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# **Office of Utilities Regulation**

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## **Clarification and Declaration Notice on the Office of Utilities Regulation's Statutory Functional Responsibility in the event of non-payment of the Universal Service Levy upon receipt of a Notification of Default from the Terminating Carrier**

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### **Clarification and Declaration Notice**

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**OFFICE OF UTILITIES REGULATION**

JANUARY 2007

## DOCUMENT TITLE AND APPROVAL PAGE

**DOCUMENT NUMBER: TEL. 2007/01**

**1. DOCUMENT TITLE:**

Clarification and Declaration Notice – Telecommunication Sector

**2. PURPOSE OF DOCUMENT**

To clarify and declare the Office of Utilities Regulation's statutory functional responsibility in the event of non-payment of the Universal Service Levy upon receipt of a Notification of Default from the Terminating Carrier

**3. RECORD OF REVISION**

**4. APPROVAL**

This document is approved by the Office of Utilities Regulation and becomes effective on January 12, 2007.

**By Order of the Office:**



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J. Paul Morgan  
**Director General**

**January 11, 2007**

**CLARIFICATION AND DECLARATION NOTICE  
IN THE MATTER OF  
THE OFFICE OF UTILITIES REGULATION FUNCTIONAL RESPONSIBILITY IN  
RESPECT OF NON-PAYMENT OF UNIVERSAL SERVICE LEVY**

**WHEREAS** the Minister of Commerce, Science & Technology (now Minister of Industry, Technology, Energy & Commerce) issued a Ministerial Order as well as an Annex to the said Ministerial Order pursuant to Section 38 & 39 of the Telecommunications Act 2000 establishing the Universal Service Levy and which Order was gazetted on April 19, 2005 and its Annex on May 31, 2005 both in the Jamaica Gazette Supplement Proclamation Rules and Regulations and both of which became effective June 1, 2005 copies of which are attached hereto as Annexure 1 and which are incorporated herein by reference and forms part of this Clarification and Declaration Notice **AND**

**WHEREAS the Office of Utilities Regulation** (“the Office”) has frequently been requested to make regulatory interventions with respect to the suspension of International Terminating Services in the event of non-payment of the levy and for which a Notice of Non-Payment has been received by the Office from the Terminating Carrier, the Office has determined that it is necessary to issue a Clarification and Declaration Notice setting out its statutory function

The Office **HEREBY MAKES** the following Clarification and Declaration:

1. The investigative powers of the OUR are activated where default in Levy payments arise and are restricted to consideration of whether the defaulting party’s licence should be recommended for suspension or revocation, pursuant to the Telecommunications Act 2000. The powers of investigation are dealt with in Paragraph 5 (iv), Paragraph 4 and 6 (d) to (g) inclusive of the **Annex to the said Ministerial Order and which for clarity are set out hereunder:**
2. Paragraph 5 (iv), titled: **“Approved Procedure for Suspension of Termination Services in the event of disputes, and non-payment.”** in paragraph 4, states:  
  
“In the event that a Terminating Carrier suspends termination services to a carrier it shall within three ( 3) days notify the OUR, the Minister, the Fund administrator, and other Terminating Carriers. The OUR will then commence proceedings under Section 14 of the Telecommunications Act 2000 to determine whether or not there are grounds for a recommendation to the Minister that the licence(s) of the carrier in question should be suspended or revoked. The existence of the Approved Procedure in no way constitutes a waiver of a Terminating Carrier’s contractual rights.”
3. Clause 6 (d) to (g) provides:  
  
“ ... (d) Following receipt of the Notice of non-payment the OUR shall immediately commence investigations in accordance with Section 14(6) and (7) of the Telecommunications Act 2000 and request that the defaulting carrier shall

within twenty-four hours of deemed receipt, give reasons in writing for its failure to pay the levy. The OUR shall review the reasons; if it is not satisfied with the reasons, the OUR shall recommend to the Minister, the immediate suspension or revocation of the Defaulting Carrier's licence;

(e) Where the Minister accepts the OUR's recommendation for the termination of a Defaulting carrier's licence the Minister shall serve a Notice of Suspension/Termination of Licence, which shall be copied to the OUR and all Terminating Carriers.

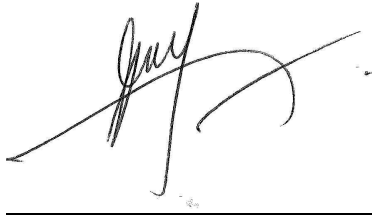
(f) Terminating Carriers shall forthwith cease the provision of all Incoming International Call termination services to a Defaulting Carrier upon receipt of the Notice of Suspension/Termination of Licence.

(g) For the avoidance of doubt the failure of a defaulting carrier to give reasons, in writing within the stipulated timeframe shall be grounds for the OUR to recommend to the Minister that a licence be suspended or terminated. Following receipt of the OUR's recommendation if the Minister is satisfied that the levy remains unpaid; he may order the immediate suspension or termination of the defaulting carrier's licence..."

4. Procedures exist wherein Carriers may act in the event of default in payment of the Levy. The Office's powers pursuant to the said procedures are restricted to the role of investigating and reporting to the Minister. The Office is of the view that such issues as extension of deadlines for payments of Universal Access Fund Levy (UAFL) do not lie within its purview.
5. Upon receipt of a Notice of Non-Payment of the UAFL by a licensed service provider, the Office is obliged to act in accordance with Paragraph 6(d) of the said Annex to the Ministerial Order as set out above. In this regard, upon of such a Notice the Office will proceed to notify all parties concerned (the Carrier, the Minister, the Terminating Carrier and the UAFC) that it has initiated an investigation pursuant to **Section 14** of the Telecommunications Act 2000, as provided for in the said **Annex to Ministerial Order**.
6. **In undertaking an investigation pursuant to Section 14, THE OFFICE shall:**
  - i. Ensure that such investigation is conducted in an expeditious manner;
  - ii. Require from the defaulting carrier a report which should inter alia explain the reason for the default;
  - iii. Assess the ability of the defaulting carrier being able to defray the outstanding indebtedness in a timely manner and in addition to maintaining its ongoing obligations on a current basis based on credible evidence and relevant fiduciary commitments.

- iv. Upon completion of its investigation the Office shall submit a report to the Minister with a recommendation to suspend, or revoke the licence in question. In the event of the recommendation to suspend the licence in question the Office shall set a specific time period within which it shall review the matter and provide the Minister with a further recommendation.
- v. For the avoidance of doubt, the Office shall not make any decisions or recommendations regarding any payment arrangements pertaining to the said Levy or any default thereof.

**BY ORDER OF THE OFFICE:**



A handwritten signature in black ink, appearing to read 'J. Paul Morgan', is written over a horizontal line. The signature is stylized and cursive.

J. Paul Morgan  
**Director General**

Dated the 11<sup>th</sup> day of January, 2007