FLOW's Response to

The Office of Utilities Regulation Consultation Document on

Update of the Fixed Cost Model and Assessment of Fixed Infrastructure Sharing Costs – Principles and Methodology

6 February 2020

I. Introduction

1. This response is submitted on behalf of Cable & Wireless Jamaica Limited and Columbus Communications Jamaica Limited (jointly hereinafter referred to as "Flow"). Flow welcomes the opportunity to respond to the Office of Utilities Regulation's ("**OUR**") Consultation Document, *Update of the Fixed Cost Model and Assessment of Fixed Infrastructure Sharing Costs – Principles and Methodology*, dated 8 January 2020.

2. Flow finds that the approach with respect to the Fixed Cost Model put forward by the OUR in this Consultation Document provides a reasonable framework for the long-run incremental cost modeling for the fixed interconnection services in Jamaica. It is also consistent with the approach taken in the previous modelling exercise.

3. With respect to the assessment of fixed infrastructure sharing (IS) costs, we have responded to the OUR questions; however, the regulatory framework provides that costing of infrastructure sharing is handled in a very different manner than is being proposed by the OUR. It is of concern, at Section 1.6 of the Consultation Document, that the OUR is even proposing an ex-ante costing for IS when the proposed Infrastructure Sharing Rules ("the draft Rules") anticipate an ex-post approach to costing only if and when there is a dispute concerning pricing among parties negotiating an infrastructure sharing arrangement. Furthermore, even if such an ex-ante approach was foreseen in the draft Rules it is unclear why the first effort the OUR has undertaken to develop an IS costing model is one which singles out fixed infrastructure (without any justification) to the exclusion of mobile infrastructure. Finally, the significant differences between the costing approaches to fixed interconnection services and IS, means that they should properly be handled in separate consultations, as indeed they have been to date. This departure is inexplicable and

represents a flaw in procedure, since combining the two matters risks delaying the resolution of both.

4. Please direct any questions you may have to Charles Douglas at charles.douglas@cwc.com.

II. APPROACH TO INFRASTRUCTURE SHARING COSTING INCONSISTENT WITH HOW REQUIREMENT SHOULD BE APPLIED

1. Flow has elsewhere critiqued the regulatory overreach and lack of clarity embedded in the draft Rules.[1] The draft Rules, for example, are to apply to "all tangibles used in connection with a public network and intangibles facilitating the utilization of a public network". This provision seeks to give the OUR the right to force any licensee to share any of its assets. Any bounds on that right have been obscured by the lack of clarity on how the OUR is to apply the three factors, set out in Section 29A(1) of the Act, relating to the application of the sharing obligation.

2. Furthermore, many of the draft Rules apply to "dominant" Licensees and the infrastructure owned by those Licensees. As we have explained elsewhere, the general IS obligation on a licensee declared dominant is ultra vires the Telecommunications Act, as this law imposes no such obligation.[2] However, even if the obligation was not ultra vires, there has been only one dominance determination in Jamaica to date, and it is set out

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1 *Section 29A.-(1) states "Subject to subsection (3) the Office may-*

(a) impose an infrastructure sharing obligation on a licensee, where the Office considers it to be justified having regard to any of the following considerations-
(i) matters relating to public health or to the environment or town planning or other development considerations;
(ii) economic inefficiencies; or,
(iii) physical or technical impracticability;"

[2] Flow's Application for Reconsideration regarding OUR's Comments on Responses to Notice of Proposed Rulemaking on Infrastructure Sharing, 23 February 2018.

in terms of retail voice services,[3] not facilities. It is far from clear what the relevance of dominance in retail voice service means in this context.

3. Flow believes that the IS costing provisions should not applied on an ex-ante basis, as it is implied by the Consultation Document:

    a. As the draft Rules currently state, their primary object is "to establish a framework within which Licensees can negotiate infrastructure sharing arrangements" (paragraph 1.1), not to establish prices ex-ante for infrastructure that may or may not require them.

    b. Paragraph 4.4 of the draft Rules states that the OUR will issue[4] a directive on imposing an obligation on non-dominant licensees to share specific, identified infrastructure. This implies a case-by-case approach to the terms and conditions of the IS, not, as envisioned in the Consultation Document, the development of a cost model for setting prices for a comprehensive set of services.

    c. Section 7 of the draft Rules presents principles for setting rates for IS, but does not require charges to be developed prior to a commercial negotiation for IS, and indeed only anticipates a role for the OUR if the parties cannot agree on IS charges (paragraph 7.5).

4. Finally, given that the draft Rules i) have not been promulgated and ii) have not been consulted upon in terms of process and applicability, we believe that the questions the OUR poses regarding IS pricing principles are premature at best. The OUR should conduct a separate consultation on how the draft Rules should be applied. Combining an IS proceeding with

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[3] *Dominant Public Voice Carriers. Determination Notice,* Document No. TEL 2003/07, OUR, 14 August 2003.

[4] After giving the relevant non-dominant License(s) opportunity to make representations on the matter,

the fixed interconnection service model proceeding, as the OUR is currently doing, increases the delay for one or both of them. We raised this concern during our meeting with the OUR to discuss its associated data request and before the Consultation Document was published.

III. FLOW'S RESPONSE TO OUR QUESTION 1: REGARDING THE UPDATE OF THE FIXED COST MODEL, "DO YOU BELIEVE THAT ANY OTHER METHODOLOGICAL ASPECT DEFINED IN THE METHODOLOGY SHOULD BE UPDATED OR CHANGED? "

9. Flow agrees that the methodological approach should remain largely the same from the previous modelling of fixed interconnection service costs. However, in addition to revising 1) the period of time modelled and 2) the definition of the reference operator, as the OUR proposes, Flow believes that the pricing structure could be further simplified by eliminating the national vs. local differentiation.

10. We convey our view on aspects of the proposed methodology by adding our position to a revised version of the table in paragraph 3.1 of the Consultation Document below. Our position is added as a brief comment on each aspect.

Methodological Aspect	OUR Approach proposed	CW&J comment
Main Modelling Approach	Bottom-up Model	Bottom-up models are more amenable to sensitivity analysis and offer greater transparency. We also agree that there is little practical alternative to the bottom-up approach in Jamaica, as fixed operators do not have in place cost accounting systems necessary for a top-down approach.
Period of Time Modelled	Establish rates for a five years	Responded to under Question 2.

Methodological Aspect	OUR Approach proposed	CW&J comment
Data Sources	The Model uses information provided by operators as the primary source; relevant benchmarking for preferred alternative.	Information provided by relevant operators in Jamaica should be the primary and preferential source of data to populate and calibrate the BULRIC model. Stakeholders must be able to vet any inputs and international benchmarks proposed.
Cost Standard	Three costs standards: Pure LRIC; TSLRIC and SAC Shapley-Shubik for allocating network joint and common costs EPMU for allocating Non-network common costs	Flow agrees that it is desirable to have a model that captures Pure LRIC, LRIC+ and SAC. Flow agrees that network joint and common costs should be allocated according to the Shapley-Shubik approach for network joint and common costs. Flow agrees with the proposal to apply EPMU for the allocation of Non-network common costs, as this is a typical, straightforward approach.
Cost Elements Considered	Consideration of Network Capex, Network Opex, G&A Costs, Retail costs and license, spectrum and way fees costs	Flow agrees with OURs proposal that Network Capex, Network Opex, G&A Costs, Retail Costs and that license, spectrum and way fees costs should be included.
Treatment of OpEx	Absolute year unit OpEx associated to each network element.	Flow agrees that absolute year unit OpEx should be added to each network element as this is a straightforward approach.
Assets Valuation Method	Static CCA	Flow agrees that the static CCA approach is an appropriate choice for this modeling exercise as we are assuming the cost of network build today.
Consideration of Modern Equivalent Assets	MEA using transitioning for some relevant assets	Flow agrees that modern equivalent assets should be used in the cost modelling with a transition approach for NGN technology and transmission

Methodological Aspect	OUR Approach proposed	CW&J comment
Annualization method	Tilted annuity	Flow agrees that the tilted annuity approach strikes the best balance between economic appropriateness and ease of implementation.
Treatment of Working Capital	Include Network Opex working capital, irrespective of sign	Flow agrees that Network OpEx working capital as a percentage of Network OpEx
Definition of the Reference Operator	Incumbent demand and network	Responded to under Question 3.
Network Details	Year approach to dimensioning and optimisation	Flow agrees that a "yearly approach" to dimensioning the network in the derivation of service costs for each year is appropriate
Fixed Services and Increments	As listed	*Flow generally agrees with the proposed services and increments* as it is consistent with the current RIO.*
Fixed Network Design - Boundary Between Access and Core Networks	Modified scorched node without access network (below the line card)	Flow agrees with the proposed boundary.
Fixed Network Design - Network Topology Design	Modified scorched node with progressive increase in access nodes	Flow agrees the modified scorched node approach with consideration of access node expansion
Fixed Network Design - Technologies to be Modelled	Modified scorched node with migration of core and transmission technologies	Flow agrees the modified scorched node approach with consideration of migration of transmission technology
Use of Gradients	Elimination of peak/off-peak	Flow has no objection to retaining the lack of distinction between peak and off-peak pricing.
Charging Basis	Elimination of set-up element in charge	Flow does not object to retaining a charge basis that is only duration based.

Methodological Aspect	OUR Approach proposed	CW&J comment
Charges Structure	Simplification of structure into two-tiers: national and local	*Flow does not oppose retaining the two-tier set of charges. We propose, however, that the OUR consider further simplification of the structure to eliminate the national vs. local distinction.*

**The exception here may be ''Voice Call Centre Both Call Centre service". We are unsure of what service the OUR means. We ask the OUR to clarify.*

IV. FLOW'S RESPONSE TO OUR QUESTION 2: REGARDING THE UPDATE OF THE FIXED COST MODEL, "DO YOU AGREE WITH THE DECISION TO UPDATE THE FIXED COST MODEL FOR THE PERIOD 2018-2025?"

1. The OUR proposes that the modelling results in this proceeding are used to set caps on fixed termination rates for the period 2021-2025.
2. Setting rate for a period of 4-5 years is consistent with international practice and strikes a balance between the need to track the cost-base but avoid overly frequent rate-setting proceedings.
3. Further, the OUR proposes that the model is calibrated to the year 2018 and thus forecasts notional results for the intervening years 2019 and 2020.
4. With this understanding that the period of applicability of results to rate-setting pertains only to the period 2021-2025, Flow has no objection to the modelling period covering 2018-2025.

V. FLOW'S RESPONSE TO OUR QUESTION 3: REGARDING THE UPDATE OF THE FIXED COST MODEL, "DO YOU AGREE WITH THE OUR THAT THE UPDATED BULRIC MODEL FOR FIXED

INTERCONNECTION SHOULD CONSIDER A REFERENCE OPERATOR BASED ON THE COMBINATION OF CW&J AND COLUMBUS?"

1. Flow does not object that the reference operator should be a fixed operator with demand and network characteristics similar to C&WJ and Columbus.

2. It should be noted, however, that due to separate reporting systems, consistent data is often difficult to produce, which can make it difficult to identify "potential inefficiencies associated with the overlapping networks" referred to by the OUR.

VI. FLOW'S RESPONSE TO OUR QUESTION 4: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE DECISION OF COVERING THE PERIOD 2018-2025? "

1. Flow believes that the development of a fixed IS cost model runs contrary to the intent of the draft Rules. OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree on prices and chooses to raise a dispute with the OUR. Furthermore, the costing should be limited to the specific infrastructure that is under negotiation, not conducted speculatively on facilities that may or may not come under dispute at some point in the future. We therefore do not agree that there should be any "period of time modelled".

VII. FLOW'S RESPONSE TO OUR QUESTION 5: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE OUR THAT THE FIXED INFRASTRUCTURE SHARING COST MODEL SHOULD CONSIDER A REFERENCE OPERATOR BASED ON THE COMBINATION OF FLOW AND COLUMBUS?"

1. Flow believes that the development of a fixed IS cost model runs contrary to the intent of the draft Rules. OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree prices and raise a dispute with the OUR. Furthermore, the costing should be relevant

to the IS under negotiation, and not conducted speculatively for facilities which may or may not be under dispute. We therefore do not agree that there should be any question of a "reference operator". Given the potential for IS by any telecommunications infrastructure holder (once warranted), the costs involved will be specific to the infrastructure concerned. As such, establishing a "reference operator" cost list, is not only inappropriate but also likely to be misleading.

VIII. FLOW'S RESPONSE TO OUR QUESTION 6: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE PROPOSED DATA SOURCES TO BE USED FOR THE FIXED INFRASTRUCTURE SHARING MODEL?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed data sources are reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

IX. FLOW'S RESPONSE TO OUR QUESTION 7: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT NETWORK CAPEX INCLUDED IN THE FIXED INFRASTRUCTURE SHARING MODEL SHOULD INCLUDE COSTS OF DEPLOYMENT, INSTALLATION AND OTHER ONE-OFF FEES?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed approach to Network CapEx is reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

X. FLOW'S RESPONSE TO OUR QUESTION 8: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT NETWORK OPEX SHOULD BE INCLUDED IN THE INFRASTRUCTURE SHARING

MODEL AS THE ABSOLUTE YEARLY UNIT OPEX (OR PERCENTAGE OVER UNIT CAPEX) FOR EACH NETWORK ELEMENT?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed approach to Network OpEx is reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

XI. FLOW'S RESPONSE TO OUR QUESTION 9: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT G&A EXPENSES SHOULD BE INCLUDED IN THE INFRASTRUCTURE SHARING MODEL?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed inclusion of G&A expenses is reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

XII. FLOW'S RESPONSE TO OUR QUESTION 10: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE USE OF THE WEIGHTED AVERAGE COST OF CAPITAL (WACC) FOR THE CALCULATION OF THE REASONABLE RATE OF RETURN ON THE CAPITAL OF THE OPERATOR?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed use of WACC for the calculation of the rate of return on the capital of the operator is reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

XIII. FLOW'S RESPONSE TO OUR QUESTION 11: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE OUR'S VIEW THAT THE MODEL SHOULD UTILIZE THE ABSOLUTE

VALUATION METHODOLOGY IN ITS EVALUATION OF ASSETS ON A CURRENT COST ACCOUNTING (CCA) BASIS?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed use of Current Cost Accounting for the evaluation of assets is reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

XIV. FLOW'S RESPONSE TO OUR QUESTION 12: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE PROPOSED LIST OF IMPLEMENTATION AND TESTING SERVICES FOR THE FIXED INFRASTRUCTURE SHARING MODEL?"

1. Flow believes that *should a costing exercise be necessary under Section 7 of the draft Rules*, the OUR's proposed the inclusion of implementation and testing services would be reasonable. However, there is no need for a fixed IS model at this time and its creation runs contrary to the intent of the draft Rules.

XV. FLOW'S RESPONSE TO OUR QUESTION 13: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE PROPOSED LIST OF RENTAL SERVICES FOR THE FIXED INFRASTRUCTURE SHARING MODEL?"

1. Flow believes that the development of a fixed IS cost model runs contrary to the intent of the draft Rules. OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree prices and raise a dispute with the OUR. Furthermore, the costing should be relevant to the infrastructure sharing under negotiation, not conducted speculatively for facilities which may or may not be under dispute. We therefore do not agree that there should be any pre-specified list of services for cost modelling.

XVI. FLOW'S RESPONSE TO OUR QUESTION 14: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT NO ADDITIONAL ANCILLARY SERVICE SHOULD BE CONSIDERED IN THE INFRASTRUCTURE SHARING MODEL?"

1. Flow believes that the development of a fixed IS cost model runs contrary to the intent of the draft Rules. OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree prices and raise a dispute with the OUR. Furthermore, the costing should be relevant to the infrastructure sharing under negotiation, not conducted speculatively for facilities which may or may not be under dispute. We therefore believe the determination of additional ancillary services should be taken for the given case at hand and not excluded ex-ante.

XVII. CONCLUSION

1. Flow finds that the approach with respect to the Fixed Cost Model put forward by the OUR in this Consultation Document provides a reasonable framework for the long-run incremental cost modeling for the fixed interconnection services in Jamaica. It is also consistent with the approach taken in the previous modelling exercise.

2. The OUR's approach to IS costing within this consultation proceeding is in our view procedurally flawed, is an overreach beyond what the draft Rules provide for, and seemingly targets Flow in a way that is unjustifiably and discriminatory manner.

3. The consultation on IS is procedurally flawed:

    a. The OUR's proposed pricing principles and modelling for setting rates for IS is inappropriately lumped in with the cost model proceeding for fixed interconnection services. This unnecessarily complicates the consultation and could cause unnecessary delays. It also represents a notable departure from how these matters were previously handled, i.e., as separate proceedings. As such, Flow objects to the two matters being combined.

b. The OUR's proposal to build a generic infrastructure sharing cost model for a "reference operator" is not based on the draft Rules or the Telecommunications Act. Furthermore, even if built, the model is unlikely to estimate the actual costs involved in a sharing agreement being negotiated between parties over a specific infrastructure. As such, the effort put into creating such a model would be a waste of time and resources.

4. The OUR's approach to IS costing represents regulatory overreach:

   a. The OUR seeks to implement an ex-ante IS regime imposing prices for a broad set of services. However, the Telecommunications Act as written, gives the OUR no such authority, since it is allowed to intervene in the event of disputes of pricing, at which time it can ask for specific and relevant information to adjudicate on the dispute.

   b. Furthermore, the basis for ex-ante rules would be a determination of Dominance in respect to the provision of specific facilities or infrastructure services. Since the OUR has not undertaken and concluded such an exercise, any attempts to impose ex-ante costing Rules on infrastructure is at best premature.

5. The OUR's approach to IS costing is discriminatory:

   a. The OUR's focus on specific fixed facilities only, is another cause for concern. The OUR appears, without justification, to be targeting Flow, which is by no means the only infrastructure holder in the industry. The issue of sharing mobile towers, for example, which is a material one, is inexplicably not addressed.

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