



Digicel Submission  
In Response to  
Consultation Document  
“Quality of service standards for the  
telecommunications sector”  
[Non-confidential version]

## **Introduction**

Digicel takes the opportunity given by the Office of Utilities Regulation (“OUR”) pursuant to the Telecommunications Act, 2000 (“the Act”) to all interested parties to comment on the OUR’s Consultation Document “Quality of service standards for the telecommunications sector.”

Digicel will address some issues and reserves the right not to comment at this time on all issues and states categorically that Digicel’s decision not to respond to any issue raised by the OUR wholly or in part does not necessarily represent agreement in whole or in part with the OUR’s position, nor does any position taken by Digicel in this document mean a waiver of any sort of Digicel’s rights in any way. Digicel expressly reserves all its rights.

Any questions or remarks that may arise as a result of these Digicel comments may be addressed to:

Elizabeth Wilks-Wood  
Head of Legal and Regulatory  
Digicel (Jamaica) Limited  
10-16 Grenada Way  
Kingston 5, Jamaica

Fax: +1 (876) 920 4626

Tel: +1 (876) 470 8698

Email: [elizabeth.wilks-wood@digicelgroup.com](mailto:elizabeth.wilks-wood@digicelgroup.com)

## General comments

### *Justification for regulation in the mobile and ISP markets*

Digicel questions the need for the regulation of quality of services in the aforementioned markets<sup>1</sup>. Digicel goes on to explain this fundamental concern at length in the following response. It is clear that under the OUR Act and the Act, it is envisaged that regulatory intervention will be limited to those cases where there is a demonstrable consumer detriment or anti-competitive effect that would occur in the absence of regulation. Digicel contends that neither of these laudable justifications are made out in the present case. The OUR should always be guided by the fact that undue regulation will adversely impact on consumers in the market. Where there is no need for regulation, but it is nevertheless imposed, operators incur (by definition) unnecessary costs, and these are likely to be passed onto consumers in terms of higher retail rates, reduced investment and reduced innovation.

We note that the OUR has failed to undertake any cost benefit analysis of its proposal to extend the existing regulatory regime in the way proposed. Digicel contends that this is a serious omission and if the OUR were to undertake such an assessment, this is likely to confirm that any benefits would be far outweighed by the significant additional cost of compliance. Before proceeding with the proposals any further we would respectfully suggest that the OUR undertake such a review.

### *Existing 'regulation' in the market*

The OUR has completely failed to take into account the effectiveness of the current incentives on operators to offer a high level of service in the area of mobile telephony and internet service provision. In this regard, we refer the OUR to its own Quarterly Performance Report (April – June 2007)<sup>2</sup> which is attached as an Appendix to Digicel's response.

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<sup>1</sup> Digicel questions the demonstrable need for regulation of quality of service in both the mobile and ISP markets. However, for brevity we will refer to these 2 markets interchangeably, however the concerns outlined in the response apply equally to both markets and should be read accordingly.

<sup>2</sup> OUR Document No Con 2007/07

The OUR's own report indicates that, during the period in question, Digicel has a subscriber base which exceeds that of the other utilities combined, however it only received 3 contacts during the quarter. It is important to note that this figure represents 0% of contacts as a percentage of Digicel's customer base and that all of these contacts were resolved in the same period. On the basis of the OUR's own figures, it is clear that the perceived customer detriment which is continually referred to as the justification for its intervention is not demonstrated.

The OUR has made no reference to the current statutory regime which is in place to ensure that operators offer a quality service. The Act contains obligations which give the OUR powers to intervene in the event that a customer is dissatisfied with the level of service received:

*44. - (1) Providers of retail services to consumers shall use reasonable endeavours service. to ensure that those services are -*

*(a) reliable;*

*(b) provided with due care and skill; and*

*(c) rendered in accordance with the standards reasonably expected of a competent provider of those services. [our emphasis]*

*(2) A complaint may be made to the Office by any customer who is dissatisfied with the services provided to him by a carrier or service provider or who claims to be adversely affected by the actions of a carrier or service provider.*

It is a condition within all telecoms licences for the licensee to comply with the Act. Therefore, a failure to offer the requisite standard of service could result in the suspension/revocation of an operator's licence. It is impossible to understand how the OUR could consider that this statutory obligation would be insufficient incentive for compliance. Digicel assumes that the OUR believes that these existing powers are inadequate, but notes that the OUR provides no evidence at all to establish that this is the case.

*Undue regulation*

The OUR must always avoid regulation for regulation’s sake. Digicel accepts that the nature of the telecoms market may dictate that ex-ante regulation may be appropriate in certain circumstances e.g. to require the ex-monopoly provider to allow access to economically non-replicable parts of its network, as it is clear that in the absence of regulation, the commercial incentives for such an operator to act in a pro-competitive manner may be low. Digicel questions the appropriateness of the OUR to intervene (and by definition devote its limited resources) in the aforementioned markets, as opposed to dealing with certain long term regulatory issues. We would caution the OUR against choosing to regulate areas where there is little or no demonstrable consumer benefit, while fundamental issues (which have a serious impact on the quality, cost and types of services available to customers) have not yet been resolved, despite being outstanding (in some cases) for a number of years.

*Cost recovery mechanism*

The proposed intervention which comes at a time when the existing operators have already made significant investments in the design of their networks, on the basis of the current regulatory regime. The OUR proposals fail to take into account the higher cost of compliance that would be incurred and further to explain how these costs are to be recovered.

Digicel notes that a cost recovery mechanism is in place for the water sector in relation to the additional costs incurred by the NWC’s compliance with the OUR’s quality of service regulation regime. We are disappointed that the OUR has failed to mention the establishment of an equivalent regime to allow telecoms operators to recover the additional costs that compliance with the proposed standard would entail. Any failure to establish such a cost recovery regime would clearly discriminate against the telecoms sector and as such must be addressed by the OUR before proceeding further with its proposals. If, following a detailed cost benefit analysis the OUR can provide objective evidence supporting the need for such regulation, Digicel would suggest that the significant additional cost of compliance be deducted from its annual regulatory fee contributions.

### *Publication requirements*

The OUR proposes to require operators to post certain information on their respective websites. If (notwithstanding the significant concerns about the correctness of the proposed intervention) it proceeds with the requirements, Digicel considers that it is far more appropriate for the OUR to publish this information on its website as information for consumers on the level of service they should expect to receive from their provider. This is the approach taken by Ofcom in the UK<sup>3</sup>. The OUR appears to have failed to take account of the fact that Digicel already provides its customers with comprehensive data, both in terms of marketing literature, its website and its terms and conditions. It is not clear that further information would be of any intrinsic value to consumers and as such if the OUR can demonstrate that it is indeed necessary, the OUR (and not the operator) should be responsible for publication.

If (as is not presently the case) the OUR can successfully provide objective evidence to support its justification for regulatory intervention, Digicel considers that it would be far more appropriate for there to be a requirement for operators to only report instances of a failure to comply, or missed targets, rather than to impose a blanket reporting requirement. This would also enable the OUR to focus its resources on persistent, serious ‘breaches’ and at the same time reduce the unduly high cost of compliance.

### *Confidentiality*

To assist the OUR in its review of the points made, we have provided the OUR with commercially sensitive information relating to the cost of services, installation process etc. This information is confidential and so Digicel has prepared both confidential and non confidential versions of its response. Where information is commercially sensitive it has been redacted and is marked with the following [...] and can only be disclosed by the OUR with Digicel’s express prior written permission.

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<sup>3</sup> <http://www.ofcom.org.uk/consumeradvice/mobile/mobileservice/service/factors/>

## **Specific comments**

### **Chapter 1 – introduction and background**

#### **Section 1.1**

The OUR appears to have placed significant reliance on the existence of international standards which (in its view) must be replicated in Jamaica. Digicel first questions the appropriateness of applying these standards to the Jamaican market whose structure is likely to be significantly different from those other markets. Further, as the OUR has placed such reliance on these international benchmarks, it should disclose which standards it is seeking to rely upon so that Digicel (and other interested parties) may undertake their own assessment on their appropriateness in the interests of transparency and procedural fairness.

The OUR has failed to confirm whether it has sought to gather information from the service providers on their existing internal service standards, their existing quality assurance program and how do these internal standards compare with international benchmarks. If they already compare favourably, then one would question the need for regulation at all. The fact that the OUR has failed to undertake such an exercise is instructive in establishing that it has failed to take proper account of the existing regime before incorrectly concluding that additional regulation is necessary. This is a further fundamental deficiency in the OUR’s work on this issue and must be rectified before proceeding further.

Digicel questions the need for extending the quality of service requirements to the mobile sector. Digicel understands the rationale for such regulation in monopoly industries or sectors (e.g. the market for electricity, water and fixed line telephony), where price capped firms can potentially reduce the impact of such regulation by offering a lower quality service. In such circumstances, customers have no real option to switch provider if they are dissatisfied with the level of service offered and therefore there is a role for the regulator to play in ensuring that monopoly providers are forced to offer an acceptable

level of service where competitive incentives to do so are entirely absent. The same simply is not the case in the mobile sector.

In Jamaica the mobile sector comprises a number of operators, multiple handset ownership is prevalent and switching costs are low. In those circumstances, where customers are not satisfied with the level of service being offered by a particular provider, it is easy for them to change to an alternative operator or even to switch between providers on an ad hoc basis. Therefore, telecoms operators are already effectively incentivised to offer levels of network performance, coverage and customer service which will make their network more attractive than the others in the market. The OUR has failed to take these market factors into account (e.g. no cost-benefit analysis has been done) and therefore, the needs for further regulation has not been clearly demonstrated.

The OUR must substantiate its assertion that “switching costs are significant” this is simply not the case in Jamaica. [...] For private users it is easy for them to switch operators with relatively low cost since their entire circle of callers can be easily advised of a new number by email or SMS.<sup>4</sup>

Further, in relation to the mobile sector, the OUR has failed to take into account the high incidence of multiple handset ownership in Jamaica. It is simply not accurate to assume (without any attempt at quantification) that switching costs are high; when subscribers can simply change handset they currently use or modify the level of usage between their multiple handsets, at no additional cost.

The OUR states that its primary object is to ensure that:

*“...the information provided to consumers is current, clear, accurate and consistent with relevant local, and international standards and practice.”*

The OUR has also failed to take into account the existing non sector specific consumer protection measures that exist in Jamaica. The OUR must always ensure that any

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<sup>4</sup> Early cost-benefit studies on mobile number portability grossly over-stated customer switching costs in part because they did not recognize the ease with which private users could advise of a number change through SMS and free email – a point now willingly acknowledge by the responsible consultancy firms OVUM and NERA.



regulation is proportionate. If adequate consumer protection measures already exist, then there is simply nothing to be gained by the OUR duplicating the obligation.

The OUR argues that its duty to protect the consumer is synonymous with a duty to promulgate rules on basic standards. This duty must be contextualized against current market behaviour where the players seek to differentiate not only on pricing, but also on service and quality of their products. The major providers already seek to continually improve the quality of service they bring to the market as a crucial method of increasing their market share. Quality of service is therefore already significantly market driven. We note that the OUR has failed to provide any evidence to support its assertion that information the public is lacking, and this must be addressed.

Digicel agrees with the OUR that information provided to the consumers should be clear, current, accurate etc. This is the best way to achieve this objective and that customers should be well informed in order to make an optimal choice given the range of services and service providers and their relative prices and *that meet the demands and requirement of each individual customer*. Consequently the focus should rather be that service providers provide information describing the service provided than having all service providers to deliver the same quality on their service. It is for example not unlikely that some customers would prefer a less qualitative service if they are to pay less.

## 1.2

The OUR opines that there is competition in the mobile sector but still prescribes regulation to foster competition. There is a significant inconsistency in its approach. The OUR must first justify the need for further regulation where the OUR (by its own admission) acknowledges that competition already impacts on quality of service levels. The OUR appears to assert that the level of competition is not sufficient, however fails to explain “how much” competition it wishes to see. The OUR has failed to show why the current level of competition falls short of dealing with certain aspects of market behaviour, and also why this is best dealt with by regulation. In the absence of any evidence, its justification for intervention appears to be purely anecdotal.

In addition, the OUR has failed to appreciate that for competition to work it is decisions by customers on the margin that matter; not whether everyone can switch at low cost but whether a sufficient number can do so such as to impose competitive discipline on the market. Moreover, new customers who continue to come onto the market are choosing between three mobile networks. On the margin, therefore, Digicel assures the OUR that failure to provide quality services to customers will be reflected in a reduced customer base and in the intensity with which existing customers use the network and service we provide. Indeed, Digicel explains its relatively success as being largely due in our ability to deliver a superior customer experience and network quality compared to that provided by Digicel's competitors.

Looked at from a slightly different angle, regulation of quality of service has been considered necessary in order that a price cap regulated (dominant) firm does not seek to undermine the price cap by neglecting quality of service<sup>5</sup> But just as no case can be made for imposing price cap regulation on mobile operators since by the OUR's own admission the retail market is competitive, therefore no case can be made for imposing quality of service regulations on them either.<sup>6</sup>

Indeed, should the OUR impose quality of service regulations on a mobile sector with three competing providers, it would be contrary to good regulatory practice and would reduce the good standing of the OUR internationally. Such illegitimate regulation is the primary source of country specific risk in developing and middle income countries, and goes some way in explaining the relative lack of investment and their lower living standards.<sup>7</sup>

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<sup>5</sup> In fact, in the telecommunications sector there is evidence to the contrary; that price cap regulation improves QoS of dominant fixed line operators. See Ai, C., Martinez, S., and D. Sappington, (2004), "Incentive Regulation and Telecommunications Service Quality": *Journal of Regulatory Economics*; 26:3 263–285.

<sup>6</sup> Network to network QoS issues can arise in some circumstances, although direct mobile to mobile interconnection would address the main concerns. Other network to network concerns are thought to only arise in exceptional circumstances. See Malueg, D. A. and M. Schwartz (2001), "Interconnection incentives in a large network", working paper, Georgetown University. <http://econ.georgetown.edu/workingpapers>

<sup>7</sup> Even in markets where competition is not considered fully effective, theory and experience suggests that the imposition of quality of service measures is not justified. It is not justified in terms of the regulatory effort needed given the opportunity cost for the sector in having the regulator commit the substantial resources needed to address this complex topic rather than other more pressing topics which would enable the sector to function more effectively to the benefit of end-users.

Theory and evidence shows that were competition is less than perfect, the importance of QoS as the competitive differentiator becomes primary. Indeed, the study of Industrial Organisation suggests that the focus of competition on QoS rather than price increase with the scale of entry barriers. See Spence, M., (1977), "Non-price Competition," *American Economic Review*; and also Lancaster, K. J. (1998),

The OUR makes a number of statements concerning the perceived lack of incentives for operators to offer a high quality service in the absence of regulation. We note that none of these statements are supported by evidence. It is not sufficient for the OUR to simply base regulation on supposition and assertion; there must be a factual and evidential basis for any regulatory intervention. Furthermore, the OUR seems to think that a market cannot function effectively without regulatory interventions. It has further begun its analysis on the conclusion that this area of the Jamaican mobile market cannot function effectively without regulation. Regulatory intervention should only be when there are clear indications that the market fails or will fail. Digicel notes that this is completely absent from the OUR's consultation. Digicel once again refers to the OUR's own quarterly report, which provides clear, objective evidence of the fact that Digicel already offers a superior quality to its customers (as can be seen by the extremely low incidence of customer contact) in the absence of OUR intervention on quality of service.

There is simply no economic case for regulating customer-facing quality of service standards in the mobile sector. With three providers competing vigorously, this regulation cannot be justified. In any event, Digicel contends that the OUR has failed to take into account the fundamental differences between networks which mean that quality of service indicators are far less appropriate for mobile services and in most cases, do not attract specific regulation. For example, in the UK, under the General Conditions of Entitlement<sup>8</sup>, General Condition 3 (which relates to the effective functioning of the network) only applies to fixed and not mobile operators.

Further, the European Commission (and by definition all of the Member States) apply asymmetric regulation and the requirements imposed (in relation to the operation of the network) only apply to fixed networks<sup>9</sup>:

*"Article 23*

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"Non-Price Competition" topic in John Eatwell, Murray Milgate, and Peter Neuman eds., The New Palgrave: A Dictionary of Economics, New York: Stockton Press, 1998..

<sup>8</sup>[http://www.ofcom.org.uk/static/archive/oftel/publications/eu\\_directives/2003/cond\\_final0703.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf)

<sup>9</sup> [http://eur-lex.europa.eu/pri/en/oj/dat/2002/l\\_108/l\\_10820020424en00510077.pdf](http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_108/l_10820020424en00510077.pdf)

***Integrity of the network***

*Member States shall take all necessary steps to ensure the integrity of the public telephone network at fixed locations and, in the event of catastrophic network breakdown or in cases of force majeure, the availability of the public telephone network and publicly available telephone services at fixed locations. Member States shall ensure that undertakings providing publicly available telephone services at fixed locations take all reasonable steps to ensure uninterrupted access to emergency services."*

It is of significant concern that the OUR states that its regulatory resources are limited; however, is prepared to compound this problem, by its proposal to regulate an area (quality of service in the mobile and ISP sectors) where it has failed to provide any demonstrable need for its intervention. Surely the OUR is exacerbating its own inadequacy to deal with issues of key consumer importance, by unnecessarily increasing its portfolio.

**1.3**

The OUR quotes 4 alleged 'detriments' which are likely to occur in the absence of quality regulation. We note that the OUR has simply listed a number of assertions which are backed with neither facts nor evidence to attest to their accuracy. Digicel agrees that these 'detriments' may be a real concern in monopoly sectors where there is no incentive to compete on the basis of superior quality of service, but does not agree that the same is the case in the mobile sector which is characterised by vigorous competition by a number of players and widespread multiple handset ownership means that switching costs (in the event that the customer decides that it is unhappy with the level of service provided by a specified operator) are all but eliminated.

One reason given by the OUR to justify regulation is the fear that ISPs may mislead customer with spurious claims on standards. Digicel respectfully asserts that any such attempt to mislead customers would properly be a matter for the Fair Trading Commission and consumer action groups which already exist and have provisions to address any such behaviour. Digicel question the appropriateness and proportionality of any OUR regulation which would simply duplicate existing consumer protection measures in Jamaica. One way in which to address the OUR's admitted lack of resource is to avoid such duplication of

intervention, as this would leave the OUR able to focus its limited resources on matters which are properly within its existing remit.

## **Chapter 2 – quality of service standards**

### **2.2**

The OUR once again makes an unsubstantiated comment about a company’s willingness to accept a fine where the cost of improvements are higher. Again, this statement may well be true in monopoly situations, but it is simply not the case in the mobile sector. As stated above, the market for mobile telephony in Jamaica is characterised by strong competition between various players and barriers to switching are low. Quality of service is one of the main differentiators (as well as price, coverage etc.) which drive customer choice. It is also very likely that some customers would be happy to receive a ‘lower’ quality of service in return for a cheaper price. The OUR’s actions will have the effect of unduly constraining the types of services which can be offered to meet customer demand. Unfortunately, the OUR appears to have simply applied a ‘one size fits all’ approach to quality of service regulation which is not compatible with the differing competitive incentives to offer a high quality of service to customers in the absence of regulation.

The guiding principle should always be that as part of the normal contractual arrangement, a party in breach (i.e. by offering a substandard level of service) is expected to compensate the other party to the extent of his loss or genuine estimate of the damages incurred. The OUR has failed to take into account the remedies available under general commercial law, and in particular statutory implied contract terms<sup>10</sup>, in the market to compensate the consumer where they fail to receive an acceptable level of service.

## **Chapter 3 – guaranteed standards**

### **3.1**

It is instructive to note that the OUR accepts that the current regime (applicable to the water and electricity sectors) has not been a success, however the OUR still considers it to be appropriate to extend it to the telecoms sector. Digicel would respectfully request

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<sup>10</sup> The Consumer Protection Act - 2005

that the OUR focus its resources on improving the quality of service regime applicable to those monopoly sectors and once a successful regime has been created, implemented and reviewed, then and only then to consider whether it is appropriate to extend it to competitive sectors if (following a detailed cost benefit analysis), such regulation is demonstrably found to be necessary.

It is also essential when discussing these issues and making comparisons to consider that there is a huge difference between JPS and NWC on the one hand and the telecommunication operators on the other. This is because telecoms operators almost exclusively (especially mobile operators as the percentage of pre-paid customers where no fixed recurring fees are paid are very high) get their revenues only when someone uses their services, consequently if the service does not work the operator will receive no revenue. That in itself is the strongest possible incentive to offer a high quality of service. In addition, if a service failure occurs, the customer care department will be overburdened with customer complaints. This would in turn require the operator to incur significant additional costs and therefore operators seek to avoid such circumstances wherever possible. The OUR appears to have adopted an overly simplistic view of the incentives for operators to offer a high quality of service, which fails to adequately take into account the commercial realities of the telecoms market.

The OUR recognizes that there was little response from customers to the issuance of the standards in the water sector, but nevertheless uses this as a basis for its conclusion that that all operators are in need of greater penalties. In Digicel's view there is an alternative conclusion to be drawn. It may simply be that there are some levels of breaches that with which customers are not concerned. This would indicate not that further regulation is necessary, but rather that the existing standards may be artificially high.

It is not clear to what extent (if any) the OUR has taken into account the existing international standards which drive the design of Digicel's networks and processes. For example, the international service standard utilised by most organisations coincide with the 80/20 rule. The OUR has not explained its rationale for the proposal of a requirement to answer 90% of calls in 20 seconds, which does not accord with this industry standard. Further (as noted above), the OUR has failed to explain how it proposes to allow Digicel to

recover the estimated [...] that would have to be incurred to meet this standard. If, notwithstanding Digicel's significant concerns about the absence of a cost benefit case to support the need for this new regulation, the OUR proceeds with this proposal, Digicel asks it to confirm the cost recovery mechanisms which it intends to put in place to allow this sum to be recouped. As stated, we note that a regime has been put in place in the water sector and we would expect this to be replicated in the telecoms sector, as to do otherwise would be clearly discriminatory.

Digicel already prides itself on its extremely high levels of customer service as evidenced by its receipt of the National Quality Award in 2006, which was presented by the Consumer Affairs Commission. This award recognised Digicel's "*excellence in customer focus*". The achievement is significant. It is interesting to note the aims and selection criteria for recipients of this award:

*"The National Quality Award is a results-driven programme of the Ministry of Commerce, Science and Technology, which is being spearheaded by the Bureau of Standards Jamaica (BSJ). The NQA seeks to recognize and reward Jamaican companies that demonstrate excellent quality systems in the production of goods and services..."*

*Qualification is based on the company's ability to prove that it has a quality system in place which is adhered to. Specific criteria are used to evaluate the performance of the companies that apply for the Award...*

*The National Quality Awards Criteria are designed to keep abreast of ever increasing competition and to improve performance. The criteria serve to:*

- *\_ Acknowledge and encourage quality efforts in the organization*
- *\_ Create a notional medium for business excellence*
- *\_ Sensitize companies to the merits of the quality systems.*
- *\_ Motivate companies to achieve and maintain high standards<sup>11</sup>."*

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<sup>11</sup> <http://www.jbs.org.jm/nqa/brochure.pdf>

It is impossible to reconcile the OUR’s insistence that in the absence of regulation there is no incentive for operators to offer a quality service, with Digicel’s actual performance and the objective recognition (both by the OUR and Consumer Affairs Commission) that Digicel already offers the level of customer focus that the proposed regulation seeks to introduce. Digicel questions the validity of the OUR’s conclusions on the level of customer service currently offered to mobile subscribers.

The OUR is suggesting that an automatic credit should be applied to the customer’s account in circumstances of a breach. However, it has failed to confirm who is responsible for proving that a breach has occurred. Who will lay claim to the breach? Will customers receive a credit for a breach which (in the customer’s view) may well be insignificant or inconsequential? If the OUR intends to take on the responsibility of policing and prosecuting the breaches this will significantly increase its already substantial workload.

### **3.2**

The OUR has set out an exception to the application of the compensation. Digicel would add that compensation is not applicable in circumstances where the customer also is in breach of its obligations. For example, it is clearly inequitable if a customer is in arrears, or violates usage policy etc, but would be in a position where they would obtain financial benefit if an operator failed to offer an ‘appropriate’ level of service.

## **Chapter 5 – standards for mobile**

In light of the above comments in relation to the existing strong incentives to comply, Digicel reiterates that the OUR has failed to make out an adequate case for the regulation of quality of service. Notwithstanding this, Digicel has still provided comments on the proposed parameters set out in Chapter 5 of the consultation document.

One of the key issues for the OUR to be guided by is that it is essential that its parameters accord with industry standards. Operators have made significant investments in



infrastructure that comply with these standards, and the OUR cannot simply devise its own figures<sup>12</sup> and expect operators to reconfigure their networks on that basis.

Is the OUR suggesting that currently customers are inadequately informed about the current level of quality of service in the mobile market? Digicel firmly believes that customers’ first hand experiences are far more effective than a published set of monthly data. For example, customers are very much aware what network offers the greatest coverage or the lowest level of drop calls and are guided by this in reaching their decision. In a competitive environment, companies can easily compete on quality of services and price. To intervene in such market may be more detrimental than rewarding to consumers, as an operator may choose to trade off quality of service for price.

*Dropped/blocked call rate*

The proposed standards are not clear. For example, the OUR must clarify whether these proposed standards are to be examined on the basis of a network or individual cell site level. In the absence of information to the contrary, Digicel has assumed that the OUR will assess the network as a whole, however if it intends to impose quality of service standards on individual cell sites, it should note that this would incur significant additional costs.

*Network availability*

The OUR must confirm whether the proposed standard relates to a percentage of the population or a percentage of geographic coverage of Jamaica.

[...]

In addition to the points made above, the OUR should also clarify the following:

*Handsets*

The OUR believes it is the operators’ responsibility to see that the handsets sold are operable. It is important to note that not all operators offer handsets as part of their bundle.

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<sup>12</sup> At pages 22-24 of the consultation document, the OUR presents a comparison of the proposed and existing fixed line services in Jamaica and other selected countries. Digicel has chosen to focus its response on the proposals in relation to GSM and ISP (for obvious reasons); however we seriously question whether standards in Canada, Nigeria, Saudi Arabia and India are comparable markets to Jamaica.

The OUR must ensure that any legal liability for a failure to offer operable equipment rests with the appropriate provider.

How does the OUR propose to reflect the fact that the quality you receive as a customer is to a certain degree dependant on which handset you select? A certain handset will give you a lower quality service and also different handsets work differently on different networks - a handset that works perfectly well in C&W’s network might drop significantly more calls in our network and vice versa. Is the OUR asserting that Digicel can only offer specific handsets so as to comply with the quality of service parameters – if so, how does it intend to address the telecoms needs of those citizens who cannot afford or do not wish to own such equipment?

*Planned outages*

The OUR must define the term “outage”. If the service will be disrupted for 5 minutes between the hours of midnight and 1am, is the OUR seriously stating that Digicel must inform its entire customer base? This is not only disproportionate, but Digicel questions whether any such notification would have any intrinsic value to the customer (if not, surely it should not be undertaken).

Further, does the notification requirement apply at a network or individual cell site level? If Digicel plans to work on 1 cell site, does the OUR propose to require it to give its entire customer base 48 hours notice?

*Signal strength*

How does the OUR plan to treat the issue of signal strength variances? By definition, with a wireless network there will always be locations within a coverage area where the signal is weak or even non existent. Does the OUR propose to require operators to offer 100% throughout Jamaica? If so, what cost recovery mechanisms will the OUR put in place to offset the huge additional investments in new base stations that will be required?

*Congestion*

Where congestion occurs at the interconnect interface – which operator should be held liable for any failure in network performance? In the absence of direct mobile to mobile

interconnection between Digicel and bmobile, a single point of network failure exists. This issue has been outstanding for some time (awaiting OUR resolution). Does the OUR intend to make direct interconnection a reality prior to imposing any quality of service regulation, as in the absence of this interconnection, Digicel's ability to comply with certain technical standards is adversely impacted.

*Billing accuracy*

In general, billing errors are more likely to be widespread as opposed to impacting on one or two invoices. Given this fact, Digicel questions whether the proposed quality of service parameter on this issue is appropriate.

**6 – Standards for ISPs**

*Installation*

The OUR does not appear to take proper account of the fact that not all ISPs use existing infrastructure to deliver their services and so may have to devote time to the installation of new equipment. Further, no distinction is made between business and residential customers and their installation needs may be very different.

[...]

[...]

[...]

[...]

For emerging services, the OUR must ensure that any proposed regulation does not stifle innovation. For new services, teething problems will occur and “early adopters” may well be happy to accept these problems in return for getting new services quickly. Undue quality of service regulation of these new services will not only have the effect of delaying their introduction, but may even lead to a failure to launch certain services at all, e.g. where technology constraints exist. If customers are not concerned about the level of

service they will receive for these new products, it is difficult to understand why the regulator should be.

[...]

#### *Fault clearance*

In general, there are two main types of faults i) network based and ii) customer end / site. There also tends to be different levels of priority depending on the nature and severity of the fault that has occurred.

The OUR has failed to make any distinction between the different types of fault which can occur and fact that (for type ii) the resolution of these faults are to a great extent within the control of the customer, not least because it is very dependant on the nature of the issue and the access Digicel is given to customers' system. Therefore, by the very nature and logistical complexity in resolving these issues can be open ended.

#### *Service Disruption*

The term "disruption" must be defined by the OUR.

#### *Reconnection*

The reconnection time will to a large extent depend on the method of payment selected by the customer. If we have a customer with a history of late payment and defaults on payments, Digicel must retain the ability to undertake further checks to ensure that the payment has been made, in order to minimise its bad debt exposure.

Digicel notes that the OUR has included a requirement to ensure that reconnection is made within 24 hours of payment of overdue amounts. [...] In the interests of proportionality and legal certainty the OUR must not impose any requirement which would require a significant amendment of existing processes without clear justification, and as Digicel has stated repeatedly, the OUR has failed to provide this justification.

#### *Basic guidelines*

Digicel questions whether all of the information is likely to be of any intrinsic value to customers. If we assume that the justification for the regulation is to offer the customer

protection, then surely this must be limited to providing them with data that is actually useful. One of the proposed OUR requirements is to inform customers about the basic network elements and their interconnection configurations – this is clearly not of importance to a residential customer.

### **Chapter 7 – pre paid calling cards**

The OUR should define the term “pre paid calling card” as it is not entirely clear which services will be covered by this chapter.

### **Chapter 8 – force majeure provisions**

#### **8.1**

Notwithstanding the aforementioned concerns about the lack of demonstrable customer benefit, Digicel questions the practical ability of operators giving the OUR 24 hours notice of a force majeure event. Further, in such an event the OUR may not even be able to accept such a notification. Digicel suggests that the text of any final document be amended to state that an operator would notify the OUR of the event as soon as reasonably practicable.

#### **8.2**

The term “persistent substandard performance” must be clarified. Digicel questions whether the remedial action proposed is proportionate. Further, Digicel is concerned about the lack of any clear process leading up to the time that the OUR may make a recommendation to the Minister to suspend/revoke an operator’s licence for a persistent failure to comply. In the interests of natural justice the specified process must (inter alia) include the following steps: prior notification of the number of instances which would give rise to such a recommendation, the operator must be given prior notice of any OUR intention to make a recommendation to the Minister, the operator must be afforded a chance to be heard and also to rectify its performance and finally any decision to suspend/revoke a licence must be appealable.

Clearly all standards are not created equal. If the operator fails to answer calls in twenty seconds it is preposterous to believe this can or should lead to revocation of licence. Certain standards may be singled out because breaches, or continued breaches are unquestionable indications that the service provider cannot effectively provide the service to any appreciable level to the public. Nothing short of such a determination can lead to revocation of licence again after proper procedures are in place for the investigation of the breach and appeals from any findings of breach.

## **Conclusion**

In conclusion, Digicel would like to reiterate that the OUR has systematically failed to provide any objective evidence of the need for such intervention in the mobile and ISP markets. Digicel assumes that the OUR has mistakenly reached the conclusion that regulation is necessary as it has failed to take proper account not only of the significant commercial incentives which already exist to secure the provision of a high quality of service, but also the fact that (by its own admission in the 2007 report) Digicel already offers an exemplary level of service in the absence of regulation. It is not clear why the OUR considers that Digicel does so unless it is to its commercial advantage to do so in competitive markets where customers can easily switch provider if they are dissatisfied.

The OUR admits that its resources are limited. As such, Digicel would respectfully suggest that it focuses its efforts on issues where there is a clear, demonstrable consumer detriment or anti-competitive behaviour. There are a number of significant regulatory issues which remain outstanding (and have been so for a number of years) and Digicel believes that the OUR should concentrate its efforts on these areas, as opposed to unduly seeking to extend its remit in the absence of clear objective justification.

Finally, and perhaps most significantly, the OUR has failed to undertake a cost benefit analysis and further to take account of the significant additional costs which would have to be incurred to comply with the proposed standards. The OUR already operates a cost recovery mechanism in the water sector, and if (notwithstanding Digicel's concerns) seeks to continue with the proposal, similar arrangements must be established for the telecoms sector.

Digicel understands and fully appreciates the OUR’s wish to impose obligations to secure a similar level of service in monopoly markets where customers are effectively constrained by the lack of alternative providers to accept any level of service. However, the same simply cannot be said for the mobile and ISP markets.