
Office of Utilities Regulation

ADDENDUM TO DIRECTIVE TO CABLE AND WIRELESS JAMAICA LIMITED FOR IMPLEMENTATION OF THE OFFICE OF UTILITIES REGULATION DETERMINATION NOTICE ON UNIFORM DOMESTIC DIALLING PLAN (DOCUMENT NO. TEL 2008/1 DATED JANUARY 8, 2008) AND DOCUMENT TEL2011001_DIR001 DATED JULY 19, 2011)

ADDENDUM



OFFICE OF UTILITIES REGULATION

August 2, 2011

Directive to Cable and Wireless Jamaica Limited
Document Tel2011001_Dir001_Adm001
Office of Utilities Regulation

DOCUMENT TITLE AND APPROVAL PAGE

DOCUMENT NUMBER: Tel2011001_Dir001_Adm001

1. DOCUMENT TITLE:

ADDENDUM TO DIRECTIVE TEL2011001_DIR001 TO CABLE AND WIRELESS JAMAICA LIMITED

2. PURPOSE OF DOCUMENT

DIRECTIVE TO CABLE AND WIRELESS JAMAICA LIMITED FOR IMPLEMENTATION OF THE OFFICE OF UTILITIES REGULATION DETERMINATION NOTICE ON UNIFORM DOMESTIC DIALLING PLAN (DOCUMENT NO. TEL 2008/1 DATED JANUARY 8, 2008 AND DETERMINATION NOTICE/RECONSIDERATION DECISION ON UNIFORM DOMESTIC DIALLING PLAN (RECONSIDERATION PHASE 2 DECISION: DOCUMENT NO. TEL2009/02:RCN/01 DATED JANUARY 22, 2009) AND DIRECTIVE TO CABLE AND WIRELESS JAMAICA LIMITED DOCUMENT TEL2011001_DIR001 DATED JULY 19, 2011)

3. RECORD OF REVISIONS

Revision Number	Description	Date
	Initial Document	July 19, 2011
1	Addendum to Directive Tel2011001_Dir001	August 2, 2011

4. APPROVAL

This Directive is approved by the Office of Utilities Regulation and becomes effective on **August 3, 2011**.

On behalf of the Office:


.....
Ahmad Zia Mian
Director General

Date: August 2, 2011

OFFICE OF UTILITIES REGULATION

ADDENDUM TO DIRECTIVE No.Tel2011001_DIR001

TEL 2011001_DIR001_ADM001

(Issued pursuant to Sections 4 and 9 of the Office of Utilities Regulation Act,
1995 (as amended))

IN THE MATTER OF:

- (1) THE TELECOMMUNICATIONS ACT, 2000
- (2) OFFICE OF UTILITIES REGULATION ACT, 1995
(AS AMENDED)
- (3) DETERMINATION NOTICE ON UNIFORM
DOMESTIC DIALLING PLAN (Document No. Tel
2008/01 dated January 8, 2008)
- (4) DETERMINATION NOTICE/RECONSIDERATION
DECISION ON UNIFORM DOMSTIC DIALLING
PLAN (Reconsideration Phase 2 Decision: Document
No. Tel 2009/02:Rcn/01 dated January 22, 2009)
- (5) NON-COMPLIANCE WITH THE OFFICE'S
DETERMINATIONS/DECISIONS AS SET OUT IN (3)
AND (4) ABOVE.
- (6) THE ISSUANCE OF AN ADDENDUM TO
DIRECTIVE No. Tel2011001_Dir001 extending the
time for compliance with said Directive, pursuant to an
application issued by LIME to the Office on July 22,
2011, with further supporting documentation provided
on July 29, 2011.

TO: LIME

WHEREAS the Office of Utilities Regulation ("the Office/OUR") pursuant to Section 4(1), (2), (3) and (7) of the Office of Utilities Regulation Act, 1995 (as amended) ("the OUR Act"), is mandated inter alia to:

" 4. Functions of the Office.

4. (1) ...

(a) regulate the provision of prescribed utility services by licensees or specified organizations;

(b) ...

(c) conduct such research as it thinks necessary or desirable for the purposes of the performance of its functions under this Act;

(d) ...

(e) subject to section 8A, carry out, on its own initiative or at the request of any person, such investigations in relation to the provision of prescribed utility services as will enable it to determine whether the interests of consumers are adequately protected.

(2) The Office may, where it considers necessary, give directions to any licensee or specified organization with a view to ensuring that—

(a) the needs of the consumers of the services provided by the licensee or specified organization are met; and

(b) the prescribed utility service operates efficiently and in a manner designed to—

(i) ...

(ii) ...

(iii) afford to its consumers economical and reliable service.

(3) In the performance of its functions under this Act the Office shall undertake such measures as it considers necessary or desirable to—

(a) encourage competition in the provision of prescribed utility services;

(b) protect the interests of consumers in relation to the supply of a prescribed utility service;

(c) ...

(d) promote and encourage the development of modern and efficient utility services;

(e) enquire into the nature and extent of the prescribed utility services provided by a licensee or a specified organization...

(7) The Office shall give reasons for any decision taken by it pursuant to subsection (4)(a) or (5), to any person affected or likely to be affected by that decision.”

AND WHEREAS Section 9 of the OUR Act states:

“ 9. Power to require measures to be taken.

9. (1) Where it appears to the Office that a licensee or specified organization, as the case may be, is not fulfilling its obligations under its licence or enabling instrument, as the case may be, the Office may, by memorandum in writing to the licensee or specified organization, require the licensee or specified organization, within the time specified in that memorandum, to take such remedial measures as may be so specified.

(2) Any licensee or specified organization which fails to comply with the requirements of a memorandum issued by the Office under this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars: Provided that the court by which any licensee or specified organization is convicted of an offence may fix a reasonable period from the date of conviction for compliance by the licensee or specified organization with the requirements of the memorandum and where a court has fixed such a period, the said daily penalty shall not be recoverable in respect of any day before the expiration thereof.”

AND WHEREAS the Office may regulate specified services and facilities pursuant to Section 4 of the Telecommunications Act, 2000 ("the Telecoms Act") which states:

" 4. Functions of Office.

4. (1) The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall -

- (a) regulate specified services and facilities;
- (b) receive and process applications for a licence under this Act and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;
- (c) promote the interests of customers, while having due regard to the interests of carriers and service providers;
- (d) carry out, on its own initiative or at the request of any person, investigations in relation to a person's conduct as will enable it to determine whether and to what extent that person is acting in contravention of this Act;
- (e) make available to the public, information concerning matters relating to the telecommunications industry;
- (f) promote competition among carriers and service providers;
- (g) advise the Minister on such matters relating to the provision of telecommunications services as it thinks fit or as may be requested by the Minister;
- (h) determine whether a specified service is a voice service for the purposes of this Act;
- (i) carry out such other functions as may be prescribed by or pursuant to this Act.

(2) In making a decision in the exercise of its functions under this Act the Office shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice, and, without prejudice to the generality of the foregoing, the Office shall -

- (a) consult in good faith with persons who are or are likely to be affected by the decision;
- (b) give to such persons an opportunity to make submissions to and to be heard by the Office;
- (c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submissions;
- (d) give reasons in writing for each decision;
- (e) give notice of each decision in the prescribed manner.

(3) In exercise of its functions under this Act, the Office may have regard to the following matters-

- (a) the needs of the customers of the specified services;

(b) whether the specified services are provided efficiently and in a manner designed to -

(i) protect the health and well-being of users of the service and such members of the public as would normally be affected by its operation;

(ii) protect and preserve the environment;

(iii) afford economical and reliable service to its customers.

(c) whether the specified services are likely to promote or inhibit competition.”

AND WHEREAS the Office, pursuant to Section 4 of the OUR Act and Section 4(2) of the Telecommunications Act and pursuant to its intention to review the National Dialling plan issued a Determination Notice entitled “**Uniform Domestic Dialling Plan, Document No Te12008/01**”, dated January 8, 2008 to become effective on January 11, 2008 (“UDDP Determination”).

AND WHEREAS on January 28, 2008 the Office received from Cable & Wireless Jamaica Limited (Now t/a, LIME) an application for reconsideration of the UDDP Determination entitled: “**Application for Reconsideration of OUR Determination Notice Titled 'Uniform Domestic Dialling Plan', Document No Te12008/01, Dated January 8, 2008**” made in accordance with section 60(5)(b) of the Telecoms Act. The petition for reconsideration stated that the OUR’s Determination Notice “*was based upon material errors of fact and law*”. LIME, in applying for the reconsideration of the Determination Notice also applied for “*...a stay of the implementation of the Determination Notice and any other proceedings or process directly or indirectly related thereto pending the OUR’s reconsideration*”).

AND WHEREAS the Office, having reviewed and considered all the arguments and recommendations reconsidered the UDDP Determination in two phases:

(i) The first phase stayed the implementation of the UDDP Determination and reopened the consultation on the Uniform Domestic Dialling Plan (“UDDP”). The reopening of the consultation was facilitated specifically for the purpose of allowing comments on unpublished responses that had been submitted by the Consumer Affairs Commission (“CAC”) and the Consumer Advisory Committee on Utilities (“CACU”) in relation to the Office’s Notice of Proposed Rule Making on the UDDP.

(ii) The second phase consisted of a review of the Office Decision with due regard to the CAC’s and CACU’s responses, and Lime’s claim of error of fact.

AND WHEREAS the Office issued its document entitled: “**Reconsideration (Phase 2) Decision: Uniform Domestic Dialling Plan Determination Notice: Document No. Tel 2009/02:Rcn/01**” dated January 22, 2009 to become effective on January 26, 2009 (“Reconsideration Decision”).

AND WHEREAS on February 13, 2009 LIME filed an appeal against the Reconsideration Decision with the Telecommunications Appeal Tribunal, a copy of which was served on the OUR.

AND WHEREAS the matter remained before the Tribunal for the ensuing two (2) years.

AND WHEREAS by letter dated February 28, 2011 Counsel for LIME advised the Telecommunications Appeal Tribunal that LIME was withdrawing its appeal against the Reconsideration Decision.

AND WHEREAS on March 02, 2011 LIME advised the Office that in light of the withdrawal of the said Appeal *"LIME is now seeking to finalize its implementation plan and share it with the Office, such that its Determination will be implemented in a manner both amenable to the OUR and LIME. It is my intention to share this plan next week and at the latest, early the following week"*. LIME has made no further contact with the OUR on the matter.

AND WHEREAS on May 13, 2011 the OUR notified the telecommunications industry that LIME's challenge to the UDDP Determination and Reconsideration Decision had been withdrawn.

AND WHEREAS on its website, LIME has notified the public that effective April 18, 2011 all residential landline customers would be able to: *"...call directly to the USA, Canada, or the Caribbean by dialling 1 + Area code + your party's number..."*. However, the customers are not able to call to numbers with area codes that are similar to local (Jamaica) Mobile and 3rd Party Fixed Numbers on which LIME currently requires 1+ dialling for local calls, because LIME has not implemented the UDDP in compliance with the Determinations/Decisions of the Office.

AND WHEREAS LIME is in breach of its statutory obligation by virtue of its non-compliance with the Office's determinations and reconsideration decisions made pursuant to Section 4 of the OUR Act and Section 4 of the Telecoms Act as set forth in:

- (a) **"Uniform Domestic Dialling Plan, Document No Tel2008/01"**, dated January 8, 2008; and
- (b) **"Reconsideration (Phase 2) Decision: Uniform Domestic Dialling Plan Determination Notice: Document No. Tel 2009/02: Rcn/01"** dated January 8, 2009.

AND WHEREAS based on the foregoing, the Office issued **Directive #Tele2011001_Dir001** dated July 19, 2011, to LIME directing the company to implement the Uniform Domestic Dialling Plan (UDDP) within thirty (30) calendar days, to be effective from July 20, 2011. A copy of the Directive is attached hereto as **ANNEXURE #1**.

AND WHEREAS LIME sent, by way of a letter dated July 22, 2011, an application for an extension of time for compliance with **Directive #Tele2011001_Dir001**, requesting that the time for compliance be extended to September 16, 2011. A copy of said application is attached hereto as **ANNEXURE #2**.

AND WHEREAS LIME sent to the Office on July 29, 2011, a supporting document entitled: **"LIME's Request for an Extension of time to comply with the OUR's UDDP Directive, effective July 20, 2011"**, stating therein that:

"LIME is in receipt of the OUR's Directive to implement the Uniform Domestic Dialling Plan (UDDP) thirty (30) calendar days starting from July 20, 2011. LIME considers it unfortunate that the Office found it necessary to issue this Directive and

regrets any inconvenience caused, as it was LIME that took the initiative to withdraw its appeal to the Telecommunications Appeals Tribunal (TAT) regarding the UDDP and subsequently advised the OUR of its intention to implement same. Notwithstanding, LIME is committed to implementing the UDDP, and hereby request that the OUR grant it an extension of the deadline for implementation from August 18, 2011 to September 16, 2011. This document is intended to make clear LIME's reason(s) for asking the Office to grant it this extension of time."

A copy of said supporting document is attached hereto as **ANNEXURE #3**.

AND WHEREAS the Office, having carefully, perused LIME's application in relation to its **Directive No. Tel2011001_Dir001**, the supporting documents and information as well as considered LIME's submissions in this regard, **IS MINDED TO GRANT** LIME the extension sought by way of its application.

The Office HEREBY DIRECTS THAT the time for compliance with its **Directive No. Tele2011001_Dir001** is **HEREBY EXTENDED** to **September 16, 2011**.

The Office HEREBY DIRECTS THAT LIME, within the time period from the effective date of this Addendum to Directive, take **ALL** measures to comply with the provisions of the UDDP Determination and Reconsideration Decision by **September 16, 2011**.

AND FURTHER TAKE NOTICE that LIME's failure to comply with this Addendum to Directive within the time specified, renders it liable to prosecution pursuant to the provisions of Section 9(2) of the OUR Act.

BY ORDER OF THE OFFICE:



Ahmad Zia Mian
Director General

Date: August 2, 2011