



**CABLE & WIRELESS**  
JAMAICA

**RESPONSE TO THE OUR's**  
**NOTICE OF PROPOSED RULE MAKING**  
**ON**  
**RULES OF PRACTICE AND PROCEDURE 2007**

June 29, 2007

## **Introduction**

C&WJ is please to be afforded the opportunity to respond to the OUR's Notice of Proposed Rulemaking (NPRM) on 'Rules of Practice and Procedure 2007' (the rules)

C&WJ agrees that it enures to good management for the OUR (the Office) to establish and codify the rules and procedures governing the agency in discharging its functions. These rules will establish predictability of treatment and avenues of recourse and are welcomed. This is also an important step to improve the efficiency and accountability of the OUR.

C&WJ expressly states that any failure to address any particular issue raised by the OUR in this NPRM does not represent agreement in whole or in part with the OUR's position on that issue. Further C&WJ reserves all rights to comment on any matter in this NPRM, in the future, that has not been addressed in this response.

C&WJ comments on the NPRM are as follows and commences with the fundamental issue of natural justice:

### **Schedule 7**

#### **Procedures Governing Conduct of Meetings with the Office and/ or its Staff**

##### *Section 12 meeting Between the Office and its Technical Staff*

Section 3 of the Office of Utilities Act ("the Act") establishes the Office of Utilities Regulation which under the Second Schedule consists of the Director-General and the Deputy Directors-General. The functions of the Office are listed in Section 4 of the Act. The Second Schedule also lists responsibilities and powers of the Office.

The rules and procedures outlined in the NPRM are directed at the operations of the Office, as opposed to the staff of the Office. In fact Section 12 is titled "Meetings between the Office and its Technical Staff" and reads:

- (i) *In order to keep itself apprised of and remain current with the issues that are under consideration, the Office shall convene regulatory meetings with its technical staff to consider regulatory matters. Such meetings shall not be regarded as meetings of the Office. These meetings shall provide the Office with the opportunity to monitor the progress of various matters before the OUR and to carry out its role of supervising the regulatory work of the staff.*
- (ii) *The Office shall from time to time designate a recording secretary who shall be responsible for making and keeping minutes of the meeting between members of the Office and its technical staff."*

C&WJ's understanding of the rules and procedures is that the staff of the Office will assist the Office in carrying out its various functions, but will not be a party before the Office in any matter. We kindly request that the OUR confirms this interpretation of the document. It is important that the roles of the Office and its staff be clearly outlined in the document, so that procedures and practices of the Office are not later impugned on the grounds of bias, or breaches of the rules of natural justice. We recommend that the OUR be instructed by dicta

of the Court of Appeal in the case of The Jamaica Stock Exchange v. Fair Trading Commission SCCA 92/97.

## **Part 6**

### **Form and Communication of Office Decisions**

#### *Rule 6.3 Form of Communication of Office Decisions Related to the Regulated Industries Generally*

In rule 6.3, the OUR (or the Office) stated that *'The Office may at its own discretion circulate Decisions and / or Orders to the affected parties by e-mail'*. C&WJ is of the view that where e-mail addresses are available to the OUR and where there is routine correspondence between the OUR and a regulated entity using e-mail, then circulation by e-mail is required and appropriate. We agree that the parties are duly notified when the Notice appears in the print media.

The OUR's rules should also stipulate that e-mail correspondence from a regulated entity is official correspondence where there is routine correspondence between the OUR and that regulated entity using e-mail.

#### *Rule 6.4 Declaratory Orders*

In rule 6.4 the Office reserves the right to decline to issue a Declaratory Order. C&WJ does not believe that it is appropriate for the OUR to decline to issue a Declaratory Order where an affected party has specifically requested such an Order. Even if the Office considers the request frivolous or vexatious there is merit in issuing the Order. The Office however needs to establish timeframes within which a Declaratory Order can be expected.

## **Part 8**

### **Reconsideration of Office Decisions (Review of Administrative Decisions)**

In rule 8.3 (b), the OUR is proposing that comments on Applications for Reconsideration be provided in five (5) days. It is C&WJ's view that five (5) days is too brief and that consideration should be given to making this period at least ten (10) days, particularly if the Application relies on new facts.

## **Part 9**

### **Confidential and Proprietary Information**

In a significant way, the treatment by the office of confidential and proprietary information departs from the provisions under the Telecommunications Act 2000.

The Office is requiring that the party asserting confidentiality of information prove that the information is confidential. This is a departure from Section 7 (6) of the Telecommunications Act 2000 which does not impose a burden to prove confidentiality but rather defines 'confidential information' to mean *'...any information classified as such and includes information that a reasonable person would regard as confidential having regard to the nature of the information'*.

## **Annual Statutory Regulatory Return**

The purpose of this form is not clear. Clarity is being sought from the OUR on the value that this Form will provide.

### **Schedule 1 Procedures for Conducting Public Consultations**

#### *Timetable of Consultations*

It is noted that the timeframes for responding to NPRMs are abbreviated when compared to the timeframes for responding to consultations. The differences in timeframes for responding suggest that consultations are more complex than rulemaking and need more time. While it is true that many of the consultations are complex, NPRM, which actually seek to set out rules and procedures, can also be complex and controversial. As such the timeframes for both consultations and NPRMs should not diverge significantly.

#### *Mode of Response*

As is currently the case, the OUR needs to specifically state that responses to consultations are to be made by e-mail.

### **Schedule 2 Procedure for Handling Customer Complaints**

At step 8 of the procedure, the NPRM makes reference to informal complaints resolution by the Consumer and Public Affairs (CPA) division. While we recognize that the Office is seeking to make a distinction between the Office, as constituted by statute, and the staff of the Office, such a distinction does not render the actions of the agents of the Office as informal. Nor does C&WJ consider the OUR's current mechanism for complaints management as informal. This is an unfortunate categorization which we encourage the Office to review.

At step 13 of the procedure, the OUR provides the utility companies with five (5) business days to acknowledge complaints, which is the case now. The Office provides ten (10) business days for the companies to respond to the complaint made. Currently, C&WJ is allowed thirty (30) business days to respond to complaints.

C&WJ's objective is to continuously improve the service provided to its customers. As such C&WJ wants to improve its responsiveness to its customers and proposes that fifteen (15) business days is feasible for providing the substantive response to a customer complaint. It is presumed that the fifteen (15) days for responding begins after the five (5) days for acknowledgement has expired and does not run concurrently with the acknowledgement period. The OUR is requested to clarify.

## **Schedules 4 and 5**

The OUR is requested to specify the issues and circumstances that warrant a type 1 as opposed to a type 2 hearing and vice versa.

### *Service*

It is proposed that a process flow will allow for better understanding and execution of this process.

## **Other Issues for Inclusion in the NPRM**

- The Office has not mentioned how it intends to treat with Mobile Virtual Network Operators (MVNOs) and if a new class of licence will be created.
- The Office needs to advise on Office procedures for matters that are before the Telecommunications Appeal Tribunal.
- A procedure governing request for extension of time to comment on OUR consultative documents is required.

**END DOCUMENT**