

28 February 2008

Mr. Ansord Hewitt  
Secretary to the Office  
Office of Utilities Regulation  
36 Trafalgar Road  
Kingston 10

Dear Mr. Hewitt,

**RE: Digicel Responses to the OUR Management Plan for Fiscal Years 2008/09 – 2010/2011**

Digicel (Jamaica) Limited is pleased to be given the opportunity to comment on the Office of Utilities Regulation Management Plan (the "Plan") for the fiscal year 2008/09 – 2010/2011.

3 – Overview

- The OUR must recognise that the revision of the Telecom Act (though necessary) is likely to take a significant length of time, given the need for widespread and comprehensive stakeholder input. Therefore, it is essential that (while this revision process is undertaken) the OUR continue to act on the basis of the current legal regime, albeit imperfect. Development in the telecom sector cannot be delayed or stifled as a result of a reticence to enforce the current regime.

4.1 Internal operation

- Digicel is pleased to note that the OUR plans to constitute an Audit Committee to advise upon its operation. Digicel considers that it would be appropriate to have industry representation on this Committee, as the regulated bodies are directly impacted by the operation of the Office. Digicel of course recognises the need for the OUR to remain independent, however it would still be possible for industry to help to improve the accountability and efficiency of the Office, through their participation in this Committee.
- Digicel notes the OUR's plan to include a "surplus" representing 4 month's worth of operational expenses to sustain the Office in the event of an inability to collect regulatory fees. Digicel assumes that this "surplus" fund will be in addition to the usual budgeted amount which is collected each fiscal year. The OUR should clarify how this "surplus" will be refunded to stakeholders in the event that it is not required – i.e. that the OUR is able to recover the appropriate regulatory fees during the period in question. Given the limited information Digicel has about this scheme we are not prepared to support it due to the system's unnecessary high cost. Digicel believes that the OUR should look for more modern and financially savvy means of addressing such problems which do not impose such

high costs on market participants. The system proposed would appear to result in the firms that can not or do not pay on time being subsidized by those that do pay on time. This would be an unacceptable situation.

#### 4.2.1 The Telecommunications Sector

- Digicel agrees with the importance the OUR has placed upon the deployment of broadband technologies. Given the importance of broadband to the development of Jamaican society it is even more important for the OUR to act quickly to address any anti competitive behaviour which will have the impact of stifling the deployment of broadband. While Digicel understands the OUR's wish to see the regulatory regime updated, this cannot prevent the OUR from acting to address market failures/anti competitive behaviour which may occur in advance of the revised Act.
- *(page 12 – Report on the state of competition)* Digicel notes that the OUR has (together with the FTC) prepared a joint review on the state of competition in the telecoms sector. However, the OUR has not explained what (if any) use will be made of the report. Furthermore, Digicel was not given an opportunity to comment on this document; it is essential that stakeholders are given every chance to provide comments on matters that may be used to develop future telecom policy.
- *(page 12 – Numbering rules)* It is essential that the OUR's policy on numbering keep pace with the rapid development of new and innovative services. It is essential that operators are not prevented from offering new services, due to a wish to adhere to the numbering policies of the past. The market is moving and changing and the allocation of numbers must keep pace with this process of development.
- *(page 13 – Review of regime for funding of Universal Service)* While looking at the funding of Universal Service it is essential that the OUR give due consideration to all aspects of the regime. For example, unless there is a requirement for operators to pass CLI data on calls, it is not possible to identify those which should properly attract the universal service levy. While operators should and are willing to work together to devise technical solutions (where problems arise) this cannot be at the expense of having the requisite legal underpinning to the regime to ensure that action can be taken in the event that a technical/informal solution cannot be found.
- *(page 14 – Regime for Toll Free Number)* Digicel was of the view that the Toll Free interim arrange was already in place since November 2007.
- *(Page 15 – first paragraph)* As part of the licensing regime, the OUR must always remain cognisant of its own mission statement and in particular the need to ensure that operators can make a reasonable return on their investments.
  - The issuance of new licences must not be allowed to jeopardise or undermine the significant investment that operators have made. For example, at the end of last year the OUR published a Notice in relation to MVNOs. Unfortunately it is still not entirely clear what these new operators can and cannot do.

- The OUR must have the necessary degree of oversight of **all** players in the market. Where operators are unlicensed (e.g. bypassers), the OUR must take the requisite enforcement action to ensure that they cannot continue to operate in the market.

#### 6.1 Telecommunications

- *(page 33: Strategy)* Digicel supports the OUR's wish to ensure that its staff is well trained and have the requisite knowledge to undertake their responsibilities in an efficient manner. The OUR should however find ways to minimise its significant training budget where it is able to do so. For example, operators within Jamaica already have extensive technical expertise in all aspects of the telecoms sector and Digicel (for one) would be more than willing to share this knowledge with the regulator. Digicel is confident that other operators would similarly be willing to share their expertise with the OUR. This would not only have the benefit of enabling the OUR to bridge its staff's knowledge gaps in a cost efficient manner, but would also ensure that that specialist knowledge appropriately reflects the specificities of the Jamaican market. Digicel urges the OUR to also audit staff training and by this we mean for experts to assess the effectiveness of the training in relation to the cost expended.
- *(page 34: major activities on the timetable)* The OUR must ensure that stakeholders are involved (from the outset) in the proposed forum on telecommunications. As the output from the forum will be used to guide the development of policy, it is essential that operators are fully engaged in the process, otherwise there is a risk that policies may be developed which do not fully address the commercial realities of the marketplace or plans for new products/services.

*(Page 37: first paragraph)* Digicel welcomes the OUR's pragmatic approach to quality of service. Digicel prides itself on providing world class quality of service to its customers (in the absence of regulation). Digicel wishes to believe that the OUR ought to keep its policing functions to a minimum in keeping with the approach of leading regulators.

- In relation to the OUR's plan to develop standards on call centre monitoring, the Office should remain cognisant of the fact that industry standards already exist. Therefore, the OUR should refrain from (1) duplicating these standards or (2) imposing more onerous standards without first undertaking a full cost benefit analysis of any proposed changes. Moreover, Digicel's success is in part explained by the excellence of its call centre service; a feature which provides us with a competitive advantage over our rivals. Digicel urges OUR not to get closely involved in this aspect of the competitive process, such level of supervision especially of a competitive market is not consistent with good regulatory practice.

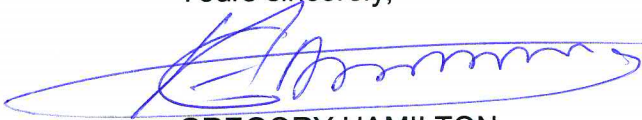
#### 7.2 Budget Items

*(page 49: Public Education, page 50: Advertising and page 51:Public Relations)* Digicel believe that Public Education, Public Relations and Advertising are geared towards achieving the same goals and should be grouped together. This will ensure efficiency by reducing duplications. Advertising for new licences should be part of the fees that are charged for the licences.

7.3 Allocation to service sectors

(Page 53: first bullet) Digicel wishes to remind the OUR that all companies should be treated equally. In August 2000, more than six months before launch Digicel was asked to pay **\$10 million** in regulatory fees, even though there was not even one subscriber. Digicel expects that all new companies will be treated in a similar manner. One way of ensuring this is to use a percentage system so that all new operators are charged the same proportion of the total regulatory fees.

Yours sincerely,



GREGORY HAMILTON  
REGULATORY MANAGER  
DIGICEL (JAMAICA) LIMITED