

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY

Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL)

To the National Telecommunications Regulatory Commission to consult on a Draft Policy for Quality of Service for Resellers Regulations

CONSULTATION DOCUMENT

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's Consultative Document for the Draft Quality of Service for Resellers Regulations.
2. The Consultative Document is attached.
3. The initial comments period will run from the 11th February 2009 to the 6th March 2009.
4. The comment on comments period will run from the 11th March 2009 to the 25th March 2009.
5. Following the Comment on comments period ECTEL will finalize and submit the draft regulations to the ECTEL Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or email to:-
The Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
Castries
St. Lucia
Facsimile: 1 758 458 1698
E-mail: consultation@ectel.int

All comments should be clearly marked "Comments on Draft Revised Telecommunications Quality of Service for Resellers Regulations Consultation Document".

Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

RATIONALE

In 2007 after a series of consultations on the Quality of Service (QoS) Regulations it was concluded that the resellers of services as well as the holders of International Simple Voice Resale (ISVR) Licences should be excluded from the QoS Regulations and separate regulations should be drafted specifically for this group.

The draft QoS Regulations for Resellers (the regulations) was discussed at the 7th ECTEL/National Telecommunications Regulatory Commission (NTRC) forum. There concerns were raised about the definition of 'reseller' and the obligations placed on those persons that fell within the ambit of the regulations. In particular it was felt that the majority of resellers were small operators who were not seized of the requisite skills and resources to fulfill the reporting and publishing requirements. The revised regulations have taken into consideration the views expressed at the forum.

In light of the amendments, ECTEL is of the view that the revised regulations should be subject to further consultation.

Consultation Procedure and Timetable

This ECTEL submission includes a request to the Commission to conduct a national consultation in [Member State] on the draft revised Telecommunications (Quality of Service) for Resellers Regulations in accordance with the timetable outlined on the cover page. NTRCs are specifically requested to draw the attention of Resellers and other class licensees to the draft regulations.

Council of Minister's Approval

It is the intention of ECTEL to finalize these Regulations after taking into account all comments received in this consultation process. The Telecommunications (Quality of Service for Resellers) Regulations will then be recommended for adoption in the ECTEL Member States when approved by the Council of Ministers.

Explanatory Memorandum

DRAFT TELECOMMUNICATIONS QUALITY OF SERVICE FOR RESELLERS REGULATIONS

These Explanatory Notes relate to the Telecommunications (Quality of Service for Resellers) Regulations. These notes have been prepared to assist the reader and do not constitute part of the Regulations. Additionally, the notes are not nor are they meant to be a comprehensive description of the Regulations and where a clause does not appear to require comment none will be supplied.

1. The regulations establish a regulatory framework to govern quality of service issues for resellers. Therefore, it mandates that resellers provide information on the services supplied, treat with the resolution of customer disputes and maintain records on its customer service as well as adhere to quality of service standards.
2. Section 1 and 2 of the regulations provide for preliminary matters such as citation and commencement.
3. Section 3 deals with the interpretation of particular words contained in the regulations. In particular, the term 'reseller of service' is now refined to exclude 'agents or contractors of a telecommunications provider who sell or promote telecommunication services for or on behalf of that provider.' This exclusion omits small proprietors from the ambit of the regulations. Also excluded is 'any person who establishes, operates, or maintains a public telecommunications network.' Such an entity would require an individual licence and is outside the scope of these regulations. These exclusions were necessary due to the wide definition of 'reseller' employed in ECTEL Contracting States thus far.
4. Section 4 states clearly the entities to which the regulations apply.
5. Section 5 outlines a list of obligations to be imposed on resellers. It mandates that resellers are responsible for dealing with customer issues. To that end, resellers are prohibited from sub contracting their obligation to deal with customer complaints and are directed to retain adequate numbers of trained customer service personnel and supply the customer with sufficient information to assist in the resolution of problems. Additionally, the section in keeping with data protection principles, seeks to prevent the abuse of a customer's personal information by prohibiting

- the sale of the same for profit and requiring the disposal of customer information when it is no longer required by the reseller.
6. Section 6 allows for the establishment of a quality of service code (hereinafter referred to as the code). The code, which would set out quality of service standards as well as any other appropriate standards, may be adopted by NTRC's acting on the recommendation of ECTEL. The procedure outlined in this section presents a flexible approach for the creation and adoption of standards. Referring to the code within the regulations obviates the need for parliamentary approval and as such the time frame for adoption is shortened. **Note - ECTEL does not anticipate the need for the development or publication of such a code at this time.** The provision is intended to build in some flexibility for NTRCs to impose standards as they deem appropriate where circumstances require in the future.
 7. Section 7 deals with the binding effect of the Code.
 8. Section 8 obliges resellers to retain data on QoS compliance levels for a minimum period of twelve (12) months.
 9. Section 9 deals with the reseller's duty to report annually to the Commission on its level of compliance with QoS standards.
 10. Section 10 speaks to the possible steps that may be undertaken in the resolution of valid complaints. Thus resellers may reimburse the customer, compensate him on clear terms and conditions set by the reseller, offer to provide an additional service at no extra cost or take any other appropriate measure. Where the reseller and an affected customer are unable to reach a resolution then the reseller must inform the customer that the matter can be referred to the Commission for resolution.
 11. Section 11 outlines the factors that an NTRC may take into account when a reseller is unable to achieve the obligations set out in the regulations. In such circumstances, the reseller may apply for extensions of time or may be exempted from an obligation to submit a report.
 12. Section 12 provides the time period for resellers to comply with the regulations. Therefore resellers must comply with the regulations within six months of the regulations coming into effect. Further, the section lists the situations which would amount to a breach of the regulations and which would authorize the NTRC to either suspend or revoke the licence. However, there is room for flexibility, as an NTRC possesses the discretion to allow the offending reseller to remedy its breach.

[MEMBER STATE]

Telecommunications (Quality of Service for Resellers) Regulations 200[-]

ARRANGEMENT OF REGULATIONS

1. Citation
2. Commencement
3. Interpretation
4. Application
5. Obligations of Resellers of Service
6. Establishing and Amending Quality of Service Standards
7. Code to Bind Resellers of Service
8. Record Keeping
9. Information to Commission
10. Customer Complaints
11. Unpredictable situations and cases of *force majeure*
12. Compliance and Enforcement

[Member State]

Telecommunications (Quality of Service for Resellers) Regulations

STATUTORY RULES AND ORDERS No. [-] of 200[-]

(Gazette [Date])

REGULATIONS

Made by the Minister under section [-] of the Telecommunications Act, 200[-] No. [-] of 200[-].

Citation

1. These Regulations may be cited as the Telecommunications (Quality of Service for Resellers) Regulations, 200[-]

Commencement

2. These Regulations shall come into force on the date of its publication in the Gazette.

Interpretation

3. In these Regulations –

“**Act**” means the Telecommunications Act No. [-] of 200[-];

“**Commission**” means the National Telecommunications Regulatory Commission established by section [-] of the Act;

“**Force majeure**” means any event or effect that can be neither anticipated nor controlled and includes both acts of nature such as earthquake, flood, lightning and hurricane, and acts of people such as riot, strike, civil disorder, declared state of emergency and war or any similar act which the Commission determines to be *force majeure*;

“**Quality of Service**” means the measurement of the performance for a telecommunications network or service and the degree to which the network or service conforms to stipulated parameters and the term “Quality of Service Standards” shall have a corresponding meaning;

“**Quality of Service Code for Resellers**” means a document published by the Commission setting out quality of service standards and related matters for resellers, recommended for adoption by ECTEL;

“Reporting Period” means a calendar year;

“Reseller of Service” means a telecommunications provider who purchases telecommunications services from another telecommunication provider for the subsequent sale or lease to an end- user of the service on a commercial basis with or without adding value to it, and for the avoidance of doubt does not include;

- (a) agents or contractors of a telecommunications provider who sell or promote telecommunications services for or on behalf of that provider; and
- (b) any person who establishes, operates or maintains a public telecommunications network.

(2) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Act.

Application

4. These Regulations apply to resellers.

Obligations of Resellers of Service

5. Every reseller of service shall:

- (a) provide, establish and maintain sufficient information to assist customers in resolving questions and issues relating to the services that it provides including:
 - (i) the name of the reseller of service;
 - (ii) the customer service telephone number of the reseller of service;
 - (iii) clear instructions pertaining to the use of the service;
 - (iv) the tariffs related to the use of the service;
 - (v) the duration or validity period of the service;
 - (vi) the terms and conditions on which a customer with a valid complaint against the service shall be compensated by the reseller;
 - (vii) the contact details of the Commission; and
 - (viii) the right of the customer to address complaints to the Commission where unsatisfied with the service for any reason.
- (b) be responsible for the treatment of customers’ complaints;
- (c) maintain adequate numbers of trained personnel sufficiently authorized to receive and respond promptly to complaints from customers;
- (d) take all reasonable commercial steps to promptly remedy and avoid the recurrence of the cause of all customer complaints which relate to the quality, availability or delivery of the services that it provides;

- (e) keep and maintain all information on the complaints made by customers and shall provide such information to the Commission at least once a year;
- (f) keep confidential any and all personal information obtained from a customer in connection with the use of its services or in the course of a dispute with the reseller and not knowingly communicate, sell or otherwise disclose such information to a third party for any reason, unless requested by the Commission;
- (g) upon the expiration of not less than one year after the end of the reporting period, promptly and permanently dispose of any and all personal information obtained from customers, unless otherwise directed by the Commission.

Establishing and Amending Quality of Service Standards

- 6. The Commission, acting on the recommendation of ECTEL, and having regard to market needs or the regulatory objectives of the Commission –
 - (a) may, in addition to the obligations set out in these Regulations, issue a Quality of Service Code for Resellers to establish quality of service standards, and setting out any other standards or guidelines the Commission may deem appropriate;
 - (b) shall publish the Code in the Gazette and on its website;
 - (c) may amend, replace or revoke a Code at any

Code to Bind Resellers of Service

- 7. (1) A reseller of service shall comply with the quality of service standards and any other standards or guidelines published in the Code.

Record Keeping

- 8. (1) A reseller of service shall retain quality of service data detailing levels of compliance with established standards of service and related records for a minimum period of twelve months after the end of the reporting period or until such time as the Commission shall direct.

Information to Commission

- 9. (1) A reseller of service shall submit to the Commission on an annual basis a report on its levels of compliance with established quality of service standards for any obligations set out in these Regulations or related Codes for the last reporting period.
- (2) The reseller of service shall submit the report referred to in sub-regulation (1) on the last working day of the calendar year in a form acceptable to the Commission.

Customer Complaints

10. (1) Where the reseller of service receives a complaint from a customer about the quality of its service, the reseller of service shall make such investigation as is required in the particular case and take all necessary steps to address valid complaints by:
- (a) reimbursing the customer for the costs of the service;
 - (b) compensating the customer on terms and conditions clearly set out by the reseller of service;
 - (c) offering to provide additional service at no extra cost to the customer; or
 - (d) taking any other measures it deems appropriate having regard to the nature of the customer's complaint as the case may be.
- (2) In the event that the customer complaint is not resolved, the reseller of service shall inform the customer that he may refer the matter to the Commission for resolution.

Unpredictable situations and cases of *force majeure*

11. (1) The Commission may take into account factors relating to:
- (a) any changes in environmental or operating conditions that could not have been reasonably foreseen by the reseller of service; or
 - (b) any service deficiencies that arise partly or wholly from the operations of another telecommunications provider;
- which may affect a reseller of service's ability to achieve the obligations set out in these Regulations or any related Codes.
- (2) Where a reseller of service is unable to submit a report during the relevant reporting period as a result of a natural disaster or a case of force majeure, he may apply to the Commission in writing for an extension of time.
- (3) In the event of a natural disaster or a case of force majeure, the Commission may exempt a reseller of service from the obligation to submit a report during the reporting period in which the natural disaster or the case of force majeure occurred until the last working day of the first quarter of the subsequent year.

