

DOCUMENT TITLE AND APPROVAL PAGE

1. DOCUMENT NUMBER: Tel 2004/08

DOCUMENT TITLE: TERMINATION CHARGES FOR INCOMING INTERNATIONAL CALLS

2. PURPOSE OF DOCUMENT

This document provides the Office's further decision on charges for international calls terminating on fixed and mobile networks.

3. RECORD OF REVISIONS

Revision Number	Description	Date
1	Modification of Decision on Settlement Rate	February 20, 2004
2	Observation of Appeal Tribunal's Order on Settlement Rate Decision	March 31, 2004
3	Clarification of the Notice of the Office's Compliance with the Telecommunications Tribunal's Directive Issued on March 31, 2004	April 5, 2004
4	Notice of Proposed Decision on Settlement Rate and Termination Charge	April 20, 2004
5	Decision on Settlement rates and Termination Charges	May 7, 2004
6	Decision on Termination charges for Incoming International Call	June 9, 2004

5. APPROVAL

This Decision is approved by the Office of Utilities Regulation and becomes effective on June 9, 2004.

On behalf of the Office:

.....
J. Paul Morgan
Director General

June 9, 2004

.....
Date

OFFICE OF UTILITIES REGULATION

Decision on Settlement Rates as of June 9, 2004

BACKGROUND

Since January 23, 2004 the Office, has undertaken a number of regulatory interventions regarding settlement rates and termination charges. These interventions were taken 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 (the Act) and were undertaken subsequent to receipt of two Ministerial Directions from the Minister of Commerce, Science and Technology namely Directive 01/2004 Tel and Directive 02/2004 Tel respectively. In the last such intervention dated May 7, 2004 titled Decisions on Settlement Rates and Termination Charges (Tel 2004/06) the Office made the following decisions effective May 8, 2004:

1. The minimum settlement rate 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 proposed changes to termination charges for international traffic to fixed and mobile networks are in abeyance pending consideration of responses by the public to the extended consultation as well as legal advice. A decision on this will be made on May 28, 2004.
4. Decision 6 of the January 23, 2004 Decision and as modified by the Modification of Decision on Settlement Rate of February 20, 2004, shall continue to apply without change. 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.

As indicated, the decision in respect of item three above was taken in order to allow the Office additional time to consider and take legal advice on the merits of the arguments proffered by C&WJ regarding the entitlement of certain licensees to cost based interconnection. Essentially, C&WJ argued that International carriers are not public voice carriers therefore the interconnection regime prescribed by the Act does not apply.

Since the publication of that decision there has been a number of additional developments.

Firstly the Office was advised by the Minister of Commerce, Science and Technology that a decision on the funding of universal service was imminent. In view of that information, the Office took the position that it would be prudent to await such a decision before proceeding further with its determination. Secondly, as indicated in the Office's public notice dated May 31, 2004, the Jamaica Competitive Telecoms Association (JCTA) by correspondence dated May 25, 2004 made further submissions on settlement rates and termination charges.

The Office also received on May 4, 2004 a new tariff schedule from C&WJ replacing the schedule in RIO-5. The Company indicated that the proposed tariffs were based on new asset valuations submitted to the Office on January 9, 2004 which were computed based on the principles and directive set out in the Office's document titled 'Principles and Methods of Asset Valuation for Regulatory Purposes' (No TEL: 2003/06).

These issues are dealt with below in the order in which they appear above.

STATUS OF INTERNATIONAL CARRIERS AS PUBLIC VOICE CARRIERS

The Office has examined and taken legal advice on the arguments presented by C&WJ regarding the status of International Carriers as public voice carriers within the meaning of the Telecommunications Act. Additionally, a number of other interested parties have submitted responses to C&WJ's comments. The Office places the arguments submitted by C&WJ and supported in part by Digicel into two categories viz, legal and public policy.

The legal argument asserts that the Office should reverse its current policy of treating all holders of carrier licences as public voice carriers as, a literal interpretation of Section 29 (2) of the Telecommunications Act 2000 suggests that public voice carriers must operate public networks and be connected to customers. The Office is aware however that this interpretation is likely to be one of the matters that will shortly be presented to the courts for adjudication. In view of this the Office will make no further pronouncements but will continue its current practice.

C&WJ has sought to ground its public policy argument on Section 3 of the Telecommunications Act which sets out among its objectives, promoting fair and open competition and promoting the telecommunications industry in Jamaica by encouraging economically efficient investment in, and use of, infrastructure to

provide specified services in Jamaica. In this regard, C&WJ has urged the Office to determine a threshold level of domestic investment for carriers to be treated as public voice carriers for interconnection purposes.

The Office is cognizant of the imperative to expand investment in domestic infrastructure but does not consider it to be within its remit to make public policy nor to take decisions that frustrate the objective of Government Policy. It is therefore submitted that if such a limitation is to be imposed, this must first be reflected in a policy position of the Government.

Ministerial Decision on Funding of Universal Service

The Office has been advised by the Ministry of Commerce, Science and Technology via correspondence dated June 9, 2004 that effective immediately a Universal Service charge of **US\$0.035** per minute on all incoming international calls terminating on all domestic networks has been imposed. This charge shall be collected by the respective domestic network operators and will be paid to the Universal Service Fund (USF) on collection. The Minister has also indicated that this levy will be reviewed whenever the Office issues its decisions on the new tariff schedule submitted by C&WJ as replacement for that in RIO-5.

Additional Submission by Jamaica Competitive Telecoms Association (JCTA)

A May 25, 2004 submission under the signature of members of the JCTA, which has been placed in the public domain by the Office made the following recommendations regarding settlement rate and termination charges:

- *“That the Office institute an immediate temporary best estimate of the cost based termination rate (e.g. based on Rio-5 less ADC) and continue the cost based study as outlined in its May 7, 2004 document.*
- *A Universal Access Charge will be assessed on a per minute basis for international termination to be paid monthly to an independent body;*
- *The GCT will only be applicable on the cost based portion of the rate. The UAC will be applicable to all carriers who terminate international; traffic”.*

The submission further states that for the above to work to the benefit of all, the following must also be implemented:

- *“The licensed international carriers must be allowed to terminate traffic to the dominant carriers at cost based rates, as appears in the Act.*
- *The dominant carrier’s market selling rate must be regulated, including bilateral agreement.*
- *We all must work to aggressively suppress bypass operations*
- *Firm rules and/or legislation to administer the UAC so that CWJ will not be able to use it as a subsidy, nor should the government be able to use it as part of the general budget (e.g. consolidated fund, etc). Management of the fund could be modelled after the Heart Trust guidelines”.*

The Office does not propose to address all of the above suggestions in this document as some fall outside of its remit (examples the computation of GCT and the management of the USF) while others such as regulation of only dominant carriers settlement rates have been addressed in previous decisions (see Decision on Settlement Rate, Document Number: Tel 2004/02, January 23, 2004 page 3 and Observation of Appeals Tribunal's Order on Settlement Rate Decision, Document Number: Tel 2004/02).

With regard to bypass operations the Office reaffirms its commitment to continue to carry out enforcement against this practice as required by the Act and in accordance with its existing procedures and welcomes any information and assistance that the JCTA or any other interested party is able to supply or render as appropriate.

The office also takes note of the comments on regulation of the selling prices of dominant operator and reiterates its commitment to work along side the Fair Trading Commission to investigate such claims of anticompetitive conduct as are brought to the attention of that Agency.

Termination Charges

The Office advised in its May 8 Determination Notice that it would not follow through on its proposals to change the termination charges for incoming international calls to mobile and fixed network and that a decision would be made on May 28, 2004. Just before issuance of that decision the Office received a submission from C&WJ proposing a new tariff schedule for interconnection to the PSTN. The submission indicates that the new tariffs are calculated on the basis of the asset value and valuation method approved by the Office in its Determination Notice titled, 'Principles and Methods of Asset Valuation for Regulatory Purposes' (No TEL: 2003/06). C&WJ has proposed that since the Office has already approved the methodology for the underlying valuations it can proceed to approve these new charges, even on an interim basis, while it concludes the review of RIO-5.

The Office has indicated to C&WJ, however, that even if it was able to satisfy itself in the relatively short period since receipt of these tariff that they conform to the principles approved by the Office, it would be contrary to its established practice and the Act to approve charges in a RIO without the benefit of public consultation. Besides, the new tariff schedule proposed by C&WJ has implications not only for the current decision with regard to termination charges for incoming international calls but also for other domestic termination charges. The Office has therefore advised C&WJ to proceed to publish the proposed rates so that the Office can include the rates as part of the process for the current review of RIO-5.

Having regard to all of the above the Office has taken the decision that in keeping with the proposal in its Notice of Proposed Decision on Settlement Rates, Document No: Tel 2004/04 it is withdrawing with immediate effect its approval of a US\$ 0.05 termination per minute for incoming international calls terminating on the PSTN. Similarly the Office is rescinding with immediate effect its prescription of a

maximum termination charge of US\$0.138 for incoming international incoming call to mobile networks.

The effects of the above decisions with regard to termination charges are as follows:

- For those carriers with signed contracts with the PSTN the per minute termination charge for incoming international calls shall be the rate for such termination set out in their contracts with the PSTN minus the sum previously included as ADC plus any amount levied by the Minister for the USF.
- For those carriers who do not have signed contracts with the PSTN the rate shall be as negotiated (save that it shall not be greater than that proposed by C&WJ in its new tariff proposals for RIO-5) plus any amount levied by the Minister for the USF.
- For termination on the mobile network, the charge shall be as negotiated between the parties plus any amount levied by the Minister for the USF.
- The rates above shall apply as of the date of this decision and shall have no retroactive effects.

DECISIONS

The **OFFICE HEREBY MAKES** the following decisions and **NOTIFIES** all affected parties that as of the date of this Determination:

1. For carriers with signed contracts with the PSTN prior to January 23, 2004, the maximum termination charge of US\$ 0.05 for international calls terminating on a fixed network IS REMOVED. As of this date, the rate for such termination shall be as set out in their contract less the sum previously included as ADC plus any amount levied by the Minister for the USF.
2. For carriers without signed contracts with the PSTN, the termination charge shall be as negotiated with the PSTN (without any provision for ADC) and save that it shall not exceed the new rates for such termination proposed by C&WJ in its new tariff schedule plus any amount levied by the Minister for the USF.
3. C&WJ shall publish (at the least by making it available on its website) the new proposed tariff schedule for PSTN termination by close of business on June 10, 2004.
4. The maximum termination charge of US\$ 0.138 for international calls terminating on a mobile network IS REMOVED. As of this date, the charge for such transaction shall be as negotiated between the parties plus any amount levied by the Minister for the Universal Service Fund.
5. The rates set out above shall apply as of the date of this Determination and shall not apply retroactively.

Future Actions by the Office

Concurrently with the extended consultation, 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 Act. In the interim and while it continues its work on cost based termination charges (see **modified** 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.

EFFECTIVE DATE OF NOTICE JUNE 9, 2004

BY ORDER OF THE OFFICE

SIGNED THIS 9th DAY OF JUNE, 2004

**J. PAUL MORGAN
DIRECTOR GENERAL**

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 has agreed on a costing model and can therefore proceed to assess cost oriented termination charges. Dominance as it relates to mobile networks is currently the subject of consultation. Should the consultation result in a declarations of dominance in mobile, the Office will proceed to consider the need for assessing cost-based termination charges for this sector. The timetable below outlines the likely process and the time period over which the Office would expect to embark on this exercise.

Event	Activity	Date
PSTN Termination	Publication on preliminary findings on fixed termination	June 24, 2004
	Responses	July 23, 2004
	Determination	August 13, 2004
Dominance in Mobile	Publication of Decision on Dominance in Mobile	July 30, 2004
Obligations to Impose on a Dominant Mobile Operator	Publication of Consultative document on Obligations to be Impose on a Dominant Mobile Operator	No later than Two months after publication of determination on dominance in mobile
	Responses	One month after receipt of comments
	Comments on Response	One month
	Determination	One month
Cost Orientation Obligations	Publication of Consultation Document on mobile network termination Costing (conditional)	To Be Announced (TBA)
	Responses	TBA
	Comments on Response	TBA
	Second consultative document Responses	TBA
	Responses	TBA
	Comment on Responses	TBA
Determination	TBA	