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THE POSITION OF THE OFFICE OF UTILITIES REGULATION REGARDING THE MATTER OF TELEPHONE PRE-PAID CALLING CARDS IN JAMAICA

1. Abstract

The Office of Utilities Regulation (OUR) has been asked to determine whether the licences under which Telecommunications of Jamaica (TOJ) operates endue that company with exclusive rights to the issuance of pre-paid calling cards for use in making international telephone calls from Jamaica. The OUR has carefully considered the various factors affecting this issue and has determined that there is no basis in any of TOJ's licences on which it can assert the sole right to the sale of prepaid calling cards in Jamaica, or by which the purchasers of such cards sold legally by other business enterprises should be prevented from using them to access the TOJ network. Further, the sale and use of such cards do not conflict with any statements of Government policy for the Telecommunications Sector.

2. Background

In June 1997 a complaint was received by the OUR from an interested third party indicating that TOJ was not allowing the complainant's customers to use its international pre-paid calling cards to make calls from Jamaica.

The OUR has also received complaints from the public concerning the rates being charged for local calls with the TOJ World Talk cards and the inability to obtain the older telephone cards that allowed local calls to be made at the gazetted rates.

The issues as the OUR sees them are:

1. Does TOJ have exclusive rights to the issuance of pre-paid calling cards for international service from Jamaica?
2. Are the appropriate rates now being charged for local calls when TOJ's World Talk Card is being used?

In order to properly consider these questions the subject of interconnection must be addressed. The OUR has evaluated the various factors involved in the interconnection issue and has the following comments:

- a. On various occasions TOJ has stated publicly that interconnection infringes the service exclusivity provided by its licence. However TOJ has entered into a number of agreements in which the telecommunication networks or services of other business enterprises have been allowed to interconnect with the TOJ system. TOJ therefore does allow interconnection, but does so in what appears to be an arbitrary manner. The processes by which the interconnection agreements currently in effect have been developed are not transparent and discriminate against a wide range of business interests that have not been allowed interconnection. Interconnection should not be privately negotiated between TOJ and selected enterprises but should have the approval of the appropriate regulatory authority. In order to minimize the potential for abuse of monopoly privileges, the interconnection charges imposed by TOJ should be independently regulated.
- b. Government's policy on value-added services is formulated in the Policy Framework Document that was tabled in Parliament (in 1996). The policy is also reflected in Jamaica's offer to the World Trade Organization (WTO) that will have come into effect on 1998 January 1. Under this policy, value added services must be offered on a competitive basis to the

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1. Under this policy, value-added services must be offered on a competitive basis to the public, which is possible only if the public telephone company allows other service providers to interconnect with its network. The OUR is currently developing the rules that will govern interconnection to the public network.

3. Basic Considerations

Resolution of the issues relevant to international pre-paid calling cards and the rates being charged for local calls when using these cards, must be undertaken in the context of the licences, relevant laws and official policies under which TOJ provides telecommunication services in Jamaica. These include:

The Telecommunications of Jamaica Limited (Wireless Telephony) Special Licence, 1988; The Telecommunications of Jamaica Limited (Telex and Tele-printer Services) Special Licence, 1988; The Telecommunications of Jamaica Limited (Telegraphic Services) Special Licence, 1988; The Telecommunications of Jamaica Limited (External Telecommunications Services) Special Licence, 1988; The All Island Telephone Licence, 1988. The 1893 Telecommunications Act; Jamaica's offer to the World Trade Organization; and The Telecommunications Policy. A Framework. January 1996.

4. Pre-paid calling Cards

4.1 Value Added Services

Two types of pre-paid calling cards are currently being marketed in Jamaica. One type is the value-added pre-paid calling card, which is the category in which TOJ's World Talk Card falls. The OUR would not require the tariffs (rates) charged for these services to be subject to direct regulatory control if vendors other than TOJ were allowed to be active in the market. The market would then be expected to determine the rates. However, TOJ has refused to provide access lines to other parties interested in marketing pre-paid cards for international telephone calls. TOJ maintains that the licences under which it operates makes the provision of these services its exclusive domain. This position can be defended only if the pre-paid card for international calls was not a value-added service.

However, TOJ itself has on occasion admitted that these cards provide value-added service, as may be concluded from the following statements:

- **Universal Service Obligation**

The other type of card is intended solely for local calls and is one of the means by which TOJ fulfills its Universal Service Obligation. Such a service is part of basic telephony and is therefore exclusive to TOJ. This service is primarily intended to benefit those persons whose only access to telecommunication services is via a public telephone. Since this service is not open to competition, the rates to be applied are subject to direct regulatory control.

5. Phone Card Rates

The OUR has noted with concern that the public is experiencing increasing difficulty in obtaining the telephone cards that are issued by TOJ exclusively for local use. The World Talk Card, which can also be used for local service, is apparently being promoted as an alternative. The rates to be charged for this service are clearly subject to direct regulation. Local calls made using the World Talk Card are charged at a rate of 75-cents per minute, for which no approval has been sought from, or given by, the regulatory authorities. Cards to be used exclusively for local calls must provide this service at rates, which have been approved and gazetted, as required by the relevant legislation and by the licences under which TOJ operates.

As previously mentioned, in a competitive environment international calling card rates will not need to be regulated.

6. Conclusion

In light of the foregoing the OUR concludes that:

In light of the foregoing the OUR concludes that:

1. International prepaid calling cards are value-added services.
2. As it is the policy of the Government to encourage competition in the provision of value-added services, TOJ's World Talk Cards do not enjoy exclusive rights for facilitating international telephone calls.
3. In a competitive environment, the rates for international calls using prepaid calling cards would not be directly regulated. The OUR offers no objection to the rates being charged by TOJ for international calls using World Talk Cards provided that the service is opened to competition.
4. TOJ has an obligation to provide members of the public with the means to access the local market at regulated tariff rates, which, for intra-parish calls are currently 15-cents per minute, and for inter-parish calls, 90-cents per minute during peak periods, and 60-cents off-peak.

In the company's Annual Report 1996 the Chairman's Statement informs that the company is convinced that it "must satisfy the demand for enhanced and value-added services, such as ... Prepaid Calling Card...."

On the 5th of November 1997, the President & CEO acknowledged on the First Edition radio program that the World Talk Card was meant to capture some of the "disposable income" from tourists, and not primarily intended for Jamaican residents.

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