CONSULTATION DOCUMENT

ON THE ESTABLISHMENT OF PRICE FLOORS FOR MOBILE ON-NET VOICE AND DATA SERVICES

November 26, 2018

I. EXECUTIVE SUMMARY

In 2012 some mobile licensees began a practice of continuous price promotions that soon embroiled all mobile service providers in a “price war”. This situation initially encouraged rapid growth in penetration rates and sector revenues in a competitive environment that was beneficial to consumers seeking lower cost of services.

The Liberia Telecommunications Authority (LTA), in furtherance of its mandate under the Telecommunications Act 2007 (the Act), particularly Part VII Article 27 of the Act, which requires the LTA to “undertake market reviews from time to time to evaluate market conditions and the state of competition in those markets”, has continued to monitor and assess the impact of the continuous promotions on the long-term stability and viability of the sector, and the impact on the quality of service offered to consumers.

Over time, the price war has resulted in the exit of a number of firms from the market and the concentration of retail and wholesale mobile markets to only two major providers. The LTA remains concerned that these providers, through their long-running promotions, may be providing services below cost, a situation indicative of predatory pricing that may eventually drive one competitor or the other out of the market.

In the medium term, this situation may increase the barriers to entry for new entrants who may find the Liberia telecommunications market unattractive, given its apparent unprofitability. Sector uncertainty, reduced sector investment and growth, falling quality of service standards for consumers, and severe declines in sector revenues raise the possibility of a market failure, a return to monopoly control of the market, and a general down turn in national economic growth.

In keeping with its responsibilities under the Act, the LTA is considering an ex ante regulatory intervention intended to avert the negative consequences of the price war, restore effective competition, increase sector revenues and investment, improve consumer quality of service and stabilize the market.

To achieve this, the LTA proposes to establish price floors on on-net voice and data services that consider the long run incremental costs of providing these services plus an acceptable markup.

II. PURPOSE & SCOPE

This document intends to present for public consultation the LTA’s decision to establish price floors on on-net voice and data services. The document presents the situational, economic, legal and regulatory rationale and reliance for the LTA’s decision.

III. CONSULTATION PROCESS

In accordance with its Guidelines for Consultation Process of 2009 (Consultation Guidelines) the LTA seeks the informed views of stakeholders and other interested parties on the LTA's proposal to establish price floors on on-net voice and data services. All comments are appreciated, but it would help the analysis of responses if comments are restricted to issues presented in this document. Please note that all responses may be published, in whole or in part, by the LTA. Respondents should therefore indicate if they consider any specific information contained in their responses to be commercially confidential. The LTA will deal with such data in accordance with its Confidentiality Regulations.

The period for comments runs from **November 26, 2018 to December 10, 2018**. The LTA undertakes to only consider comments received within this period. Comments should be in writing, and be sent, preferably by email, to the following address:

consult@lta.gov.lr

IV. PROPOSED PRICE FLOORS

The LTA proposes to establish the following price floors for on-net voice and data services:

A. Price Floor for On-Net Voice: **1.56 US cents per minute**
B. Price Floor for On-Net Data: **2.18 US cents per megabyte**

The price floors indicated above have been determined based on the LTA Updated Cost Model (2016) which set rates for call termination for mobile service categories for the period 2016 to 2020. The price floors above are the rates established by the Model as at 2019.

The Model uses Long Run Incremental Costs (LRIC+) to determine the costs borne by operators in providing an additional minute of voice service or an additional megabyte of data service, plus an over-all mark-up of 32 per cent.

Developed in 2016 by the LTA with the advice of international consultants, the Model is an updated version of the LTA's 2009 cost model and was used to establish the interconnection termination rate currently in use among network service providers. The Model is based on actual data provided by service providers supplemented where needed by benchmark data from similar markets. The Model was validated after extensive consultation with service providers and sector stakeholders in 2016 and requires no further consultation.

LRIC+ Rates for On-Net Voice and Data

(US Cents)

	Service	Unit	2016	2017	2018	2019	2020
1	On-Net Calls	Voice Minutes	1.58	1.52	1.51	**1.56**	1.65
2	On-Net Data	Megabytes	1.90	1.94	2.06	**2.18**	2.29
3	On-Net SMS	SMS	1.70	1.70	1.50	1.40	1.30

Source: LTA Updated Cost Model (2016)

V. LEGAL & REGULATORY CONTEXT

In pursuit of the LTA's function to maximize the welfare of all citizens, the LTA systematically studies, observes and analyses the telecommunications market in order to assess the state of competition.

Existence of fair competition in telecommunications markets is a necessary condition for sustainable economic development and enhanced social welfare of the people. Anti-competitive practices by dominant players may marginalize the benefits of economic efficiency inherent in competitive markets. Abuse of market power diminishes opportunities for dynamic efficiency leading to worsening consumer welfare.

In furtherance of its duties and functions under the Act, and specifically as regards **Part III Article 11(f) and (m)** of the Act, the LTA is authorized to implement tariff regulation and to "*institute and maintain appropriate measures for the purpose of preventing service providers from engaging in or continuing anti-competitive practices…".*

The LTA, in **Part VII Article 27** of the Act, is further directed to "*promote efficient and sustainable competition for the benefit of end-users*" to "*monitor and prevent abuses of a service provider's dominant position*" and to "*monitor and prevent practices that would restrict competition".*

Part VII Article 28 of the Act prohibits dominant service providers from "*supplying competitive telecommunications services at prices below long run average incremental costs or such other cost standard as is established by the LTA",* and from undertaking *"any other action or activity engaged in by a dominant service provider that the LTA determines … to have the effect, or to be likely to have the effect, of materially restricting or distorting competition in a telecommunications market".*

The LTA is further mandated by **Part IX Article 45** of the Act to "*issue an order to adopt any method of tariff regulation that is consistent with this Act, including, but not limited to, price cap regulation, rate-rebalancing and other forms of cost-based regulation*" and to "*consult with service providers before it adopts any new method of tariff regulation*".

In proposing price floors on on-net voice and data services, the LTA also relies on **LTA Order 0013-12-14-16** on the "*Determination of Markets Relevant for Ex Ante Regulations*" which identified the following markets as being susceptible to ex ante regulations:

(1) Mobile Voice/SMS Access and Call Service
(2) Mobile Data and Internet Access
(3) Fixed Data and Internet Access
(4) Call Termination
(5) Local Fiber Access
(6) Dedicated Fiber Transport; and
(7) Fiber Optic International Connectivity.

Reliance is also made on **LTA Order 0014-12-14-16** on the "*Designation of Significant Market Power (SMP*)". LTA Order 0014-12-14-16 mandated that "***each Licensee that terminates voice calls and SMS messages of its subscribers possesses SMP in the market for Call Termination.*** *In this regard, the following ex-ante remedies, among others, are imposed on Lonestar Cell/MTN, Novafone and Cellcom:*

a. *"Pursuant to Section 37(1) of the Act and Section 4.5 of the Interconnection Regulations, all licensees terminating voice/SMS calls shall be required to set termination charges at the level of their costs."*

b. *"Pursuant to Section 37(2) of the Act and Section 4.5 of the Interconnection Regulations, all licensees terminating voice/SMS calls shall be required to implement those charges determined by the LTA for termination."*

VI. RATIONALE FOR PRICE FLOORS

Traditionally, price regulation is an appropriate corrective policy response to resource misallocation, market inefficiency and the distortion of price structure away from underlying costs. The on-going "price war" in Liberia has resulted in heavily distorted price structures. Consequently, price regulation is an effective tool for the regulation of telecommunications services in a process of price rebalancing.

LTA Order 0014-12-14-16 imposed obligations on Lonestar Cell/MTN and on Cellcom (now Orange) as a result of the LTA's finding that these service providers possess Significant Market Power and are therefore dominant within their own networks. These obligations include the directive that these service providers are to set their prices "at the level of their costs".

The dominance within their own networks also applies to their SMP in providing data and internet access services within their own networks (on-net).

The non-ending on-net promotions being run by service providers are evidently priced below cost, and since these promotions have been continuous over several years, the below-cost pricing is non-transitory and therefore subject to regulatory intervention in keeping with Part VII of the Act which prohibits service providers from pricing below long run incremental cost.

Pricing below cost further violates LTA Order 0014-12-14-16 and exposes dominant service providers to additional regulatory remedies, including the price floors being contemplated by the LTA to re-balance pricing and restore sector stability.

Pricing below cost may also be an abuse of the dominant positions of the service providers under Part VII Article 28 of the Act as below cost pricing may materially restrict and distort competition.

VII. CONCLUSION

For the various reasons indicated herein, and pursuant to its responsibilities under the Act, the LTA proposes to establish price floors on on-net voice and data services of all licensees providing mobile on-net voice/SMS and data/internet access services. It is the expectation of the LTA that this intervention will contribute to re-balancing the price structure and stabilizing the market. All other remedies imposed by LTA Order 0014-12-14-16 on dominant service providers in the call termination market remain in effect.

The LTA will continue to monitor and assess the market and may consider further remedial action, in keeping with the Act, to restore effective competition, improve consumer quality of service, and foster the sustained viability and growth of the telecommunications sector.