TELECOMMUNICATIONS REGULATORY COMMISSION

VIRGIN ISLANDS

SHORT REPORT ON THE CONSULTATION ON THE MARKET ANALYSIS OF WHOLESALE CALL AND SMS TERMINATION ON INDIVIDUAL FIXED AND MOBILE NETWORKS: PART II: ASSESSMENT OF REGULATORY REMEDIES

10 February 2012

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1. Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks

This short report collates the operators' comments in response to the second phase Consultation on the Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks: Part II: Assessment of Regulatory Remedies dated September 30, 2011 " the Consultation Document: Part II", which outlined the TRC's proposals in relation to:

- The proposed methodology for determining the call termination charge controls
- The proposed termination rates
- The process of consultation and licence amendment.

Responses to the Consultation Document: Part II were received from CCT and LIME and are published on the TRC's website.

Before proceeding to set out the responses from the operators regarding the above issues, the TRC addresses again the issue of fixed call termination on mobile networks as raised by LIME in its response to the second phase consultation.

2. Fixed Termination

In its response to the first phase consultation, LIME expressed the view that both CCT and Digicel provide a fixed line service and should therefore be declared dominant for call termination on a fixed network[1]. LIME's argument is that because CCT market "FiWi" a fixed wireless service, as a fixed product which offers calls to and from the home at a fixed location, calls terminated to this product should be charged at the fixed termination rate. LIME further argues that it is inefficient to award a termination rate to a technology which is more costly.

The Consultation Document: Part II clearly sets out the position that the applicable termination rate is the one that covers the cost of terminating on that particular network as determined by whether the technology of termination is mobile or fixed. Whilst the licences adhere to the principles of technology neutrality, there is a difference in the network costs of a fixed network as against a mobile network. The purpose of applying a cost based termination rate is to ensure that the termination charge covers as closely as possible the efficient cost of termination on that network. The TRC believes that it would not be appropriate to apply a fixed termination rate to calls which are terminated on a mobile network even if the product sold on the mobile network is marketed as a fixed product.

In this case and as has been explained in the first consultation document and in Consultation Document: Part II, it is the TRC's position that CCT does not use fixed technology to terminate or originate calls on FiWi. Rather, the technology is strictly mobile., Further, the TRC believes that consumers have the choice between a LIME fixed line and a CCT FiWi line and it might be that consumers prefer a CCT FiWi phone even if it is more expensive to call a FiWi phone than a LIME fixed phone. Indeed, LIME's charges

[1] LIME Response to Consultation on the Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks dated July 1, 2011, Section II points 6-11.

are the same for calls to a third party landline and to a third party mobile. If Digicel and CCT choose to offer a fixed line product to meet consumer demand in the marketplace, then they are entitled to do so through the use of mobile technology which may be more efficient and cheaper than investing in or leasing a separate fixed network.

The TRC fundamentally disagrees with LIME's approach to this issue which is to attempt to confuse a retail product with a wholesale service. The product in question is the termination product, not the retail product which is purchased by the consumer. Therefore, the TRC's position remains that the relevant termination rate to apply to the termination of calls to CCT's and Digicel's "fixed" products is a mobile termination rate as long as the technology used to terminate the call continues to be mobile.

3. The proposed methodology for the determination of charge controls

The TRC has elected to follow a benchmarking approach to setting termination rates. The TRC has collected benchmarks for the fixed termination rate which calculate to an average fixed termination rate of $0.02 in 2011 across the Caribbean region. The TRC set out in the Consultation Document: Part II that it believes that the ECTEL benchmarks for Dominica, Grenada, St Kitts, St Lucia and St Vincent and the ARCEP benchmarks for French Guiana, Guadeloupe and Martinique represent the most relevant set of benchmarks. The TRC derived a simple average of $0.01 from the regulated termination rates in the ARCEP and ECTEL regulated territories.

In its response, LIME took issue with the use of ARCEP regulated rates in this benchmarking exercise. LIME argued that the ARCEP regulated fixed termination rate in French Guiana, Guadeloupe and Martinique is not appropriate for the Virgin Islands as it is based on the regulated fixed termination rate which is set for the whole of metropolitan France and for the outermost territories of France.

The TRC would like to clarify that the purpose of using the ARCEP regulated rate was to include in the benchmark a rate which was set on the basis of a pure LRIC methodology which excludes fixed and common costs from the cost calculation and focuses exclusively on the incremental costs of third party termination. This approach was set out by the European Commission Recommendation of May 2009 and is now being followed across the European Union. As explained in the Consultation Document: Part II, the TRC does not propose to undertake a cost modelling exercise for the Virgin Islands since the TRC does not believe that, at this time, the likely benefits of such a cost modelling exercise would justify the estimated cost to be incurred. In this exercise, the TRC considers that it needs to balance the objectives of proportionality and accuracy, which can be achieved by benchmarking against countries which have already been through detailed cost modelling exercises taking account of the two different approaches to LRIC modelling; pure LRIC and LRIC plus. A pure LRIC approach, as adopted by ARCEP considers only the "difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale call termination service to third parties.[2]" LIME in its response points out that the ARCEP fixed termination rate is calculated on the basis of the costs of an operator in metropolitan France and argues that the operating conditions in Paris are different to the Caribbean. The TRC agrees that this may be the case however, in the context of call

[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0067:0074:EN:PDF

termination there are other factors which could cause the cost of termination to be lower in a small territory such as the VI. A metropolitan operator may need to undertake additional network investment to supply additional capacity for termination services in congested areas which would not be necessary for an operator in the VI without the same level of traffic demand. Therefore, the TRC believe that whilst there are factors that would cause the ARCEP rate to differ from the actual real cost of termination in the VI, the point of using the ARCEP benchmark is to reflect the result of applying a pure LRIC methodology, so that in the absence of a detailed cost model, the TRC is able to reflect both the outcomes of applying a pure LRIC and LRIC plus methodology. The termination rates from the ECTEL countries are set on the basis of a LRIC plus methodology which takes account of fixed and common costs. As set out in LIME's response to the first consultation, the average of these rates for 2011 as calculated by LIME is $0.0147. This is a termination rate which LIME is subject to in these countries. Therefore, the TRC is of the view, that even if the termination rates from ARCEP regulated territories were discounted, an average termination rate of $0.0147 would result, which LIME is already subject to and is less than half the rate charged in the BVI. The fixed termination rates from the ECTEL countries produce the average rate of $0.0147 which, as set out below, were presented in LIME's response to the first consultation document and are applicable until 2013 with no glidepath.

In its response to the first stage of the consultation process, LIME presented the following table showing termination rates in ECTEL countries for 2011:

	DOMESTIC TERMINATION RATES			
COUNTRIES	**Fixed**	**Mobile**	**Transit**	**Emergency**
BVI	**0.03**	**0.05**	**0**	
Dominica	0.0217	0.0956	0.0114	0.0093
Grenada	0.0151	0.0930	0.0076	0.0114
St. Kitts	0.0097	0.1043	0.0110	0.0073
St. Lucia	0.0130	0.0830	0.0067	0.0080
St. Vincent	0.0141	0.0893	0.0067	0.0066
ECTEL Average	**0.0147**	**0.0930**	**0.0087**	**0.0085**

Source: LIME response

In its response of 31 December 2011, LIME advocates the use of a glidepath for setting termination rates and in this instance recommends the ARCEP approach rather than the ECTEL approach.

The TRC proposes to set a fixed termination rate of $0.01 from 2012 to ensure that Virgin Islands' rates become and remain comparable with relevant Caribbean benchmarks such as the ECTEL countries. It is also proposed that in 2014, this rate would be subject to further review to ensure that it does not become quickly outdated by future regulatory decisions across the region.

The TRC does not consider it appropriate to delay the introduction of a lower fixed termination rate through the use of a glidepath given the short period of time before the next review of the level of the charge control. The timing allowed in this consultation process, as set out in the next section allows a significant period of time (a further 120 days) for licensees to plan for changes in the termination rate. Given possible technological developments in the industry, the TRC wishes to retain the flexibility to adjust the termination rate in the near future, if necessary. This approach is comparable to the one taken by ECTEL in its 2009 decision which did not set a glidepath for fixed termination rates[3]. Any delay in reaching the target rate of $0.01 would be seen by the TRC as an attempt by licensees to preserve termination revenues and to avoid passing the benefits of lower termination rates to customers in a timely sense.

4. The proposed termination rates

The TRC has proposed to regulate the termination rates as follows:

Mobile termination rate: $0.05 per minute

Fixed termination rate: $0.01 per minute

CCT has stated in its response that it is in agreement with the proposed fixed termination rate of $0.01.

LIME's arguments in relation to the use of regional benchmarks to set the proposed rates and the TRC's response have been outlined in Section 3 above.

5. The process of consultation and Licence Amendment

In its response of 31 December 2011, LIME queried the process by which the TRC proposed to amend the licences.

The TRC wishes to assure licensees and the public that the market analysis of wholesale call and SMS termination on mobile and fixed networks and the assessment of possible regulatory remedies in response thereto is, in fact, still subject to further public consultation. The TRC has considered and intends to continue to consider in good faith the representations made by persons in response to the Consultation Document: Part II.

[3] http://www.ectel.int/pdf/Interconnection/LRIC%20Implementation%20Cover%20Note%20to%20NTRCs.pdf

For the avoidance of doubt, the TRC avers that it will follow the processes set out in Articles 18.1 and 18.5 of the respective licences as considered appropriate.

Following the publication of this Short Report, the TRC will proceed to engage each Licensee in a process of negotiation as to the amendment of the terms of its Licence as it relates to the implementation of the proposed charge controls in accordance with Article 18.1 of each licence.

Upon the expiration of the thirty (30) day period of negotiation or at such time that there is consensus between TRC and the Licensee, whichever, is sooner, the TRC will publish in the Gazette and in one national newspaper a Notice of the Draft Directive on the proposed amendments to the terms of the Licence and will notify each Licensee as provided in Article 18.5.

The licensees or any interested party will then be permitted thirty (30) days to respond to this Notice outlining any further comments and objections to the proposed amendments. No earlier than ten (10) days after receipt of responses to the Notice of the Draft Directive, the TRC will then hold a Hearing on the matter to provide even further opportunity for comment.

Not less than sixty (60) days following the date of publication of the Notice, the TRC will consider the comments received both from the response to the Draft Notice and from the Hearing and will submit a report and opinion to the Licensees. No earlier than ninety days following the publication of the Notice the TRC will then publish its Directive as to the regulatory remedies to be implemented in the relevant markets and the specific amendments to the Licence of each operator as considered necessary to give effect to such remedies.

A tabular representation of the above schedule is as follows:

Timeline	**Procedural Steps**
Date of this document	Publication of short report on second consultation
+ 30 days	Period of negotiation on Licence Amendment
Day 0	Publication of Notice of Licence Amendment *(upon expiration of 30-day period of negotiation)*
Day 30	Due date for Response from licensees *(to facilitate 30-day period of consultation)*
Day 40 +	Hearing for Licensees and third parties with a legitimate interest *(not less than 10 days of receipt of responses from licensees)*
Day 60 +	Report and opinion of TRC *(not less than 60 days of date of publication of the Notice)*
Day 90 +	Directive *(not less than 90 days of date of publication of the Notice)*

Conclusion

Upon conducting an analysis of all responses received, the TRC finds that there was no evidence submitted by the operators strong enough so as to merit any change in the proposed regulation of termination rates. In the view of the TRC, the benefits of lower fixed termination rates should be available to consumers in the Virgin Islands as soon as the schedule prescribed in the regulatory framework will allow.

Therefore, the TRC will now proceed to engage each Licensee in negotiations as to the amendment of its Licence to give effect to the proposed termination rates.