
Office of Utilities Regulation

**RECONSIDERATION OF THE OFFICE'S DECISION: DETERMINATION
NOTICE (2013/TEL/003/DET.002) "HARMONISATION OF MOBILE RIOS"**

BEFORE THE OFFICE OF UTILITIES REGULATION

3rd Floor, P.C.J. Resource Centre, 36 Trafalgar Road, Kingston 10, Jamaica

FINAL DECISION

Adoption Date: October 11, 2013



OFFICE OF UTILITIES REGULATION

October 11, 2013

DOCUMENT TITLE AND APPROVAL PAGE

1. DOCUMENT NUMBER: 2013/TEL/003/DET.002/RCN.001

2. DOCUMENT TITLE: RECONSIDERATION OF THE OFFICE'S DECISION:
DETERMINATION NOTICE "HARMONISATION OF
MOBILE RIOS"

3. PURPOSE OF DOCUMENT

This document contains the Office's decision on Cable & Wireless Jamaica Limited's application for reconsideration of the Office's Determination Notice on the Harmonisation of Mobile RIOS.

4. ANTECEDENT DOCUMENTS

Document Number	Description	Date
2013/TEL/003/DET.002	Determination Notice: "Harmonisation of Mobile RIOS"	July 1, 2013

5. APPROVAL

This document is approved by the Office of Utilities Regulation and the Decision becomes effective **October 11, 2013**.

On behalf of the Office:



Maurice Charvis
Director General

October 11, 2013

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STATEMENT BY THE OFFICE

This matter comes before the Office of Utilities Regulation ("Office") for its consideration of an application for reconsideration of the Determination Notice Document No: 2013/TEL/003/DET.002, titled "*Harmonisation of Mobile RIOs*" issued on July 1, 2013 (the "Determination Notice"). Subsequent to the issuance of its decision, the Office received an application from Cable & Wireless Jamaica Limited (t/a LIME) dated July 15, 2013 requesting reconsideration of certain aspects of the decision.

In particular, LIME has requested that the Office reconsiders the following:

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LIME contended that paragraph (iv) of Determination 3 is based on material error of fact and law as the Office has not taken account of legitimate costs of preparing the system for billing of calls routed directly to its mobile switch. LIME submitted that as the Office is aware, interconnection to LIME mobile has been facilitated through the fixed network and using a single billing system. LIME maintained that the cost to implement billing of calls routed directly to its mobile network is incurred as a direct result of interconnection and it is unjust and inequitable to prevent LIME from recovering these costs. LIME asserted that the Office has often cited the obligation under Section 29 (2) of the Telecommunications Act (the "Act") using this to justify its position that interconnection is mutually beneficial and that consequently the cost of interconnection should be shared equally. LIME argued that if this position is followed through to its logical conclusion, the implementation of billing as a direct cost of interconnection should be shared between the parties. As such, LIME requested that paragraph (iv) of Determination 3 be deleted. LIME also requested that the words "*for installation and testing*" be deleted from paragraph (iii) of Determination 3 as equipment, fibre, and other expenses are part of relevant One-off Charges related to the implementation of Joining Services.

Determination 3 – Current Wording

- "(1) The mobile termination rate to be included in the Tariff Schedule shall be the rate approved by the Office in its "Determination Notice for Cost Model for Mobile Termination Rates – The Decision on Rates" Document Number TEL2013001_DET001 dated May 30, 2013, or such other rate as may be approved by the Office from time to time having regard to Section 32(3) of the Act.*
- (ii) The cost of facilitating interconnection shall be borne equally by both Parties.*
- (iii) One-off charges for installation and testing shall be split equally between the Parties.*

- (iv) *One-off charges shall not include upgrades to network, including but not limited to billing and switching systems."*

Determination 3 – LIME's Proposed Wording

- "(1) *The mobile termination rate to be included in the Tariff Schedule shall be the rate approved by the Office in its "Determination Notice for Cost Model for Mobile Termination Rates – The Decision on Rates" Document Number TEL2013001_DET001 dated May 30, 2013, or such other rate as may be approved by the Office from time to time having regard to Section 32(3) of the Act.*
- (ii) *The cost of facilitating interconnection shall be borne equally by both Parties.*
- (iii) *One-off charges shall be split equally between the Parties."*

RESPONSES TO APPLICATION FOR RECONSIDERATION:

The Office circulated the application for reconsideration to stakeholders on July 18, 2013 for response from interested parties by August 8, 2013. Responses were received from:

- Columbus Communications Jamaica Limited (t/a Flow); and
- Digicel Jamaica Limited (t/a Digicel).

The Office then circulated the responses to the application for reconsideration to stakeholders on August 23, 2013 for comments from interested parties. Comments were received from:

- Digicel; and
- LIME.

The responses to the application for reconsideration are summarised below:

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Flow stated that since liberalisation, LIME has consistently objected to direct interconnection to its mobile switch both locally and across the region. Flow concluded that this was a deliberate strategy from LIME to inflate termination costs to its mobile network through the addition of a transit charge. This Flow argued, is contrary to Section 30 (1) (c) of the Act. Flow cited the Office's position from the February 2001 Determination Notice "*Cable and Wireless Reference Interconnection Offer*" which stated LIME should allow direct interconnection to its mobile switch and where it is unwilling or unable to do so

there should be no charge for transit of the fixed network. Flow opined that the OUR was correct to determine that One-off charges shall not include upgrades to the network, including but not limited to billing and switching systems. Flow indicated that LIME did not provide any explanation for its position that part (iv) of Determination 3 is based on an error of law and fact and the reconsideration should be disallowed on this basis. Flow further reasoned that Section 29 (c) of the Act relates to establishing interconnection and not costs associated with interconnection. Flow's position is that interconnection pricing is more extensively addressed in Section 33 of the Act. In this regard, Flow proffered that costs related to network upgrades should be recovered by recurring charges as allowed for under Section 33 (b) of the Act. Flow further indicated that costs related to switching and billing are included as part of network costs in the long run incremental cost ("LRIC") model and is therefore recovered through recurring charges. Flow stated that if interconnection seekers were required to pay for One-off costs related to infrastructure investment, the question as to how much each potential interconnection seeker should pay would arise. Also, there would be an issue as to how much each new interconnection seeker would be required to pay for the capital investment that other interconnected operators have made into LIME's network. Flow suggested that in order to reduce the costs associated with direct interconnection, LIME should consider internet protocol ("IP") interconnection to its mobile switch. This it claims will eliminate the need for traditional joining services and is consistent with how LIME is currently interconnected with a number of overseas carriers. Flow contended that IP peering would allow the call data records ("CDRs") to be picked up by the existing billing system for invoicing thus negating the need for any major capital investment. Flow therefore urged the Office to maintain its position on the matter and reject LIME's proposed changes to Determination 3.

Digicel opined that LIME's requested amendments will have a retrograde effect on the industry in relation to interconnectivity between the operators. Digicel suggested that LIME's need to recover One-off charges for network upgrades was a consequence of its legacy network architecture and was related to its historic refusal to allow direct interconnection to its mobile switch. Digicel argued that recovery of these costs should not be permitted as these costs are outside of the cost recovery principle outlined in the Determination Notice. Digicel contended that allowing recovery of such costs would allow operators to place a prohibitive price on system upgrades which will effectively obstruct requests for direct interconnection. Further, Digicel's position is that it would be inequitable to allow interconnection seekers to compensate LIME for investments that are required to ensure that it is able to comply with the directive to offer direct interconnection to its mobile switch. Digicel claimed that the practical effect of the amendments proposed by LIME will be that interconnection seekers will either have to pay the commercial terms and conditions as offered which are bespoke or seek resolution through the Office.

LIME in its comments on responses to the application for reconsideration indicated that the determination as worded imposes an undue and unreasonable burden on LIME. It contended that the proposed amendments would make the determination consistent with the principle that costs should be borne by those who cause them to be incurred. LIME denied Flow's assertion that transit charges are used as a means to inflate the termination cost. LIME disagreed with Flow's suggestion that One-off charges could be recouped via usage charges as it claimed this would be against the provisions of the Act. LIME further stated that even if it was legal to recover system upgrade costs through usage charges, these cost were not included in the LRIC model. LIME regarded Flow's comments relating to IP interconnection as irrelevant. LIME also disagreed with the arguments put forward by Digicel on the matter while stating that the amendments are not specifically about LIME as they are applicable to all mobile operators who incur network upgrade costs in order to facilitate direct interconnection to their mobile network.

Digicel indicated its general agreement with the views expressed by Flow in its response to the application for reconsideration.

DECISIONS ON RECONSIDERATION REQUEST

In light of the request for reconsideration and comments received thereon, the Office has given further consideration to its Determination Notice – “Harmonisation of Mobile RIOs” and now issues the following response:

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1. With respect to paragraph (iv) of Determination 3, the Office disagrees with LIME that it is based on a material error of law and fact. LIME argues that the Office has failed to take account of legitimate costs associated with implementing interconnection because LIME mobile has in the past facilitated interconnection through its fixed network using a single billing system. As the Office has consistently indicated, LIME mobile is treated as a separate network from LIME fixed for regulatory purposes. It is this principle that caused the Office to direct LIME to allow direct interconnection to its mobile switch in the February 2001 *“Cable and Wireless Jamaica’s Reference Interconnection Offer”* Determination Notice. The Office generally accepts the principle highlighted by LIME that costs should be borne by those who caused them to be incurred. However, in this particular case, network upgrades to facilitate billing for interconnect traffic to LIME’s mobile network is as a direct result of LIME being a licensed telecommunications carrier with a statutory obligation to provide interconnection to its network - much as is the case for all other licensed telecommunications carriers. Section 29 of the Act mandates interconnection between networks. Since LIME operates a licensed public network and is required by the provisions of the Act to permit interconnection to its network, if requested, it is only logical that LIME should put in place the necessary network facilities to bill for both interconnection traffic and on-net traffic. Therefore, the cost of network upgrades to facilitate basic network functionality such as billing is the result of LIME having a licensed public network. This principle applies to all operators of a public network, and the Office sees no justification for LIME to be treated differently.
2. If LIME’s proposal that it be permitted to recover the cost of its billing system as a One-off charge from those seeking interconnection to its mobile network was to be adopted (a proposal which the Office does not accept), then all operators interconnected to other licensed carriers would in turn be obliged to pay the costs of those carriers’ billing systems. So for example, operators connected to Flow’s network or Digicel’s network would be responsible for paying part of the cost for Flow’s billing system or Digicel’s billing system, as the case may be. Therefore, LIME would need to compensate Flow, Digicel, and any other carrier to which it interconnects for a portion of the cost of their billing system. The set off that may result from each operator paying a portion of the cost of the other operators’ billing systems would

effectively be no different from having each operator being responsible for the cost of its own billing system.

3. If, for commercial reasons, LIME wishes to continue using its single billing system for interconnection to its mobile switch by routing calls through its fixed network, it may do so. However, there should be no transit or other cost of interconnection for the interconnecting operator, other than the tariffs listed in the Mobile Interconnection Offer Tariff Schedule.
4. LIME is correct that the LRIC model did not include costs associated with network upgrades as it models a modern efficient network, and takes into account only costs associated with termination services. Therefore, network upgrades costs are not included in the calculated termination rate.
5. With respect to part (iii) of Determination 3, the Office agrees with LIME that there is equipment, fibre, and other expenses which are legitimate One-off charges related to the implementation of joining services between the two networks. However, it is the Office's position that these costs are covered under the current wording of part (iii) of Determination 3. The current wording of part (iii) of Determination 3 states that *"One-off charges for installation and testing shall be split equally between the Parties."* Therefore, fibre for example would be accounted for as part of installation costs. Determination 3 was worded to distinguish between One-off charges for installation and testing which are to be shared equally between the parties and charges for network upgrades which are not considered as One-off charges. Therefore, the Office considers that the current wording of Determination 3 adequately covers all legitimate One-off charges related to the implementation of joining services between networks.

Having regard to all of the above, the Office denies LIME's request for amendments to the Determination Notice on "Harmonisation of Mobile RIOs" and specifically reaffirms Determination 3.