OFFICE OF UTILITIES REGULATION
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Reliant Enterprise Communications Ltd Response To

RIO 6 Submission

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RIO Philosophy

Before deciding on a new RIO, it is important to review, after six years, RIO 5/5A and determine if it achieved its goals. One of the key criteria was creating a robust competitive market for International termination. A review of the number of licensees in 2003 that are still in business today shows that there has been a failure in creating a competitive market. This is due to many reasons, some failed business plans, but generally we view it as a lack of regulatory and competitive oversight. As we look at the market today, we still see the following:

- Massive bypass in all markets
- Wild fluctuations in wholesale termination rates
- Major carriers continuing unfair pricing practices via their bi-lateral agreements and ability to blend prices
- No consistency in what major carriers charge competitors or each other on critical routes such as fixed-to-mobile
- Major carriers charging their customers less than termination rates for certain calls
- Lack of enforcement on major carriers to determine if they are charging their retail operations the same pricing as they do competitors

To delve into these areas in greater detail:

1. **Bypass**

Bypass has plagued telecoms since before deregulation. Unfortunately, it has only ended up getting much worse since the market has deregulated. The estimate for PSTN alone is in the 12-15 million minute range. Based on discussions with mobile carriers, it appears the bypass there is even larger. The major carriers due to the large volumes of traffic they generate in/out, are able to absorb bypass much better than a competitor. In addition, the Government is losing US$ millions of dollars per year in Foreign Exchange and revenues. Yet, there is no mechanism to find, punish and stop bypass. It would seem the OUR and FTC have decided that the problem is intractable and therefore ignore it, instead of taking a proactive approach with the carriers, SMA and others to eradicate it.

2. Fluctuations In termination rates

This is another problem that has been going on for years the remains unaddressed. It is clear that the only ones who have the market presence to cause significant changes in wholesale rates are the large carriers. Yet we see swings or US$0.01 - 0.03 regularly. We also see rates below actual cost quoted to overseas carriers for direct routes to the major Jamaica carrier's. Yet nothing is done to prevent or monitor these situations. We have been quoted rates of $0.045 - $0.053 on PSTN and $0.110 - $0.148 for mobile. We also see significant fluctuations within the termination cost comparisons as carriers try to gain market share.

3.Consistent Termination Rates

There are significant differentiations between what carriers charge competitors and what the charge their own customers, which is illegal as termination rates at the wholesale level are to be "equal" between wholesale and retail groups.

Some examples:

LIME has three different rates for fixed to fixed termination. Depending on where the call originates and ends, the rates can be as high as $2 plus Jamaican. However. on its web site it quotes a rate of J$0.99 for all fixed to fixed calls. Now, either LIME is not charging their retail unit the same termination charges or they have made a decision to lose money when selling to the retail unit which is anti-competitive in either case.

Digicel charges almost J$8.00 per minute for fixed to mobile termination, yet charges its own business customers only J$4.00 per minute. This is clearly anti-competitive as they are giving their retail operations a significant price advantage and in effect setting up a barrier for any competitor.

Transit/Switch Specific Charges

LIME does not allow a competitor to have direct access to the Mobile Switch. They force you to transit via the PSTN which is an additional charge. This is totally unnecessary and a blatant attempt to generate revenue for a non-existent cost. As the former SVP of

Mobile for LIME, I am well aware of the Mobile switch capabilities and interconnection. I would be happy to debate LIME on the merits of this issue. Competitors should be able to interconnect directly to the Mobile switch and there should be no transit charge allowed in this RIO. To further emphasize. does the international and retail operations of LIME charge Mobile the same termination charges as they do competitors?

Digicel has much the same issue regarding interconnection to their international switch for calls instead of the mobile switch. Not to be cynical, but has the OUR even determined if there is a separate switch just for international calls. It is an unlikely scenario. Giving them the benefit of the doubt, do they charge their retail operations and business additional termination for outgoing international? Do they charge incoming carriers an additional charge for terminating to a different switch?

These types of inconsistencies are simply barriers for competitors. One may argue that currently mobile is unregulated, but this does not allow anti-competitive behavior.

Joining Services

This is another artificial barrier to entry for competitors. By making the service one way, competitors are forced to buy more interconnect than they really need. I am not aware of any technical reason why this is so. If a competitor wanted to use a T-1 for both incoming and outgoing there is no logical reason they should not be able to. I can assure you that LIME does not use one-way T's in their international network as it would be cost prohibitive. The OUR should not allow this in the new RIO.

Bilateral Agreements

Most major carriers have these types of agreements and this is not the first time the issue has been brought up. These types of agreements allow carriers to do "minute swaps" on a weekly or monthly basis. For example, ATT might want a better rate to Jamaica to be more competitive and offer LIME or the Mobile carriers another country for a reduced rate in exchange. This most often results in ATT receiving a below termination cost rate thus negatively impacting competitors in Jamaica. At the same time, there has been a total lack of transparency as to what goes on within these arrangements and how the impact competitors. Regardless of "confidentiality, the regulator should have the right to review the arrangements on a monthly basis to determine what has happened and if it negatively impacts competition. Without this, any RIO is basically toothless.

Blending

Large carriers often work under a blending of rates to achieve a desired margin outcome on a monthly basis. This allows them to raise and drop rates in the market as long as they achieve specific margin targets. We believe this is happening in the Jamaican market and the major carriers are indulging in anti-competitive actions with this strategy. The OUR has to investigate this practice and determine if it is happening on a monthly basis and put a stop to it.

Termination Rates

There are many inconsistencies in the new termination rates.

1. How is it in the US there is a single termination rate across all states, but in a small country there are three different termination rates based on local, regional and national. In the US there are multiple switches within a geographic regions and networks are pretty much the same as in Jamaica in regards to architecture. So why three different termination charges here but not in the US. We believe this is a unjustified charge and should be eliminated in the RIO. We also would like proof that LIME charges it's retail and mobile operations the same terminations fees.

2. We are now in the sixth year of international and LIME would have us believe that there terminating cost, US$0.025, is the same. This despite having laid off over a 1000 people during that time and adding no capacity to their international network that we are aware of. To have the OUR believe their cost base is the same after six years is insulting or a monument to mismanagement. Their existing network has been in place for twenty plus years including cable and switches, most likely has been fully depreciated or close to it yet there is no reduction in cost. We view this as an attempt to maintain a revenue stream to make up for lack of performance in other areas and unacceptable. International is not a subsidy for other services as it was in the past and the OUR you should not allow it to be so. It is not competition's role to pay charges to maintain the status quo. I believe if the OUR were to check other jurisdictions for historical data, they would find that after the first six years termination charge actually went down, not stayed the same.

There is also the issue of LIME charging it's various business units the same termination rates that they charge competitors. With outgoing PSTN rates dropping, how can termination rates stay the same. LIME pays somewhere in the neighborhood of US$0.005 - $0.008, if not less to terminate calls in North America. Why is there such a difference for rates in Jamaica. If they deny they get these types of rates, please refer them to Reliant as we would be happy to terminate calls in North America for them at those rates.

If the OUR is going to let stand this rate, we would expect detailed analysis forthcoming in the ruling that provides a sound factual basis for extending the same rate after six years. We would also like to see factual evidence that the major carriers are charging their business units the same termination rates as they do competitors. It would be instructive for the OUR to review termination rates in the US, UK and Canada to see what the carrier are paying to terminate and relate this to what they charge competitors in Jamaica. I believe it would be a real "eye opener" for the regulator.

We have in the past urged the OUR to acquire a subscription to ARBINET, the minutes commodity exchange in the US. There is a wealth of information on a daily basis as to what prices, number of minutes available, average call durations, average call completion etc. It would provide great insight as to what is happening in the Jamaican market and I am sure would raise many questions as to what is actually going on. As for cost, perhaps the OUR could apply for a grant or charge the industry, proportionally, for the membership.

Conclusion

It is difficult to come to the conclusion that the former RIO regime has been effective in fostering a robust competitive market. Bypass, different termination rates, bi- laterals, inconsistencies and market manipulation remain just as they did in 2003-2009. We do not see this RIO changing any of that or increased oversight by the OUR. If the competitive market fails in International, it will be the fault of lax oversight, lack of enforceable laws, benign neglect and lack of real competitive regulation. The interesting thing is that the negative impact on the revenues of the Government far outweigh the impact on competition. We hope the OUR will stand up in this RIO and deliver a decision that encourages competition, really regulates the industry and is fair to all participants.