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Office of Utilities Regulation

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# **PROPOSED DECISION ON SETTLEMENT RATES AND TERMINATION CHARGES**

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## **A Notice of Proposed Decision**

Document No : Tel 2004/05  
April 20, 2004



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**OFFICE OF UTILITIES REGULATION**

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### **Notice of Proposed Decision on Settlement Rates as of May 3 2004**

This document provides notice of the Office's intention to issue a further decision on international settlement rate and termination charges. In view of this Notice interested parties are invited to submit comments to the Office by **April 28, 2004**. The Office will then proceed to issue a determination notice (which will take account of all comments received) on **May 3, 2004**.

Persons who wish to submit comments on the proposed decision set out in this document are invited to submit their comments in writing by the date stipulated above to the OUR. Such responses should be sent by post, fax or e-mail to: -

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#### **BACKGROUND**

The Office, pursuant to the provisions of Section 4(3) (a) of the Office of Utilities Regulation Act 1995, as amended and Sections 4 (f) and 4.4 respectively of the Telecommunications Act 2000, with the clear intention of encouraging and promoting competition among carriers and service providers, issued an Interim Decision ("the Decision") dated January 23, 2004 on Settlement Rates following two Ministerial Directions issued to it by the Minister of Commerce, Science and Technology namely Directive 01/2004 Tel and Directive 02/2004 Tel respectively. The salient features of those directives and the respective interim decision taken by the Office are set out in the said Decision.

For ease of reference the determinations made by the Office and set out in the Decision are summarized below:

1. The minimum settlement rates for international calls terminating on a fixed network shall be US\$ 0.081
2. The minimum settlement rates for international calls terminating on a mobile network shall be US\$ 0.169

3. Cable & Wireless Jamaica's application for a termination rate of US\$ 0.05 for incoming international calls on the fixed network is approved.
4. The maximum termination rate for international calls for a mobile network is US\$ 0.138.
5. The effective time of the above determinations is 12.01 a.m. January 24, 2004.
6. All locally licensed international carriers are to provide the Office within five days of a calendar month information pertaining to:
  - a. Contract details with each correspondent foreign carrier indicating prices, volumes, points of handing over traffic and other terms of the contract for traffic terminated in Jamaica in the calendar month.
  - b. The volumes of traffic obtained from each foreign carrier for termination for fixed and mobile networks
  - c. Any other information that the Office may from time to time consider relevant and necessary to ensure competition in the market

The Decision by way of intervention of the Office was geared to -

- (a) "stabilize the market pending investigation and consultations on further measures that may be necessary"
- (b) allow the Office time to obtain further information relevant to the operation of the sector which it was envisaged would put it in a position to issue a final determination on the issues raised in the Decision.

In keeping with the interim nature of the Decision there were revisions to the Decision, by way of a modification dated February 20, 2004. A further review that was set for April 1, 2004 was pre-empted by an order issued by the Telecommunications Appeal Tribunal in response to an appeal filed by Reliant Enterprise Communications Limited against the Office's January 23<sup>rd</sup> Decision. The Tribunal's order directed that the Decision which the Office intended to come in force on April 1, 2004 be stayed until April 6, 2004. The Tribunal subsequently dismissed the appeal filed by Reliant. In addition, an Order by Mr. Justice Courtney Daye (Acting) dated March 31, 2004 granting a stay of the implementation of Determination 02/2004 dated February 20, 2004 was lifted by the Supreme Court of Judicature of Jamaica on the application of Cable and Wireless Jamaica Limited who had been added as a party to Claim No. 2004/HCV 00765 Newgen Technologies Company Limited vs. the Office of Utilities Regulation.

Concurrent with all of the events detailed above the Office's staff has been engaged in ongoing consultations via meetings and oral and written communications with various interest groups. Representatives of the Office also visited and engaged in discussions with overseas carriers and regulatory authorities in a bid to assess the extra-territorial impact of its decisions as well as to inform future regulatory decisions on the matter.

Given that the judicial and administrative fetters that prevented the Office from issuing a decision on April 1, 2004 as was scheduled are now removed the Office now proposes to proceed to issue a decision on May 3, 2004. This notice sets out the conclusions that the Office has drawn from its consultations and the position that it proposes to set out in its May 3 decision. Interested parties are invited to submit comments on these proposals to the Office by April 28, 2004 so that the Office will have the opportunity to consider whether there is any need to make adjustment to the proposals as set out herein.

### **Findings Coming out of Consultations**

The Office has found that there is significant opposition to its decisions to approve maximum termination charges of US\$0.05 for the fixed network and US\$0.138 for mobile networks. Additionally, carriers have threatened, attempted or are in the process of seeking judicial review of these decisions primarily on the grounds that the approved interim rates are not cost based.

There has also been mixed reaction to the decision to impose minimum settlement rates of US\$0.081 and US\$0.169 for incoming international calls to fixed and mobile networks respectively. Among the predominant views expressed is that it is virtually impossible to police these in such a way as to ensure compliance by all carriers.

It should be recalled that among the reasons for the imposition of minimum settlement rates and maximum termination charges was the concern to eliminate claims of margin squeeze. Indeed, the Office's initial judgment from its observations of market behavior was that a minimum margin of US\$ 0.031 was required between settlement rate and termination charges in order to ensure the viability of carriers who do not own domestic networks. The Office has found since that decision, however, that the minimum margin between settlement rate and the termination charge could be as low as US\$0.008 per minute. Notwithstanding this, the Office has expressed concerns that where such margins exist by virtue of the existence of a locally licensed operator with a foreign affiliate, it raises issues of competitive concerns to which further attention should be given.

As indicated in the Office's notice of February 20, a number of carriers also protested the time period that was given for implementation of the decision arguing that the existence of long term settlement contracts made immediate compliance virtually impossible.

### **Decisions Slated for Implementation on May 3, 2004**

The Office has reviewed the decisions taken in its notice of January 23, 2004 and proposes to make the following adjustment as of May 3, 2004:

1. The minimum settlement of US\$ 0.081 for international calls terminating on a fixed network BE REMOVED. As of that date parties involved in such transaction shall negotiate their own terms.

2. The minimum settlement rate of US\$ 0.169 for international calls terminating on a mobile network BE REMOVED. As of that date parties involved in such transaction shall negotiate their own terms.
3. The Office's INTERIM approval of Cable & Wireless Jamaica's application for a termination rate of US\$ 0.05 for incoming international calls on the fixed network BE REMOVED.
4. The maximum termination rate of US\$ 0.138 for international calls for a mobile network BE REMOVED.

Decision 6 of the January 23, 2004 Decision and as modified by the Modification of Decision on Settlement Rate, February 20, 2004 namely,

All locally licensed international carriers are to provide the Office within five days of a calendar month information pertaining to:

- a. Contract details with each correspondent foreign carrier indicating prices, volumes, points of handing over traffic and other terms of the contract for traffic terminated in Jamaica in the calendar month;
- b. The volumes of traffic obtained from each foreign carrier for termination for fixed and mobile networks;
- c. Any other information that the Office may from time to time consider relevant and necessary to ensure competition in the market;

shall continue to apply without change.

### **Underlying Reasons for Decision**

The Office accepted from the outset that the decisions issued on January 23, 2004 were issued on the basis of the information then available to the Office and would be subject to review based on the Office's receipt of better information and its assessment of the impact of its decision. The Office, at the time, also expressed some discomfort with the particular mode of intervention but argued that it was necessary to restore order to the market.

In undertaking the promised review, the Office has also had the opportunity to examine additional information from participants in the sector. Among the conclusion from this review is that the difficulties of policing minimum settlement rates at this time and within the current regulatory framework are perhaps not worth the incremental gains to the sector. In this regard, the Office now proposes to resile from its policy of fixing minimum settlement rates.

Since the minimum settlement rates established by the Office would have had to take account of some notional charges for termination on both fixed and mobile networks it was deemed necessary to stipulate such minimum charges. Beside, the Office also considered that establishing set margins between settlement rates and termination charges was the best way to deal with claims of margin squeeze in the short term. This decision was also influenced by the concern that within the current regulatory framework there are practical limitations on both the ability of the Fair Trading Commission and the Office to enforce decisions against anti-competitive practices. Since the Office is no longer proposing to establish minimum settlement rates it considers that it does not need to establish either a minimum termination charge or an explicit margin at this time, especially given that it does not currently have the information to assess that such rates are cost based. At the same time, the Office is not prepared to rule out the option of resorting to suitable international benchmarks in the absence of reliable cost based information.

It is also the case that the new regime that the Office has sought to introduce has already given rise to a number of legal challenges. A preponderance of legal challenges creates uncertainty in the sector and may stymie its development. In this regard the Office has determined that rather than subjecting the sector to long and involved litigation it is prepared to withdraw the basis for these challenges.

#### **Future Actions by the Office**

The Office proposes to complete its work on drafting rules to ensure the orderly operation of the international settlement system as provided for at Section 50 of the Telecommunications Act. In the interim and while it continues its work on cost based termination charges (see timetable at Appendix 1) the Office proposes to continue to work with the Fair Trading Commission to investigate and resolve such allegations of anti-competitive conduct as may be submitted to that body.

## Appendix 1

### TIMETABLE FOR CONSULTATION ON TERMINATION COSTS

The Office proposes to undertake a process of consultation to review Reference Interconnection Offer 5 (RIO5) which includes proposed termination charges for both fixed and mobile networks. In the case of the fixed network the Office has already made a determination of dominance and can therefore proceed to enforce cost oriented termination charges. Dominance as it relates to mobile networks is currently the subject of consultation. Whatever the results of the consultation on dominance in mobile, the Office still considers it important to determine reliable cost based termination charges for this sector. The time table below outlines the process and the time period over which the Office expects to embark on this exercise.

<i>Event</i>	<i>Date</i>
Publication of Consultation Document on network termination	Mid June 2004
Responses	Mid July 2004
Comments on Response	Mid August 2004
Second consultative document Responses	Mid September 2004
Responses	Mid October 2004
Comment on Responses	Mid November 2004 Mid
Determination	January 2005