
Office of Utilities Regulation

Rules for the Resolution of Pre-Contract Disputes & Related Matters

Notice of Proposed Rule Making



OFFICE OF UTILITIES REGULATION

2001 May

Abstract

The functions of the Office of Utilities Regulation (the Office) as prescribed by Section 4(l) of the Telecommunications Act, 2000 ("The Act") is to regulate telecommunications in Jamaica in accordance with the said Act. In carrying out its functions the Office is empowered to inter alia:

- promote competition among carriers and service providers in the industry;
- regulate specified services and facilities;
- promote the interest of customers.

The Act mandates the Office to prescribe rules to arbitrate pre-contract disputes, which may be referred to it, between interconnection providers and interconnection seekers (section 34(i) (2))

By way of a Notice dated February 21, 2001, the Office released its determination with regard to the terms and conditions under which Cable and Wireless Jamaica is to allow other public voice carriers to interconnect with its network.

Submissions were made by the three organizations listed below and the Office wishes to thank them for participating in the consultation exercise.

- The Fair Trading Commission
- Cable and Wireless Jamaica Limited, and
- Digicel

Subsequent to the receipt of these comments the Office redrafted the rules incorporating such of the comments and recommended changes as were considered appropriate. This has resulted in major changes to the rules, especially the mechanisms for resolving pre-contract disputes.

The Office again invited written comments from interested parties which should be submitted no later than June 29, 2001 to

Franklin Brown
Office of Utilities Regulation
3rd. Floor,
PCJ Resource Centre
36 Trafalgar Road
Kingston

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

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COMMENTS FROM INTERESTED PARTIES

Persons who wish to express opinions on the contents of this Notice of Proposed Rule Making are invited to submit their comments in writing to the OUR. Comments are invited on all aspects of the proposed rules and in particular the various options for resolving pre-contract disputes. If they consider it appropriate, respondents may wish to address other aspects of the document.

Responses to this Consultative Document are requested by **June 29, 2001** and should be sent by post, or fax to:-

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

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

Arrangements for viewing responses

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

.....
Telephone: (876) 968 6053 (or 6057)
Fax: (876) 929 3635
E-mail: ?

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

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

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

CHAPTER 1: INTRODUCTION

1. The Office regulates telecommunications in accordance with the Telecommunications Act, 2000 and is thereby constituted to establish rules for regulating matters within the Office's responsibility and in accordance with the Act.
2. The Office intends to issue a consultative document covering the general powers and procedures of the Office and the mechanisms and processes at its disposal in carrying out the responsibilities under the Act and the resolution of issues within the scope of the Act.
3. The Office is mandated to regulate interconnection and wholesale arrangements. With regard to interconnection the Office undertakes the assessment of a Reference Interconnect Offer filed by a carrier and guides the overall process of reaching agreements between carriers. In carrying out that responsibility of making an assessment of the RIO and determining the terms and conditions that should be reflected in interconnection agreements between carriers the Office engages in a public consultative process to aid the decision-making. The attached document sets out the rules that will guide the Office and affected parties in the filing of RIOs. The assessment of the Offer, the process for resolving pre-contract disputes and the process that would be followed in the event the Office finds an objection to an agreement once file.

Structure of Document

4. The annexes to this document define the rules for the Office's disposition of its powers with respect to interconnection and wholesale arrangements:
 - (a) Annex A: Particulars to be Contained in Reference Interconnect Offers
 - (b) Annex B: Assessment of Reference Interconnect Offers
 - (c) Annex C: Objection to Interconnect Agreements; and
 - (d) Annex D: Resolution of Pre-Contract Disputes
 - Voluntary Dispute Mechanisms; and
 - Arbitration by the Office

Annex A:Particulars to be Contained in Reference Interconnect Offers (RIOs)

- 1.0 All public voice carriers shall submit to the Office and make available to other carriers, upon request, an explanatory document detailing the procedure for initiating and conducting negotiations over interconnection and wholesale agreements, including:
 - (a) the information that is required from the interconnection and wholesale seeker before negotiations can commence;
 - (b) where and how the request for interconnection and wholesale and any supporting information should be sent; and
 - (c) target timings for the conclusion of interconnection agreements
- 1.1 A reference interconnection offer (RIO) shall:
 - 1.1.1 Designate one or more points of interconnection at which the provider will permit physical interconnection, setting out the exact location of relevant switches.
 - 1.1.2 Set out applicable technical specifications regarding interconnection, including:-
 - (a) detailed description of the interconnection interface(s) and the signalling protocol used;
 - (b) non-discriminatory measures or restrictions that are necessary to ensure network security or integrity;
 - (c) service level parameters including financial penalties, availability, security, efficiency and synchronization;
 - (d) traffic routing and numbering arrangements; and
 - (e) arrangements for submitting trouble reports, and handling and clearing faults.
 - 1.1.3 Specify a list of interconnection services, including a detailed description of each service and any service-specific terms and conditions.
 - 1.1.4 Identify the price to be paid for the provision of each interconnection service, showing the unit of billing and charging, and separately identifying any supplementary charges.
 - 1.1.5 Specify conditions governing service provisioning, including traffic forecasting arrangements and the maximum implementation times for interconnection circuits and other services.

- 1.1.6 Set out arrangements for the reciprocal sizing of interface equipment and for testing the operation of interfaces and the end-to-end operability of services subject to interconnection.
- 1.1.7 Include standard commercial provisions governing such matters as:
 - (a) billing and collection procedures;
 - (b) exchange of information necessary to facilitate interconnection;
 - (c) protection of the confidentiality of such information, including as between different parts of the carrier's businesses;
 - (d) definition and limitation of liability;
 - (e) indemnification;
 - (f) notifications;
 - (g) default; and
 - (h) termination.
- 1.1.8 Any other provisions which the Office determines from time to time to be relevant or in the public interest.
- 1.1.9 Set out post-contract dispute resolution procedures.
- 1.1.10 Set out the procedure in case of proposed changes to the terms and conditions of the interconnection agreement, including the introduction of new interconnection services.

Annex B: Assessment of Reference Interconnect Offers

- 2.0 A dominant public voice carrier shall submit its Reference Interconnect Offer (RIO) to the Office in both hard copy and electronic form pursuant to section 32(2) of the Act. A non-dominant public voice carrier may lodge a RIO with the Office, pursuant to section 32(1).
- 2.1 Within seven (7) working days following the lodging of a RIO or amended RIO with the Office by a carrier, that carrier ('the submitting carrier') shall make available to the public on request copies of the current RIO either in hard copy or in electronic form. The said carrier shall be deemed to fulfil this requirement if it posts the RIO in its entirety (including, definitions, legal framework, description of service, tariffs) on its Website. Where hard copies are provided a carrier may require a reasonable charge for copying.
- 2.2 Where a carrier is deemed to be dominant the Office shall assess its reference interconnect offer (RIO) that has been lodged with it and in doing so it may approve or reject the RIO in whole or in part.
- 2.3 In assessing a RIO in whole or in part, the Office shall consider whether it is consistent with the objectives and principles set out in the act and such other matters to the circumstances as the Office reasonably believes are relevant.
- 2.4 Before making a determination to approve or reject a RIO in whole or in part, the Office shall consult with such persons as it reasonably considers are interested parties and it shall have regard to submissions received in that consultation process.
- 2.5 Upon assessment the Office shall subject to paragraph 2.4 issue a determination in writing approving that RIO either in whole or in part. The determination notice shall include a reasoned explanation for the decision. Within twenty (20) working days following a determination by the Office, the submitting carrier shall amend its RIO in conformance with the said determination notice and shall lodge it with the Office.
- 2.6 The Office in its determination may:
- (a) require the submitting carrier to offer amendments to the relevant terms and conditions of its RIO and lodge the amended RIO with the Office; and or
 - (b) directs through its determination the relevant terms and conditions that the submitting carrier shall incorporate in its RIO.

- 2.7 If the submitting carrier wishes to amend its RIO or any part thereof that has not taken effect (i.e. has not previously been approved by the Office), the submitting carrier shall lodge the amended RIO in its entirety and shall in addition submit a separate document, setting out the amended parts and the reasons for the amendments. The Office shall adopt the same procedure and criteria as set out above for the assessment of the original RIO.
- 2.8 Submissions to amend shall conform with the publication requirements for a lodged RIO.

ANNEX C: Objection to Interconnection Agreements

- 3.0 Each party to an interconnection agreement shall lodge with the Office a copy of the agreement within seven (7) working days following its date of signing.
- 3.1 Within forty-five (45) working days from the date at which an interconnection agreement has been lodged with the Office, the Office may issue a public notice in writing objecting to that agreement or any part thereof. The notice shall identify the 'adverse effects' (3.3 below) and shall be accompanied by an explanation of the reasons for the objection.
- 3.2 The Office may make an objection if it considers that the interconnection agreement or any part thereof has adverse effects, which shall include any term or condition that:-
- (a) unfairly discriminates against other carriers or service providers, or is likely to have the effect of substantially lessening competition in a market; or
 - (b) materially damages the interests of customers; and
 - (c) whether specified services are provided efficiently and in a manner designed to:
 - (i) protect the health and well-being of users of the service and such members of the public as would normally be affected by its operation;
 - (ii) protect and preserve the environment; and
 - (iii) afford economical and reliable service to its customers.
- 3.3 Before making a determination of terms and conditions, the Office should be satisfied on reasonable grounds that there is no other action, which it could take to prevent that agreement from having the adverse effects identified.
- 3.4 Where the Office finds an interconnection agreement objectionable either in whole or in part, the Office may:
- (a) require the parties to offer amendments; or
 - (b) directs the terms and conditions to be incorporated in the amended agreement. The amended agreement should be lodged with the Office within seven (7) working days of the determination.

Annex D: Resolution of Pre-Contract Disputes

Voluntary Alternative Dispute Resolution Process

- 4.0 In order to facilitate negotiated resolutions of any dispute concerning a request for interconnection and/or wholesale agreements pursuant to the Telecommunications Act the parties are encouraged, but not required, to pursue any method of alternative dispute resolution agreeable to them, including, without limitation, mediation or private binding arbitration.

Mediation

- 4.1 Any party negotiating a request for interconnection or a wholesale agreement pursuant to the Telecommunications Act may request, in writing, at any time, that the Office assist the parties by mediating any differences that have arisen in the negotiations. One (1) copy of the request shall be filed with the Office and a copy shall be served on each of the other parties involved in the negotiations. The request shall identify the parties involved in the negotiations, the potential issues for which mediation may be needed and, if possible, an estimate of the time period during which mediation will be pursued.
- 4.2 The Office shall notify the parties of who is assigned to serve as a mediator. The person assigned to serve as mediator may participate in any subsequent arbitration proceedings on the matter. The mediator shall work with the parties to establish an appropriate schedule and procedure for mediating any disputes. The mediator's role shall be limited to assisting the parties in attempting to reach an agreed resolution of the issues.
- 4.3 No official record of the mediation proceedings shall be taken by the Office and only parties to the negotiation may participate in the mediation proceeding.

Informal Settlement Conference

- 4.4 Either party to the negotiation of an interconnection and/or wholesale agreement may request the Office to convene an informal settlement conference by filing three (3) copies of a written request with the Office and, on the same day, delivering a copy of the request to the other party (respondent) to the negotiation from which the dispute arises. The written request shall include the name, address, telephone number, facsimile number, and, if available, e-mail address of each party to the negotiation and the requesting party's designated representative;
- 4.5 The Office shall notify the parties of the time, date, and location of the settlement conference, which, if held, shall be conducted no later than ten business days from the date the request was filed. The Office may require the respondent to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve

the disputes at the settlement conference. If the parties are in disagreement as to the need of a settlement conference, the Office may deny the request for good cause.

Arbitration of Pre-Contract Disputes by the Office

4.6 Request for Arbitration.

4.6.0 Any party to negotiations concerning a request for interconnection and/or the resale of a carrier's international and/or domestic switched voice minutes pursuant to section 34 of the Telecommunications Act, 2000 may file three (3) copies of a Notice of Request for Arbitration with the Office.

4.6.1 Three copies of the Notice of Request for Arbitration should be sent to the other party at the sametime it is filed with the Office.

4.6.2 The Request for Arbitration shall include:

- (i) the name, address, telephone number, facsimile number, and, if available, e-mail address of each party to the negotiations and the party's designated representative;
- (ii) a description of the parties' efforts to resolve their differences by negotiation;
- (iii) A list of the unresolved issues and the position of each of the parties with respect to those issue as well as all relevant documentation; and
- (iv) a list of the issues that have been resolved by the parties.

4.6.3 A Request for Arbitration shall be addressed and delivered to:
The Director General
Office of Utilities Regulation

Kingston -----

Or at such other address as may be notified from time to time.

4.7 Where a Notice of Request for Arbitration does not meet the requirements set out in 4.6 the Office may consider dismissal without prejudice to these rules.

4.8 The Office may consider dismissal of a Request for Arbitration or refer the matter to the petitioning party if:

4.8.0 the notification of the dispute was vexatious;

4.8.1 the subject matter of the dispute is trivial, misconceived or lacking in substance;

4.8.2 a party to the arbitration of the dispute has not engaged in negotiations in good faith;

4.8.3 neither parties to the negotiation is a dominant carrier.

4.9 Withdrawal of Request for Arbitration

4.9.0 The party who has filed a Notice of Request for Arbitration may at anytime after filing that request withdraw the request by Notice in writing to the Director General and the other party who would have received copies of the Notice previously.

4.9.1 The Notice of withdrawal should be sent to the other party on the same day it is filed with the Office.

4.10 Parties to the Arbitration

Only parties to the negotiation may participate as parties in the arbitration hearing. If the Arbitration Panel is of the opinion that the resolution of the dispute may involve requiring another person to do something materially that other person may be invited to participate.

4.11 Response

4.11.0 Acknowledgement of receipt and response by the non-petitioning party must be filed within ten (10) working days after receipt of the Request for Arbitration.

4.11.1 Any non-petitioning party to the negotiation may respond to the Request for Arbitration by filing three (3) copies of the response with the Office and serving a copy on each party to the negotiation.

4.11.2 The response shall indicate any disagreement with the matters contained in the Request for Arbitration and may provide such additional information as the party wishes to present.

4.12 Arbitration Panel.

The Arbitration Panel shall consist of one or more members of the Office. The arbitration panel may be advised on issues as it deems necessary.

4.13 Pre-hearing Conference; Challenges

As soon as practical the Arbitration Panel shall schedule a pre-hearing conference with the parties to the arbitration. At the pre-hearing conference, parties shall raise any challenges to the inclusion of any issue identified for arbitration in the petition. If such challenges are not raised at the pre-hearing conference, they shall be deemed waived by the parties.

The Arbitration Panel shall serve on the parties orders ruling on challenges within five (5) working days of the conclusion of the pre-hearing conference.

4.14 Discovery Issues.

Parties may obtain discovery by submitting requests for information that include requests for inspection and production of documents, requests for admissions, and depositions by oral examination.

4.15 Confidentiality

The proceedings of an arbitration process will normally be considered to be conducted in private and the filings confidential to the affected parties. Where, within an arbitration proceeding, a party claims confidential information submitted as part of the record of the proceeding, the party must submit reasons supporting the claim of confidentiality and notify the other parties of such a claim. The other party(s) may respond to the claim of confidentiality challenging the supporting rationale. Such challenges will be heard at the pre-hearing conference and the Arbitration Panel will rule on the matter within five days of the pre-hearing. Claims of confidentiality must demonstrate that specific direct harm will result to the company as a result of releasing the information.

4.16 Notice

The arbitrator shall make arrangements for the arbitration hearing, which shall be scheduled within 30 days after the Director General receives a complete Request for Arbitration. The Arbitration Panel shall notify the parties, not less than ten (10) days before the hearing, of the date, time, and location of the hearing.

4.17 Record of Hearing

A stenographic record shall be made of the hearing by an official court reporter appointed by the Office. A party may purchase a copy of the transcript. Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process

4.18 Hearing Procedures.

4.18.0 The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing.

4.18.1 The Arbitration Panel has broad discretion in conducting the arbitration hearing and has the authority to regulate its own proceedings having regard to the rules of natural justice.

4.19 Pre-filed Evidence.

Parties to the hearing shall provide their direct cases to the arbitrator at least ten (10) working days prior to the hearing unless the arbitrator establishes a different deadline. Three copies of the direct case shall be filed with the Office. A copy shall be provided to each of the other parties to the hearing at the same time it is provided to the Office. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The prepared case shall present the entirety of the party's direct evidence on each of the issues in controversy and shall serve as the party's complete direct case.

4.20 Brief(s)

4.20.0 The Arbitration Panel may require the parties to submit post-hearing briefs or written summaries of their positions.

4.20.1 The Arbitration Panel shall determine the filing deadline and any limitations on the length of such submissions.

4.21 Power to Take Evidence on Oath

The Arbitration Panel has the power to summon witnesses and take evidence under oath.

4.22 Determination by Arbitration Panel

4.22.0 The Arbitration Panel shall endeavor to issue a final decision on the arbitration within thirty (30) working days after filing of any post-hearing briefs, unless waived by the parties.

4.22.1 The final decision and report of the Arbitration Panel shall be based upon the record of the arbitration hearing. The Arbitration Panel may agree with the positions of one or more of the parties on any or all issues or may offer an alternative resolution of the issues.

4.22.2 The final decision and report of the Arbitration Panel shall include:

- (i) a decision on each of the issues presented for arbitration by the parties;
- (ii) a statement of any conditions imposed on the parties in order to comply with the provisions of the Telecommunications Act
- (iii) a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

4.22.3 The Arbitration Panel in making a determination shall take into account of the provisions of the Telecommunications Act and such other matters having regard to the circumstances as the Arbitration Panel considers relevant.

4.22.4 The final decision and report of the Arbitration Panel is a matter of public record and shall be delivered to all parties of record in the arbitration. On the same day that the decision is issued, the Arbitration Panel shall notify the parties by facsimile or electronic mail that the decision has been issued.

4.23 Compliance with Decision of the Arbitration Panel

Once the Arbitration Panel makes a decision, the parties to that arbitration are bound by, and must comply in full with, that decision except regard to section 60(4) and 62 of the Telecommunications Act.

4.24 Consolidation.

Consistent with the Telecommunications Act the Arbitration Panel may, to the extent practical, consolidate separate proceedings in order to reduce the administrative burdens on parties and the Arbitration Panel. The panel may consolidate separate applications for approval of negotiated or arbitrated agreements as appropriate. The Arbitration Panel may consolidate the arbitration proceeding and the approval process for any arbitration conducted by the Arbitration Panel.