
Office of Utilities Regulation

**Equipment Inspection, Discontinuance and
Disconnection of Service by a
Telecommunications Carrier**

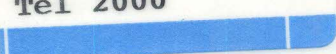
A Consultative Document



OFFICE OF UTILITIES REGULATION

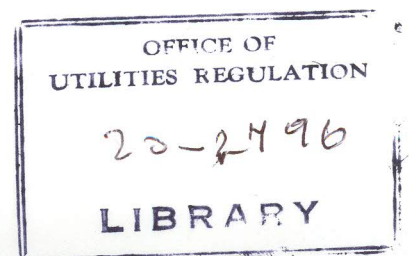
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Abstract

Under the Telecommunications Act, 2000 the Office of Utilities Regulation (OUR) has been empowered to be the independent regulatory body for the telecommunications sector in Jamaica. The functions of the OUR as set out in section 4 (1) of the Act, include *inter alia*:-

- to promote and protect the interests of customers;
- to promote competition among carriers and service providers; and
- to ensure the provision of services to persons able to meet the financial and technical obligations related to those services.

The Act requires the OUR to set the terms and conditions under which the underlying international carrier may inspect customer equipment which interfaces with its network. It also requires a carrier to obtain the approval of the Office prior to discontinuing the provision of service or disconnecting service to any person deemed to be engaging in activities in breach of the Act. The OUR takes the view that given the potential for controversy on this matter, there is a need for wide public consultation in arriving at the set of principles and procedures to be followed in carrying out the above functions.

It is accepted that the main objectives of the provisions are to detect and reduce bypass. The OUR consequently envisages that the principal tasks involved in this exercise are to: establish a fair and transparent process; and set out clear guidelines as to the principles on which it will give approval for examination of equipment, the discontinuance of service and the disconnection of equipment. ~~Initial thoughts are that the~~

This document sets out the OUR's preliminary views on such matters as the format for applications, requisite notice periods, evidence to be considered, mode of carrying out inspection and termination and competitive safeguards.

Written submissions on the contents of this Document are invited from interested parties, including consumer groups, carriers and service providers and other interested parties.

Additional copies of this document are available at the OUR's Web site at <http://www.our.org.jm>

COMMENTS FROM INTERESTED PARTIES AND ARRANGEMENTS FOR PUBLIC PARTICIPATION

Persons who wish to express opinions on this Consultative Document are invited to submit their comments in writing to the OUR. Comments are invited on all aspects of the issues raised, but especially the specific questions identified. At various points in this document specific questions are set out on which the OUR is seeking the opinion of interested parties. These questions appear below the explanatory text to which they relate and are also listed together in **Chapter 3**.

To ease the OUR's processing of the responses, respondents are requested as far as possible to follow the order of the OUR's questions. If they consider it appropriate, respondents may wish to address other aspects of the document for which the OUR has prepared no specific questions. They may of course only wish to answer some of the questions posed - failure to provide answers to all questions will in no way reduce the consideration given to the response.

Responses to this Consultative Document are requested by and should be sent by post, fax or e-mail to:-

Ansord Hewitt
P.O. Box 593, 36 Trafalgar Road, Kingston 10
Fax: (876) 929 3635
E-mail: ahewitt@our.org.jm

Responses are requested byAny confidential information should be submitted separately and clearly identified as such. In the interests of promoting transparent debate, respondents are requested to limit as far as possible the use of confidentiality markings. Respondents are encouraged to supply their responses in electronic form, so that they can be posted on the OUR's website (or a link included where the respondent wishes to post its response on its own website).

Comments on responses

The OUR's intention in issuing this Consultative Document is to stimulate public debate on the structure of regulatory accounts for Cable & Wireless Jamaica. The responses to this Consultative Document are a vital part of that public debate, and so as far as possible, should also be publicly available. The OUR considers that respondents should have an opportunity both to find out the evidence and views put forward in other responses, with which they may disagree, and to comment on them. The comments may take the form of either correcting a factual error or putting forward counter arguments.

Comments on responses are requested byie.....weeks after the deadline for the receipt of responses.

Arrangements for viewing responses

To allow responses to be publicly available, the OUR will keep the responses that it receives on files, which can be viewed by and copied for visitor to the OUR's Offices. Individuals who wish to view the responses should make an appointment by contacting Granville Newell by one of the following means:-

Telephone: (876) 968 6053 (or 6057)

Fax: (876) 929 3635

E-mail: granewell@our.org.jm

The appointment will be confirmed by a member of the OUR's staff. At the pre-arranged time the individual should visit the OUR's Offices at:-

3rd Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10.

The individual will be able to request photocopies of selected responses at a price, which just covers the cost to the OUR.

Chapter 1 Introduction

Consequent on a September 30, 1999 agreement between the Government of Jamaica and Cable and Wireless Jamaica, a new Telecommunications Act has been passed into law. Among the principal issues addressed in the new Act is the matter of measures to deal with bypass. Bypass operations are defined in the Telecommunications Act as, "operations that circumvent the international network of a licensed international voice carrier in the provision of international voice services". This activity is prohibited by Section 9 (1) (d) of the Act.

The temptation to engage in bypass is particularly acute where international settlement rates are high. Over the three-year period leading up to the full liberalisation of the telecommunications sector, C&W will maintain a monopoly on international telephony. At the same time, between now and January 2001 the US Federal Communications Commission will take steps to narrow the settlement rate gap. This should reduce but will not remove the incentive for engaging in this type of operation and so it remains a matter of concern for both the incumbent international carrier and the Government because of its effect on tariff re-balancing.

The opportunity for bypass arises from the interface between the incumbent public network and facilities or equipment owned by other networks and customers. Presumably in order to facilitate the detection and control of bypass operations, the Act confers on the incumbent international carrier a right to inspect subject to obtaining the approval of the Office of Utilities Regulation (OUR).

The provision for inspection is set out under section 18 of the Act.

"(1) Any person may provide customer equipment to the public, other than prescribed equipment.

(2) Customer equipment referred to in subsection (1) include any equipment used –

(a) by the customer to receive mobile services; and

(b) to connect more than one telephone station to the public network.

(3) Where a person provides customer equipment referred to in subsection (2) –

(a) that person shall include a provision in the appropriate tariff or contract that reserves a right of the underlying international carrier on application to the Office and on such terms and conditions as the Office may specify to have access to, inspect that equipment; and

(b) that carrier shall take action under paragraph (a) in the prescribed manner.

(4) Where a customer denies access to the carrier that is required for the purpose of subsection (3) (a), the carrier may, with the approval of the Office, disconnect the service provided to that customer or may discontinue the provision of that service."

The provisions in respect of the discontinuance of service or the disconnection of equipment are set out under Section 51 of the Act.

“A carrier or service provider may on application to the Office and on such terms and conditions as the Office may specify –

- (a) discontinue the provision of specified services to any person; or
- (b) disconnect any facility from that carrier’s facility or another facility used to provide that service provider’s specified services,

if that carrier or service provider believes on reasonable grounds, that the person who owns or operates that ~~the~~ facility or the person to whom those specified services are provided is engaging in bypass operations or in conduct in respect of international services that is prohibited or regulated by the international service rules”.

This document represents preliminary thoughts on the principles and the process that are envisaged for the OUR in giving effect to the relevant sections of the Act. The views of Staff members are invited, particularly in respect of what should be the scope of the consultation document.

The Scope of the Consultation Document¹

It is proposed that the consultation document should seek to cover the following:

- Identification of the range of equipment that are contemplated and consequently, the contracts or tariff that will have to reserve a right of inspection for the underlying carrier.
- The format and the procedure for an application by the underlying carrier to carry out inspection, discontinuation of service and disconnection of equipment.
- The preconditions for approval of requests for inspection, discontinuance of service or disconnection of equipment, including burden of evidence required.
- The Conditions the Office should apply to its approval (property rights and competition safeguards).
- Basis for refusal of application and the format for communicating such refusal.
- Provision if any for appeal

What other element should be included in the scope of this consultation Document?

¹ This section is included for internal circulation only and will be deleted prior to sending out the consultation document.

Chapter 2: Inspection, Discontinuance and Disconnection

Sections 18 and 51 of the Act provide for three types of activities viz. Inspection, discontinuation of service and disconnection of equipment. Inspection is provided for under section 18 while discontinuation and disconnection are addressed by section 51. By the terms of Section 18 inspection pertains only to the underlying carrier who must apply to the Office for approval to carry this out. The logic here is that by carrying out inspection a carrier will be able to confirm suspicions of bypass activities. In this regard, the conclusion is that inspection will, be undertaken on the basis of reasonable suspicion while discontinuation and disconnection will be done on the basis of reasonable evidence.

Notably, whereas section 18 only contemplates applications from the underlying international carrier, Section 51 contemplates that in theory an application for termination of service or disconnection of equipment may also be made by a service provider. In practice however, it is very unlikely that a service provider would have an interest in either terminating service or disconnecting equipment on the ground of involvement in bypass operations.

Principal affected Equipment and Parties

If it is accepted that the provisions in the Act are seeking to address bypass then the principal persons and equipment must be those who by virtue of their interface with the incumbent's network are able to engage in this type of operation. In this regard, the customer equipment contemplated must be multi-lines facilities, which allows for the connection of private networks (examples, a Vsat or a leased international circuit) to the public network. Private Branch Exchange (PBX) is the principal equipment falling in this category.

Are there any other equipment, the ownership of which could provide the opportunity for engagement in bypass activities?

In terms of affected parties, as set out in the OUR consultation Document on Interconnection², two types of customers are contemplated. Those connecting to the carrier's facility and operating a competing service (an internet provider provides a good example); and those end-users who do not in anyway compete with the carrier but operate equipment that could be used for bypass operations.

The OUR's initial view was that the regulator should only be called upon to become involved prior to enforcement action where the person perceived to be engaging in bypass is also a competitor of the carrier in question. The reasoning here is that a carrier operating in end-user markets may use its rights of inspection, discontinuation of service or disconnection of equipment to injure competitors.

² See Interconnection in Telecommunications, (March, 1999), A Consultative Document

The Act makes no such distinction however, between competitors and Customers who are not in Competition with the carrier. Nonetheless, the Office is of the view that the distinction is, from a competition standpoint, still important and should figure in its approach to dealing with requests. For example, in the case of a request involving a competitor the carrier should be required to give specific undertaking regarding information gained during the inspection process. The office should also take care to ensure that the discontinuation or disconnection of service or equipment is confined solely to what is required to prevent bypass operations.

Do respondents agree with the OUR's position that the approach to dealing with request for inspection, discontinuation and disconnection should differ depending on whether or not the alleged bypass operator is a competitor of the carrier?

Format of Application for Inspection

The application should set out clearly the basis for the suspicion that bypass is taking place and that the equipment in question is being used for such purposes. The applicant should also stipulate how it intends to carry out the examination, the names and qualifications of the persons designated to carry out the inspection, the equipment slated for inspection and time required to carry out the inspection.

It is also envisaged that the Office will commit to respond to requests for approval of inspection within a specified time of the date of reception. Such a time period should be such as to allow the Office to reasonably examine the request and the documents supplied in support of the request. A time period of five working-days is being proposed.

What format should the format for application take and what details should the applicant be required to furnish the Office with?

What time period should the Office be afforded to consider and approve application?

Criteria for granting OUR approval for inspection, discontinuance of Service or Disconnection of Equipment

A prime difficulty in establishing criteria for granting approval for carrying out inspection is striking the balance between the rights of the carrier to take steps to reduce bypass operations and the property rights of the equipment owner. The Office also recognises that where the person suspected or alleged to be involved

disconnection of service or equipment may simply be a means of eliminating a competitor. On the other hand, the easier it is for the carrier to carry out inspection, the more likely it will be that bypass operations will be detected and reduced which is the intention of the Act.

In this regard, the bar for granting inspection should not be set so high as to reduce the carrier's ability to detect and prevent bypass operations. It is contemplated that the following evidence will be considered when looking at request for approval of inspection:

- Sharp and unexplained reductions in the traffic on the carrier's network.
- Promotional and advertising activities suggesting that the suspected bypass operator is engaging in the sale of voice calls.
- Unusual call traffic pattern as in large number of out going calls versus incoming calls on lines, which are largely for calling in.
- Unexpected frequency of line use.

If it is taken for granted that inspection would normally precede a request for discontinuance of service or the disconnection of equipment it is reasonable to argue that the standard of evidence required in support of the latter requests should be higher than that for inspection. In this regard, the initial proposal is that a request for an inspection should be approved once the underlying carrier has made out a prima facie case for bypass.

On the other hand, since in practice the carrier proposing to discontinue service or disconnect equipment would have already carried out an inspection, it should be able to present reasonable evidence to support its claims. It is anticipated that evidence in support of such request would include:

- Confirmation of voice traffic over circuits designated for non-voice traffic.
- The presence of connections leading to facilities that facilitate bypass such as Very Small Aperture Terminal (VSAT) or leased circuits.
- Caller identification information

Should the Office set a high bar for evidence in support of a request for its approval of an inspection request?

What evidence should the Office require that a carrier submit in support of a request for approval of inspection?

What evidence should the Office require that a carrier submit in support of a request for approval to discontinue service or disconnect equipment?

Conditions Attached to Granting Approval for Inspection

Where the Office determines that a request for inspection is reasonable it is expected that it would require the carrier to comply with certain prescribed conditions. Such conditions should include requirements for the presence of OUR or its designated personnel on the inspection team where the matter involves a competitor (the cost of such personnel to be borne by the carrier). A stipulation as to the time period in which the inspection must be carried out, the duration of the inspection and the requisite notice to be given to the equipment operator (if applicable).

There should also be a stipulation that the carrier undertakes to confine its inspection to equipment that can be used for bypass operation as identified in its application. Additionally, the Carrier should also be required to give a signed undertaking that information gathered during the inspection, will not be used to further a competing business interest against the operator. In this regard, a list of designated inspectors with the authority to give undertakings to this effect may be desirable.

Other stipulation should include an undertaking that the carrier shall exercise due care in carrying out its activities to ensure that there is no damage to the property of the operator. The carrier should be required to pay for any resulting damage that cannot be shown to have been necessary for the purpose of the inspection.

Similarly conditions should apply in respect of approval of request for discontinuance of service and disconnection of equipment. As an additional competitive safeguard, the Office should stipulate that discontinuance of service and disconnection of equipment must be limited to only what is required to stop the bypass operations. This is especially important where the operator is also involved in legitimate activities that compete with the carrier in other markets.

Should there be a requirement for the underlying carrier to notify customers prior to inspection, discontinuance of service and disconnection of equipment?

What other competitive and property rights safe guards should be imposed upon the carrier requesting the approval of the Office?

Where the carrier requesting approval for inspection, disconnection of equipment fails to meet the stipulated conditions, the Office shall refuse such an application. Such refusal shall be formally communicated to the carrier within the time allowed for a response and shall state the reason for the refusal.

In considering a request for approval the Office shall consider whether similar request has been refused in the past and if the carrier has provided new evidence to support reconsideration.

On what grounds should the Office refuse a request for inspection, discontinuance of service or disconnection of equipment?

Should there be a right of appeal for a carrier who has been refused the Office approval of its request for inspection, discontinuance of service and disconnection of equipment?

What format should the format for application take and what details should the applicant be required to furnish the Office with?

What time period should the Office be afforded to consider and approve application?

Chapter 3: Consultation Questions

Are there any other equipment, the ownership of which could provide the opportunity for engagement in bypass activities?

Do respondents agree with the OUR's position that the approach to dealing with request for inspection, discontinuation and disconnection should differ depending on whether or not the alleged bypass operator is a competitor of the carrier?

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