
Office of Utilities Regulation

NOTICE TO DIGICEL JAMAICA LIMITED OF INTENTION TO DISCLOSE INFORMATION

Development of a Long Run Incremental Cost
Model for the Telecommunication Sector



OFFICE OF UTILITIES REGULATION

April 18, 2012

NOTICE OF INTENTION TO DISCLOSE INFORMATION
[TEL2012003_NID001]

(Issued pursuant to Section 7 of the Telecommunications Act)

IN THE MATTER OF:

- (1) The Telecommunications Act**
- (2) The Office of Utilities Regulation Act**
- (3) The Office of Utilities Regulation's (the "Office") intention to disclose certain information submitted by Digicel Jamaica Limited to the Office and classified as confidential**

TO: DIGICEL JAMAICA LIMITED ("Digicel")

10 – 16 Grenada Way

Kingston 5

Attention: Mr. Richard Fraser

WHEREAS:

1. Pursuant to its powers under the Telecommunications Act (the "**Telecoms Act**"), the Office of Utilities Regulation ("**the Office**") has embarked upon a consultation exercise with stakeholders in the telecommunications sector for the development of a long run incremental cost model which will be used to determine mobile termination rates. The relevant Consultation Document entitled "Cost Model For Mobile Termination Rates" Document Number TEL2012001_CON001 was published on February 21, 2012; **AND**
2. In order to facilitate meaningful consultation with relevant telecommunication service providers and to ensure transparency in the Office's decision making process regarding the development of the cost model, the Office deems it of utmost importance and in the public interest that certain information of service providers submitted or to be submitted to the Office under confidential cover be disclosed as part of the said consultative process; **AND**
3. The Office, its officers and employees are subject to a strict statutory obligation to maintain the confidentiality of information which it receives, both under the Office of Utilities Regulation Act (the "**OUR Act**") and the

Telecoms Act. This obligation however is subject to certain exceptions expressly specified in the relevant provisions of these statutes as follows:

Section 5(1) of the OUR Act states:

“Except in so far as may be necessary for the due performance of its functions under this Act, every officer and employee of the Office shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any licensee or specified organization or of any customer of any such licensee or specified organization, that may come to his knowledge in the course of his duties.”

Section 7 of the Telecoms Act states in part:

(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential information relating to applicants and applications for licenses, and the management and operation of licensees and shall, upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Subject to subsection (3), a person who, by reason of his capacity or office has by any means access to the confidential information referred to in subsection (1) shall not, while his employment in or, as the case may be, his professional relationship with the Office continues or after the termination thereof, communicate any confidential information to any person.

(3) Subsection (2) shall not apply where –

(a) the confidential information is disclosed –

(i) with the consent in writing of a licensee or an applicant for a license;

...

(iv) subject to paragraph (b), to any person who is authorized by the Office to receive it;

(b) in the opinion of the Office or the Minister, disclosure is necessary in the public interest, so however, that before such disclosure is made, the Office or the Minister shall give not less than fourteen days' notice of the proposed disclosure to the applicant or licensee concerned who shall, upon receipt of that notice, be entitled to apply to a Judge in Chambers for an order prohibiting the disclosure on the ground that it would be harmful to the interest of the applicant or licensee.; AND

4. The Office may therefore disclose confidential information of telecommunication licensees where, *inter alia*, such disclosure is necessary for the due performance of its statutory functions or where in its opinion, such disclosure is necessary in the public interest; **AND**
5. Confidential information for purposes of the Telecoms Act is defined in section 7(6) as ***“any information classified as such and includes information that a reasonable person would regard as confidential having regard to the nature of the information”***; **AND**
6. The Office intends to disclose to industry stakeholders information and data regarding:
 - (i) market share by subscribers, traffic and revenue of Digicel;
 - (ii) termination rates charged and paid by Digicel; **AND**
7. The information and data to be disclosed includes information and data already in the possession of the Office and information and data to be submitted to the Office by Digicel as part of the consultations currently underway in connection with the development of the long run incremental cost model for the telecommunications sector; **AND**
8. The information and data will be disclosed to the industry stakeholders and the public at large as part of the consultative process currently underway, in the final Determination on the cost model and any document or correspondence containing any description, explanation, clarification or reconsideration thereof; **AND**
9. The Office requires the disclosure of the information and data to ensure transparency in the Office's decision making process regarding the development of the cost model. The development of the cost model is in

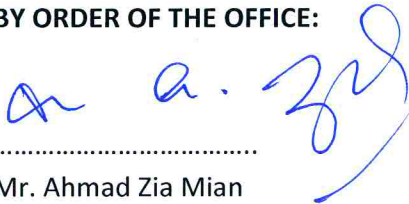
exercise of the Office's statutory function to regulate telecommunication services provided for in sections 4(1)(a) of the OUR Act and 4(1) of the Telecoms Act; **AND**

10. The Office is also mandated by section 4(2)(d) of the Telecoms Act to give reasons in writing for its decisions. The information and data to be disclosed represent the matters taken into account by the Office in making its final decisions with regard to the design of the cost model. If it cannot disclose this information and data, it will not be able to properly fulfil its obligation to give reasons for its decision; **AND**
11. It is for these reasons that the Office is of the opinion that the disclosure of the information and data mentioned in this notice is necessary for the due performance of its statutory functions and in the public interest.

NOTIFICATION

The Office **HEREBY NOTIFIES** Digicel of its intention to disclose the information and data specified at paragraph 6 of this Notice no sooner than **FOURTEEN DAYS** after the date of this **Notification**, pursuant to Section 7 (3) (b) of the Telecommunications Act.

BY ORDER OF THE OFFICE:



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Mr. Ahmad Zia Mian
Director General
April 18, 2012