



# LIME's Response to the Office of Utilities Regulation (OUR) NPRM on Resolution of Interconnection Disputes in the Telecommunications Sector

October 21, 2014

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## 1. Executive Summary

- 1.1. Cable & Wireless Jamaica Limited, trading as LIME (“**LIME**”), is pleased to respond to the OUR’s NPRM on **Resolution of Interconnection Disputes in the Telecommunications Sector**. LIME expressly states that failure to address any issue raised in this consultation process does not necessarily signify its agreement in whole or in part with the OUR’s proposal. LIME reserves the right to comment on any issue raised in the consultation at a later date.
- 1.2. LIME supports the establishment of regulation(s) and procedures to resolve interconnection disputes in the telecommunications sector. Its comments are intended to ensure the effectiveness and appropriateness of the Rules agreed upon.
- 1.3. LIME’s response is structured based on the OUR’s proposed Rules.
- 1.4. All responses to this document should be sent to Charles Douglas, Regional Regulatory Advisor, LIME, at [charles.douglas@lime.com](mailto:charles.douglas@lime.com).

## **2. Discretion to Hear Disputes: Rule 3**

**2.1.** Rule 3(2) states, ***“Except where a party to the dispute is a dominant public telecommunications carrier, the Office reserves the right whether to hear a dispute that it considers to fall within its statutory remit.”***

**2.2.** LIME considers that the above rule is vague and recommends that the Office provides a list of matters which it will not hear, notwithstanding the party to the dispute.

## **3. Intervention by the Office in a Dispute: Rule 5**

**3.1.** Rule 5(2) states, ***“Where the Office on its own initiative, intervenes in a dispute, the Office shall give such directions as it thinks fit.”***

**3.2.** LIME is concerned about this provision since it has the potential for allowing inconsistent behaviour by the Office who may intervene in certain types of disputes and not others. Will the Office’s decision to intervene be based on the types of matters? The parties involved? The period over which the dispute spans? Or a combination of these factors? LIME asks that the OUR provide the Industry with additional details since its approach should give the Industry confidence that justice has been served.

## **4. Assessment of Dispute: Rule 7**

**4.1.** It is LIME’s understanding that Rule 7 deals collectively with instances where a Notice of Request is sent to the Office and when the Office intervenes on its behalf. The effect is that the proposed rules are not clear and LIME recommends that the rules treating with one circumstance or the other be separated (not combined) to facilitate clarity of what is intended and allow LIME to better understand what is intended.

**4.2.** Rule 7(2) refers to a “complaint” or “a Notice of Request and the Affidavit”. LIME queries the inclusion of “complaints” in this Rule. It considers that the treatment of bare complaints should be dealt with in Rule 4, and kept separate from the formal Notice of Request.

4.3. Under Rules 7(3) and 7(4), it is not clear how much time the parties will be given to respond when the Office decides to intervene and require an indication of the nature of the dispute from them? Further, the time for that Office take to decide whether a formal hearing is to be held or not, is also unclear. LIME asks that the Rule(s) include specific and reasonable timelines.

4.4. LIME asks the OUR to indicate the length of the “assessment phase” referenced in Rule 7(4).

4.5. Rule 7(6) provides that **“The Office shall decide to whether or not proceed to conduct a formal hearing, on a case by case basis”**. LIME considers that this Rule is too discretionary and require guiding principles to be added engender confidence in the Rule.

## 5. Service of Notice of Request and Affidavit: Rule 9

5.1. Rule 9(1) provides for service of the Notice on the Respondent by the Plaintiff in 3 days. This is in conflict with Rule 7 which provides for the Office to serve on Respondent in 5 days. LIME asks the intended timeline to be consistently applied.

## 6. Filing of the Response: Rule 10 & Service of the Response: Rule 12

6.1. Given that the Respondent is to file its Response in 10 days after receipt from the Plaintiff and files Notice of Service with the Office in 3 days; how does this affect the OUR’s assessment process outline in Rule 7?

## 7. Constitution of Panel: Rule 17

7.1. Rule 17 states ***“The Panel shall consist of one or more members of the Office. The Office reserves all rights and sole discretion with regard to the constitution of the Panel in relation to the number of members as well as the selection of Chairman”***..

7.2. LIME is concerned that this proposal if accepted can potentially result in allegations of bias if a Plaintiff or Respondent is displeased with the constitution of the Panel. It may be more prudent for a permanent Panel to be named e.g. General Counsel, Head of Policy and the Director General.

## **8. Rules 18, 19, 20, 21, 24 & 26**

**8.1.** LIME seeks answers to the following questions;

- 8.1.1. How long after the meeting to determine the preliminary timetable does the Pre-meeting takes place?
- 8.1.2. How long after the Pre-Meeting can a decision can be made based on Affidavits only?
- 8.1.3. Are the appearances before the Panel separate? Or are both parties present?

## **9. Compliance with the Panel's Decision: Rule 33**

**9.1.** Rule 33(2) states that, ***“The decision of the panel is subject to reconsideration by the Office, pursuant to Section 60(4) to (8) of the Act”***

**10.** LIME is concerned that this Rule is likely to lead to allegations of bias against the Office, since the Panel is constituted by the Office and the reconsideration is heard by the Office. *Prima facie*, this provision does not change the way the Office currently operates. Complaints are made to the Office and the Office makes a determination. An aggrieved person can apply to the Telecoms Appeal Tribunal. However, with the creation of the Panel, it can be argued that an application for reconsideration from the Panel to the Office is an unnecessary step, and appeals should go directly to the Tribunal.

## **11. Conclusion**

- 11.1.** It is very important that any Rules/Regulation(s) established to resolve interconnection disputes are not just reasonable and fair but timely. In disputes of this nature more often than not, time is off the essence.
- 11.2.** LIME looks forward to commenting on the Industry comments.

**End**