

**DOCUMENT TITLE AND APPROVAL PAGE**

1. **DOCUMENT NUMBER:** Tel 2004/02

2. **DOCUMENT TITLE:** **Decision on Settlement Rate**

3. **PURPOSE OF DOCUMENT**

This document sets out the decision taken on minimum settlement rates for incoming international rates.

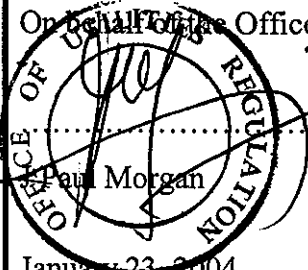
4. **RECORD OF REVISIONS**

Revision Number	Description	Date
None		
None		
None		
None		

5. **APPROVAL**

This document is approved by the Office of Utilities Regulation and becomes effective as of the date of the signature attached hereunder.

On behalf of the Office:



..... ) Director General

Paul Morgan )  
January 23, 2004

.....  
Date

# OFFICE OF UTILITIES REGULATION

## Decision on Settlement Rates

### BACKGROUND

Pursuant to Section 3 (a) of the Office of Utilities Regulation Act 1995 and Sections 4(f) and 4.4, and Section 50 of the Telecommunications Act 2000 the Office has a duty to encourage and promote competition among carriers and service providers. Section 50 specifically provides authority for the Office to regulate the terms on which International Telecommunications Services are conducted, including International Settlement Rates.

The Office has become aware that, following the recent judgment of the Supreme Court of Judicature of Jamaica in the suit M-074/2003-Office of Utilities Regulation vs Minister of Commerce Science and Technology, certain carriers have responded by serving notice of their intention to increase call termination on their networks. This action has posed an immediate danger to the telecommunications market in that there is a real possibility of a collapse of competition in the market for incoming international calls. This situation arises as a result of the ability of carriers with both a domestic license and an international license to set both the terminal charge to their network as well as the rates to be paid by foreign correspondent carriers (settlement rates) for the termination of international calls.

Locally licensed international carriers with no domestic network (there are currently 17 of these intermediate carriers in operation) will be forced out of the market if there is not a reasonable margin between the settlement rate and the termination charge. In the extreme there could evolve a situation where international calls can only be economically terminated on a domestic network through its sister international carrier's facilities.

The Office is of the opinion that Jamaica has been deprived of the full benefits of the precipitous decline in settlement rates (from US\$ 0.625 in 1998 to around US\$ 0.07 at December 2003). There are reports of 'whip-sawing' in the negotiations between local carriers and foreign correspondent carriers resulting in the local carriers receiving low or below cost rates. The consequential reduction in costs accruing to the said foreign correspondent carriers as a result of the benefits of low or below cost rates has not been passed on to the consumers in the foreign correspondents countries. Accordingly the expected increase in the volume in terms of calls per line, had the benefit of the low rate been passed onto the foreign consumers, has not materialized.

### Ministerial Directive

The Minister of Commerce, Science and Technology in his own recognition of the crisis in the market and pursuant to the powers vested in him by section 6 of the Telecommunications Act 2000 ('the Act') issued two directions to the Office. The first Directive 01/2004 Tel states inter alia.

1. *'Undertake and implement such acts of regulatory intervention in the mobile (cellular) market (howsoever defined) as will stimulate*

*sustainable, effective competition among carriers and service providers.*

2. *In the exercise of its powers under section 4(1)(f) of the Telecommunications Act 2000 require such information from licensees as will enable the Minister to assess the effectiveness of this policy directive from time to time and respond accordingly.*
3. *Have specific regard to the directive at paragraph ` above in the exercise of its powers under sections 29(4), 33(1), and 33(2) of the Telecommunications Act 2000.'*

The second Directive 02/2004 Tel affects settlement rates and states inter alia:

1. *'With immediate effect, undertake and implement such acts of regulatory intervention in the market for international voice services as will establish an appropriate international settlement rate at which licensed operators shall provide such services, whilst continuing to maintain sustainable, effective competition among carriers and service providers. It is specifically intended that any ruling or directive to Licensees issued by the Regulator pursuant to this Ministerial Directive shall be immediately binding on such licensees pursuant to the terms and conditions of their Licensees.*
2. *In the exercise of its powers under section 4(1)(f) of the Telecommunication Act 2000 require such information from licensees as will enable the Minister to assess the effectiveness of this policy directive from time to time and respond accordingly.'*

### **Exercise of Regulatory Authority**

Operators in the international market have made representation to the Office seeking the Office's immediate intervention in the market to resolve the crisis in the sector. The Office has therefore decided to take interim steps to stabilize the market pending investigations and consultations on further measures that may be necessary. The Office has a duty pursuant to its functions under the Telecommunications Act to regulate specified services and facilities and to promote competition. In making its decisions in exercise of these functions, the Office

- a. Has consulted with members of the industry and gave such persons an opportunity to be heard by oral and written submissions to the Office.
- b. Considered the needs of the consumers and whether the service being provided in the manner in which it was contemplated was likely to promote or inhibit competition.

## **Consultations**

Discussions were held with various stakeholders who raised issues concerning.

- i. The setting of an appropriate margin between termination charges and settlement rates.
- ii. Whether the minimum settlement rates should be uniform for all local carriers.
- iii. The absolute level of the settlement rates.
- iv. The effective date of any decision, and
- v. The status of offshore carriers connected to local carriers and doing business on behalf of the local carriers with other foreign carriers.

## **Uniform Settlement Rates**

There have been suggestions that the margin should not be uniform across operators. It has been stated specifically that because of other technical and commercial advantages the margin for local international local carriers with domestic networks should be different.

The Office is of the opinion that whatever the merits of these arguments it would be constrained by legislation from discriminating in price setting so as to eliminate competitive advantages. It is the duty of the Office, as far as is possible, to afford a leveled playing field to all operators. It will therefore continue to pursue efforts to address, in conjunction with the Fair Trading Commission, issues of predatory pricing, abuse of dominance and any other anti-competitive behaviour.

## **Rationale for Decision on Minimum Margin**

In considering the issues, the Office is of the view that in order to allow effective competition among local carriers the minimum margin above the termination rate should be set at the marginal cost of the most efficient operator. Due to the lack of costing information on all carriers this margin cannot be determined *ex ante* with any degree of accuracy so *ex post* empirical data will be used. The information available to the Office suggests that with a termination rate to the fixed network of approximately US\$ 0.03 the settlement rate for traffic terminating on the fixed network cleared as low as US\$ 0.061 in December 2003. This implies a required margin of US\$ 0.031.

## **Reporting Requirements**

There is not at this time reliable information to ascertain whether US\$ 0.061 was the lowest trading rate or if special circumstances influenced this rate. The Office however will by this notice institute reporting mechanisms such that all the relevant market data would be available to make decisions. The policy would then be to have a monthly review of the

required margin in order for it to reflect the cost of the most efficient operator so that the market remains competitive.

### **Status of Connected Offshore Carriers**

The Office is of the opinion that there must be arm's length relationships with connected offshore carriers. The local carriers are therefore required to treat and report transactions with connected carriers in the same manner as they do for other foreign carriers.

## **DECISION 1**

### **Minimum Margin**

#### **This Office DIRECTS that**

- i. A minimum margin between termination rates and settlement rates of US\$ 0.031 **BE AND IS HEREBY ESTABLISHED** by way of this interim decision; AND
- ii. **HERE BY NOTIFIES** that
  - a. The Office intends to institute reporting mechanisms for all relevant market data to be made available to the Office to assist it in making its decisions concerning the margins to be effected.
  - b. Monthly reviews will thereafter be carried out to determine the required margin in order to reflect the cost of the most efficient operator with the objective of ensuring that the market remains competitive.

## **DECISION 2**

### **Approval of Cable and Wireless Jamaica Limited Termination Rate**

Following Cable and Wireless Jamaica Limited (C&WJ's) application to the Office for approval of a termination rate of US\$ 0.05 for international calls

#### **The Office HEREBY APPROVES**

- i. A termination rate US\$ 0.05 for international calls to the fixed network.
- ii. A minimum settlement rate for calls to the fixed network of US\$ 0.081 (being US\$ 0.05 plus US\$ 0.031).

### **DECISION 3**

#### **Settlement Rates for International Calls To Mobile Networks**

The current termination rate of international calls on mobile networks is not uniform. C&WJ and Oceanic Digital Jamaica Limited have given notice for a rate of US\$ 0.0138 while Digicel has given notice of a rate of US\$ 0.135.

#### **The Office HEREBY DIRECTS THAT**

- i. Until it has assessed the mobile termination rate it will set the minimum settlement rate for international calls to mobile networks on the basis of the higher proposed rate.
- ii. The minimum settlement rate for international calls to mobile network is set at US\$ 0.169 (being US\$ 0.138 plus US\$ 0.031).

### **DECISION 4**

#### **Effective Date of Decisions**

The Office has noted that there are varying submissions as to the effective dates of the proposed termination charges and its position is that it is necessary to eliminate as many of the uncertainties in the market as quickly as possible in order to bring about stability in the market.

The **Office HEREBY DIRECTS** that decisions on the matter of terminations and settlement become effective for all carriers on the same date and time and accordingly designates an effective time of 12.01 am, January 24, 2004.

### **DECISION 5**

#### **Submission of Information**

The **Office HEREBY DIRECTS** all licensed international carriers to provide the Office within five days of a calendar month information pertaining to:

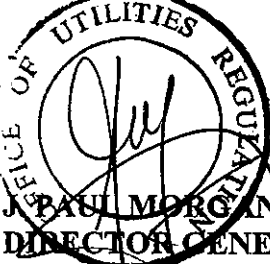
- i. Contract details with each correspondent foreign carrier indicating prices, volumes, points of handing over of traffic and all other terms of the contract for traffic terminated in Jamaica in that calendar month.
- ii. The volumes of traffic obtained from each foreign carrier for termination on fixed and mobile networks.

## SUMMARY OF DECISIONS

1. The minimum settlement rates for international calls terminating on a fixed network shall be US\$ 0.081
2. The minimum settlement rates for international calls terminating on a mobile network shall be US\$ 0.169
3. Approval of an application by Cable & Wireless Jamaica for a termination rate of US\$ 0.05 for incoming international calls on the fixed network.
4. The maximum termination rate for international calls for a mobile network is US\$ 0.138.
5. The effective time of the above decisions is 12.01 a.m. January 24, 2004.
6. All local international carriers are to provide the Office within five days of a calendar month information pertaining to:
  - a. Contract details with each correspondent foreign carrier indicating prices, volumes, points of handing over traffic and other terms to the contract for traffic terminated in Jamaica in the calendar month.
  - b. The volumes of traffic obtained from each foreign carrier for termination for fixed and mobile networks
  - c. Any other information that the Office may from time to time consider relevant and necessary to ensure competition in the market

**BY ORDER OF THE OFFICE**

**SIGNED THIS 23<sup>rd</sup> DAY OF JANUARY 2004**

  
**J. PAUL MORGAN**  
**DIRECTOR GENERAL**