage or if they allow OOB roaming usage, whether users are "defaulted" into it or are provided a choice to "opt-in".

Element #8 relates to whether users are notified by their service provider that they are accessing OOB roaming usage and, if so, the applicable roaming rates.

Element #9 relates to whether operators impose any OOB roaming usage caps/limits, separate from any user-specific credit limit-related caps.

For Element #7, ECTEL notes that, as set out in Table 14, there is some variation between and C&W and Digicel and across MS with respect to practice for users to access OOB roaming usage. C&W generally has the "default" regime. Digicel also mostly uses a the "default" regime, except where it offers its Prepaid "EZ Roaming" plans for which a "disallow" approach applies. This *suggests that an alternative "opt-in" or "disallow" approaches for OOB roaming may be technically and commercially feasible for C&W and Digicel across all plans and in all MS. Elsewhere, a "default" regime applies in Jamaica and most other surveyed international jurisdictions, other than HK where a "disallow" regime for data services applies and RSA where an "opt-in" approach applies for roaming services. Based on the available evidence, there is a mixed approach with respect to the commercial practice to roaming usage.*

As with Element #4 (Mobile Consumer Safeguard #3), ECTEL considers that OOB roaming usage raises significant bill-shock concerns for mobile consumers and, therefore, on a preliminary basis, ECTEL considers a mobile consumer safeguard is necessary and appropriate and, therefore, proposes that a mobile consumer safeguard be established that would require mobile consumers to formally "opt-in" for OOB roaming usage before they are able to use and, consequently, be charged for OOB roaming usage. This measure is included as part of the draft NTRC Guidelines in Annex 4.

For Element #8 there is some variation between C&W and Digicel and across MS that mirrors the regime adopted under Element #7. Generally, C&W and Digicel do not notify users that they are accessing OOB roaming usage or provide the applicable roaming rates. Digicel does, however, notify users of prepaid "EZ Roaming" plans that they need to purchase a new plan to continue to roam. There is generally no roaming usage or rates notifications in Jamaica. In contrast, the majority of the surveyed international jurisdictions have requirements for these types of roaming usage or rate notifications.

For the same reasons applicable in the case of Element #7 and consistent with Mobile Consumer Safeguard #4, ECTEL considers that a mobile consumer safeguard is necessary and appropriate and, therefore, proposes that a mobile consumer safeguard be established that would require mobile consumers to be notified of applicable OOB roaming rates before they begin making use of OOB roaming usage and, consequently, be charged for such usage. This measure is set out in the proposed Mobile Consumer Safeguards in Annex 4.

- Dominica's comment on Page 13, Section 5.3.4

As with Element #4 (Mobile Consumer Safeguard #3), ECTEL considers that OOB roaming usage raises significant bill-shock concerns for mobile consumers and, therefore, on a preliminary basis,

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ECTEL considers a mobile consumer safeguard is necessary and appropriate and, therefore, proposes that a mobile consumer safeguard be established that would require mobile consumers to formally "opt-in" for OOB roaming usage before they are able to use and, consequently, be charged for OOB roaming usage

While this may offer some safeguards, it does not capture the high markups put on roaming data charges. Once again fairness or reasonableness is not considered. Most people artificially address this by choosing not to roam with mobile data period. However, in the event that an issue arises or they are in an emergency or unwittingly forget to turn off their data or turn on their data too soon may before they re-enter their home market the level of bill shock that ensues is unimaginable. The issue is not that all the stored updates or new messages are being downloaded. The issues is the high markup being charged for roaming data services. ECTEL needs to investigate the level of markup being charged for roaming data.

Further the safeguards being espoused will require the collaboration of two network operators. One which is likely ECTEL has no jurisdiction over. It is our view that a threshold be set on the markup associated with roaming charges as this would be easier to police and determine whether it is being implemented fairly.

The issue has also been brought up regarding why there are roaming charges at all between certain jurisdictions networks that span multiple MS.

- <u>LEGAL DRAFTING UNIT GRENADA:</u>

A. Telecommunications (Mobile Consumer Safeguards) Guidelines:

1. ECTEL's proposal*: Page 1 Section 3. Customer Notification for National Usage*

   a. A licensee shall notify a retail customer whether he or she is using a mobile service within a bundle or out-of-bundle.
   b. If a retail customer is using a mobile service out-of-bundle with a licensee, the licensee shall notify the retail customer of the rate of the service.

c. If a retail customer is using a mobile service within a bundle with a licensee, the licensee shall notify the retail customer when he or she reaches 80% and 100% of the usage measure or service allowance permitted for that service.

d. If a retail customer has exhausted the allowance for a mobile service in a bundle with a licensee, the licensee shall notify the retail customer of the available options and the rate of each option.

e. The options referred to under sub-clause (4) 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 mobile service bundle;

iv. use an out-of-bundle service;

v. use a credit advance to continue using a mobile service; or

vi. any other option available to the retail customer.

f. If a retail customer does not select any option under sub-clause

(5) then the retail customer should be notified that they will no longer be able to use the service.

Grenada's 1st comment: *Page 1 General Observation (1) It is our view that the focus of this guideline should be the rates that apply when using a mobile service in bundle and out of bundle ", and not necessarily whether a retail customer uses a mobile service in bundle or out of bundle.*

We think the guidelines should cover both rates and usage.

Grenada's 2nd comment: *Page 1 General Observation (2): Consideration could be given to including guidelines to say that a licensee must not permit out of bundle data usage until a retail customer purchase a new data bundle or opt in or out of bundle usage.*

We agree with the point to have an opt in or opt out approach if the consumer has utilized its allocated usage. However, purchasing a new data bundle would not lead to out of bundle usage but a completely new package.

B. Changes to consumer protection Regs

1. ECTEL's Proposal Page 8 Title of Section *"20. Expiration of Prepaid Subscription"*
   Grenada's comment on page 3 on the Title of Section 20 *Expiration of prepaid subscription- We suggest the following redraft of heading Expiry of prepaid subscription*

We do not agree to this. It should be left as is.

2. ECTEL's Proposal Page 9 Title of Section *"21. Criteria for Termination of Prepaid Subscription"*
   Grenada's comment on Page 5 on the Title of Section Clause 21 *Criteria for termination of prepaid subscription-* We suggest the following redraft of heading: *Prohibition on terminating prepaid subscription*

We do not agree to this. It should be left as is.

- CABLE & WIRELESS:

A. Regulated & Unregulated services

1. FLOW's general comment on page 2. point iii - *The Basic Broadband Offer obligation is unfairly asymmetrically imposed. FLOW believes that should Digicel enter the market in a significant degree as measure by the Automatic Adjustment Mechanism, then either the obligation should be lifted from FLOW or imposed symmetrically on Digicel.*

We agree that should Digicel enter the market in a significant degree as measure by the Automatic Adjustment Mechanism, then the obligation should be imposed symmetrically on Digicel.

2. ECTEL's proposal: Section 4.2.3 Flow-through of Mandated Changes in Interconnection Rates: *In April 2018, ECTEL completed a review of interconnection rates aimed at ensuring interconnection rates in each MS are cost oriented. Among other things, in its decision,10*

ECTEL recommended significant reductions in fixed and mobile call termination rates (i.e., "FTR" and "MTR", respectively). These involved FTR reductions of over 80% in most MS and MTR reductions of 90% or more in all MS. ECTEL also recommended that the FTR and MTR reductions be phased in over three years, with the first reduction scheduled for May 2018 and the following two reductions scheduled for May 2019 and May 2020. The vast majority of the overall recommended FTR and MTR reductions were front-end loaded into the scheduled May 2018 and May 2019 reductions (i.e., 95% or more of the total reduction). Therefore, by the time the New RPRR is implemented, the vast majority of the recommended FTR and MTR reductions will have been implemented and, in any event, will be completed in 2020. The mandated MTR and FTR reductions for each MS are presented in Table 5. The MTR reductions vary from 21.0 to 26.7¢/minute, with an average of 23.3¢/minute. The FTR reductions vary from 1.8 to 4.8¢/minute and average 3.5¢/minute. ECTEL considers that the mandated FTR and MTR reductions qualify as eligible Z factors. Reductions in FTRs and MTRs reduce C&W's wholesale call termination costs and, as a result, directly reduce the per-minute costs of providing retail FTF and FTM calls. Accordingly, as Z factors, ECTEL is of the preliminary view that FTR and MTR reductions should be flowed through if not in whole, in large part to retail standalone basic FTF and FTM call rates. In 2010, the previous time when MTR reductions were flowed through to FTM rates, the focus was on reducing FTM rates to a common "target" rate for all MS rather than flowing through MTR reductions in full. As a result, the FTM rate, which was 71¢/minute in each MS at the time, was reduced by 31¢/minute to a target rate of 40¢/minute. At the time, the mandated MTR reductions varied from 32.8 to 38.6¢/minute by MS, with an average reduction of 35.9¢/minute. Consequently, the MTR reduction flow-through percentage averaged 87% (31¢/35.9¢). At the time, there were no mandated reductions in the FTR and, consequently, no FTR-related flow- through reductions to FTF rates were necessary. ECTEL considers that the MTR reduction approach used for FTM rates in 2010 can be used in a similar fashion for both FTM and FTF flow- through purposes in the current instance.

- FLOW's comment on Page 14 (Section 27) *FLOW believes that the specific interconnection pass-through proposal is flawed in numerous ways. Firstly, competitive pressure exists on fixed calling. Fixed and mobile broadband OTT VOIP applications and traditional mobile calling services in general are used as substitutes for this service. Because of this competitive pressure, prices will be reduced to their* *cost level by the market. Any cost benefit arising from the termination rate proceeding will be utilized to lower prices and/or offer more promotions and discounts to address the relative lack of attractiveness of the fixed calling service vis-à-vis mobile substitutes.*

While competition exists amongst two providers, the cost per minute to make a phone call is quite substantial in comparison to the termination rate. Especially with mobile, evidence shows that while both providers compete, there is no real reason to drastically reduce prices for consumers so they both compete with similar high prices. Consider the below local cost per minute:

Cable & Wireless	Digicel
$1.00	$0.99

3. ECTEL's proposal: Section 4.2.3 *Flow-through of Mandated Changes in Interconnection Rates: In April 2018, ECTEL completed a review of interconnection rates aimed at ensuring interconnection rates in each MS are cost oriented. Among other things, in its decision,10 ECTEL recommended significant reductions in fixed and mobile call termination rates (i.e., "FTR" and "MTR", respectively). These involved FTR reductions of over 80% in most MS and MTR reductions of 90% or more in all MS. ECTEL also recommended that the FTR and MTR reductions be phased in over three years, with the first reduction scheduled for May 2018 and the following two reductions scheduled for May 2019 and May 2020. The vast majority of the overall recommended FTR and MTR reductions were front-end loaded into the scheduled May 2018 and May 2019 reductions (i.e., 95% or more of the total reduction). Therefore, by the time the New RPRR is implemented, the vast majority of the recommended FTR and MTR reductions will have been implemented and, in any event, will be completed in 2020. The mandated MTR and FTR reductions for each MS are presented in Table 5. The MTR reductions vary from 21.0 to 26.7¢/minute, with an average of 23.3¢/minute. The FTR reductions vary from 1.8 to 4.8¢/minute and average 3.5¢/minute. ECTEL considers that the mandated FTR and MTR reductions qualify as eligible Z factors. Reductions in FTRs and MTRs reduce C&W's wholesale call termination costs and, as a result, directly reduce the per-minute costs of providing retail FTF and FTM calls.*

Accordingly, as Z factors, ECTEL is of the preliminary view that FTR and MTR reductions should be flowed through if not in whole, in large part to retail standalone basic FTF and FTM call rates. In 2010, the previous time when MTR reductions were flowed through to FTM rates, the focus was on reducing FTM rates to a common "target" rate for all MS rather than flowing through MTR reductions in full. As a result, the FTM rate, which was 71¢/minute in each MS at the time, was reduced by 31¢/minute to a target rate of 40¢/minute. At the time, the mandated MTR reductions varied from 32.8 to 38.6¢/minute by MS, with an average reduction of 35.9¢/minute. Consequently, the MTR reduction flow-through percentage averaged 87% (31¢/35.9¢). At the time, there were no mandated reductions in the FTR and, consequently, no FTR-related flow- through reductions to FTF rates were necessary. ECTEL considers that the MTR reduction approach used for FTM rates in 2010 can be used in a similar fashion for both FTM and FTF flow- through purposes in the current instance.

- FLOW' comments on Page 15 section 30. *The best policy option for ECTEL is simply to acknowledge that fixed calling like mobile calling is subject to competitive pressures and drop the entire notion of pass-through.*

We do not completely agree with this. The call connection quality between PSTN or fixed calling with WhatsApp as the example they use are not substitutable.

4. ECTEL's Proposal: Section 4.3. on page 21: *The market assessment results show that C&W and Columbus currently have market dominance in the fixed broadband services market in Grenada, Saint Lucia and St. Vincent and the Grenadines. However, as noted, Digicel could enter these markets with its Fibre-based Retail Services in the near future. In contrast, there are established competitive alternatives to C&W in the other two MS, Dominica and St Kitts and Nevis.12*

   ECTEL considers that the significant differences in market conditions in the fixed broadband services across MS requires a mixed approach to price regulation in this instance. Where C&W and Columbus hold a dominant position, ECTEL is of the preliminary view that ex ante price regulation is required. At the same time, in such cases, ECTEL also believes a light touch price regulation approach is also necessary and appropriate in this market, especially in view of the need for ongoing network investments to improve capacity and expand coverage of latest generation broadband technologies. Otherwise, *ECTEL is of the preliminary view that direct ex ante price regulation is not required in MS where competitive fixed broadband service alternatives exist.*

Therefore, ECTEL considers that ex ante price regulation should apply to standalone "basic" fixed broadband service offered by C&W and Columbus in Grenada, Saint Lucia and St. Vincent and the Grenadines (i.e., those MS in which C&W and Columbus hold a dominant market position). Encouraging both the deployment of advanced, high-speed broadband facilities and subscriber take-up of broadband services are key ECTEL policy objectives. ECTEL recognizes that the significant investments are required to constantly improve speeds, capacity and coverage of latest generation broadband technologies. At the same time, ECTEL is concerned that broadband service prices can raise affordability concerns for many existing and potential customers and, therefore, could serve to limit broadband penetration. With these considerations in mind, in the Restricted Consultation Document, ECTEL required as a regulatory obligation for these three MS that C&W provide a "basic" broadband offer ("BBO") that satisfies proposed minimum broadband services capabilities at a reasonably affordable price. The resulting BBO that was finalized through the Negotiation Process is described below.

- FLOW's comment on Page 15 Section 31 *Another objectionable proposal that ECTEL is adding to its traditional plan is that of mandating and capping the price of FLOW's "basic" residential broadband service in the overlap markets of Grenada, St. Lucia and St. Vincent & the Grenadines. We believe that this proposal is unnecessary due to the existing competitive pressure of mobile broadband, the related competition for broadband services, such as data, DPLC and IPLC, and the impending deployment of Digicel's subsidized fixed network in these markets. There is sufficient competition and contestability to prevent excessive pricing.*

We do not agree with the comments put forward by FLOW on page 15 (C), I think that capping the price of FLOW's "basic" residential broadband service in the overlap markets of Grenada, St. Lucia and St. Vincent & the Grenadines is a good move by ECTEL.

B. <u>Telecommunications (Mobile Consumer Safeguards) Guidelines</u>

1. ECTEL's proposal: Page 1 Section 3. Customer Notification for National Usage

NTRC
P.O. Box 2368, 2nd Floor NIS Building, Upper Bay St., Kingstown, St. Vincent and the Grenadines
Tel: (784) 457-2279 | Fax: (784) 457-2834 | Email: ntrc@ntrc.vc | www.ntrc.vc
NTRC SVG NTRCSVG

a. A licensee shall notify a retail customer whether he or she is using a mobile service within a bundle or out-of-bundle.
b. If a retail customer is using a mobile service out-of-bundle with a licensee, the licensee shall notify the retail customer of the rate of the service.
c. If a retail customer is using a mobile service within a bundle with a licensee, the licensee shall notify the retail customer when he or she reaches 80% and 100% of the usage measure or service allowance permitted for that service.
d. If a retail customer has exhausted the allowance for a mobile service in a bundle with a licensee, the licensee shall notify the retail customer of the available options and the rate of each option.
e. The options referred to under sub-clause (4) 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 mobile service bundle;
iv. use an out-of-bundle service;
v. use a credit advance to continue using a mobile service; or
vi. any other option available to the retail customer.
f. If a retail customer does not select any option under sub-clause
(5) then the retail customer should be notified that they will no longer be able to use the service.

- FLOW's comment on Page 18: *Status and Feasibility: C&W does not provide such notices to all its subscribers using service out of bundle. Technically it is not feasible to do so at this time, so C&W cannot comply with such a requirement as specified.*

We do not agree with Cable & Wireless' point on them not being able to notify customers in real time of out of bundle usage. While we agree that customers' service be discontinued to prevent bill shock if they have not selected an out of bundle plan, we still believe that the provider should provide notices to the user of applicable rates in advance.

- FLOW'S comment on page 21: *If a retail customer is using a mobile service within a bundle with a licensee, the licensee shall notify the retail customer when he or she reaches at least three (3) levels of the usage measure or service allowance permitted for that service. One level should be at no less than 75% and another at 100%, with a third at some intermediate* *level between the two. The licensee may notify the retail customer at any other levels of usage as it deems appropriate.*

We do not agree with FLOW's reduction to the minimum threshold of 80% to 75%.

5. ECTEL's proposal: Page 2 Section 4 Customer Notification for Roaming Usage-
   i. *A licensee shall notify a retail customer who is roaming, whether he or she is using a roaming mobile service within a roaming bundle or out-of-bundle roaming.*

   ii. If a retail customer is using a mobile roaming service out-of- bundle with a licensee, the licensee shall notify the retail customer of the rate of the service.

   iii. If a retail customer is using a roaming mobile service within a roaming bundle with a licensee, the licensee shall notify the retail customer when he or she reaches 80% and 100% of the usage measure or service allowance permitted for that service.

   ii. *iv. If a retail customer has exhausted the allowance for a service in his or her roaming bundle with a licensee, the licensee shall notify the retail customer of the available options and the rate of each option.*

   iii. *v. The options referred to under sub-clause (4), may include the option to—*
   - *discontinue the use of the roaming mobile service;*
   - *purchase an add-on for the roaming mobile service;*
   - *purchase another roaming mobile service bundle;*
   - *use an out-of-bundle roaming service;*
   - *use a credit advance to continue using a roaming mobile service; or*
   - *any other option available to the retail customer.*

   vi. If a retail customer does not select any option under sub-clause (5) then the customer should be notified that they will no longer be able to use the service.

- FLOW's comment on Page 19: *Status and Feasibility: Status and Feasibility: C&W does not generally provide such notices to their subscribers. In many cases, C&W is reliant on third party input to calculate roaming usage, which does not allow for real-time notifications and access options. In such instances, it is not technically feasible to notify, so C&W cannot comply with such a requirement.*

We do not agree with Cable & Wireless' point on them not being able to notify customers in real time of out of bundle usage. While I agree that customers' service be discontinued to prevent bill shock if they have not selected an out of bundle plan, I still believe that the provider should provide notices to the user of applicable rates in advance.

- FLOW's comment on Pg. 21 Section 3: To include the following provision:

c. Notwithstanding sub-clause (b), if, for technical reasons, the licensee cannot notify a retail customer that they are using a mobile service out-of-bundle and associated rate of the service, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the he or she signs up for a new allotment, i.e., another service bundle.

We do not agree with the above as after years even month customers may forget what was said when they signed up for the service as such reminders are necessary.

- FLOW's comment on Page 21 Section 3 (G): To include the following provision:

  g. Notwithstanding sub-clauses (d), (e) and (f), if, for technical reasons, the licensee cannot notify the retail customer as they approach or reach their national usage allowance of their options to continue their service, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the retail customer signs up for an add-on for the mobile service.

We do not agree with the comment put forward by FLOW for the same reason as outlined above.

- FLOW's comment in Page 22 Notwithstanding sub-clause (b), *if, for technical reasons, the licensee cannot notify a retail customer that they are using a mobile service out-of-bundle and associated rate of the service, the licensee may tell the retail customer in advance (at the time the retail customer signs up for the service and as part of the general terms of service) that it will discontinue service until and unless the he or she signs up for a new allotment, i.e., another service bundle.*

Furthermore, there should be different mechanisms in place by the licencee to inform customers of their remaining allowance. Stating for "technical reasons" is not sufficient as the licencee can employee different means to do so. Furthermore, after years even month customers may forget what was said when they signed up for the service as such reminders are necessary.

C. Changes to consumer protection Regs

1. FLOW's general comment on consultation document:

   Page 3 Section 7, "On this basis alone, FLOW believes, ECTEL should suspend this consultation and undertaken to relaunch once it has undertaken appropriate preliminary steps."

We do not agree with Cable and Wireless' comment to cease all consultations and restart the process by consulting with them first.

2. ECTEL's Proposal: *Page 9 Section 21 Criteria for Termination of Prepaid Subscription A licensee shall not terminate a*

   a. a retail customer has at least $10.00 on his or her account;
   b. a retail customer has at least 10% of the voice minutes, text messages or data allowance on his or her account; or
   c. in the preceding 3 months, a retail customer has—
   i. made or received a call;
   ii. sent or received a text message; or
   iii. used data.

- FLOW Comment on Page 5: *Provisions 21.1.a and 21.1.b are inconsistent with what pre-paid accounts were designed for, and FLOW cannot technically automatically interrogate its system to maintain an account depending on a dollar or % allowance balance. However, 21.1.c is implementable and can be retained in the regulations as proposed.*

FLOW has not justified why it is impossible for them to maintain the customer's account based on the amount on the account or the % allowance balance.

3. ECTEL's proposal on Page 8 Section 20 (a) *A license shall -*
   a. *notify a retail customer by email, text message or other application, at least 5 days before a prepaid subscription expires;*

- FLOW Comment on Page 4: *Because pre-paid subscription is of different durations a 5 day notification may not be relevant or beneficial to a customer. ECTEL should change "5 days" to "1 day" as is current practice.*

1 day in advance may not be sufficient notice in all cases for a subscriber to take action. As such, it is recommended that for plans in excess of 1 week, 5 days' notice be granted, and for those less than one week, 1-day notice be given.

4. ECTEL's proposal on Page 8 Section 20 (b) *A license shall -*
   b) clearly inform a retail customer of the options that are available and the implications of inaction.

- FLOW Comment on page 4*: FLOW does notify the customer of his or her options, which differ depending on whether the customer has opted for auto-renew or not*

This does not address the issue at hand. Flow should be required to inform customers of implications of failure to renew a prepaid plan which can cause the customer to consume data at high out of bundle rates.

5. ECTEL's Proposal on Page 8 Section 20 (1) Expiration of Prepaid Subscription
   1. *A licensee shall not activate a prepaid subscription for an electronic communications service that has a life cycle of less than 3 months.*

- FLOW Comment on Page 4: *ECTEL must either define what it means by life cycle and reissue this provision for further comment or delete this provision.*

We agree that the term must be defined.

6. ECTEL's Proposal on 2. ECTEL's Proposal: *Page 9 Section 22. Termination of Prepaid Subscription with outstanding credit balance*

1. If a retail customer requests, a licensee shall, within 30 days of the termination of a prepaid subscription with an outstanding credit balance —
a. refund the outstanding credit balance to the retail customer; or
b. transfer the outstanding credit balance from a terminated prepaid subscription to another prepaid subscription on the licensee's network.
2. If a prepaid subscription has been terminated by a licensee and the licensee has received no request from a retail customer for a refund or transfer of funds, the licensee shall, after a period of 3 months, deposit any outstanding credit balance to the Accountant General.
3. Any outstanding credit balance to be submitted to the Accountant General shall be subject to a 20% administrative fee.

- FLOW Comment: Provision 22.2. is technically infeasible for the reasons mentioned above. Moreover, these provisions are simply a new form of taxation which is likely to have negative implications on how prepaid prices are set in the market.

From this, it seems as though the Company would increase its service prices if such a provision is implemented which can negatively impact the consumer.

7. ECTEL's proposal: Page 9 Section 21. Criteria for Termination of Prepaid Subscription,

A licensee shall not terminate a prepaid subscription, if—

a. a retail customer has at least $10.00 on his or her account;

b. a retail customer has at least 10% of the voice minutes, text messages or data allowance on his or her account; or

c. in the preceding 3 months, a retail customer has—

i. made or received a call;

ii. sent or received a text message; or

iii. used data.

- FLOW Comment on page 5*: Provisions 21.1.a and 21.1.b are inconsistent with what pre-paid accounts were designed for, and FLOW cannot technically automatically interrogate its system to maintain an account depending on a dollar or % allowance balance. However, 21.1.c is implementable and can be retained in the regulations as proposed.*

We are not clear on what is meant by the above where it is mentioned that "FLOW cannot automatically interrogate its system". It appears FLOW Is unwilling to work on implementing the new measures in attempts to retain call unused credit. Also, we would like clarity on what pre-paid accounts were designed for.

Sincerely yours,

Apollo Knights
Secretary / Director

CC: **Executive Director – Mr. Craig Nesty, NTRC Dominica**
Coordinator – Mr. Lawrence Samuel, NTRC Grenada
Director – Mr. Ervin Williams, NTRC St. Kitts
Officer in Charge – Mr. Alden St. Clair/ NTRC St. Lucia