



Response

to

OUR's Notice of Proposed Decision on Settlement Rate and Termination Charges

by

Digicel

28th April 2004

1 Introduction

Digicel welcomes the opportunity to comment on the OUR's Notice of Proposed Decision on Settlement Rates and Termination Charges. Whilst Digicel agrees with steps to support an increase in Jamaica's Foreign Exchange Revenues, we have previously voiced our concerns to the OUR on the regime instituted on January 23rd through numerous correspondence and meetings with the OUR on the matter. These views are repeated below.

2 Impact of January 23rd Decision

2.1 Creation of an artificial market

As stated before, Digicel agrees in principle with attempts increase the inflow of foreign exchange into the country. We also fully support competition in the market. However, we believe that the creation of an artificial market for Network Free Operators (NFOs) through the establishment of a lower boundary (through the maximum termination rate) and an upper boundary (through the minimum settlement rate) was not consistent with the principles of competition.

We further believe that the creation of such an artificial market would only serve to encourage inefficiencies and margin gathering by operators who would be rewarded for not investing in the building of infrastructure based facilities. This would act as a disincentive for network-based operators to invest further in the Jamaican market and reduce the foreign exchange flows into the country.

In fact there were reports of local rogue operators who were offering some market rates as low as US11.2 cents. Such market distortions made it difficult for Digicel to implement higher rates. The result of which was that Digicel in its attempt to comply with the OUR's decisions, lost traffic to these local rogue carriers who were not in compliance.

2.2 Regulatory uncertainty with overseas carriers

The OUR decisions of January 23, February 29 and March 31, 2004 had the effect of creating regulatory uncertainty in the market for international calls. The short notice period for the introduction of the initial decision on January 23rd posed severe problems with the International Carriers. This was further compounded by the belief by some overseas carriers that the FCC would have intervened to prevent the new settlement rates from becoming effective. Therefore the

subsequent OUR notices, which stayed the January 23rd decision, did not auger well for trying to implement higher market rates.

Another effect was that some of our overseas carriers were refusing to accept any of our rate change notifications. This placed Digicel in the very difficult position of either taking court action against these carriers or terminating their service. Closing down these carriers would have seriously impacted the completion of calls coming into the island.

2.3 Compliance and enforcement issues (by-pass operators)

Notwithstanding the comments above, perhaps the biggest problem being faced by Digicel was the hemorrhaging of money to operators who were not in compliance with the OUR's decisions. Digicel consistently pointed out that unless there were stronger enforcement mechanisms available to police both illegal by-pass operators and non-compliant licensed operators, the proposed settlement rate regime would not work. It is also impractical to increase settlement rates significantly without raising termination rates.

3 OUR's proposed May 3rd Decision

In light of the above, Digicel is in support of the OUR's proposed decision that:

1. The minimum settlement of US\$0.081 for international calls terminating on a fixed network.
2. The minimum settlement rate of US\$0.169 for international calls terminating on a mobile network
3. The Office's interim approval of Cable and Wireless Jamaica's application for a termination rate of US\$0.05 for incoming international calls on the fixed network
4. The maximum termination rate of US\$0.138 for international calls for a mobile network

be removed on May 3, 2004 and that free market forces be allowed to operate.

4 Future Action by the OUR in this Area

Digicel asks the OUR to consult on any proposals for future action to be taken in this area so that the market participants are able to put forward their case about the ramifications for them and for Jamaica.