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**Office of Utilities Regulation**

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**Harmonisation of Mobile RIOs**

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**Determination Notice**

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**OFFICE OF UTILITIES REGULATION**

July 1, 2013

## DOCUMENT TITLE AND APPROVAL PAGE

**DOCUMENT NUMBER: 2013/TEL/003/DET.002**

**DOCUMENT TITLE: Harmonisation of Mobile RIOs**

### PURPOSE OF DOCUMENT

This document contains the decisions of the Office of Utilities Regulation (OUR) regarding the harmonisation of mobile Reference Interconnection Offer (RIO).

### ANTECEDENT DOCUMENTS

Document Number	Description	Date

### APPROVAL

This document is approved by the Office of Utilities Regulation and the Decisions therein become effective **July 1, 2013**.

On behalf of the Office:



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Maurice Charvis  
**Director General**

**July 1, 2013**

## **Abstract**

This document details the Office's assessment of the draft reference interconnection offers (RIOs) submitted by mobile operators. The document represents the culmination of a consultative process to harmonise the three individual RIOs submitted to the Office by mobile operators into a single Mobile RIO for all dominant mobile operators. Further, the document indicates which clauses in the RIO are open to negotiation between interconnection providers and seekers. The approved Mobile RIO is included as an Appendix.

## Contents

CHAPTER 1: Introduction.....	5
Background .....	5
Purpose of Document .....	6
Legislative Framework .....	6
CHAPTER 2: Mandatory and Non – Mandatory RIO Clauses .....	8
CHAPTER 3: Publication of Interconnection Agreements .....	13
CHAPTER 4: Approval Of The Mobile RIO .....	15
Appendix – <b>Mobile RIO</b> .....	16

# CHAPTER 1: INTRODUCTION

## Background

- 1.1 On September 2, 2004 the Office of Utilities Regulation (the “Office” or the “OUR”) issued a Determination Notice titled ‘*Decision on Assessment of Dominance in Mobile Call Termination*’, Document No: TEL 2004/10 in which it found that “[a]ll mobile carriers are dominant with respect to the call termination service offered.” Subsequently, Mossel (Jamaica) Limited (“t/a Digicel”) lodged an appeal with the Telecommunications Appeal Tribunal established under section 61 of the Telecommunications Act (the “Tribunal”) against the Office’s Determination set out in the aforementioned Determination Notice. On May 31, 2010, the Tribunal issued its decision dismissing Digicel’s appeal and affirming the Determination of the Office.
- 1.2 The Office by way of letter dated June 8, 2010 requested that mobile carriers submit their Reference Interconnection Offer (“RIO”) for approval. All three mobile carriers who were operating in the Jamaican market at the time eventually complied with the request and submitted their respective RIOs. As such, a RIO was received respectively from:
  - Cable & Wireless Jamaica Limited (t/a “LIME”);
  - Digicel (Jamaica) Limited (t/a “Digicel”); and
  - Oceanic Digital Jamaica Limited (t/a “Claro”).
- 1.3 On May 4, 2011, the Office convened a Mobile RIO industry meeting with stakeholders to discuss the approach to be taken in assessing the RIOs. The meeting was attended by representatives from:
  - LIME;
  - Claro;
  - Columbus Communications Jamaica Limited (t/a “Flow”);
  - Convergent Technologies Limited;
  - Digicel; and
  - Fair Trading Commission.
- 1.4 The Office proposed that rather than follow the regular consultation approach where the Office issues a consultation document and solicits responses to the document, two working groups made up of representatives from the OUR and the stakeholders would be set up to review the documentation and related issues with a view to harmonising the three RIOs into a single Mobile RIO for the industry. The stakeholders present at the meeting consented to this approach. One working group dealt with the legal aspects of the RIO while the other addressed technical matters.

## Purpose of Document

- 1.5 This document contains the Office's decisions regarding the Office's assessment of the draft RIOs submitted by mobile operators and represents the culmination of a consultative process to harmonise the three individual RIOs into a single Mobile RIO for dominant mobile operators. This document only addresses issues pertaining to voice services as mobile operators were adjudged to be dominant in the provision of call termination service on their respective networks. Data services are therefore not covered under the provisions of the Mobile RIO.

## Legislative Framework

- 1.6 The Office, in carrying out its function to regulate the telecommunications sector, is guided by, *inter alia*, the Telecommunications Act as amended by the Telecommunications (Amendment) Act, 2012 (the "Act"). Part V of the Act contains provisions which deal with matters relating to interconnection. In particular, Section 32 of the Act addresses the filing of a RIO by dominant carriers and other carriers. The RIO sets out the terms and conditions under which other carriers may interconnect with the public network of the carrier which issued the RIO. Sections 30 to 32 of the Act state that:

*"30. - (1) Without prejudice to section 29, dominant public telecommunications carrier shall provide interconnection in relation to a public network in accordance with the following principles -*

*(a) the terms and conditions under which it is provided shall be -*

*(i) on a non-discriminatory basis;*

*(ii) reasonable and transparent, including such terms and conditions as relate to technical specifications and the number and location of points of interconnection; and*

*(iii) charges shall be cost oriented and guided by the principles specified in section 33;*

*(b) no unfair arrangements for cross subsidies shall be made;*

*(c) where technically and economically reasonable, interconnection services shall be so diversified as to render it unnecessary for an interconnection seeker to pay unreasonably for network components or facilities that it does not require.*

*(2) Each dominant public telecommunications carrier shall keep separate accounts in such form and containing such particulars as will enable the Office to assess whether that carrier provides interconnection services in accordance with the principles specified in subsection (1).*

31. *Each term and condition in relation to the provision of interconnection services provided to each carrier shall be determined -*

*(a) in accordance with the relevant reference interconnection offer or any part thereof which is in effect in relation to the provision of those services;*

*(b) where paragraph (a) does not apply, by agreement between the interconnection seeker and the interconnection provider; and*

*(c) where neither paragraph (a) nor (b) applies, by the Office acting as arbitrator pursuant to the arbitration rules referred to in section 34(2).*

32. - *(1) Every dominant carrier shall, and any other carrier may, lodge with the Office a proposed reference interconnection offer setting out the terms and conditions upon which other carriers may interconnect with the public network of that dominant or other carrier for the provision of telecommunications services.*

*(2) Each dominant public telecommunications carrier who is required under this Part to provide interconnection in relation to telecommunications services shall submit a reference interconnection offer to the Office –*

*(a) within ninety days after the date of determination of dominance pursuant to section 28; or*

*(b) at least ninety days before the date of expiry of an existing reference interconnection offer,*

*and the existing telecommunications carrier shall submit its initial reference interconnection offer within thirty days after the appointed day.*

*(3) A reference interconnection offer shall contain such particulars as may be specified by the Office and shall remain in force for a period not exceeding five years or such shorter period as the Office considers necessary having regard to technological and market developments.*

*(4) A reference interconnection offer or any part thereof shall take effect upon approval by the Office and all existing interconnection agreements executed by the filing carrier shall be amended in accordance with the approved reference interconnection offer and until actually amended are deemed to be so amended.”*

## CHAPTER 2: MANDATORY AND NON – MANDATORY RIO CLAUSES

- 2.1 As indicated by the Office in its “*Determination Notice for Assessment of RIO 6*” Document No: TEL2011002\_DET001, published December 24, 2012, the Office intends to give carriers more latitude to negotiate the terms and conditions of their interconnection agreements. As such, the Office in assessing and harmonising the RIOs has not made all clauses mandatory.
- 2.2 The Mobile RIO as included in the Appendix will serve as the default Mobile RIO for all operators seeking interconnection.

### **Determination 1**

The Mobile RIO as included in the Appendix to this Determination will serve as the default Mobile RIO for all operators seeking interconnection to a carrier’s mobile network.

- 2.3 All decisions in this Determination Notice and all clauses of the Mobile RIO related to tariffs are mandatory and shall be incorporated, where applicable, in all interconnection agreements, including those already in existence.
- 2.4 Interconnection seekers may choose to negotiate the other clauses of the RIO, subject however to any other reference interconnection offer governing the interconnection arrangements between the parties. Without limiting the foregoing, the following clauses of the Mobile RIO listed below are open to negotiation between the interconnecting parties:
- (i) The Recitals section of the Legal Framework:

#### **“RECITALS**

A) *[Pursuant to Licences issued by the Minister, TELCO is entitled to operate a domestic Telecommunications Network and to provide certain Telecommunications Services in Jamaica.*

B) *MOBILECO is entitled by its Licences to operate its Mobile Networks and to provide domestic and international Telecommunications Services in Jamaica.*

C) *TELCO has requested interconnection of its Telecommunications Network with that of MOBILECO, and the Parties have agreed to interconnect their respective networks in accordance with the Act on the terms and conditions set out herein.]”*



- (ii) Clause 1.5 which addresses how operators intend to treat with inconsistencies between numbered clauses of the Legal Framework and Schedules, Annexes, or other Attachments:

*“In the event of any inconsistency between the numbered Clauses of this Agreement and the Schedules, Annexes or other Attachments, the numbered Clauses of this Agreement shall prevail. In any other event the following order of priority will apply:*

- a) Definitions*
- b) Service Descriptions*
- c) Tariff Schedule*
- d) Joint Working Manual*
- e) Service Schedule and*
- f) Parameter Schedule”*

- (iii) Clause 2 which addresses the duration of interconnection agreements:

**“2. Duration**

2.1 *This Agreement takes effect on the date it has been executed by both Parties and continues in full force and effect [for a period of five (5) years] unless terminated in accordance with Clause 24, otherwise varied in accordance with the provisions of Clause 23, or replaced with a new Agreement agreed to by the Parties in writing. In the event of any variation pursuant to Clause 23, the Agreement as amended shall continue in full force and effect unless terminated in accordance with Clause 24, further otherwise varied in accordance with the provisions of Clause 23, or replaced with a new Agreement.*

2.2 *Renegotiation for an extension of this Agreement shall commence on the fourth (4th) anniversary of the execution of this Agreement. In the event that no agreement is reached on a renewal of this Agreement prior to expiry of the five-year term, the Agreement shall remain in force for a further six (6) months beyond the original term. In the event that no agreement is reached on a renewal of this Agreement prior to expiry of the six (6) months extension, the Agreement shall remain in force for a further six (6) months during which period the matter shall be referred to the OUR for resolution as a pre-contract dispute.”*

- (iv) Clauses 6.1 and 6.2 address which party is responsible for planning, providing, operating, and maintaining the Telecommunications Equipment:

*“6.1 Subject to Clauses 6.2, each Party shall be responsible for planning, providing, operating and maintaining all Telecommunications*

*Equipment located on its side of the interface at the Point of Connection.*

- 6.2 *In the case of the Non-Footway Box Joining Service, the Service Taker shall be responsible for planning and providing those aspects of the Service specifically described in the Non-Footway Box Joining Service section of the Service Description which are on the Service Taker's side of the interface at the Point of Connection."*

### **Determination 2**

All decisions in this Determination Notice and all clauses of the Mobile RIO related to tariffs are mandatory and shall be incorporated, where applicable, in all interconnection agreements, including those already in existence. The Office will allow operators the freedom to negotiate some non-tariff clauses, subject to any other reference interconnection offer governing the interconnection arrangements between the parties. Without limitation, the provisions in the recitals clause and clauses 1.5, 2, 6.1 and 6.2 of the Legal Framework can be negotiated.

- 2.5 The Tariff Schedule included in the Appendix includes termination rates which have already been approved by the Office and rates and charges related to joining services which by their nature will have to be agreed by the interconnecting parties.
- 2.6 The mobile termination rate to be included in the Tariff Schedule shall be the rate approved by the Office in its "Determination Notice for Cost Model for Mobile Termination Rates – The Decision on Rates" Document Number TEL2013001\_DET001 dated May 30, 2013, or such other rate as may be approved by the Office from time to time having regard to Section 32(3) of the Act.
- 2.7 The tariffs that are to be negotiated and agreed by the interconnecting parties shall be governed by the following:
- (i) Interconnection is mutually beneficial to both parties and therefore the cost of facilitating such interconnection should be borne equally by both Parties. This position is consistent with Section 29(2)(c) of the Act which states that "*interconnecting carriers shall be equally responsible for establishing interconnection and doing so as quickly as is reasonably practicable*".
  - (ii) The Office has also determined that one-off charges for installation and testing should be split equally between the Parties.
  - (iii) One-off charges shall not include upgrades to network, including but not limited to billing and switching systems.

### **Determination 3**

- (i) The mobile termination rate to be included in the Tariff Schedule shall be the rate approved by the Office in its “Determination Notice for Cost Model for Mobile Termination Rates – The Decision on Rates” Document Number TEL2013001\_DET001 dated May 30, 2013, or such other rate as may be approved by the Office from time to time having regard to Section 32(3) of the Act.
- (ii) The cost of facilitating interconnection shall be borne equally by both Parties.
- (iii) One-off charges for installation and testing shall be split equally between the Parties.
- (iv) One-off charges shall not include upgrades to network, including but not limited to billing and switching systems.

2.8 The Office recognises that there may be instances where an interconnection relationship is governed by more than one RIO. This will arise for example where the interconnection between a mobile carrier and a fixed carrier is governed by both the Mobile RIO and the reference interconnection offer for the fixed operator which is approved by the Office. In the event that there are differences in or conflicts between some of the provisions of both applicable reference interconnection offers, these differences or conflicts shall be resolved as follows:

- (i) Where the differing or conflicting provisions are not mandatory in either reference interconnection offer, then the resulting provision in the interconnection agreement shall be determined by agreement of the interconnecting parties. Where they cannot agree, the matter may be submitted to the Office for resolution.
- (ii) Where the differing or conflicting provision is mandatory in one reference interconnection agreement, but not in the other, then the mandatory provision shall prevail, and shall be incorporated in the resulting interconnection agreement. Notwithstanding the foregoing, where one or both parties are of the view that the mandatory clause may be prejudicial to their interests or may otherwise not be technically feasible, then the matter shall be submitted to the Office for resolution.
- (iii) Where the differing or conflicting provision is mandatory in both reference interconnection offers, then the matter shall be submitted to the Office for resolution.

#### **Determination 4**

Where more than one approved reference interconnection offer is applicable to the interconnection arrangements between two interconnecting parties and there are differences in or conflicts between some of the provisions of both applicable reference interconnection offers, these differences or conflicts shall be resolved as follows:

- (i) Where the differing or conflicting provisions are not mandatory in either reference interconnection offer, then the resulting provision in the interconnection agreement shall be determined by agreement of the interconnecting parties. Where they cannot agree, the matter may be submitted to the Office for resolution.
- (ii) Where the differing or conflicting provision is mandatory in one reference interconnection offer, but not in the other, then the mandatory provision shall prevail, and shall be incorporated in the resulting interconnection agreement. Notwithstanding the foregoing, where one or both parties are of the view that the mandatory clause may be prejudicial to their interests or may otherwise not be technically feasible, then the matter shall be submitted to the Office for resolution.
- (iii) Where the differing or conflicting provision is mandatory in both reference interconnection offers, then the matter shall be submitted to the Office for resolution.

## **CHAPTER 3: PUBLICATION OF INTERCONNECTION AGREEMENTS**

- 3.1 For the industry to receive the full benefit of the approach of allowing carriers some latitude in negotiating the terms and conditions of their interconnection agreements, each carrier must be given the opportunity to access interconnection on the same terms as afforded to all other carriers. In light of this, all interconnection agreements need to be transparent and non-discriminatory, as required under Section 30 of the Act.
- 3.2 Under the principle of non-discrimination, the following shall apply:
- (1) interconnection shall be provided to interconnecting operators on no less favourable terms, rates, and quality as the interconnection provider affords itself, its affiliates, or both itself and its affiliates;
  - (2) interconnection shall be provided without regard to the types of users to be served or the types of services to be provided by the interconnecting operator;
  - (3) an interconnection provider shall provide on request, information reasonably necessary to interconnecting operators considering interconnection, in order to facilitate the conclusion of any agreements;
  - (4) an interconnection provider shall offer the terms and conditions of existing interconnection agreements, including those of newly concluded agreements to any other interconnected or interconnecting operators, upon request.
- 3.3 One of the critical aspects of a competitive market is equal access to information to remove information asymmetries which tend to give one party an advantage over another. The Office's view is that access to information in interconnection agreements is integral to the facilitation of the non-discriminatory and transparency provisions of Section 30 of the Act. As such, redacted versions (as further explained in paragraph 3.4 below) of all interconnection agreements with dominant mobile networks shall be provided to the Office and shall be made publicly available on the OUR's website and in its Information Centre. The Office's position is that this disclosure is necessary in the interest of the public to stimulate effective competition between carriers at the retail level. Such disclosure helps to keep interconnection rates at cost oriented and non-discriminatory levels for all carriers, thereby removing any unfair competitive advantage that one carrier may have over another.
- 3.4 The Office is mindful of the need to keep commercially sensitive information confidential as the release of such information to the public may be harmful to a carrier. In this regard, a carrier may request, pursuant to the procedure set out in Section 7(6) of the Act, that parts of its interconnection agreement be made confidential and provide supporting arguments to validate this request. Where such a

request is granted, the carrier shall submit a redacted version of the interconnection agreement for publishing along with the original confidential version which will be kept for use by the Office. Section 7 of the Act empowers the OUR to disclose confidential information where it is of the opinion that such disclosure is in the public interest. Section 7A of the Act specifies the types of information that will not be regarded as confidential. Items which may be excluded from disclosure include but are not limited to the following information for the interconnected parties:

- a) customer orders;
- b) market forecasts;
- c) plans for the development of new services;
- d) network plans; and
- e) business plans.

#### **Determination 5**

Redacted versions of all interconnection agreements with mobile networks shall be provided to the Office and shall be made publicly available on the OUR's website and in its Information Centre. A carrier may request, pursuant to the procedure set out in section 7(6) of the Act, that parts of its interconnection agreement be made confidential and provide supporting arguments to validate this request. Where such a request is granted, the carrier shall submit a redacted version of the interconnection agreement for publishing along with the original confidential version which will be kept for use by the Office. Section 7A of the Act specifies the types of information that will not be regarded as confidential. Items which may be excluded from disclosure include but are not limited to the following information for the interconnected parties:

- a) customer orders;
- b) market forecasts;
- c) plans for the development of new services;
- d) network plans; and
- e) business plans.

## CHAPTER 4: APPROVAL OF THE MOBILE RIO

4.1 The Mobile RIO included in the Appendix to this Determination Notice shall be the default Mobile RIO.

### **Determination 6**

- (i) The Mobile RIO which is comprised of the documents listed in paragraph (ii) below and which are attached to this Determination as an Appendix is hereby approved by the Office of Utilities Regulation and shall take effect on **July 1, 2013** pursuant to Section 32(4) of the Act. The Mobile RIO shall remain in effect for a period of five (5) years ending **June 30, 2018** unless earlier reviewed by the Office of Utilities Regulation in accordance with Section 32(3) of the Act.
- (ii) The Mobile RIO comprises of the following documents:
- The Legal Framework
  - The Definitions – Schedule 1
  - The Tariff Schedule – Schedule 2
  - The Service Descriptions – Schedule 3
  - The Joint Working Manual – Schedule 4
  - The Service Schedule – Schedule 5
  - The Parameter Schedule - Schedule 6.

## **APPENDIX – MOBILE RIO**

- ❖ Covering Page
- ❖ Legal Framework
- ❖ Definitions – Schedule 1
- ❖ Tariff Schedule – Schedule 2
- ❖ Service Descriptions – Schedule 3
- ❖ Joint Working Manual – Schedule 4
- ❖ Service Schedule – Schedule 5
- ❖ Parameter Schedule – Schedule 6