
Office of Utilities Regulation

Jamaican Common Short Code Scheme

Second Consultation Document



OFFICE OF UTILITIES REGULATION

November 19th, 2012

Abstract

Pursuant to Section 8 of the Telecommunications Act, 2000, the Office of Utilities Regulation (the OUR) has been assigned the function of Jamaican National Numbering Plan Administrator with specific responsibility for the management and administration of numbering resources to be used in relation to telecommunications services provided by carriers and service providers as prescribed in said statute.

This Second Consultation Document seeks to elaborate on the proposed structure for a Jamaican Common Short Code Scheme to be used for the provision of premium services, as well as the methodology by which these short codes should be assigned in keeping with regulatory best practices so as to allow for transparency and effective competition.

This document will outline any reconsiderations or revisions to the OUR's position on comments submitted in the first consultation. Through consultation it will also attempt to address critical issues to do with customer protection for services that will utilize the short codes. The OUR welcomes all relevant comments and opinions based on what has been presented here. The OUR also welcomes all relevant points that may be material to the discussion at hand, that may not have been considered in the document.

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Comments from Interested Parties

Persons who wish to express opinions on this Second Consultation Document are invited to submit their comments in writing to the OUR. Responses to this document should be sent by post, fax or email to:

Gordon Swaby
P.O Box 593
36 Trafalgar Road
Kingston 10
Fax: (876) 929-3635
Email: gswaby@our.org.jm

Responses are requested by December 19th, 2012

Respondents are requested to limit their use of confidentiality markings as far as possible, and are encouraged to supply their responses in electronic form so that they can be posted to the OUR's website.

Comments on Responses

There will be a specific period for respondents to view other responses (non-confidential) and to make comments on them. The replies may take the form of either correcting a factual error or putting forward counter arguments.

Comments on responses are requested by January 4th, 2013

Arrangement for viewing responses

The responses received by the OUR will also be made available to the public through the OUR's Information Centre (OURIC). Persons who wish to view the responses should make an appointment by contacting:

Kishana Munroe
Public Affairs/ Information Officer
Telephone: (876) 968 6053
Fax: (876) 929 3635
Email: kmunroe@our.org.jm

Individuals with appointments should visit the OUR's offices at:

3rd Floor, Petroleum Corporation of Jamaica (PCJ) Resource Centre,
36 Trafalgar Road, Kingston 10.

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Photocopies of selected responses may be requested at a price which just reflects the cost to the OUR.

Consultative Timetable

The timetable for this consultation is summarized below:

<i>Event</i>	<i>Date</i>
Publish Second Consultation Document	November 19th, 2012
Responses to document	December 19 th , 2012
Comments on Responses	January 4 th , 2013
Determination	February 4 th , 2013

1.0 Introduction

1.1 The first consultation document on the Jamaican short code scheme entitled “*Jamaican Common Short Code Scheme Consultation Document*” Document No: TEL2012002_CON002 was issued on the 23rd of March, 2012 (First Consultation document). The OUR would like to express thanks to all who participated in the exercise. Written responses to this consultation document were received from the following organisations:

- Digicel Jamaica Ltd. (Digicel)
- Cable & Wireless Jamaica Ltd. (Lime)

1.2 Digicel’s response to the First Consultation document is entitled “*OUR – Jamaica Common Short Code Scheme Consultation Document Response*” dated May 2nd, 2012 (Digicel’s response). Lime’s responses to the First Consultation document are entitled “*Lime’s Response to the OUR Consultation Document on Jamaican Common Short Code Scheme*” dated May 2012 (Lime’s First response) and document of the same title dated May 16, 2012 (Lime’s Second response), together referred to as “Lime’s response”.

1.3 The First Consultation was done by way of written responses and as such no public meetings were held.

Purpose of Document

1.4 Pursuant to its statutory mandate as set out in Section 8 of the Telecommunications Act, 2000, (the Act) the Office of Utilities Regulation (the Office/ the OUR) is responsible for the development and management of the Jamaican National Numbering Plan (the Numbering Plan). The Numbering Plan governs the provisioning of telephone numbers that the Office has determined to be available for allocation and due assignment as well as the conditions that govern their adoption and use in Jamaica by licensed telecommunications service providers.

1.5 Further, in keeping with global trends and the explosion of premium and value added services; the growth of non-traditional service providers worldwide has created the need for additional regulatory considerations where numbering resources are concerned.

1.6 The First Consultation document examined the issues raised by the OUR from a general point of view and the Second Consultation document will seek to elaborate on the issues raised by the Industry and provide further proposals for consideration.

- 1.7 In addition, since the publication of the First Consultation document there have been key legislative changes that will be relevant to the consultation going forward. These changes will be examined as well as their implications with regard to previous concerns raised within the First Consultation document.

Structure of Document

- 1.8 This rest of the document will be structured as follows:
- Chapter Two examines the Regulatory Framework;
 - Chapter Three examines the Legal Framework;
 - Chapter Four examines Numbering Plan for Short Code Resources
- 1.9 This Second Consultation document has been organised so as to reflect the issues raised by the Industry in relation to the First Consultation document. In this regard Chapters 2 & 3 will be set out under the following headings to reflect Industry comments and the OUR responses:
- Summary of the issues;
 - Comments from Interested Parties;
 - Comments on Responses from Interested Parties (where applicable);
 - OUR's Response to Comments;
 - OUR's Proposals/Views

Following on from this, Chapter 4 will seek to offer proposals on a numbering scheme that will seek to address numbering needs for premium and value added services going forward. In this manner the issues relating to the consultation, as well is the position of the OUR in relation to these issues, will be addressed.

2.0 Regulatory Framework

Regulatory and Policy Implications for Premium and Value Added Services

Summary of Consultation Issues

- 2.1 In the First Consultation document, the Office invited comments regarding the regulatory and policy implications involving the provision of premium rate and value added services in Jamaica.
- 2.2 Critical issues arose around the question of providing:
- 1) Access to third party content providers;
 - 2) Interconnectivity;
 - 3) The definition of premium and value added services and related issues.

Comments from Interested Parties

Q.1 What premium services do you think will be of interest to this market?

Digicel

- 2.3 In its response, Digicel suggested a number of services that would be of interest to the market. The services suggested included, mobile banking, location services, emergency information services and others.

Lime

In its response, Lime agreed that there is interest in premium services within the local market especially in the areas of entertainment, advertising, commerce, marketing and information.¹

Q.2 What issues do you find presently that are affecting access to mobile and fixed networks for access seekers?

Digicel

- 2.4 Digicel in its response commented that “*the OUR should seek to develop guidelines for the provision of access by mobile and fixed networks based on International best practise*” as the current Act does not make provision for service providers to access their network. Digicel further stated that this

¹ Page 2 of Digicel’s response

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would provide a level playing field for access seekers looking to offer premium and value added services to consumers.²

- 2.5 Digicel also went on to comment that due to the inherent risks posed to the carrier, fit and proper criteria should be established for third party entities seeking access to the carrier's network. The preferred mode of access, it stated, for such access seekers would be for them to connect indirectly with the carrier. Digicel also suggested that third party access seekers should have,

- 1) *"A clear sustainable business plan with funding for the business; and*
- 2) *The plan should be feasible and sustainable over a protracted period".³*

Lime

- 2.6 In paragraph 6 of Lime's First response, Lime commented that *"there are some areas albeit relatively few, where fixed line and mobile access may be limited"*. Lime also stated that it considered the questions arising from the issues affecting access by access seekers to mobile and fixed networks to be *"broad in nature and somewhat vague"*.

Q.3 What other considerations do you believe are necessary to facilitate the interoperability of networks?

Digicel

- 2.7 Digicel proposed in its response that there be a change in/clear definition of what services should be interoperable across networks seeing that the current emphasis is on voice. They further suggested, that any such redefinition should include IP based services and multimedia messaging.
- 2.8 Another matter raised was that there should be mandatory maintenance of mission-critical industry directories for interconnecting content providers, operators and users around device type, provider ID etc.

Lime

- 2.9 Lime posited in its response that carriers in Jamaica merely import and install equipment used by more advanced markets such as North America and Europe and as such their ability to interoperate with other would be

² Page 1 of Digicel's response

³ Page 2 of Digicel's response

constrained by the ability of the equipment they own and the technical standards they support.⁴

- 2.10 Lime further stated that the adoption of IP would more readily facilitate interoperability.

Q.4 Do you believe that there are some entities that may need short code numbering resources that are not being catered to by the existing regulatory framework? In this regard what changes do you feel would be necessary to facilitate them?

Digicel

- 2.11 In its response, Digicel expressed its assent to the issues raised in the question set out above and stated that third party content providers may experience difficulties in accessing short code numbering resources under the existing regulatory regime. Digicel reasoned that although they do not have a network there should be a system or policy to facilitate access to numbering resources.⁵
- 2.12 Digicel stated further that as long as third party content providers are compliant with numbering guidelines and they are able to produce an agreement with at least one of the service providers, which allows access directly or indirectly to the carrier's network, they should be able to access numbering resources.

Lime

- 2.13 In its response, Lime spoke to the limited range of numbering resources available to licensed carriers and service providers. Lime was of the view that this, limited the choice of numbers available to it and selected partners who may wish to deploy a particular service in conjunction with the carrier using a desired number. Lime stated that this scenario could be greatly enhanced by a significantly expanded number range from which a short code can be chosen.⁶

Q.5 What are your views on a short code registration system for newer providers? How would you like to see this system run?

Digicel

- 2.14 Digicel in its response supported a short code registration system for new providers and suggested that the Industry could adopt some examples cited in the First Consultation document. The carrier stated that the UK example could be looked at, with a few adjustments to make it applicable. The

⁴ Paragraph 7 of Lime's First response

⁵ Page 2 of Digicel's response

⁶ Paragraph 8 of Lime's First response

operation of this scheme could be ceded to the service operators with the OUR giving regulatory oversight.

Lime

- 2.15 Lime stated that it is not in a position to make a specific recommendation on this issue but went on to urge that should any such system that is to be implemented should avoid complexity and bureaucracy. The information from the registry should be readily available to all in the Industry.⁷

Q.6 Do you believe that premium rate services should be designated a specified service?

Digicel

- 2.16 Digicel stated that the designation of premium services as a specified service will facilitate the management of the service under the existing regulatory framework and aid in the rapid rollout of such services. In the same vein Digicel posited that such a move will foster tariff transparency as well as create an avenue for interoperability of services.⁸

Lime

- 2.17 Lime stated that it is not opposed in principle to a formal consultation on the issue of the designation of premium services as a specified service.⁹ Lime further went on to state that subscribers are currently protected under the Act as their interests are being promoted. As such, Lime believes that there is no urgency to designate premium rate services as a “specified service”.¹⁰

OUR's Response to Comments

- 2.18 The issue of premium and value added services has raised many important questions regarding access for third party access seekers as well as interconnectivity through varied means and across platforms. This will be explored within the ambit of interconnection agreements geared towards data and as well as voice services instead of being limited to purely voice services as was the case prior to the amendment to the Act. This issue will be explored further in Chapter 3 of this document dealing with legal issues.
- 2.19 Based on some of the responses given, the OUR is of the view that the discussion on the issues raised in relation to premium and value added services was at times limited and prevented a balanced view of the matter from being heard. In one response, terms such as “somewhat vague” were

⁷ Paragraph 9 of Lime's First response

⁸ Page 2 of Digicel's response

⁹ Page 3 of Lime's First response

¹⁰ Page 4 of Lime's First response

used to describe the questions asked whilst at the same time, the same question elicited wholesome responses from other respondents.

- 2.20 Nonetheless the OUR acknowledges that the short code scheme that will be employed will have to be sufficiently robust to cater to the varying demands that will arise, given the potential services that may be offered.
- 2.21 Further, interoperability across networks for premium and value added services will be necessary to ensure that subscribers are able to access these services irrespective of their network provider. In addition to this, it seems to be the common view, as stated by Lime and Digicel, that the move towards IP based services will greatly assist in efforts to promote interoperability between the operators.
- 2.22 In jurisdictions such as the United States and Canada, most of the services offered have utilised short code resources that are leased for periods of three (3) months, six (6) months as well as annually with the option for renewal according to prescribed time limits. This indicates the transitory nature of these service offerings in these markets as well as the types of arrangements that usually typify their existence.
- 2.23 Furthermore in these jurisdictions (Canada for example), before approval for the use of short code numbering resources is granted, there is also the obligation for service providers offering premium rate or value added services to seek approval from the wireless carrier(s) that they intend to use to facilitate the operation of their respective services.
- 2.24 Another consideration is that of the protection of existing and potential ‘smaller’ providers of these services through the use of appropriate safeguards. This will be especially relevant where these ‘smaller’ service providers may offer services that may compete with the existing (or potential) service offerings of wireless providers themselves. In this respect, the terms under which access is given as well as the quality of the access that is provided will have to be considered in order to reduce the possibility of anti-competitive behaviour by mobile carriers.
- 2.25 This will be important so as to ensure that innovation and competition in this segment of the mobile market is not curtailed by wireless providers through the exercise of dominance with respect to termination of services on their telecommunication networks. It is desirable that transparency exists in these arrangements (whether it is related to interconnection or otherwise) within the appropriate regulatory framework that will ensure that potential providers of premium rate and value added services are not discriminated against. This will be explored further under Chapter 3 dealing with the Legal Framework as well.

OUR's Views/Proposals

- 2.26 Non-traditional service providers (content providers, aggregators etc.) will have to acquire a license in light of the fact that they are offering a telecommunications service to the public and as such, would need to be compliant with the relevant regulatory framework.
- 2.27 This will therefore allow for these non-traditional service providers to apply for a license and consequently there should be provision for:
- Access to numbering resources;
 - Interconnection with carriers and access to facilities and specified services through the appropriate legislative provisions within the Act such as those that exist under Sections 29, 44, 45 *et al* ; and
 - Proper regulatory supervision within the existing licensing framework.
- 2.28 Licensing will allow for the inclusion of these entities within the regulatory framework as well as provide a means to address future developments within the sector regarding content and other such issues relative to the provision of premium and value added services. This will be expounded on in Chapter 3 of this document.

Q1. What are your views on the proposal to license non-traditional service providers and what issues, if any, do you anticipate under such an arrangement?

Consumer Protection with Regard to Premium Rate and Value Added Services

Summary of Consultation Issues

- 2.29 The First Consultation document sought to examine issues concerning the possible impact that premium and value added services would have on consumers with respect to:
- 1) Tariff Transparency;
 - 2) Prevention of abuse;
 - 3) Protection from certain content;
 - 4) Consumer complaints and redress.

Comments from Interested Parties

Q.7 What considerations should be given to the issue of tariff transparency?

Digicel

- 2.30 Digicel commented in its response that all rates and the attendant terms and conditions *must be made publicly available on each company's website* as well as through the print and electronic media when the service is being marketed.¹¹
- 2.31 Digicel also suggested that the number range could be used to indicate a higher tariff on the attached services.

Lime

- 2.32 Lime in principle supported, any initiative that will enable the public to better understand the level of tariff that they will be required to pay in exchange for the services they intend to consume. However Lime went on further to urge that any approach to be adopted should be one that promotes the efficient use of short code numbering resources. In this manner, they did not support any move to match any particular NXX number range with specific services as they believed it would lead to an inefficient assignment of numbers to service providers.¹²

Q.8 What particular arrangements should be made to facilitate tariff transparency in services that will be utilizing short codes (for example price points, tariff dependent numbering ranges etc.)?

Digicel

- 2.33 Digicel stated that any service or content providers receiving a license to offer services utilising short codes should ensure that the prices for such services be made public.

Further the carrier noted that market forces should be left to determine the prices of premium and value added services with the only caveat being that service providers should ensure that prices are properly displayed. In addition, Digicel suggested that there should be a *referential or advisory charging limit on a per transaction basis*.¹³

¹¹ Page 3 of Digicel's response

¹² Paragraph 12 of Lime's First response

¹³ Page 3 of Digicel's response

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Lime

- 2.34 Lime contended that service providers should advertise tariffs for services in a clear manner through appropriate communication with users.
- 2.35 The carrier urged that the OUR should use the media to further educate the public about the use of the premium services. These services are priced higher than usual so they should ensure that they ascertain the applicable rate of the service they intend to use.¹⁴

Q.9 What prospective services do you envisage will believe will require special tariff considerations?

Digicel

- 2.36 The carrier commented that all premium and value added services will require special tariffs. The point was also made that mobile payments are transactional fees rather than flat-rate as they tend to be a percentage of the sum remitted.¹⁵

Q.10 What particular mechanisms should be put in place to protect subscribers who may wish to participate in premium rate services that utilize short codes?

Digicel

- 2.37 Digicel suggested that in the interest of tariff transparency, mandatory opt-out/exit features should be included in any service offering and these details should be given to the subscriber. In addition, Digicel also suggested that content providers should provide opt-out/exit details to the subscriber on sign up.¹⁶

Lime

- 2.38 Lime stated that service providers should put in place clear and unambiguous communication regarding the service that is being offered as well as the terms and conditions related to it. This would indicate a realistic expectation of what their user experience is likely to be and any limitations attached to such a service.¹⁷

Q.11 Should specific charging limits be set for a premium rate subscription purchased by subscribers during a given timeframe (You may refer to Annex 3) for data on the charging policies in selected countries)?

¹⁴ Paragraph 13 of Lime's response

¹⁵ Page 3 of Digicel's response

¹⁶ Page 3 of Digicel's response

¹⁷ Paragraph 15 of Lime's First response

Digicel

- 2.39 Digicel was of the view that customers should know their purchasing power and the expectation is that consumers should behave rationally when using a particular service. However Digicel was supportive of “*referential or advisory charging limit on a per transaction basis*”¹⁸. In its submission, Digicel also stated that service providers should have the opportunity to determine the rates based on the free market system without third-party interference.¹⁹

Lime

- 2.40 Lime in their submission acknowledged the regulator’s concern for the potential of abuse for subscribers as genuine but countered by stating that the potential for abuse also exists for other retail services as well. Lime further claimed that the regulator, in keeping with economic regulatory principles, should seek to determine the dominant supplier of premium rate services before seeking to impose retail rate regulation. It was on this basis that Lime interpreted the question to mean that the OUR was seeking to impose price regulation on premium rate services without a proper regulatory basis.²⁰

Q.12 What are your views on the privacy of consumer data and what should be done to protect it, especially where 3rd parties are involved are involved in the provision of these services?

Digicel

- 2.41 Digicel stated that the provisions of the Act were sufficient to protect subscriber information and suggested that no further protection would be necessary. The carrier further posited that should premium services become specified services, third party providers, such as content providers, as a part of their statutory obligation would have to comply with the law.
- 2.42 The carrier also stated that the necessary protection mechanisms, such as encryption, should be employed when data is being passed over any medium to third parties in the provision of any service. Further, Digicel suggested that demographic information should not be given to third parties without prior consent of the subscriber.²¹

Lime

- 2.43 Lime supported the principle of consumer data privacy and that it should not be disclosed to third parties without the consent of the consumer. However Lime added that it is reasonable for the service provider to use customer data

¹⁸ Page 3 of Digicel’s response

¹⁹ Page 4 of Digicel’s response

²⁰ Paragraphs 16-17 of Lime’s First response

²¹ Page 4 of Digicel’s response

for the purpose of understanding their behaviour and marketing new products or service.²²

O.13 What are your views on the privacy of consumer data and what should be done to protect it, especially where 3rd parties are involved are involved in the provision of these services?

Digicel

- 2.44 Digicel suggested that protection against SPAM may be deployed through an anti-spam framework supported by an opt-in/opt-out facility with appropriate sanctions to be applied for breaches where applicable. Digicel stated that any provider who knowingly acts in breach should be punished by fines.²³

Lime

- 2.45 Lime contended that access to its network for third-party stakeholders could create an issue of the entry of SPAM on its network. Lime suggested that service providers should monitor the messages sent over their networks to prevent SPAM.
- 2.46 The carrier also proposed that service providers should be encouraged to monitor the messages sent to subscribers as some third parties, based on their contractual arrangements, may be incentivized to bombard subscribers in order to induce subscribers to patronise the product or service being advertised. If the third parties' behaviour is not appropriate then relevant warnings and subsequent sanctions should then be applied based on the contractual arrangements between third parties and the carrier.²⁴

O.14 What measures do you believe should be put in place to monitor connected agents (aggregators etc.) that terminate messaging volumes to the carrier?

Digicel

- 2.47 Digicel stated that anti-spam policies should be applied to disallow connected agents from terminating messages that are not in their customer/opt-in database. Digicel suggested that third parties should share their customer/opt-in database as well.
- 2.48 Digicel also suggested that there be message caps, limits on message volumes based on transaction per second and blackout periods etc.²⁵

²² Paragraph 18 of Lime's First response

²³ Page 4 of Digicel's response

²⁴ Paragraph 19-20 of Lime's First response

²⁵ Page 4 of Digicel's response

Lime

- 2.49 Lime noted that there were adequate inherent network controls and therefore there was no need for additional measures, and all that was necessary was to implement these measures.²⁶

Q.15 Do you believe that mobile content should be rated? If so, what system should be used to classify mobile content be rated?

Digicel

- 2.50 Digicel suggested that a rating system similar to that on television should be utilised for content related to premium and value added services. The system proposed has four (4) categories of classification based on whether the content is deemed suitable for a general audience (G); those over 13(13+); those over 16(16+); and those over 18(18+).²⁷

Lime

- 2.51 Lime stated that the issues raised in the consultation were outside the remit of the OUR and should be placed under the appropriate Content Regulator. They further stated that the phone is a personal device that is sold to adults and not to children. In this regard, while Lime acknowledged its role in protecting vulnerable in society, it stated that the responsibility for securing this content was largely with the adult subscriber “as at the point of sale (the phone being sold) is registered as being sold to an adult”.²⁸

Q.16 What measures should be used to protect against content that could be considered for vulnerable groups such as children etc.?

Digicel

- 2.52 Digicel suggested that access to such content should be limited to those that are able to provide a government issued identification from which relevant information such as age etc. can be extracted.²⁹

Q.17 Do you believe that the short code numbering range should be used to classify content categories as a means of protecting the consumer?

Digicel

- 2.53 The carrier agreed with utilising the short code numbering range to classify content.³⁰

²⁶ Paragraph 21 of Lime’s First response

²⁷ Page 5 of Digicel’s response

²⁸ Paragraphs 22-24 of Lime’s First response

²⁹ Page 5 of Digicel’s response

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Lime

- 2.54 Lime disagreed with the approach that the short code numbering range should be used to classify content as a means of protecting the consumer. Lime believed that such an approach would precipitate a case where scarce numbers are likely to become inaccessible for other uses and reiterated earlier comments made on the issue in answering questions 7 and 8. Further, Lime stated that information should be provided by the service provider on each service offered via a short code.³¹

O.18 Should a time limit be set on how long customers should have in lodging a complaint? How long should this be?

Digicel

- 2.55 Digicel stated that there should be a six-week time limit (for consumers who may a complaint against a service provider).

Lime

- 2.56 Lime shared the OUR's concern regarding the timely resolution of complaints brought to the attention of service providers. However, Lime questioned the jurisdiction of the OUR relative to these matters and posited that such affairs rested solely within the purview of the Fair Trading Commission (FTC).
- 2.57 Lime also suggested that the extent to which the limitations of the service are known to the subscriber, as described within the terms and conditions, is a relevant consideration in these matters.³²

O.19 What measures do you think should be put in place by operators and 3rd party service providers, who may be utilising their networks to provide a premium rate service, to treat with consumer complaints?

Digicel

- 2.58 Digicel suggested that each service provider should develop and publish its service level agreement (SLA) detailing terms for reimbursements for poor service, customer resolution timelines etc. and any pertinent information to the terms stated.
- 2.59 It was further stated that customer complaints should be divulged to the network provider and a maximum response time set for treating with such complaints outlined within the SLA.

³⁰ Page 5 of Digicel's response

³¹ Paragraph 26 of Lime's First response

³² Paragraph 27-28 of Lime's First response

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- 2.60 It was also suggested that subscribers should be able to lodge complaints directly with the third-party provider through the same means by which they were able to access the service.³³

Lime

- 2.61 Lime stated that all service providers (whether they are third-party or not) should provide subscribers with the terms and conditions of their respective services offered along with their contact information and business address. Subscribers should also ensure that they read and accept these terms and conditions before subscribing to such services.
- 2.62 Lime also stated that network operators that are not service providers have a responsibility to address complaints concerning the services offered by service providers facilitated on its network. Lime went on further to state that these arrangements should be governed by commercial agreements outlining the roles and responsibilities of each party, and attendant responsibilities and liabilities.³⁴

O.20 What barring measures and facilities do you think should be provided to the users of any service?

Digicel

- 2.63 An opt-out mechanism was suggested as services are usually subscription based and as such a customer initiated exit feature would be appropriate.³⁵

Lime

- 2.64 The carrier stated that it did not believe in the barring of phones from making calls to short codes or premium services. However where possible it will facilitate the request on a case-by-case basis and where it is technically feasible and commercially practical.
- 2.65 Lime noted that in principle it did not accept an obligation to provide a barring service to subscribers. It posited that it is primarily the responsibility of the subscribers to choose the service they require and to protect their phone from abuse as well.
- 2.66 It was also suggested that at this time service providers would be trying to increase access to their services and spend resources accordingly instead of limiting access to such.³⁶

³³ Page 5 of Digicel's response

³⁴ Paragraph 29-30 of Lime's First Response

³⁵ Page 6 of Digicel's response

³⁶ Paragraphs 31-34 of Lime's First response

Q.21 Do you think that customers should have the option for universal barring for all chargeable services?

Digicel

- 2.67 Digicel was not in agreement with the question posed as set out above and stated that there are no other barring facilities available on the home network. Digicel also stated that premium services are generally barred on roaming and this offers sufficient buyer protection. In addition Digicel also claimed that premium services are subscription based and as such could be exited at any time. Digicel also made a note of the fact that the introduction of service barring may require additional resources as well as system reconfiguration.³⁷

OUR's Response to Comments

- 2.68 The evolving landscape of telecommunication services has created the need for partnership among entities for the sake of reducing time to market new services and for product innovation within the mobile landscape. This has been even more pronounced within the more established markets such as North America and Europe where major carriers have developed testing labs for speedy promotion, integration and development of products and services alongside third party entities.
- 2.69 This fact has meant that telecommunication carriers have had to increasingly leverage their ownership of network infrastructure in pursuit of the development of new services.
- 2.70 The nature of premium and value added services introduce different risks to consumers that must be mitigated through appropriate safeguards. In this regard, the need for the protection of the consumer and other vulnerable groups (minors, disabled etc.) must be balanced against the interests of those seeking to provide services to the public.
- 2.71 The OUR therefore encourages any facility that will allow consumers to exercise greater control over any service that they patronise. It is therefore more than reasonable to consider that any such measure should be technically feasible and commercially practical as well as adequate to the stated effect that it is intended to remedy.
- 2.72 Digicel suggested that the use of opt-out mechanisms may be sufficient to address issues of abuse where premium and value added services are concerned. However the question remains whether this remedy will be adequate in light of usage-based services (for example such as a premium call service that will bill based on the time for which the service was

³⁷ Page 6 of Digicel's response
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engaged) where the possibility of abuse as well as charges resulting from such an abuse is much higher than for subscription based services.

- 2.73 Further, the present regulatory framework for network operators has no provisions for the classification of mobile content. Service providers who may be desirous of offering premium and value added services will have to be appreciative of this and as such have some facility in place that will adequately address any concerns in regards to the public interest. This issue will be further addressed in Chapter 3 of this document.
- 2.74 The nature of communications between carriers and subscribers has also introduced the question of how SPAM should be managed. This issue is not only germane to possible unwanted messages from services provided by third party providers but is also applicable to the carriers themselves. In this regard, all communication should be viewed from the standpoint of what actually constitutes effective communication to users, such as messages relating to network availability and other emergencies for example.
- 2.75 In this respect, while third party services connecting with carriers may be viewed as a possible source of SPAM, it at no time removes the impact of the carriers themselves to this phenomenon and this too will need to be considered.

OUR's Proposals/Views

- 2.76 The issue of these new service providers will be addressed through the relevant safeguards within an amended licensing framework as applicable to the exigencies and possible risks posed by the provision of premium and value added services offered through telecommunication networks.
- 2.77 Further, applicants that are desirous of offering premium and value added services should satisfy the stipulations as set by the carriers that they desire to host their service, while enjoying the appropriate safeguards such as outlined under the amended section 45 of the Act. The provisions of section 45 of the Act will be further discussed below in Chapter 3. This will, as some carriers have suggested, further aid in ensuring the wellbeing of the public.
- 2.78 Additionally, it is proposed that a Code of Conduct should be promulgated regarding the use of short code numbering resources by prospective service providers who may be seeking to offer premium and value added services.

Numbering Resources

Summary of Consultation Issues

- 2.79 The First Consultation document highlighted general numbering issues; the management of short code numbering resources; uses of short codes; possible eligibility requirements for those interested in utilising short codes, as well as global best practises where short codes have been deployed.

Comments from Interested Parties

Q.22 What service categories do you believe will be relevant to the Jamaican market for the purpose of defining service ranges?

Digicel

2.80 The carrier suggested in its response that the following categories could be useful in defining service ranges:

1. Mobile Payments
2. Premium Data (SMS & MMS)
3. Premium Voice
4. Mobile Lottery
5. Mobile Banking
6. Entertainment (including adult entertainment)³⁸

Lime

2.81 Lime envisioned that the following services will be accessed through the use of short codes:

1. Market and advertise goods/services
2. Facilitate voting by subscribers
3. Provide information
4. Enable gaming
5. Facilitate banking services or money transfer
6. E-government transactions

Lime also stated that the demand for short codes is likely to be modest for particular categories of services due to the size of the Jamaican market and as such recommended that short codes should not be assigned to specific categories. It contends that if it were otherwise, this could render particular code ranges unusable. In this respect Lime also stated that it would be better to educate consumers about the premium charge attached to the use of short

³⁸ Page 6 of Digicel's response
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codes and suggested that the approach taken by the United States and Latin America is to be preferred as it leaves the range open for full use³⁹.

Q.23 What approach do you support for the management of short codes; should it be through an industry group or simply left to the regulator?

Digicel

- 2.82 Digicel suggested that an Industry group should be formed as was done in the United Kingdom⁴⁰.

Lime

- 2.83 Lime supported the assignment of numbers in an efficient and non-discriminatory manner and indicated an appreciation for the approaches taken in the countries cited in First Consultation document. However, it stated that the size and scope of the Jamaican market render such approaches inappropriate and was of the view that the formation of an Industry group would be an unnecessary bureaucracy.
- 2.84 The carrier also suggested that the OUR should continue in its role as Numbering Administrator and continue to assign codes to applicants as needed⁴¹.

Comments on Responses from Interested Parties

Lime

- 2.85 In Lime's Second response to Digicel's comments on Question 23 above, Lime disagreed with the position taken by Digicel and reiterated its original position that the formation of an Industry group would be an unnecessary bureaucracy and that the OUR should remain Numbering Administrator.⁴²

Q.24 If you support the formation of an Industry group: who should comprise this body; what specific issues would you like them to consider as a body?

Digicel

- 2.86 Digicel supported the formation of an Industry group (the UK example was cited) consisting of members of the Industry to handle the assignment of short codes, interconnection disputes, and other issues that will contribute to the seamless operation of the short code. Members would be chosen from the

³⁹ Paragraphs 36-39 of Lime's First response

⁴⁰ Page 6 of Digicel's response

⁴¹ Paragraphs 40-42 of Lime's First response

⁴² Paragraphs 3-4 of Lime's Second response

carriers (Lime, Flow & Digicel) themselves alongside with the OUR that could have none voting members on the council⁴³.

Comments on Responses from Interested Parties

Lime

- 2.87 In Lime's Second response, the carrier stated their disagreement with Digicel's suggestion that a proposed Short Code Management Council should manage interconnection disputes and 'other issues' impacting the seamless operation of the Short Code Scheme. Lime recommended that the arbiter for such disputes should be the OUR subject to its objective investigations and findings⁴⁴.

Q.25 What information do you believe that prospective applicants should provide as well as what other information do you believe should be considered from the list given above?

Digicel

- 2.88 Digicel suggested that prospective applicants should be registered companies and should provide the relevant documents pertaining to the Articles of Incorporation, the directors and shareholders, and a letter of good standing. Digicel went on to add that applicants should also possess a business plan and an agreement with a carrier allowing them access to their network for the provision of the premium services.
- 2.89 It was further suggested that a timeline for the application process should also be provided along with a system for appeals and ideally the system should be automated⁴⁵.

Lime

- 2.90 Lime stated that the information outlined in Section 5.30 of the First Consultation document will be sufficient for prospective code applicants⁴⁶.

Q.26 What other considerations do you feel are relevant to the CSC scheme as described above?

Digicel

- 2.91 Digicel proposed that the short code scheme should as a precursor see the appointment of an Industry group to approve/reject applications and champion reform in this area as fitting⁴⁷.

⁴³ Page 6 of Digicel's response

⁴⁴ Paragraph 5 of Lime's Second response

⁴⁵ Pages 6-7 of Digicel's response

⁴⁶ Paragraph 44 of Lime's First response

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Lime

- 2.92 The carrier resolved to comment further as the consultation process progressed as it saw fit⁴⁸.

Q.27 What further requirements should there be for services utilising short codes?

Digicel

- 2.93 Digicel stated that applicants should declare the particular mobile or fixed network that will be used for service provision and/or their aggregator⁴⁹.

Lime

- 2.94 The carrier resolved to comment further as the consultation process progressed as it saw fit⁵⁰.

Q.28 What particular features of the Industry experiences highlighted do you think will be applicable to Jamaica?

Digicel

- 2.95 Digicel stated the following areas were of interest:

- 1) Prospective use of the Short Codes
- 2) Management of Short Codes
- 3) Eligibility Criteria for Assignment and Use of Short Codes⁵¹.

Lime

- 2.96 Lime suggested that the full range of short code numbering resources should be made available for use with premium services as in the case of North and Latin America. It had no preference for either a five or six digit code short code.

However, there was some reservation for the implementation of such a code in the fixed line networks and the attendant translations for such a short code scheme. It suggested that use of the YYY codes may be less problematic in its implementation.

⁴⁷ Page 7 of Digicel's response.

⁴⁸ Paragraph 45 of Lime's First response.

⁴⁹ Page 7 of Digicel's response.

⁵⁰ Paragraph 46 of Lime's First response

⁵¹ Page 7 of Digicel's response.

OUR's Response to Comments

- 2.97 The consensus seems to be that there are many services that may have use for short codes in Jamaica and as such the management of the resources is necessary. However, it will be important to also consider that each type of service may pose different risks to subscribers. Therefore any code regime that is employed will have to be cognizant of the potential risks based on the prospective service offerings.
- 2.98 The framework for any potential short code regime will also have to take into account the effectiveness in delivering short code numbering resources in keeping with the demand for premium and value added services within the context of the local market.
- 2.99 The suggestions for the application process have merit and will be duly considered when the framework is formulated as well as any other suggestions during its promulgation.
- 2.100 Additionally, it should be noted that in the short code regimes employed in other jurisdictions, consideration was given to the size and scope of the relevant markets for premium and value added services. This was necessary as it informed the basis on which the short code regime was formulated and the dissemination of numbering resources within those jurisdictions.
- 2.101 This is especially relevant when one considers such factors as the subscriber base as well as the number of carriers in operation within overseas markets as compared with the local market. The Jamaican mobile market (where it is expected that most of the demand for premium and value added services will come from) has experienced a reduction in the number of mobile carriers operating within the country, which may have impacted the delivery of the service based on reduction in supply of such facilities.
- 2.102 Another relevant consideration will also be the extent to which the competitive interests of carriers militate against the formulation of a short code regime as it exists in some of the other markets overseas. In the case of the United Kingdom, for example, responsibility for the management of the regime is borne by the operators with some oversight of the regulator. Such a regime if employed locally would be highly dependent of the cooperation between the industry players.
- 2.103 The nature of such a scheme and the conditions that exist within the local telecommunications industry do beg the question as to whether such an arrangement could flourish based on the level of cooperation that has been observed within the sector. These concerns serve to buttress the call for independent management of short code resources within the context of the existing landscape for telecommunication services.

- 2.104 The proposed short code regime will seek to enable prospective code holders to have flexibility through the proposed number range for short codes that is to be utilised, while balancing the need to protect the consumer interest through the appropriate safeguards.
- 2.105 It is believed that this mechanism will seek to limit wanton waste of numbering resources and ensure that resources are not rendered useless through the formulation of fixed code ranges married to specific service types such as ranges dedicated to mobile banking, entertainment etc.
- 2.106 This approach may offer greater commercial benefits and may be inherently more appealing to applicants. In this regard, it is hoped that it may also offer the possibility for a more responsive short code regime and consequently, encourage innovation and creativity with respect to premium and value added service offerings.

OUR's Proposals/Views

- 2.107 It is proposed that the OUR be retained as the numbering administrator based on the exigencies of the local market such as its size and scope. In this manner, the knowledge and experience that has been garnered with respect to its management of similar resources will be utilised with the prospective short code regime to be deployed.
- 2.108 The intended scheme will seek to accommodate, through the proposed short code regime, a variety of services in recognition of the demand and flexibility offered by short codes whilst being mindful of any possible threats to the consumer interest.
- 2.109 It is expected that prospective short code holders (that are not current licensees under the Act) will be expected to apply for a license and in so doing will undergo the respective "fit and proper" tests as stipulated in the application guidelines through the licensing requirements relative to the services they intend to offer to the public.

3.0 Legal Framework

- 3.1 The First Consultation document examined several legal issues surrounding the provision of numbering resources to those operators intending to offer premium and value added services. In addition to these issues there were also several recent legislative changes that will have an impact on the provision of these services.
- 3.2 One of the primary concerns raised by Lime and Digicel was the issue of interconnection to carriers for the provision of these services as well as the appropriate conditions for third-party access seekers who may desire to offer such services.
- 3.3 In addition, the issue of classification and regulation of content in relation to premium and value added services was also raised and the attendant concerns as well as question of the OUR's ability to treat with customer complaints.
- 3.4 Another relevant consideration raised is that of the licensing framework that will be expected to accommodate prospective service providers of premium and value added services. This is important as it will dictate the OUR's ability to exercise its powers pursuant to the provisions of Act.

Interconnection

- 3.5 The issue of interconnection and access was raised in the responses to the First Consultation as highlighted by the selected responses shown below:

Digicel

- 3.6 Digicel stated that the then existing Telecommunications Act was limited relative to interconnection arrangements and that the OUR should develop guidelines for third party access seekers⁵².

Lime

- 3.7 Lime recognised that within the existing legal regulatory framework, only licensed carriers or service providers have access to numbering resources.

Premium & Value Services as a Specified Service

- 3.8 The First Consultation also raised the question of designating premium and value added services as a specified service, with the responses being shown below:

⁵² Ibid 2.

Digicel

- 3.9 Digicel shared the view that the designation of premium services as specified services will aid in the management and rapid rollout of said services. The carrier also stated there is adequate legal protection where consumer data is concerned even though it does not explicitly treat with content providers⁵³.

Lime

- 3.10 Lime did not object in principle to a formal consultation on the issue but believes that consumer interests will be protected nonetheless⁵⁴.

Mobile Content

- 3.11 The issue of the rating of mobile content was also raised in the First Consultation document. Selected responses are shown below:

Lime

- 3.12 Lime was of the view that issues to do with content are “*outside the remit of the OUR*”. It proposed that any statement put forward will have to be consistent with any standards as set by the “*appropriate Content Regulator*” subject to technical feasibility and commercial viability⁵⁵.

Customer Complaints

- 3.13 Within the First Consultation document there were questions raised with respect to the extent of the OUR’s power to handle customer complaints as well as to set particular terms under which these complaints may be handled . The relevant issues are set out below:

Lime

- 3.14 “*LIME shares the OUR’s concern that customer complaints need to be promptly resolved “one way or the other” when brought to the attention of Service Providers. Notwithstanding, LIME is not entirely clear regarding the intent of this question. LIME is of the view that the issue as to the length of time permissible or allowed for a customer to lodge a complaint in relation to his service, after which time he can no longer do so is outside of the scope of this consultation document, and indeed to OUR’s powers to determine.*”⁵⁶”

⁵³ Ibid 8.

⁵⁴ Ibid 10.

⁵⁵ Ibid 28.

⁵⁶ Ibid 32.

OUR's Response to Comments

Interconnection

- 3.15 The issue of the interconnection has been affected by the recent passage of the Telecommunications (Amendment) Act, 2012. As a result the relevant portions of Section 29 of the Act now read as follows:

Section 29

- (1) *“Each carrier shall, upon request in accordance with this Part, permit interconnection of its public network with the public network of any other carrier for the provisions of telecommunications services.*
- (2) *A public carrier shall provide interconnection with the following principles –*
 - (a) *Any-to-any connectivity shall be granted in such manner as to enable customers of each public network to complete calls to customers of another public network or to obtain services from such other network;*
 - (b) *End-to-end operability shall be maintained in order to facilitate the provision of services by an interconnecting carrier to the customer notwithstanding that the customer is directly connected to a different network;*
 - (c) *Interconnecting carriers shall be equally responsible for establishing interconnection and doing so as quickly as is reasonably practicable.”*

- 3.16 In addition to this Section 30 of the Act was also amended and the relevant portions now provide as follows:

Section 30

- (1) *“Without prejudice to section 29, dominant public telecommunications carrier shall provide interconnection in relation to a public network in accordance with the following principles-*
 - (a) *The terms and conditions under which it is provided shall be-*
 - (i) *on a non-discriminatory basis;*
 - (ii) *reasonable and transparent, including such terms and conditions as relate to technical specifications and the number and location of points of interconnection;*

(iii) charges shall be cost oriented and guided by the principles specified in section 33;

(b) no unfair arrangements for cross subsidies shall be made;

(c) where technically and economically reasonable, interconnection services shall be so diversified as to render it unnecessary for an interconnection seeker to pay unreasonably for network components or facilities that it does not require”;

3.17 Consequently, the concerns expressed by Digicel in its response to the First Consultation document regarding the adequacy of the legal framework governing interconnection with other networks that may be offering services that are not voice services have now been addressed.

3.18 However in spite of the amended legal framework, the terms and conditions of an interconnection offer will need to be examined for non-voice interconnection seekers.

3.19 Further, there is also a concern that there should be competitive safeguards to ensure that the interests of small service providers and consumers are protected. Pursuant to Telecommunications (Amendment) Act, 2012, Section 44 of the Act now provide as follows:

Section 44

(1) “Providers of facilities or specified services to consumers shall use reasonable endeavours to ensure that those facilities or specified services are-

(a) reliable;

(b) provided with due care and skill;

(c) rendered in accordance with the standards reasonably expected of a competent provider of those facilities or specified services.

(2) A complaint may be made to the Office by any customer who is dissatisfied with the facilities or specified services provided to him by a carrier or service provider or who claims to be adversely affected by the actions of a carrier or service provider.

(3) The Office may-

(a) after consultation with the Minister, make rules prescribing quality standards for the provision of facilities or specified services in relation to all licensees, and relating to the administration and resolution of customer complaints; and

- (b) direct the licensees to conduct all required associated measurements and to report to the Office thereon in such a manner and at such intervals as the Office may determine.*
- (4) Rules made under such subsection (30) regarding customer complaints shall be applicable to, and shall be observed by, all licensees.*
- (5) The Office may-*
 - (a) examine customer contracts in respect of facilities or specified services; and*
 - (b) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair.*

3.20 In addition to this:

Section 45 of the Act further states:

“A licensee may-

- (a) refuse to provide facilities or specified services to consumers; or*
- (b) discontinue or interrupt the provision of such facilities or specified services to a customer pursuant to an agreement with that customer,*

only on grounds which are reasonable and non-discriminatory and where any such action is taken, the licensee shall state the reasons therefor.”

- 3.21 In this respect the amended legal framework has sought to provide meaningful guidance for those who may be seeking to obtain facilities or specified services through an objective process that is cognizant of the possible abuses that may occur within any access regime.
- 3.22 The legislative framework has been further amended to give the Office jurisdiction over contracts related to the said facilities and specified services so as ensure the terms are reasonable and non-discriminatory for potential access seekers.
- 3.23 While one recognises the right of any carrier to not enter into contractual arrangements with another entity, who wishes to provide premium and value added services (or any other related service), there must be a clear basis for such refusal so as not to limit or intentionally frustrate the legitimate operations of other service providers.

Premium & Value Services as a Specified Service

- 3.24 The issue of the designation of premium and value added services as “specified services” pursuant to the Act also came up for consideration during the consultation process. The Act under Section 2 defines specified services as a “*telecommunications service or such other service as may be prescribed*”.
- 3.25 In this regard, the OUR agrees with Lime that the interests of the consumer are protected based on the provisions of the Act at this time given that any telecommunications service can qualify as a specified service. Section 2 of the Act defines a “telecommunications service” as follows:

Section 2

“Telecommunications service means a service provided by means of a telecommunications network to any person for the transmission of intelligence from or within Jamaica without change in the content or form and includes any two way or interactive service that is provided in connection with a broadcasting service or subscriber television service;”

- 3.26 Based on the definition above, any consideration with respect to designating premium and value added services as a specified service should appreciate that once these services are delivered via a telecommunications network, this would serve to qualify them as a telecommunications service and by extension also qualify them to be a specified service.
- 3.27 While this does not preclude any further consideration in the way of formal consultations on premium and value added services it seems appears as if the particular designation of these services as specified services may not be necessary at this time based on the provisions of the Act.

Mobile Content

- 3.28 It is the OUR’s view that LIME is correct in its assertion that content and its “rating” would fall under the remit of the “appropriate Content Regulator”, which is the Broadcasting Commission, pursuant to inter alia, Sections 11 and 16 of the Broadcasting and Radio Re-Diffusion Act. To elaborate on the point, mobile content, such as mobile TV and video has been referred to as follows:

“Mobile video also comes in the form of streaming TV over the mobile network, which must be a 2.5G or 3G network. This mimics a television station in that the user cannot elect to see what they wish but must watch whatever is on the channel at the time.

There is also mobile broadcast TV, which operates like a traditional television station and broadcasts the content over a different spectrum. This frees up the mobile network to handle calls and other data usage, and because of the "[one-to-many](#)" nature of mobile broadcast TV the video quality is a lot better than that streamed over the mobile networks, which is a "one-to-one" system.

The problem is that broadcast technologies don't have a natural uplink, so for users to interact with the TV stream the service has to be closely integrated to the carrier's mobile network. The main technologies for broadcast TV are [DVB-H](#), [Digital Multimedia Broadcasting](#) (DMB) and [MediaFLO](#).⁵⁷

- 3.29 Further, in Section 4.6.3 of the InfoDev ICT Regulation Toolkit, the status quo regarding mobile content regulation is elucidated in regard to what could be considered global best practice. In the said document, it is set out clearly that mobile content is treated in the same manner as cable television broadcasting in many jurisdictions. The said section states:

"Many countries are applying television content regulations to mobile TV providers. The EU, for example, imposed the same restrictions on mobile TV advertising that apply to television broadcast advertising. In Singapore, the Media Development Authority (MDA), which is responsible for mobile broadcasting, conducted a public consultation in which it proposed subjecting mobile TV service providers, as well as cellular mobile TV providers, to broadcasting regulation. This would put them under MDA's programming codes for free over-the-air content, subscription content, VOD and other kinds of content.[1] Singapore also proposed applying to mobile TV the existing framework for advertising regulation.

In Australia, regulation restricting minors' access to certain content was applied to mobile premium services, including mobile portal and premium rate SMS/MMS services.[2] This regulation removed content-related provisions regarding mobile phones from the Telecommunications Service Provider (Mobile Premium Services) Determination of 2005. Meanwhile the Restricted Access System Declaration, enacted in accordance with the new Schedule 7 of the Broadcasting Service Act 1992, was applied to mobile premium services such as mobile TV.⁵⁸

- 3.30 In light of the above, the OUR agrees that mobile content and its rating would fall under the purview of the Broadcasting Commission. However,

⁵⁷ Wikipedia. http://en.wikipedia.org/wiki/Mobile_content. Accessed September, 2012.

⁵⁸ InfoDev ICT Regulation Toolkit. <http://www.ictregulationtoolkit.org/en/Section.3429.html>. Accessed September, 2012.

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whilst acknowledging this, a discussion on the regulation of mobile content and its rating is important to the development and provision of premium and value added services. So it is the position of the OUR that there is still the need for consideration and a general discussion of the matter.

- 3.31 In this respect, there may be a need for general consensus around the issue as well as measures to treat with content provided through mobile carriers. This is especially relevant where the possibility may exist that some content may not be suitable for all age groups such as adult entertainment.

Customer Complaints

- 3.32 In respect to the comments made by Lime in Lime's First response it is necessary to consider the OUR's legislative power to handle complaints under the Office of Utilities Regulation Act (OUR Act) and the Act as listed below:

Sections 8 and 8A of the OUR Act provides as follows:

"8. Power to hold an enquiry.

8. (1) The Office may, upon its own motion or upon complaint by any persons, hold an enquiry into the operations of the provision of any prescribed utility services by a licensee or specified organization.

(2) The provisions of the Third Schedule shall apply to every enquiry conducted by the Office pursuant to this section.

8A. Discretion to undertake or continue investigation.

8A. (1) The Office may, determine whether to undertake or continue an investigation under this Act and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if it is of the opinion that—

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or not made in good faith;

(c) the complainant has deferred for too long the making of his complaint to the Office;

(d) the complainant does not have a sufficient interest in the subject-matter of the complaint; or

(e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(2) Where the Office decides not to undertake or continue the investigation of a complaint; it shall inform the complainant of its decision and give reasons therefor.”

Section 43 of the Act provides as follows:

43. In this part – "consumer" means a person –

(a) to whom facilities or specified services are provided or are intended to be provided in the course of a business carried on by a carrier or service provider;

“retail service” means a specified service provided by a service provider to a consumer who is an end user of that service.

3.33 Further Sections 44(2) and (5) of the Act clearly provides for customer complaints:

(2) A complaint may be made to the Office by any customer who is dissatisfied with the facilities or specified services provided to him by a carrier or service provider or who claims to be adversely affected by the actions of a carrier or service provider...

(5) The Office may-

(c) examine customer contracts in respect of facilities or specified services; and

(d) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair.

3.34 Based on the foregoing statutory provisions, the Office has the power to handle customer complaints (as is presently done by way of providing an avenue of Appeal, once the relevant service provider’s complaints resolution mechanisms have been exhausted).

3.35 There are no provisions that serve to limit the time within which an aggrieved customer may lodge a complaint in relation to his service. Any such restrictions would fall under the aggrieved parties common law and statutory rights. The only provision in the Act that sets out a time limit regarding certain contentious circumstances is Section 60(4) of the Act which speaks to reconsideration of decisions of the Office:

“...(4) A person who is aggrieved by a decision of the Office or Authority may, within fourteen days of receipt of that decision, apply to the Office in the prescribed manner for a reconsideration of the matter.

(5) An application under subsection (4) shall be heard only if the applicant-

(a) relies upon new facts or changed circumstances that could not, with ordinary diligence have become known to the applicant while the matter was being considered by the Office or Authority; or

(b) alleges that the decision was based upon material errors of fact or law.”

- 3.36 In this respect there are adequate bases for the OUR to seek to protect the rights of the consumer where customer's complaints are concerned and as such these must be respected as outlined in the applicable statutes.

Licensing

- 3.37 Section 9 of the Act provides as follows:

“Section 9

(1) A person shall not -

(a) own or operate a facility in Jamaica unless that person is the holder of a carrier licence granted under section 13;

(b) provide specified services to the public by means of that facility unless the person is also the holder of a service provider licence granted under section 13;

(c) sell, trade in or import any prescribed equipment unless that person is the holder of a dealer licence granted under Section 13;

(d) engage in bypass operations.

(2) A person shall not provide a specified service to the public in Jamaica unless that person is the holder of a service provider licence granted under section 13.

(5) For the purposes of this Act, a specified service is provided to the public if it -

(a) is supplied, directly or indirectly, for a fee to a person other than -

(i) a connected person or any of its employees or officers; or

(ii) a closed user group;

(b) is connected to a public network; or

(c) provides customers with the capability to use the service for originating specified services to or terminating such services from the public switched telephone network."

Section 13 of the Act provides as follows:

Section 13

"Upon receipt of a recommendation from the Office pursuant to section 11(4), the Minister may, subject to subsections (2) and (3) –

(a) in the case of an application for a carrier licence, grant that licence authorizing the licensee to own and operate the facilities specified in the application;

(b) in the case of an application for a service provider licence, grant that licence authorizing the licensee to provide the services specified in the application;

(c) in the case of a dealer licence, grant the licence authorizing the licensee to sell, trade in or import any prescribed equipment;

(d) refer the recommendation back to the Office for further consideration; or

(e) refuse to grant the licence and the Minister shall as soon as practicable give written reasons for such refusal.

3.38 Further Section 2 of the Act (amended) defines the following terms:

Section 2

" "Facilities" means any physical component of a telecommunications network (other than customer equipment) including –

(a) wires, lines, poles, ducts, sites, towers, satellite earth stations or any other apparatus using the radio spectrum;

(b) submarine cables and other tangible resources used in the provision of a specified service;

"Specified service" means a telecommunications service or such other service as may be prescribed;

"telecommunications network" means a system or any part thereof, whereby a person or thing can send or receive intelligence to or from

any point in Jamaica, in connection with the provision of a specified service to any person;

“telecommunications service” means a service provided by means of a telecommunications network to any person for the transmission of intelligence from or within Jamaica without change in the content or form and includes any two way or interactive service that is provided in connection with a broadcasting service or subscriber television service;”

- 3.39 In keeping with the statutes outlined above, non-traditional service providers can be viewed as operating a telecommunications service by virtue of them being a part of a telecommunications network through the connection that they would have with a carrier.
- 3.40 For this purpose, this connection whether it be simply a wired connection to the end user’s equipment will thereby effectively constitute a ‘facility’ in accordance with the definition given above.
- 3.41 This is important as this will have implications with respect to the entity desiring to offer premium and value added services, acquiring numbering resources for such a purpose.
- 3.42 Numbering rules have defined and specified eligibility criteria under Section 6 of the Numbering Rules Determination Notice (Document No. Tel 2009/01: Det/01):

Section 6.1:

All service providers providing, or who intend to provide within a specified time, publicly available domestic telephone services, and owning and operating a public telecommunication system, under licences granted under Section 13 of the Telecommunications Act, 2000, are eligible to apply for primary assignments of telephone numbering capacity, subject to the satisfaction any other eligibility criteria specified in the relevant Assignment Guidelines.

Section 6.2:

All operators of a Public Switched Telephone Network, Public Land Mobile Network, or a Public Switched Data Network under license granted under Section 13 of the Telecommunications Act, 2000, are eligible to apply for assignment of network codes, subject to the satisfaction of any other eligibility criteria specified in the appropriate Assignment Guidelines and other relevant standard specifications such as the International Telecommunications Union’s ITU-T Recommendations.

Section 6.3:

Non-facilities-based service providers may seek a secondary assignment from an eligible service provider (as defined in 6.1). Secondary assignments shall be made in an efficient and non-discriminatory manner.

- 3.43 The application guidelines for numbering resources was done within the context of facilitating service providers that had the intention to offer publicly available domestic telephone services through public telecommunication system that they owned and operated.
- 3.44 Going forward, the numbering application guidelines for the issuance of short code numbering resources may require additional considerations based on the nature of the services and the attendant provisions related to the operation of premium and value added services.
- 3.45 Furthermore, so as not to frustrate the process related to the provision of short code numbering resources, existing provisions may require amendments in the numbering eligibility rules. This is to ensure that service providers that are desirous of acquiring short code numbering resources are not constrained by the fact that they do not own nor operate a public telecommunications system.
- 3.46 Amendments to numbering eligibility rules may also be necessary where licensed entities may require the utilization of codes for themselves so as to have the flexibility of using the codes on any network(s) of their choice. Such a move would allow them to access and keep short codes that are of special significance to their operations etc.
- 3.47 Another consideration with respect to licensing has to do with entities operating facilities that are not presently under the licensing regime. One such group is the entities that are located in Jamaica that provide ‘bulk messaging’ services; whereby SMS messages are sent to the carriers’ messaging platforms whether through a web portal or otherwise for the sake of marketing and other commercial interests on the behalf of their clients.
- 3.48 Presently, these entities utilise carrier resources and offer what is effectively a telecommunications service. Based on the provisions of the Act and the OUR Act, the powers granted to the OUR are applicable to licensees but not to such entities which are currently beyond the reach of the OUR.
- 3.49 With regard to any issues that may arise having to do with such entities and their commercial activities, recourse will have to be sought through the final point of delivery of the service that is a licensed entity (in this case the mobile carrier).

- 3.50 In respect of the fact that these entities are providing access to telecommunications services via a telecommunications network it would necessitate that these entities be licensed based on Section 13 of the Act.
- 3.51 In addition to this Digicel in its response stated that it “*would prefer to have third party access seekers interconnect indirectly*”⁵⁹. This would beg the question regarding how is this to be achieved in practice. It would also of necessity entail external entities acting as facilitators for potential access seekers who may be desirous of accessing the carrier’s network.
- 3.52 In this respect, it would therefore be imperative for such entities to be licensed and as such, have the relevant terms and conditions regulated so as to prevent any bottlenecks within the service delivery chain for premium and value added services. It will therefore be important for key stakeholders to observe the evolution of the sector as well as note the possible roles that these entities may play within the sector.

OUR’s Proposals/Views

- 3.53 The legal framework offers a basis for the providers of premium and value added services to be considered as legitimate telecommunications services owing to the fact that they are provided over a telecommunications networks. This allows for the relevant statutes to be applied to entities offering such services to seek interconnection to carrier facilities as well as access to said facilities along with relevant safeguards for service providers.
- 3.54 The provisions of the Act would then allow service providers offering premium and value added services to be facilitated within the context of existing interconnection arrangements by applying for a carrier license through the licensing process. In addition to this, it will also allow for access to numbering resources for primary numbering assignments under existing numbering eligibility rules.
- 3.55 The terms and conditions of interconnection would appropriately be governed by a reference interconnect offer and related legal instruments that fall within the ambit of the existing regulatory regime or any other terms and conditions for access as may be provided by the carrier on which network the premium and value added service will be operated. In this manner, the regulatory framework will seek to accommodate the particular demands presented by these services within an evolving telecommunications landscape.

Q2. Do you believe that Section 6.1 of the numbering rules should be amended to allow service providers that have been licensed under Section 13 and who may not:

⁵⁹ Ibid 2.

- i) “Own and operate a public telephone service”;*
- ii) Nor intend to provide ‘publicly available domestic telephone service’.*

To be allowed to obtain short codes for the purpose of offering premium and value added services?

Q3. Do you believe that there are any particular concerns posed by entities that provide “bulk messaging” services and what are your views on licensing them?

4.0 Numbering Framework for CSC

- 4.1 The First Consultation document explored the issues surrounding the formulation of a short code numbering regime for use with premium and value added services for both fixed and mobile operators in order to assess the demand for such resources within the local telecommunications market.
- 4.2 Responses to this consultation indicated that the demand for fixed line premium and value services was not as prominent for fixed networks as for mobile services. The feedback reflected global trends as the ubiquity and flexibility offered by mobile telephones has inspired a greater demand for premium and value added services through this facility.
- 4.3 The scheme to be employed will be formulated and promulgated based on the general principles governing the use of numbering resources in Jamaica. Additionally, it is proposed that a code of conduct should be drafted so as to aid in the governance of providers of these services. This will be done in order to provide further guidance to carriers and prospective service providers with respect to the operations of any service requiring short codes.
- 4.4 This will be contemplated and done in recognition of the fact that premium and value added services pose particular risks to subscribers owing to the nature as well as the variety of services that can be offered through these short codes. In this manner, it is expected that the proposed code of conduct will help to mitigate perceived risks to subscribers and provide a basis for confidence when using such services.
- 4.5 In this regard, the desire will be to release resources to cater for the demand expected on particular service networks. Therefore the following are proposed:
- Resources for the fixed network will continue to use legacy code assignments such as the NXX '976';
 - Mobile premium assignments will be expanded to include the common short code assignments. It is expected that as the uptake for common short codes improves the demand for '444' number assignments may experience attrition;
 - Legacy arrangements that are currently utilising the NXX '444' will be expected to continue to operate until such services are terminated by their respective service providers;

Proposed Short Code Scheme

- 4.6 The First Consultation document explored different industry experiences with respect to the implementation of short code regimes around the world.

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The cases cited in the document utilised codes that were either five (5) or six (6) digits in length.

- 4.7 In light of these experiences, it is proposed that a similar regime should be implemented here for use with premium and value added services in line with global best practises. The scheme will seek to utilise either a:

1. Five (5) digit short code range *or*
2. Six (6) digit short code range.

- 4.9 This option is proposed in recognition of the possible size and scope for premium and value added within Jamaica. Other considerations include the ease with which these resources can managed and administered as compared with other markets in which some have actually used both five (5) and six (6) digit code ranges.

In this respect it was felt that a choice of either a five (5) digit regime or a six(6) digit regime would aid in the efficient management and administration of these entities in the Jamaican market.

- 4.10 Presently, it has not yet been determined whether there is any overwhelming benefit to be had from the use of either a five (5) or six (6) digit code scheme from a commercial point of view. However it was felt that with consultation on the matter, the needs of stakeholders would be better accommodated within the regulatory framework as well as further knowledge may be garnered regarding the optimal use of these resources.

- 4.11 Another relevant consideration for the short code scheme is that of the range of codes that will be available to potential service providers of premium and value added services. It is intended that the range that is to be assigned will afford providers of such services as much flexibility as possible with respect to the choice of codes that will be available to them.

- 4.12 For the purpose of this consultation, it is suggested that the range to be utilised within the scheme be as follows depending on the length of the code to be adopted:

Code Length	Proposed Range
5	22222 - 99999
6	222222 - 999999

Table: Showing proposed code length and ranges

- 4.13 This range is somewhat reflective of the numbering resources presently used in providing fixed and mobile voice services within the island and as such

should be a useful consideration where the provision of premium and value added services are concerned.

PREMIUM & VALUE ADDED SERVICES

4.14 The First Consultation document also examined the issue of defining premium and value added services within the context of the telecommunications networks. It was noted that:

1. Premium rate services attract a higher rate than services of a similar nature as well as the fact that such services generally utilize an existing service and provide added value for the purpose of deriving incremental revenue for providers⁶⁰.
2. Value added services may function as add-ons to existing services (usually attracting a higher price) and also it is not viewed as a basic service but complements existing service offerings⁶¹.

4.15 With respect to issue of premium and value added services for the purpose of this consultation and all subsequent references to the same, it is proposed that:

A premium rate service is:

“Any value-added service provided over a public telecommunications network which consists of;

- a) the transmission of intelligence to any person in Jamaica including but not limited to content such as information, news, updates, data, quizzes, jokes, greeting messages, ringtones, wallpapers, logos and games for which charges are imposed over and above the standard network charges of the relevant network operator;*
- b) the provision of a facility to any person including but not limited to facilities for chat services, contest participation, charitable fundraising and vote lines for which charges are imposed over and above the standard network charges of the relevant network;*
- c) a combination of (a) and (b) above or as so designated by the Office in connection with any service that is to be provided over a public telecommunications network.”*

4.16 In this regard, it is proposed that common short code numbering resources be provided to those desirous of providing premium and value added services

⁶⁰ Office of Utilities Regulation. (2012). *Jamaican Common Short Code Scheme* (Document No. TEL2012002_CON002)

⁶¹ Ibid 60.

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over the public telecommunications network. However presently, as previously stated, it is expected that most of the interest will be from operators intending to offer premium and value added services over the mobile platform.

Q4. What are your views on the number of digits to be used in the proposed short code scheme and is there a preference for having either a five or six digit code?

Q5. What are your views on the proposed number range to be used for short codes?

Summary of Questions

Chapter 2

Q1. What are your views on the proposal to license non-traditional service providers and what issues, if any, do you anticipate under such an arrangement?

Chapter 3

Q2. Do you believe that Section 6.1 of the numbering rules should be amended to allow service providers that may not be facilities-based to obtain short codes for the purpose of offering premium and value added services?

Q3. Do you believe that there are any particular concerns posed by entities that provide “bulk messaging” services and what are your views on licensing them?

Chapter 4

Q4. What are your views on the number of digits to be used in the proposed short code scheme and is there a preference for having either a five or six digit code?

Q5. What are your views on the proposed number range to be used for short codes?