

Abstract

The functions of the Office of Utilities Regulation ("The Office") as prescribed by Section 4(I) of the Telecommunications Act, 2000 ("The Act") are to regulate telecommunications in Jamaica. In carrying out its functions the Office is required to, inter alia:

- promote competition among carriers and service providers;
- regulate specified services and facilities; and to
- promote the interest of customers.

The Act mandates the Office to prescribe rules to arbitrate pre-contract disputes - sections 34(2), 79(3) & 80(2).

By way of a Notice dated February 21, 2001, the Office released its determination with regard to the terms and conditions under which Cable and Wireless Jamaica is to allow competing mobile carriers to interconnect with its network. Annex A to that document set out the proposed rules relating to interconnection and the arbitration of pre-contract disputes. Interested parties were invited to submit comments on the proposed rules.

Submissions were made by the Fair Trading Commission, Cable and Wireless Jamaica Limited, and Digicel. The Office wishes to thank these organizations for participating in the consultation exercise.

Subsequent to the receipt of these submissions, the Office redrafted the rules incorporating such of the comments and recommended changes as were considered appropriate. This has resulted in major changes to the proposed rules, especially the mechanisms for resolving pre-contract disputes.

The Office is again inviting written comments from interested parties. These should be submitted no later than July 31, 2001 to:

C. Courtney Jackson
Deputy Director General
Office of Utilities Regulation
3rd. Floor,
PCJ Resource Centre
36 Trafalgar Road
Kingston

Additional copies of this document will be available at the OJR's Web site at <http://www.our.org.jm>

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COMMENTS FROM INTERESTED PARTIES

Persons who wish to express opinions on the contents of this Notice of Proposed Rule Making (NPRM) are invited to submit their comments in writing to the OUR. Comments are invited on all aspects of the proposed rules and in particular the various options for resolving pre-contract disputes.

Responses to this NPRM are requested by July 31, 2001 and should be sent by post, or fax to:-

C. Courtney Jackson
P.O. Box 593, 36 Trafalgar Road, Kingston 10
Fax: (876) 929 3635

Any confidential information should be submitted separately and clearly identified as such. In the interests of promoting transparent debate, respondents are requested to limit as far as possible the use of confidentiality markings.

Arrangements for viewing responses

To allow responses to be publicly available, the OUR will keep the responses that it receives on files, which can be viewed by and copied for visitors to the OUR's Offices. Individuals who wish to view the responses should make an appointment by contacting **Leisa Gregory** by one of the following means:

Telephone: (876) 968 6053 (or 6057)
Fax: (876) 929 3635

The appointment will be confirmed by a member of the OUR's staff. At the pre-arranged time the individual should visit the OUR's Offices at:-

3rd Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10.

The individual will be able to request photocopies of selected responses at a price, which just covers the cost to the OUR.

Introduction

The Office regulates telecommunications in accordance with the Telecommunications Act, 2000 and is hereby constituted to establish rules for regulating matters within the Office's responsibility and in accordance with the Act.

The Office intends to issue a consultative document covering the general powers and procedures of the Office and the mechanisms and processes at its disposal in carrying out its responsibilities under the Act and the resolution of issues within the scope of the Act.

The Office is mandated to regulate interconnection and wholesale arrangements. With regard to interconnection, the Office undertakes the assessment of a Reference Interconnect Offer (RIO) filed by a carrier and guides the overall process of reaching agreements between carriers. In carrying out its responsibility for making an assessment of the RIO and determining the terms and conditions that should be reflected in interconnection agreements between carriers, the Office engages in a public consultative process to aid the decision-making. This document sets out the rules that will guide the process for the filing of RIOs, the assessment of the Offer, the process for resolving pre-contract disputes and the process that would be followed in the event that the Office finds an objection to an agreement once filed.

Rules For Interconnection

A. Reference Offer of Interconnection by a dominant carrier

The dominant carrier shall file with the Office a proposed Reference Interconnection Offer (RIO) setting out the terms and conditions upon which other carriers may interconnect with the public voice network for the provision of voice services.

1. Assessment of a RIO

Upon filing of an interconnection offer the document is considered to be upon the public record and the submitting carrier is to make the document publicly available. The Office shall issue a public notice that the interconnection offer is on file and set out the procedures for review and assessment of the proposed RIO.

The rules for the particulars to be contained in a RIO and assessment of a RIO are set out in Annex A and Annex B.

Interconnection agreements negotiated between the dominant carrier and any other carrier upon filing will be reviewed by the Office for consistency with the approved RIO.

B. Interconnection Agreements.

1. Rules for arbitration of pre contract disputes

During the course of negotiations of interconnection agreements, where a dispute arises, either party may refer the dispute to the Office for resolution. Rules applicable to dispute resolution processes and arbitration of pre-contract disputes are set out in Annex D

Interconnection Agreements between carriers are to be filed with the Office. The Office may object to the provisions within an Agreement where it finds the provision therein to be inconsistent with the overall terms and conditions of the approved interconnection offer. This may occur where the terms and conditions entered into are deemed to unfairly discriminate against another carrier or service provider, is unjust, or materially damages the interests of customers.

Where such a determination is made the parties will be asked to amend or resubmit the proposed agreement to reflect the Office's decision.

2) Resolution of disputes during the tenure of the agreement

Either party to an agreement may make an application to the Office for an interpretation or resolution of a dispute should an issue of contention arise during the course of an Agreement.

Annex A: Particulars to be Contained in Reference Interconnect Offers (RIOs)

- 1.1 A reference interconnection offer (RIO) shall:
 - 1.1.1 Designate one or more points of interconnection at which the provider will permit physical interconnection, setting out the exact location of relevant switches.
 - 1.1.2 Set out applicable technical specifications regarding interconnection, including:-
 - (a) detailed description of the interconnection interface(s) and the signalling protocol used;
 - (b) non-discriminatory measures or restrictions that are necessary to ensure network security or integrity;
 - (c) service level parameters, including financial penalties, availability, security, efficiency and synchronization;
 - (d) traffic routing and numbering arrangements; and
 - (e) arrangements for submitting trouble reports, and handling and clearing faults.
 - 1.1.3 Specify a list of interconnection services, including a detailed description of each service and any service-specific terms and conditions.
 - 1.1.4 Identify the price to be paid for the provision of each interconnection service, showing the unit of billing and charging, and separately identifying any supplementary charges.
 - 1.1.5 Specify conditions governing service provision, including traffic forecasting arrangements and the maximum implementation times for interconnection circuits and other services.
 - 1.1.6 Set out arrangements for the reciprocal sizing of interface equipment and for testing the operation of interfaces and the end-to-end operability of services subject to interconnection.
 - 1.1.7 Include standard commercial provisions governing such matters as:
 - (a) billing and collection procedures;
 - (b) exchange of information necessary to facilitate interconnection;
 - (c) protection of the confidentiality of such information, including as between different parts of the carrier's businesses;
 - (d) definition and limitation of liability;
 - (e) indemnification;
 - (f) notifications;

- (g) default; and
- (h) termination.

1.1.8 Any other provisions which the Office determines from time to time to be relevant or in the public interest.

1.1.9 Set out post-contract dispute resolution procedures.

1.1.10 Set out the procedure in case of proposed changes to the terms and conditions of the interconnection agreement, including the introduction of new interconnection services.

Annex B: Assessment of Reference Interconnect Offers

- 2.0 A dominant public voice carrier shall submit its Reference Interconnect Offer (RIO) to the Office in both hard copy and electronic format pursuant to section 32(2) of the Act. A non-dominant public voice carrier may lodge a RIO with the Office, pursuant to section 32(1).
- 2.1 Within seven (7) working days following the lodging of a RIO or amended RIO with the Office by a carrier, that carrier ('the submitting carrier') shall make available to the public, on request, copies of the RIO either in hard copy or in electronic form. The said carrier shall be deemed to fulfil this requirement if it posts the RIO in its entirety (including, definitions, legal framework, description of service, tariffs) on its Website. Where hard copies are provided a carrier may require a reasonable charge for copying.
- 2.2 Where a carrier is deemed to be dominant, the Office shall assess its RIO and in doing so it may approve or reject the RIO in whole or in part.
- 2.3 In assessing a RIO the Office shall consider whether it is consistent with the objectives and principles set out in the Act and such other matters that the Office believes are relevant.
- 2.4 Before making a determination to approve or reject a RIO, in whole or in part, the Office shall consult with such persons as it reasonably considers are interested parties and it shall have regard to submissions received in that consultation process.
- 2.5 On completing its assessment the Office shall, subject to paragraph 2.4, issue a determination in writing approving the RIO either in whole or in part. The determination notice shall include a reasoned explanation for the decision. The submitting carrier shall, within twenty (20) working days following a determination by the Office, amend its RIO in conformance with the said determination notice and lodge it with the Office.
- 2.6 The Office, in its determination, may:
 - (a) require the submitting carrier to offer amendments to the relevant terms and conditions of its RIO and to lodge the amended RIO with the Office; and or
 - (b) direct the relevant terms and conditions that the submitting carrier shall incorporate in its RIO.
- 2.7 If the submitting carrier wishes to amend its RIO, or any part thereof that has not taken effect (i.e. has not previously been approved by the Office),

the submitting carrier shall lodge the amended RIO in its entirety and shall in addition submit a separate document, setting out the amended parts and the reasons for the amendments. The Office shall adopt the same procedure and criteria as set out above for the assessment of the original RIO.

- 2.8 Submissions to amend a RIO shall be subject to the publication requirements as stated at 2.1 above.

ANNEX C: Objection to Interconnection Agreements

- 3.0 Each party to an interconnection agreement shall lodge with the Office a copy of the agreement within seven (7) working days following its date of signing.
- 3.1 Within forty-five (45) working days from the date at which an interconnection agreement has been lodged with the Office, the Office may issue a public notice in writing objecting to the agreement or any part thereof. The notice shall identify the 'adverse effects' (3.2 below) and shall be accompanied by an explanation of the reasons for the objection.
- 3.2 The Office may make an objection if it considers that the interconnection agreement or any part thereof has adverse effects, which shall include any term or condition that:-
 - (a) unfairly discriminates against other carriers or service providers, or is likely to have the effect of substantially lessening competition in a market;
 - (b) materially damages the interests of customers;
 - (c) likely to damage the health and well-being of users of the service;
 - (d) is harmful to the environment.
- 3.3 Before making a determination on terms and conditions, the Office should be satisfied on reasonable grounds that there is no other action which it could take to prevent that agreement from having the adverse effects identified.
- 3.4 Where the Office finds an interconnection agreement objectionable, either in whole or in part, the Office may:
 - (a) require the parties to offer amendments; or
 - (b) direct the terms and conditions to be incorporated in the amended agreement. The amended agreement shall be lodged with the Office within seven (7) working days of the determination.

Annex D: Resolution of Pre-Contract Disputes

Voluntary Alternative Dispute Resolution Process

4.0 In order to facilitate negotiated resolutions of any dispute concerning a request for interconnection and/or wholesale agreements pursuant to the Act, the parties are encouraged to pursue any method of alternative dispute resolution agreeable to them, including, without limitation, mediation or private binding arbitration.

Mediation

4.1 Any party negotiating a request for interconnection or a wholesale agreement pursuant to the Act may request, in writing, at any time, that the Office assist the parties by mediating any differences that have arisen in the negotiations. One (1) copy of the request shall be filed with the Office and a copy shall be served on each of the other parties involved in the negotiations. The request shall identify the parties involved in the negotiations, the potential issues for which mediation may be needed, and an estimate of the time period during which mediation will be pursued.

4.2 The Office shall appoint a member of the OUR to be mediator and shall notify the parties accordingly. The mediator may participate in any subsequent arbitration proceedings on the matter. The mediator shall work with the parties to establish an appropriate schedule and procedure for mediating any disputes. The mediator's role shall be limited to assisting the parties in attempting to reach an agreed resolution of the issues.

4.3 No official record of the mediation proceedings shall be taken and only parties to the negotiation may participate in the mediation proceedings.

Informal Settlement Conference

4.4 Either party to the negotiation of an interconnection and/or wholesale agreement may request the Office to convene an informal settlement conference by filing three (3) copies of a written request with the Office specifying the issues to be resolved and, on the same day, delivering a copy of the request to the other party (respondent) to the negotiation from which the dispute arises. The request shall include the name, address, telephone number, facsimile number, and, if available, e-mail address of each party to the negotiation and the requesting party's designated representative.

4.5 The Office shall notify the parties of the time, date, and location of the settlement conference, which, if held, shall be conducted no later than ten business days from the date the request was filed. The Office may require the respondent to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference. If the parties are in

disagreement as to the need of a settlement conference, the Office may deny the request for good cause.

Arbitration of Pre-Contract Disputes by the Office

4.6 Request for Arbitration.

4.6.1 Any party to negotiations concerning a request for interconnection and/or the resale of a carrier's international and/or domestic switched voice minutes may file three (3) copies of a Notice of Request for Arbitration with the Office.

4.6.2 Notice of Request for Arbitration should be sent to the other party on the same day it is filed with the Office.

4.6.3 The Request for Arbitration shall include:

- (i) the name, address, telephone number, facsimile number, and, if available, e-mail address of each party to the negotiations and the party's designated representative;
- (ii) a description of the parties' efforts to resolve their differences by negotiation;
- (iii) A list of the unresolved issues and the position of each of the parties with respect to those issues as well as all relevant documentation; and
- (iv) a list of the issues that have been resolved by the parties.

4.6.4 A Request for Arbitration shall be addressed and delivered to:
The Director General
Office of Utilities Regulation

Kingston -----

Or at such other address as may be notified from time to time.

4.7 Where a Notice of Request for Arbitration does not meet the requirements set out in 4.6 the Office may dismiss the Request without prejudice to these rules.

4.8 The Office may dismiss a Request for Arbitration or refer the matter to the petitioning party if:

- 4.8.1 the notification of the dispute was vexatious;
- 4.8.2 the subject matter of the dispute is trivial, misconceived or lacking in substance;

- 4.8.3 a party to the arbitration of the dispute has not engaged in negotiations in good faith;
- 4.8.4 neither party to the negotiation is a dominant carrier;
- 4.9 Withdrawal of Request for Arbitration
 - 4.9.1 The party who has filed a Notice of Request for Arbitration may at anytime after the filing withdraw the request by Notice in writing to the Director General and to the other party who would have previously received copies of the Notice.
 - 4.9.2 The Notice of withdrawal shall be sent to the other party on the same day it is filed with the Office.
- 4.10 Parties to the Arbitration

Only parties to the negotiation may participate as parties in the arbitration hearing. If the Arbitration Panel is of the opinion that the resolution of the dispute may require material action by another person, that other person may be invited to participate.
- 4.11 Response
 - 4.11.1 Acknowledgement of receipt and response by the non-petitioning party must be filed with the Office within ten (10) working days after receipt of the Request for Arbitration.
 - 4.11.2 Any non-petitioning party to the negotiation may respond to the Request for Arbitration by filing three (3) copies of the response with the Office and serving a copy on the other party to the negotiation.
 - 4.11.3 The response shall indicate any disagreement with the matters contained in the Request for Arbitration and may provide such additional information as the party wishes to present.
- 4.12 Arbitration Panel.

The Arbitration Panel shall consist of one or more members of the Office. The arbitration panel may seek independent expert advice on issues as it deems necessary.
- 4.13 Pre-hearing Conference; Challenges

As soon as practical the Arbitration Panel shall schedule a pre-hearing conference with the parties to the arbitration. At the pre-hearing conference, parties shall raise any challenges to the inclusion of any issue identified for arbitration in the petition. If such challenges are not raised at the pre-hearing conference, they shall be deemed waived by the parties. The Arbitration Panel shall serve, on the parties, orders ruling on

challenges within five (5) working days of the conclusion of the pre-hearing conference.

4.14 Discovery Issues.

Parties may obtain discovery by submitting requests for information that may include requests for inspection and production of documents, requests for admissions, and depositions by oral examination.

4.15 Confidentiality

The proceedings of an arbitration process will be conducted in private and the filings confidential to the affected parties. Where, within an arbitration proceeding, a party claims information submitted as part of the proceedings is confidential, the party must submit reasons supporting the claim of confidentiality and notify the other parties of such a claim. The other party(s) may respond to the claim of confidentiality, challenging the supporting rationale. Such challenges will be heard at the pre-hearing conference and the Arbitration Panel will rule on the matter within five days of the pre-hearing. Claims of confidentiality must demonstrate that specific direct harm will result to the claimant or party claiming confidentiality.

4.16 Notice

The arbitrator shall make arrangements for the arbitration hearing, which shall be scheduled within 30 days after the Director General receives a complete Request for Arbitration. The Arbitration Panel shall notify the parties, not less than ten (10) days before the hearing, of the date, time, and location of the hearing.

4.17 Record of Hearing

A stenographic record shall be made of the hearing by an official court reporter appointed by the Office. Either party may purchase a copy of the transcript. Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process

4.18 Hearing Procedures

4.18.1 The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing.

4.18.2 The Arbitration Panel has broad discretion in conducting the arbitration hearing and has the authority to regulate its own proceedings having regard to the rules of natural justice.

4.19 Pre-filed Evidence.

Parties to the hearing shall provide their direct cases to the arbitrator at least ten (10) working days prior to the hearing unless the arbitrator

establishes a different deadline. Three copies of the direct case shall be filed with the Office. A copy shall be provided to each of the other parties to the hearing at the same time it is provided to the Office. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The prepared case shall present the entirety of the party's direct evidence on each of the issues in controversy and shall serve as the party's complete direct case.

4.20 Brief(s)

4.20.1 The Arbitration Panel may require the parties to submit post-hearing briefs or written summaries of their positions.

4.20.2 The Arbitration Panel shall determine the filing deadline.

4.21 Power to Take Evidence on Oath

The Arbitration Panel has the power to summon witnesses and take evidence under oath.

4.22 Determination by Arbitration Panel

4.22.1 The Arbitration Panel shall endeavor to issue a final decision on the arbitration within thirty (30) working days after filing of any post-hearing briefs, unless waived by the parties.

4.22.2 The final decision and report of the Arbitration Panel shall be based upon the record of the arbitration hearing. The Arbitration Panel may agree with the positions of one or more of the parties on any or all issues or may offer an alternative resolution on any or all of the issues.

4.22.3 The final decision and report of the Arbitration Panel shall include:

- (i) a decision on each of the issues presented for arbitration by the parties;
- (ii) a statement of any conditions imposed on the parties;
- (iii) a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

4.22.4 The Arbitration Panel, in making a determination, shall take account of the provisions of the Act and such other matters as the Arbitration Panel considers relevant.

4.22.4 The final decision and report of the Arbitration Panel shall be a matter of public record and shall be delivered to all parties of record in the arbitration. The Arbitration Panel shall notify the parties by facsimile or electronic mail of the decision on the day that it is made.

4.23 Compliance with Decision of the Arbitration Panel

Once a decision has been made by the Arbitration Panel the parties to that arbitration are bound, and must comply in full.

4.24 Consolidation.

Consistent with the Act, the Arbitration Panel may, to the extent practical, consolidate separate proceedings in order to reduce the administrative burdens on the parties and the Arbitration Panel. The Panel may consolidate separate applications for approval of negotiated or arbitrated agreements as appropriate. The Arbitration Panel may consolidate the arbitration proceeding and the approval process for any arbitration conducted by the Arbitration Panel.

