

CWI Caribbean's Response to the Eastern
Caribbean Consultation Document on

**“Proposed changes to the Universal Service
Fund in the ECTEL Member States”**

- Published December 4, 2015

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EXECUTIVE SUMMARY

1. CWI Caribbean Limited, on behalf of its affiliates Cable & Wireless Dominica Limited, Cable & Wireless (St. Lucia) Limited, Cable & Wireless Grenada Limited, Cable & Wireless St. Kitts and Nevis Limited and Cable & Wireless St. Vincent and the Grenadines Limited, (hereinafter “**C&W**”), is pleased to respond to ECTEL’s Consultation Document on **Proposed changes to the Universal Service Fund in the ECTEL Member States**, published December 4, 2015. C&W expressly states that failure to address any issue raised in this Consultation does not necessarily signify its agreement in whole or in part with the Commission’s position. C&W reserves the right to comment on any issue raised in the consultation at a later date.
 - 1.1. C&W accepts that the Universal Service Fund (“USF” or “Fund”) has a critical role to play in the development of and use of ICT services within and across the ECTEL States. Notwithstanding C&W’s support of the USF in principle, it is concerned with some of the proposals in the consultation document, since they appear to facilitate a lack of transparency, accountability and waste. This we accept is not ECTEL’s intention.
 - 1.2. C&W believes that there is a fundamental disconnect between the approaches to these USF Regulations and the proposals in the new draft ICT Bill. The USF proposals seek to mandate that service providers forego more of their revenues to the Fund (in the form of a levy or tax), while the draft ICT Bill seeks to introduce heavy handed and intrusive regulations; for example its proposal is to make it “**a right**” for a competing provider to have access to the infrastructure of its competitor, while restricting how much of its invested network capacity it can reserve for its own future network needs. We consider that in these respects, both the USF and ICT Bill proposals are likely to have a chilling effect on investments by service providers, leading to a decline in their revenues, and ultimately reduced contributions to the USF. Hence we ask that these proposals be revisited and modified.
 - 1.3. C&W would have liked ECTEL to include in its discussion of the ICT needs of the ECTEL Member States, the other initiatives and programs that the governments of the region have implemented and/or need to implement involving other sectors of the economy. The omission of these details have resulted in our getting a very limited view of what is really required and how best to achieve it. In C&W’s view, the basis for the proposed increase in USF contribution has not been justified. In addition, the extent to which the proposed increase in USF contributions would impact the price of access to consumers has not been properly addressed.

- 1.4.** Based on the proposed redefinition of Universal Service and the additional uses to which the Fund is being asked to be put, the Consultation Document has not properly addressed the issue of sustainability of USF investments, except to increase the annual liability of contributors. ECTEL has not addressed the competition issues that are likely to arise between the companies that contribute to the Fund and the proposed non-contributing beneficiaries of the Fund. Also, ECTEL appears to suggest that the role of the Fund is that of a “Business Incubator” which provides venture capital to start ups. C&W considers that the Fund’s primary role ought to remain that of facilitating the introduction and modernizing of critical ICT infrastructure in the ECTEL Members States.
- 1.5.** The bureaucracy which is attendant to ECTEL’s proposal(s) is likely to introduce inefficiencies and waste. Instead of seeking to increase the tax levied on service providers, ECTEL is better served to let the USF tax remain at its present levels and explore how it can provide regulatory based incentives to stimulate the required market investment, such that both the under-served and the service providers benefit from a sustainable economic framework. ECTEL is encouraged to forge a closer partnership with the contributors to the Fund to make its use more effective. What really matters is how quickly the Funds can be converted to benefits to the poor and underserved in the ECTEL Member States. Based on ECTEL’s comments, it is evident that the synergies between the government agencies and the Fund also need to be improved.
- 1.6.** C&W does not agree with the proposal of establishing a Reserve Fund. In our view its effect would be to introduce an additional layer of taxation and diminish the ability of service providers to re-invest in the market. In our view, it should be the USF Fund’s aim to convert every dollar received in a given year to a legitimate project or required process that will benefit the poor or underserved. The proposal to have funds being idle in a bank account is not desirable and counterproductive.
- 1.7.** C&W invites ECTEL to lead on a robust discussion of how it intends to introduce regulation(s) that will properly address the challenge of matching affordable access with that of incentivizing sustainable investment in ICT infrastructure by market participants.
- 1.8.** All responses to this document should be sent to Charles Douglas, Regional Regulatory Advisor, C&W, at charles.douglas@cwc.com.

DISCUSSION OF ECTEL'S MAIN RECCOMENDATIONS

2. C&W has responded to each of ECTEL's recommendations to the Universal Service Fund in the ECTEL Member States as presented in the Consultation Document;

3. **Recommendation 1:** *"ECTEL recommends that the definition or scope of Universal Service is redefined to include the provision of access devices to users, and the provision of ancillary services (security, training), infrastructure equipment (a/c, generator, electricity, UPS) that is relevant to the USF project."*

3.1. **C&W's Response:** C&W does not agree with this proposal. We consider that the current definition or scope of Universal Service is adequate to address the needs within ECTEL Member States. It very clearly speaks to facilitating voice telephony and internet access as well as providing financial support to address **"efficient access to networks"**, **"reasonable availability and affordability of basic and advanced telecommunications services" at the community, household and individual level** and targets entities that will impact the poor and underserved, namely **"schools, health facilities and other organizations serving public needs"**. These objectives are clear and adequate, while engendering fiscal responsibility.

3.2. To the contrary, the proposed redefinition of Universal Service appears to be seeking to entrench provisions to enable the funding of activities that are so indirectly related to the required service or access, that waste and inefficiency would be encouraged. It seems unreasonable to require telecommunications companies in ECTEL Member States to bear the brunt of a subsidy to Electricity Companies, Security Firms and the like. Further, in a market where convergence is occurring at a rapid rate, the reference to access devices is too expansive. The fact is that with access to the Internet via a phone, table, computer etc. users can avoid using "tariff based" services by using free apps and Wi-Fi to achieve the same outcome. In such an ever-changing environment, where telecommunications providers face an ever increasing risk of revenue loss, simply expanding the scope of Universal Service and increasing the percentage of the tax applied to their revenue is short sighted and unsustainable. In our view, this approach in effect penalizes competitive entry and investment in the region.

4. **Recommendation 2:** *"ECTEL recommends a change of philosophy and mandate of Universal Service to include promotion and adoption of service."*

4.1. **C&W's Response:** C&W does not agree that the mandate of Universal Service should include promotion and adoption of a service(s). This objective is quite vague and would facilitate the exploitation of the Fund. Inherent in the concept of Universal Service or Access is that the demand for such a service or access exists and that the problem to be remedied is making it available and affordable to citizens that are poor or underserved for economic reasons. The idea that the limited USF funds should be used to market services and stimulate demand for such services appears to be misguided in light of the current economic environment and of the declining revenue streams faced by telecommunications

service providers. C&W does not agree with this objective. USF funded projects should only be undertaken after research and due diligence demonstrate the need for the services/access in question. The promotion and adoption of those services are properly and solely within the remit of the commercial players in the market and government funded agencies which seek to promote development within the ECTEL Member States, not within the remit of the USF.

5. **Recommendation 3:** *“ECTEL recommends that the scope of the USF is to ensure that all citizens and public institutions are afforded opportunity to provide and receive information knowledge and services via ICTs that will improve efficiency, productivity and safety of our economies via publicly tendered projects.”*

5.1. **C&W’s Response:** C&W is of the view that this scope is not new and is already captured by the scope of the current Fund arrangements.

6. **Recommendation 4:** *“ECTEL recommends a name change to Universal Service and Access Fund in accordance with the proposed increase in scope.”*

6.1. **C&W’s Response:** C&W does not object to the proposed name change but does not agree with the proposed increase in scope. C&W considers that the proposed name is in fact consistent with the current scope of the Fund.

7. **Recommendation 5:** *“ECTEL recommends the following definition of under-served – “under-served” means any area –*

7.1. *“where the penetration rate for broadband subscribers in [ECTEL Member State] is below the national penetration rate;”*

7.1.1. **C&W Response:** C&W has no objection to this definition for “under-served”.

7.2. *“with a population density of eighty persons per square kilometer or less, and where public cellular services are not available.”*

7.2.1. **C&W Response:** C&W has no objection to this proposed condition.

8. **Recommendation 6:** *“ECTEL recommends the use of licensing or regulatory provisions to encourage uptake of broadband services.”*

C&W Response: C&W is concerned about this proposal due to its vagueness and apparent inconsistency as with ECTEL’s overall proposal. The **“use of licensing or regulatory provisions”** seeks to include conditions within a license or make rules to mandate a licensee to make access to broadband available and/or affordable to **“encourage”** uptake. However, to at the same time introduce a year-on-year increase of the taxes/levy applied to a licensee’s annual revenue is burdensome and unreasonable.

8.1. Further, unlicensed OTTs which are domiciled overseas and make zero contributions to the Universal Service Fund, are being encouraged to provide applications which make voice based (international and domestic) calling applications and TV services available to citizens on tablets and smart phones

that the taxed service provider has funded. The Policy framework appears short-sighted and unsustainable especially for small markets and economies such as represented by the ECTEL Member States. ECTEL needs to discuss more openly and clearly its policy goals and justify its proposed mechanisms to achieve them. For the avoidance of doubt, C&W does not agree with this proposal.

9. Recommendation 7: *ECTEL recommends that audited financial statements are submitted by providers or contributors to the Fund.”*

9.1. C&W Response: C&W does not object to this proposal.

10. Recommendation 8: *“ECTEL recommends the imposition of a penalty for non-contribution to the USF.”*

10.1. C&W Response: C&W contemplates that all commercial entities (including OTTs) participating in the ICT market should be required to contribute to the USF. Since it is only the contributors to the Fund that are entitled to participate in the Fund projects, this serves as a strong incentive for them to contribute. Failure to contribute should limit their ability to bid on projects. There is no need to establish any prescribed penalty for non-contribution, which can be appropriately addressed under ECTEL’s existing powers and due process.

11. Recommendation 9: *“ECTEL recommends the establishment of a reserve fund for contingencies and if agreed the making of rules for use of the reserve fund.”*

11.1. C&W Response: C&W does not agree with the establishment of a reserve fund for the USF. This introduces a level of complexity, unnecessary bureaucracy, administrative expense to the Fund arrangements and financial burden on the contributing service providers. The Fund should be used to benefit the underserved each year and not saved up for future years.

12. Recommendation 10: *“ECTEL recommends the establishment of regional USF to cover cross-border activities.”*

12.1. C&W Response: C&W does not agree with the establishment of a regional USF to cover cross border activities. Again, this proposal only serves to add a level of complexity, unnecessary bureaucracy, and administrative expense to the Fund as well as increase the financial burden on the contributing service providers. ECTEL has not even considered it fit to describe in any detail what these **“cross border activities”** would include and how underserved and underserved consumers could possibly benefit, and gives the impression of an agenda to massively grow the funds by whatever means. Since each Member State will have a Fund to address the areas within its borders there is no need for a cross border Fund and no credible arguments have been posited to justify it. Such a Fund would merely act as another layer of taxation on Telecommunications Service Providers.

13. Recommendation 11: *“ECTEL recommends that the administrative budget could be used for market surveys, studies or consultancies in support of USF projects.”*

13.1. C&W Response: It is very important that steps are taken to manage the USF in a fiscally responsible manner. This involves reducing waste and inefficiency in the use of the funds. Activities such as **“market surveys, studies or consultancies”** have proven to be areas where much financial wastage occurs on projects. The USF should be applied to expanding the network(s) to or reducing the number of underserved consumers, not market research.

14. Recommendation 12: *“ECTEL recommends a change in the maximum proportion of the USF that can be used for fund administration from 10% to 15% of USF contributions to allow for the additional activities to be funded by the administrative budget.”*

14.1. C&W Response: C&W strongly disagrees with this recommendation. As reflected throughout the entire Consultation Document, ECTEL’s proposals appear to be more preoccupied with funding the bureaucracy instead of ensuring that the monies collected reach the underserved members of the public. The recommendation has not been justified and ought to be rejected.

15. Recommendation 13: *“ECTEL recommends the use of the USF for the provision of grant funds for ICT entrepreneurial start-ups. Total grant funds not to exceed 10 per cent of annual USF project budget.”*

15.1. C&W Response: This proposal is not clear to C&W and appears to go beyond the primary purpose of the fund which is to facilitate the provision of certain “agreed services” or access to certain “agreed services” to under-served areas or population centers. This proposal seeks to have the Fund serve as a **“Business Incubator”** and **“Venture Capital”** provider. How will this impact the sustainability of the Fund? What are the implications for fair competition within the market? Will the Universal Service Fund have a stake in these start-ups to ensure that the Public Interest objective (given its investment) is protected? These are key questions that need to be asked and addressed, and have not been in the Consultation Document.

15.2. Whereas C&W appreciates the need for business incubators and venture capital to foster growth in emerging economies, such as the ECTEL Members States, C&W disagrees that the USF should play this role. C&W strongly opposes this framework. It seems that other sources of government funding is required as well as the participation of other sectors of the economy. This proposal appears to open the door to inefficiency, waste and complexity and potentially a market place that is not based on the efficiency of new entrants but one that offers a subsidy for inefficient entrants that may be “propped up” or sustained by its competitors. This runs counter to the Public Interest.

16. Recommendation 14: *“ECTEL recommends funding of content projects and educational projects (development of course content, etc).”*

16.1. C&W Response: C&W considers this proposal to be beyond the scope of the appropriate use of the USF and that it should not be included. Instead of facilitating affordable service and access to the under-served, this proposal seeks to generate demand for the use of ICT which is a separate issue which is not properly the focus of a USF and is likely to crowd out private investment in the provision of content. The private sector is best incentivized to invest in the provision of content demanded by the market.

16.2. If the production of content is funded; How does this properly fit with the economic basis for establishing the Fund in the first place? Would this initiative not likely be a disincentive for other entities to produce this content? Which entity will own the content and how will the Public Interest be protected? C&W does not agree with this proposal.

17. Recommendation 15: *“ECTEL recommends that the process for determining the scope and nature of projects that may be eligible for USF support in any given financial year be included in the USF Regulations rather than in Guidelines.”*

17.1. C&W Response: C&W considers that both the scope and nature of projects that are eligible for USF support should be outlined in the Regulations. However, the criteria for assessment and the procedures to be followed to make a selection should be outlined in the Guidelines. C&W’s concern relate to ECTEL’s proposals to expand the current scope of the USF. C&W has formed the considered view that the USF’s current scope should remain unchanged.

18. Recommendation 16: *ECTEL recommends changing bidding eligibility to –“include in the definition a person as opposed to limiting to telecoms service provider;”*

18.1. C&W Response: C&W does not agree with this proposal. Licensed telecoms service providers with their scale, expertise and partnerships, as well as license obligations are best placed to implement the required ICT infrastructure/services to the underserved under the supervision of the Fund Management. Furthermore, it is also equitable, since the telecoms service providers are the primary contributors the USF and would have forgone material portions of their revenues in the process, and by extension reducing their ability to reinvest in their networks. That they should be allowed to bid against each other such that the most efficient delivery of a project is selected seems most fair and economically prudent.

18.2. For clarity, it is reasonable to allow ALL contributors to the Fund to bid on projects.

19. Recommendation 17: *ECTEL recommends changing bidding eligibility to – “identify components of project that would be open to persons who were not telecoms service providers;”*

19.1. C&W Response: C&W does not agree with this proposal. See our response in 18(1)(2). C&W does not see the benefit of fragmenting a project to facilitate the participation of disparate individuals, for the mere sake of doing so. This is likely to add unnecessary complexity and dependencies, resulting in unnecessary delays and additional cost/expense. C&W does not agree with this proposal.

20. Recommendation 18: *ECTEL recommends changing bidding eligibility to – “divide project into lots – telecoms service providers could bid on all lots and non-providers would be restricted to bid only on some lots.”*

20.1. C&W Response: C&W does not agree with this proposal see our response at 19(1). It is unnecessary and will provide little or no additional benefits. In fact, we believe it is likely to increase project costs, as economies of scale and scope would be negatively impacted.

21. Recommendation 19: *“ECTEL recommends a change in the USF contribution to allow for the funding of additional USF eligible projects and to provide an incentive for increased USF implementation rates.”*

21.1. C&W Response: C&W strongly disagrees with this recommendation. ECTEL has not justified the case for this expansion of the use of the Fund. Instead, ECTEL ought to better account of the current use of the Fund and in comparison to predetermined metrics and targets. How well is the USF being managed? What synergies have been forged between the Fund Managers and the government(s) to facilitate the timely execution of projects to avoid the monies sitting in a bank account for longer than is helpful, that is not in the Public Interest?

22. Recommendation 20: *“ECTEL recommends an amendment to the USF Contribution Order. ECTEL proposes a minimum contribution of 1% for telecom service providers with a mechanism to increase annual contributions by providers to up to 2% over a four-year period based on the utilization of the funds for eligible USF projects.”*

22.1. C&W Response: C&W does not agree with this proposed increase. C&W considers that the monies currently being contributed to the Fund are adequate. However, C&W has formed the view that the Fund needs to be more effectively and efficiently managed and more transparency and accountability is required of the manager(s) of Fund assets. C&W believes that there is much opportunity for the service providers and ECTEL to collaborate so as to ensure that projects are properly managed, so that the full benefit derived from the contributed funds follows to poor and underserved consumers.

CONCLUSION

23. CWI respectfully asks that ECTEL gives its comments is timely and careful consideration with a view to revisiting areas of its proposal which merit reconsideration. C&W would also appreciate ECTEL's responding to the questions raised throughout its response to allow it to better appreciate ECTEL's considered views on the issues. We look forward to further communication from ECTEL on this most important subject, before it makes its Decision.

End