
Office of Utilities Regulation

MEMORANDUM TO LIME REGARDING ACTIVATION OF TOLL FREE NUMBER RANGE FOR DIGICEL



OFFICE OF UTILITIES REGULATION

July 1, 2009

DOCUMENT TITLE AND APPROVAL PAGE

DOCUMENT NUMBER: Tel 2009/03:Mem/01

1. DOCUMENT TITLE

MEMORANDUM TO LIME REGARDING ACTIVATION OF TOLL FREE NUMBER RANGE

2. PURPOSE OF DOCUMENT

To require *LIME* (formerly Cable and Wireless Jamaica Limited at the material time of the publication of the aforementioned Industry Notification) to activate within its network facilities, the Toll Free Number Range 888-935-5XXX which has been assigned to Digicel Jamaica Limited in compliance with the Directive of the Office set out in the Office's Industry Notification TFNP-290408/02 dated April 29, 2008.

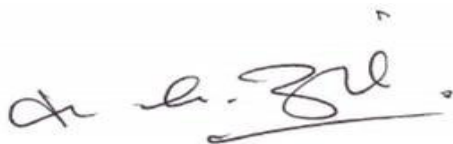
3. RECORD OF REVISIONS

Revision Number	Description	Date

4. APPROVAL

This document is approved by the Office of Utilities Regulation and the Instruction therein becomes effective **July 15, 2009**.

On behalf of the Office:



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Ahmad Zia Mian
Director General

July 1, 2009

OFFICE OF UTILITIES REGULATION

MEMORANDUM

Tel 2009/3: Mem/01

(Issued pursuant to Section 9 of the Office of Utilities Regulation Act)

IN THE MATTER OF:

- (i) THE TELECOMMUNICATIONS ACT, 2000
- (ii) THE OFFICE OF UTILITIES REGULATION ACT (AS AMENDED)
- (iii) CABLE & WIRELESS JAMAICA LIMITED T/A LIME ACTIVATING THE TOLL FREE NUMBER RANGE ASSIGNED TO DIGICEL JAMAICA LIMITED WITHIN LIME'S NETWORK FACILITIES (NAMELY THE NUMBER RANGE 888-935-5XXX) PURSUANT TO THE OFFICE'S DIRECTION AS SET OUT IN ITS INDUSTRY NOTIFICATION *TFNP-290408/02* DATED APRIL 29, 2008

TO: LIME (formerly Cable and Wireless Jamaica Limited at the material time of the publication of the aforementioned Industry Notification).

WHEREAS the Office of Utilities Regulation ("the Office") is mandated to:

- (i) regulate specified services and facilities pursuant to Section 4 (1) (a) of the Telecommunication Act, 2000 ("the Act") and
- (ii) "promote competition among carriers and service providers" pursuant to Section 4- (1) (f) of the Act
- (iii) regulate the provision of prescribed utility services by licensees and specified organizations pursuant to Section 4 of the Office of Utilities Regulation Act (as amended) ("the OUR Act")

AND

WHEREAS “prescribed utility services” is defined under the FIRST SCHEDULE of the OUR Act as follows:

“FIRST SCHEDULE (Section 2)

Prescribed Utility Services

- 1. The provision of telecommunication services.**
2. The provision of public passenger transportation by road, rail or ferry.
3. The provision of sewerage services.
4. The generation, transmission, distribution and supply of electricity.
5. The supply or distribution of water.”

AND

WHEREAS the Minister with portfolio responsibility for Telecommunications, pursuant to Sections 75-(3), 76- (2), and 78- (2) (b) (iv) of the Act, granted to Cable and Wireless Jamaica Limited (C&WJ) a Licence cited as “The Cable and Wireless Jamaica Limited Carrier Licence 2000” (“the Licence”) **AND**

WHEREAS the Grant of Rights provision in the said Licence provides that:

“The Licensee is licensed to own and operate the Licensed Facilities in accordance with the terms of this Licence (including but not limited to Schedules 1 and 2 hereof) the Telecommunications Act” **AND**

WHEREAS the Licence obligation imposed by General Provision 19 of the license provides that:

“The Licensee shall comply with the Regulations made pursuant to the Telecommunications Act and the Laws of Jamaica.” **AND**

WHEREAS Section 4(2) (a) of the Office of Utilities Regulation Act provides:

“(2) The Office may, where it considers necessary, give directions to any licensee or specified organization with a view to ensuring that—

(a) the needs of the consumers of the services provided by the licensee or specified organization are met; and...” **AND**

WHEREAS pursuant to Section 8(1) the Office is empowered to:

“8. Numbering.

8. (1) The Office shall assign numbers for telecommunications services to carriers and service providers on a non-discriminatory basis...” AND

WHEREAS Section 29 of the Act provides:

“29.- (1) Each carrier shall, upon request in accordance with this Part, permit interconnection of its public voice network with the public voice network of any other carrier for the provisions of voice services.

- (2) A public voice carrier shall provide interconnection in accordance with the following principles-
- (a) any-to-any connectivity shall be granted in such manner as to enable customers of each public voice network to complete calls to customers of another public voice 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” **AND**

WHEREAS Section 45 of the Act provides:

“45. Non-discrimination and continuity of supply.

45. Service providers may –

(a) refuse to provide retail services to consumers; or

(b) discontinue or interrupt the provision of such services to a customer, whether or not that customer is a consumer, pursuant to an agreement with that customer,

only on the grounds which are reasonable and non-discriminatory and where any such action is taken, the service provider shall state the reasons therefor;” AND

WHEREAS the Office issued an Industry Notification **TFNP-290408/02** dated April 29, 2008, which provided as follows:

“The Toll Free Number assignments tabulated below have been made by the Office of Utilities Regulation in accordance with the provisional Toll Free NXX Plan. Please arrange for the necessary changes to your networks, as required.

	<i>TOLL FREE NUMBER ASSIGNMENTS</i>	
<i>NUMBER RANGE</i>	<i>SERVICE PROVIDER</i>	<i>EFFECTIVE DATE</i>
<i>888-429-5XXX</i>	<i>Cable & Wireless Jamaica Limited</i>	<i>29/04/08</i>
<i>888-303-9XXX</i>	<i>Columbus Communications Jamaica Limited</i>	<i>29/04/08</i>
<i>888-935-5XXX</i>	<i>Digicel Jamaica Limited</i>	<i>29/04/08</i>

:” **AND**

WHEREAS to date, LIME has not activated within its network facilities, the Toll Free number range **888-935-5XXX** which has been assigned to Digicel Jamaica Limited (“Digicel”) thereby preventing Digicel from implementing Toll Free Services in the manner that Digicel is entitled to do by virtue of its relevant licenses as well as in accordance with the aforementioned provisions of the Act. **AND**

WHEREAS Toll Free numbers are assigned by the Office to operators for the purpose of the allocation and activation of Toll Free Service, being a service generically defined and accepted within the industry as a reversed charge service wherein a customer, (being the called party and/or toll-free subscriber) has a set and standing arrangement with the relevant service provider for the facilitation of “reversed charge calling”, which involves a process wherein a telephone call is billed at the point of termination, rather than at the point of the origination of the call, with provision for direct dialing by the party initiating the call. It is to be noted that other restrictions imposed on the use of Toll Free numbers are those that flow from the allocation of numbering resources in the National Numbering Plan and the National Dialing Plan. Apart from and beyond the aforementioned, the use of Toll Free Numbers is not defined or abrogated by the manner of usage and allocation of products and services by Carriers/Service Providers. **AND**

WHEREAS Toll free numbers are assigned by the Office for the purpose of allowing callers to have the ability to reach individual parties, businesses and services without incurring a charge for the said call. Local Toll Free numbers are intended to be able to be dialed, as well as accessible across ALL domestic telephone networks and are intended to be accessible in such a way as to provide benefits similar to those inherent in other similar jurisdictions wherein Toll-Free numbers and their usage have become commonplace, providing viable access for private use by individuals as well commercially successful options for entities and Carriers/Service Providers conducting business in the areas of customer service, prepaid calling services and telemarketing. **AND**

WHEREAS in the Office’s assignment of Toll Free numbers as set out in the said Industry Notification **TFNP-290408/02** dated April 29, 2008, the Office intended that those assigned NXXXs would be activated by LIME within its relevant domestic networks with no greater difficulty than has been experienced by LIME in the provision of its own Toll Free Service as presently provided to its customers, thereby allowing the Operators in the number ranges as assigned by the Office in the said Industry Notification to use the said numbers in any manner as prescribed by virtue of the Act. **AND**

WHEREAS in light of the myriad correspondence received by the Office on this matter, it is the position of the Office that LIME has not demonstrated reasonable cause for its non-compliance with the said Industry Notification regarding the activation, within LIME's networks, of the Toll Free number Range (888-935-5XXX) as assigned to Digicel pursuant to the said Industry Notification **TFNP-290408/02**. **AND**

WHEREAS it is the position of the Office that LIME's non-compliance in this regard amounts to a breach of Sections 8, 29 and 45 of the Act respectively aforesaid, as well as a patent breach of the Office's Directive as set out in the said Industry Notification **TFNP-290408/02** thereby amounting to a state of affairs which is discriminatory to the operators (such as Digicel) who have been assigned Toll Free ranges under the said Industry Notification, in light of the fact that, as a result of LIME's inactivity in this matter, customers are being prevented from obtaining services that may be legitimately provided via the use of the said assigned number ranges, **AND**

WHEREAS pursuant to:

1. Sections 4 (2) of the OUR Act

“The Office may, where, it considers necessary, give directions to any licensee or specified organization with a view to ensuring that-

- (a) the needs of the consumers of the services provided by the licensee or specified organization are met
- (b) (i)
- (ii)
- (iii) afford to its consumers economical and reliable service” **AND**

2. Section 4 (3) of the OUR Act

“(3) In the performance of its functions under this Act the Office shall undertake such measures as it considers necessary or desirable to—

(a) encourage competition in the provision of prescribed utility services;

(b) protect the interests of consumers in relation to the supply of a prescribed utility service;

(c) encourage the development and use of indigenous resources; and

(d) promote and encourage the development of modern and efficient utility services;

(e) enquire into the nature and extent of the prescribed utility services provided by a licensee or a specified organization. ” **AND**

WHEREAS Section 9 of the OUR Act provides:

“(1) Where it appears to the Office that a licensee or specified organization, as the case may be is not fulfilling its obligations under its licence or enabling instrument, the Office may, by memorandum in writing to the licensee or specified organization, require the licensee or specified organization within the time specified in that memorandum, to take such remedial measures as may be so specified.”

“(2) Any licensee or specified organization which fails to comply with the requirements of a memorandum issued by the Office under this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars . . .” **AND**

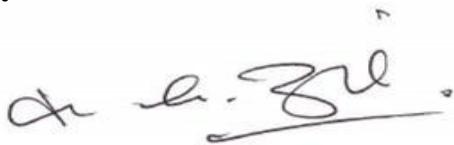
WHEREAS LIME is in breach of its licence obligation 19 of the said Carrier Licence as well as its statutory obligations by virtue of its non-compliance with Sections 8, 29 and 45 of the Act respectively.

The Office **HEREBY REQUIRES** by this Memorandum that LIME, within ten (10) working days of the effective date of this Memorandum, **TAKE THE FOLLOWING REMEDIAL MEASURE**, namely:

Activate within its network facilities, the Toll Free number range **888-935-5XXX** which has been assigned to Digicel Jamaica Limited in compliance with the directive of the Office set out in the Office’s Industry Notification **TFNP-290408/02** dated April 29, 2008.

AND FURTHER TAKE NOTICE that LIME’s failure to comply with this requirement renders it liable to the provisions of section 9 (2) of the OUR Act.

By Order of the Office:



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Ahmad Zia Mian
Director General

Date: July 1, 2009