Blue Communications (Jamaica) Ltd.

Response by Blue Communications (Jamaica) Ltd. to the invitation by

The Office of Utilities Regulations for comments on Draft RIO 6.

August 24, 2009.

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Executive Summary

It is our opinion that Cable and Wireless Jamaica's (C&WJ) proposed changes to the Reference Interconnection Offer (RIO 6) represent a departure from the cost based approach to network interconnection and should not be accepted. The proposed RIO 6 uses a structure and maintains rates that are more than five years old, does not incorporate significant changes in government policy and provides no additional incentives for achieving a cost-based competitive rate structure. Specifically, Blue Communications Jamaica Ltd (Blue) notes five critical deficiencies in the proposed RIO:

a. The RIO should contain specific language implementing Two-Stage Dialling and Indirect Access. It should also clarify that calling card services are explicitly supported under the Two Stage Dial arrangement.

b. The RIO should recognize the significant reductions in both telecommunications equipment costs and asset depreciation that have occurred since the RIO was originally implemented with a commensurate reduction in interconnection rates. Contrary to the trend toward decreasing costs and prices of telecommunication services around the world, Cable and Wireless Jamaica is proposing an effective increase to PSTN termination charges.

c. The RIO should also reflect true cost based charging for International Transit tariffs which would see the proposed rate of $0.929 JMD reduced to more industry standard rates such as those in the UK of €0.0014 EUR or $0.18 JMD, a significant difference in an industry in which margins are measured in tenths of a cent.

d. The RIO should more closely follow the trend toward a reduction of mobile termination rates in the region and the tariff should be non-discriminatory. The current tariff discriminates against international vs. domestic termination and should be adjusted to equate the same tariff for both services as they are essentially the same.

e. The proposed changes to the Legal Framework relating to dispute mechanisms, linking of tariffs to USD exchange rates and retention of Service Takers deposits beyond the two year period all serve to provide Cable & Wireless with an unfair advantage in a supposedly competitive market and should be rejected, reverting to current language in RIO5A1.

f. The proposed changes to the Joint Working Manual in which C&WJ requests compensation for missed forecasts by Service Takers, who also happen to be its competitors, should be rejected as this would serve to further compensate Cable and Wireless Jamaica for competitive activity. Approval of this change would provide Cable and Wireless with a golden opportunity to abuse its dominance of the market.

Below, Blue expands on its concerns detailed above and comments on other matters.

Introduction

Our review of the draft Reference Interconnection Offer 6 (RIO 6) follows the OUR's invitation for comment on the offer. We will comment on the changes proposed by C&WJ under the headings used by the OUR as they relate to the section of the RIO being discussed. We will then comment on the topics which we regard as important inclusions for RIO 6 which have not been included in this draft. We make the assumption that the reader is aware of the changes proposed by C&WJ.

Legal Framework

Change to 9.6

We do not agree with the proposed change to paragraph 9.6. It is our view that, given the volume of business exchanged, an amount in dispute of 5% can be substantial. Decreasing this amount to 3% of the total amount of the invoice unnecessarily increases the risk to the Service Taker and reduces any incentive that C&WJ might have to speedily resolve the dispute. In our opinion C&WJ have failed to provide justification for this change. In addition, C&WJ holds a deposit (for at least two years) as a guarantee for the payment of their invoices. This change would unnecessarily increase this guarantee without providing an equivalent consideration to the Service Taker.

Change to 10.4

We do not agree with the proposed change to paragraph 10.4. We make the following points.

- C&WJ does business in Jamaica. Most of the costs incurred in providing the services are incurred in Jamaica and are in Jamaican dollars. Changes in the costs of providing these services are not proportionately tied to the foreign exchange rate.
- All of the services provided by Cable and Wireless (Jamaica) to Service Takers under the RIO are also provided by C&WJ to Jamaican consumers. It is our view that these rates do not need to be reviewed any more often (for reasons of foreign exchange fluctuations) than C&WJ's rates to domestic consumers.

Change to 28.2

We do not agree with the proposed change to paragraph 28.2. The present practice of returning the deposit after two years of proper credit management is consistent with the generally accepted practice for public utilities. Indeed we know that this is also consistent with the practice of the Cable and Wireless Group in other jurisdictions. For example Blue Communications Ltd. an associated company operating in Barbados has had its deposit with Cable and Wireless Barbados returned after two years of proper fiscal management of its account with Cable and Wireless Barbados.

It is also our view that the extended retention of this deposit would provide C&WJ with an unfair competitive advantage over Service Takers since it will have continuous access to a cash resource that will be denied to the Service Taker. For the Service Taker the deposit represents an inefficient use of essential working capital which constrains the growth of a new carrier. Returning it after two years would thus enable it to be deployed in further business development in Jamaica.

Service Description (Part 1 and Part 2)

Changes to Joining Services

The following comments apply to the proposed changes to the following paragraphs

- Footway Box Joining Services
    - Paragraph 1.5.5
    - Paragraph 1.5.4
- Non-Footway Box Joining Service
    - Paragraph 1.5.1
    - Paragraph 1.5.4
- Small Capacity Joining Service
    - Paragraph 1.5.1
    - Paragraph 1.5.4

We disagree with all of the proposed changes because they all provide an unfair advantage to C&WJ, the dominant carrier. We wish to note the following.

- Both parties, C&WJ and the Service Taker, incur costs in joining their networks.
- Presently Cable and Wireless does not share in the Service Taker's costs. With 50% of C&WJ's cost (under the existing RIO 5), plus 100% of its own costs, the service taker is already spending more than C&WJ for the joining of the networks. An increase in this amount (to 100%) will only serve to the disadvantage of the Service Taker.

- This increase is not only unreasonable but it increases the barriers to entry for new service providers and flies in the face of the spirit of deregulation and a free telecommunications market.
- Finally this is against established procedure for the joining of two networks. The cost of joining services has traditionally been split evenly between the two joining network operators.

Joint Working Manual

Change to Clause 2.4.4.3

We have a fundamental disagreement with clause 2.4.4.3 and are of the view that it should be struck from the RIO. Forecasts are based on many factors, the majority of which are beyond the control of the Service Taker. These include forecasts from carriers in other countries, changes in domestic and global economies, C&WJ's marketing strategy and acts of God. Providing for forecasts are a part of the business risk inherent to the telecommunications industry and C&WJ has decades of experience in planning for and in minimising this risk.

We also wish reinforce the point that C&WJ is competing directly with Service Takers for inbound international traffic. It is entirely possible (indeed likely) that the reduction in the Service Takers' forecasts could be due directly to C&WJ's competitive strategy in the marketplace. In other words C&WJ is receiving compensation for traffic it has probably won from the Service Takers. Allowing Cable and Wireless to further penalise the Service Taker for the reduced traffic is extremely unjust and serves to reassure C&WJ's dominant position in the marketplace.

We repeat that this unjust clause should be struck from the RIO.

In particular we disagree with the change proposed by C&WJ. If it must be compensated for inaccurate forecasting then this compensation should be restricted to its real costs. It is entirely unreasonable for "revenue opportunity foregone" to be passed on to the Service Taker.

We further question what the real costs to C&WJ are. The facilities used for interconnection are paid for by the Service Taker as are the capital costs incurred by C&WJ. We see no need for further compensation to C&WJ.

Further, the lost revenue opportunity will have to be quantified and C&WJ, in its document *Methodology and Assumptions supporting the Tariff Schedule* have not provided evidence of how this will be determined. We foresee that the acceptance of this change will have the following repercussions.

- Disputes over the quantity of these opportunity losses
- Suspension of service to Service Takers who dispute C&WJ's claims

- Increase in the number of arbitration hearings for the OUR
- A reduction in the availability of choice in telecommunication services for Jamaican consumers

Definitions

Since we object to all of C&WJ's proposed changed we do not agree to the removal of any definitions.

Important Omissions from RIO 6

1. Two Stage Dialling and Indirect Access

Blue notes that the OUR has already made a determination on two stage dialling (Document No: TEL 2008/09: Det 02 – May 30, 2008), approving it for use as an interconnection service. We further note that implementation of this determination and its corresponding government policy requires that both Indirect Access and Two-Stage Dialling be incorporated into the Consolidated Reference Interconnection Offer 6 (RIO 6). In its proposed RIO 6, Cable and Wireless Jamaica have completely omitted this interconnection service. It is our view that, in order to promote true deregulation, increase competition and increase choice in telecommunication services available to Jamaican consumers, two stage dialling must be included in the RIO. Further it must be made clear that this includes the use of this service for the provision of international calling cards in the Jamaican market. The provision of this service should be a part of the agreement and a tariff should be included in the tariff schedule in keeping with that determined by the OUR.

Cable & Wireless Jamaica must be instructed to include Two Stage Dialling in the RIO pursuant to the OUR's findings and order in 2008. RIO 6 cannot be considered complete nor should it be implemented without this important next step in deregulation. Cable & Wireless Jamaica should not be allowed to choose which elements of approved regulatory policy it will implement and which it will ignore.

It is our view that Two Stage Dialling will bring significant benefits to the Jamaican consumer, renewed economic activity in the telecommunications sector and an increase in the taxation revenue for the Government of Jamaica.

2. Cost Based Termination charges and Expected Tariff Reductions

a. International Incoming Call Termination on PSTN

i. Blue believes that interconnection rates should be based on forward looking incremental costs as the cost of telecommunications equipment and services has been steadily declining around the world and most old legacy networks have essentially been written off. Cable & Wireless' rates as proposed in RIO 6 have been essentially unchanged in 6 years and are based on outdated fully distributed cost information.

ii. On March 13, 2009 the ECTEL Council of Ministers approved new interconnection rates for its treaty members: St. Lucia, Dominica, St. Kitts, St. Vincent and Grenada. This was done based on a review of Cable and Wireless' long-run incremental costs ("LRIC"). Despite the fact that these countries are all much smaller than Jamaica, rates in all cases are considerably less than the currently proposed rate of $0.025 USD. Below are the approved tariffs for International Call Termination to PSTN in the ECTEL states:

1. St. Vincent and the Grenadines - $0.0534 EC ($0.0197 USD, $1.74 JMD)
2. St. Lucia - $0.0346 EC ($0.0127 USD, $1.13 JMD)
3. Grenada - $0.0407 EC ($0.0150 USD, $1.33 JMD)
4. Dominica - $0.0586 ($0.0216 USD, $1.91 JMD)
5. St Kitts - $0.0261 ($0.0096 USD, $.84 JMD)

iii. In Barbados, with a population roughly 10% of that of Jamaica, termination rates are less than half of those proposed in RIO 6 and currently in force in RIO 5A1. The tariff for International Call Termination to PSTN totals $0.0189 BDS per minute and equates to $0.0095 USD per minute or $0.84 JMD (Barbados tariffs taken from "Barbados PIII RIO 2.0")

iv. In Trinidad, with a population roughly 35% of Jamaica's, the regulator, TATT approved a tariff of $0.07 TTD for international termination to PSTN. This equates to $0.0118 USD or $1.04 JMD.

v. In RIO 5A1 this charge is denominated in Jamaican dollars and is not specifically tied to any fixed amount in US dollars. C&WJ's proposed change to a $.025 USD equivalent is a significant increase over its existing tariff and further does not represent a cost based pricing methodology. This should be rejected by the OUR. C&W should be asked to present cost based termination tariffs at a level similar to that of other Caribbean jurisdictions (we suggest Barbados). This would yield a termination rate of approximately $0.90 JMD, a level comparable with most Caribbean destinations considering Jamaica's size and economic standing.

b. International Transit to Third Party Fixed Network

i. The Proposed RIO 6 contains no reductions in the above transit fee charged by C&WJ to convey calls from any competitor to any other competitor's network or its own mobile network. The fee is currently $0.929 JMD or roughly $0.011 USD. As demonstrated above this fee is in fact higher than the fee levied in Barbados to terminate international calls to the PSTN.

ii. C&WJ's mobile and fixed networks come together in either the same or adjacent buildings and thus a minor amount of switching and joining facilities are required. It is not rational to accept that C&WJ's cost of providing the transit service is in fact greater than that of C&W Barbados' cost of terminating calls in the Barbados PSTN.

iii. This is yet another example of C&W's abuse of dominance in that it controls this crucial bottleneck facility and charges rates which give it a significant advantage over its competitors who are thus unable to respond.

One example of this can be seen in the mobile termination market where a Service Taker must pay the mobile termination fee of $0.138 USD as well as the transit fee of $0.011 USD and the USF fee of $0.02 USD, yielding a total cost before selling of $0.169 USD. A margin of at least $0.005 USD is required to offset costs so the competitor's selling price would be roughly $.174.

C&WJ's costs would be the assumed termination fee and the USF fee for a total cost of $0.158 USD as it would not charge itself the transit fee. This provides an advantage of $0.016 advantage over the Service Taker, its competitor, offering the identical service. The net effect of this practice is to 'ring fence' C&WJ's mobile network and provide itself a preferred and dominant position in the market.

Another practical example of the above pertains to C&WJ's unique ability, provided via the transit fee, to dominate and control the international termination market to Digicel's network, C&WJ is allowed to sell Digicel terminating traffic without consideration for the transit fee, thus depressing the price for Digicel calls while providing itself with a significantly higher cost base for any reciprocal termination by Digicel. Simply put C&W can sell Digicel mobile termination at $0.158 USD or above while Digicel cannot sell C&WJ mobile termination at any price below $0.169 USD.

iv. In comparison to C&WJ's tariff the average local call termination charge (setup charges are rolled into the per minutes fee) in the UK which employs the most rigorous costing of this service in the EU was 0.14 Euro cents in 2007; about $0.18 JMD. Recent decisions by the Trinidad regulator (TATT) have set the fee for this service at $0.004 TT or approximately $0.0006 USD and $0.06 JMD. Blue requests that the proposed rate submitted by C&W be rejected and an interim rate of $0.25 JMD be applied pending a cost review of this service.

c. International Incoming Call Termination on PLMN (Mobile)

i. Blue notes that in addition to the charges for transit and PSTN termination, C&WJ has offered no reduction in the fees it charges for terminating calls on its mobile network or that of its competitors. There is a clear trend around the world to reduce the cost of mobile termination which in most cases requires significant regulatory intervention. In Jamaica the fee of $0.138 USD has been in place for at least five years and one would expect this cost to have been reduced as explained above in points a and b.

ii. The proposed RIO 6 offers a tariff for the identical service but applicable to domestic calls only at rates which start as high as $6.838 JMD and decline to as low as $4.349 JMD yet its fee for terminating an international call on its mobile network is fixed at $12.21 JMD, an average increase of more than 200%. It is discriminatory to offer different rates for what is essentially the same service.

iii. Other Caribbean countries have recognized the need to reduce mobile termination costs and have set tariffs which demonstrate that mobile operators have found to be acceptable but which are well below those of

Jamaica. The ECTEL Council of Ministers approved a downward sliding scale of fees between 2009 and 2011 which will see rates at an average of $0.115 USD in 2011. Most notably, the Trinidad regulator TATT approved tariffs for international call termination to mobile networks of $0.4 TT/minute which is equivalent to $0.0635 USD or $5.62 JMD. This compares very favourably to the fees approved by the OUR in RIO5A1 for termination of domestic mobile traffic.

iv. The UK's Competition Commission ruled in Jan 2009 against telecom regulator Ofcom's planned reduction in mobile termination rates. Instead of the four main UK mobile operators having to reduce their termination rates to 5.1 pence per minute ($.083 USD, $7.33 JMD) by 2010/2011, as mandated by Ofcom, they must instead reduce them to 4 pence per minute ($.065 USD, $5.75 JMD). The other mobile operator, 3 UK, is given late entry protection by being required to cut only to 4.4 pence per minute.

v. Blue recommends that the OUR adopt the existing domestic mobile termination fee tariff for International Incoming Call Termination on Mobile networks on an interim basis until a more comprehensive cost study can be performed thus eliminating a discriminatory practice and bringing Jamaica in line with the global trend in mobile charge reductions.

Conclusion

Cable and Wireless Jamaica's omissions from and its proposed changes to the Reference Interconnection Offer 6 is an attempt by this company to depart from a cost based approach to the provision of interconnection services. The proposed changes have more to do with increasing charges to Service Takers than in reflecting true cost based interconnection services for its interconnection partners in Jamaica. The proposed changes will serve to:-

- Increase the barriers to entry in the industry
- Reduce the choices available to telecommunication consumers in Jamaica
- Re-affirm and strengthen C&WJ's position as the dominant carrier
- Defeat the rights of interconnected carriers to cost based pricing and a level playing field in the Jamaican telecoms market

Therefore it is our view that none of the proposed changes should be accepted.

It is also our view that additional services such as Two Stage Dialling should be included in the RIO. Further, we suggest reductions in terminating tariffs and propose that these should be reduced on an interim basis until a more detailed cost analysis of each service can be performed, or appropriate international benchmarks adopted.

Appendix 1.

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL) DECISION ON INTERCONNECTION RATES FROM THE 19TH COUNCIL OF MINISTERS' MEETING.

EASTERN CARIBBEAN TELECOMMUNICATIONS
AUTHORITY (ECTEL)

DECISION ON INTERCONNECTION RATES FROM THE 19TH COUNCIL OF MINISTERS' MEETING

At its nineteenth meeting held on March 13th 2009 in Saint Lucia, the ECTEL Council of Ministers approved the recommendation for new interconnection rates for telecommunications services.

Please find attached a summary of the rates and guidelines for the implementation of the decision. If you require any further guidance, please contact the ECTEL Directorate.

IMPLEMENTATION OF COST ORIENTED INTERCONNECTING RATES

Introduction

The Council of Ministers of ECTEL, approved the Directorate's recommendation for the Long Run Incremental Cost (LRIC) models to be used to determine cost-oriented interconnection rates in the ECTEL Member States, at the 19th Meeting of the Council held in St Lucia on Friday March 13, 2009.

Special Notes to NTRCs and Licensees

The following recommendations do not bind ECTEL or the NTRCs with respect to any rates contained therein. These recommendations represent the culmination of the public consultation process on ECTEL's proposed LRIC model. They provide a cost-oriented reference against which ECTEL will assess any rates contained in any proposed interconnection agreement between interconnecting licensees. This notice is intended only to provide a clear statement of ECTEL's determination as to what constitutes "cost oriented rates" in the ECTEL Contracting States as required by relevant sections of the Telecommunications Act and related Interconnection Regulations. The document is therefore intended only to communicate to interested parties, the formal outcome of the Council's decision. NTRCs and licensees should note that, each new proposed interconnection agreement negotiated in future, will still need to be referred to ECTEL for a formal recommendation prior to approval or rejection by the NTRC, as required by both the Act and Regulations. **Other than the requested actions recommended by ECTEL for NTRCs and licensees at (f) below, NTRCs are therefore not required to take any further action with respect to this notice.**

The recommendation approved by the Council of Ministers is outlined below:

(a) Mobile Termination Rates

The Council of Ministers approved a three year phased reduction in the rates for mobile termination. The recommended rates will result in an up to 40 per cent reduction in the wholesale rate for mobile termination in the first year and up to 60 percent reduction over the three year period. The impact of this is expected to be significant reductions in rates for fixed to mobile and mobile to mobile calls over the next three years. The recommended rates are presented in table1.

Table 1: Recommended rates for mobile termination

Member State	Mobile Termination Rate		
	April 1 2009	**April 1, 2010**	**April 1, 2011**
Dominica	0.369	0.3135	0.2580
Grenada	0.369	0.3100	0.2510
St Kitts and Nevis	0.369	0.3253	0.2817
St Lucia	0.369	0.2965	0.2240

St Vincent and the Grenadines	0.369	0.3051	0.2413

The first period of the phased introduction of reduced rates will be truncated to a six month period from April to September 2009 in St Vincent and the Grenadines and St Lucia. In both Member States the last interconnection agreement expired in September 2008 and there have been delays in the negotiations for a new agreement. In the interim, providers have been using, and benefiting from, the older higher interconnection rates. This truncation will ensure that consumers can benefit from cost savings in a timely manner**.**

The recommended rates are applicable for calls originating domestically and internationally.

(b) SMS termination Rates

The Council approved maximum rates for SMS termination in the ECTEL Member States as presented in table 2.

Table 2: Rates for SMS termination

Member State	SMS Termination Rate
Dominica	0.0482
Grenada	0.0395
St Kitts and Nevis	0.0352
St Lucia	0.0300
St Vincent and the Grenadines	0.0329

(c) Fixed Public Interconnection Charges

The Council approved maximum rates for fixed interconnection services in the ECTEL Member States as presented in table 3.

Table 3: Rates for Fixed Interconnection Services

Member State	Dominica	Grenada	St Kitts Nevis	St Lucia	St Vincent Grenadines
PSTN Termination	0.0586	0.0407	0.0261	0.0346	0.0534
PSTN Transit	0.0307	0.0206	0.0296	0.0186	0.0270
Local Directory Enquires	0.9700	0.9200	0.8800	1.030	0.8800
International Directory Enquires	0.8800	0.9500	0.8800	1.4800	0.9000
Emergency Services	0.0251	0.0307	0.0196	0.0216	0.0178

Member State	Dominica	Grenada	St Kitts Nevis	St Lucia	St Vincent Grenadines
International Call Origination	0.0727	00.0610	0.0290	0.0546	0.0670

(d) Rates for PSTN and PLMN Transit

The Council approved maximum rates for transit services for both PSTN and PLMN as presented in table 4.

Table 4: Rates for transit service

Member State	Dominica	Grenada	St Kitts Nevis	St Lucia	St Vincent Grenadines
PSTN Transit	0.0307	0.0206	0.0296	0.0186	0.0270
PLMN Transit	0.0307	0.0206	0.0296	0.0186	0.0270

Notes

(i) All rates are per minute and denominated in Eastern Caribbean Dollars

(ii) The composite interconnection rates (call duration plus interconnect-specific charges) for telecommunications providers should not exceed the rates recommended in table 3.

(iii) Telecommunications providers may negotiate lower interconnection rates and may adopt a pricing structure that included peak and off peak rates. Where providers propose lower rates in an interconnection agreement the providers must submit supporting documents presenting the basis for the lower rates.

Recommended Action by NTRC

(f) ECTEL hereby recommends that, pursuant to its powers under Regulation 12(3) of the new Interconnection Regulations No. 60 of 2008[1], the NTRC should:

(i) Publish, in the Gazette, a notice on the decision of the Council of Ministers on the new interconnection rates.

[1] "Where an interconnection agreement is negotiated before the Commission determines any rates, or where, after the conclusion of an interconnection agreement, the Commission establishes new rates for interconnection for any reason, the interconnection agreement shall be amended by the parties to comply with the rates as may subsequently be determined or established," per section 12(3), Interconnection Regulations, No. 60 of 2008, St. Vincent and the Grenadines.

(ii) Direct all parties to currently approved interconnection agreements to submit revised tariff schedules to the Commission, amended in accordance with the foregoing recommendation approved by the Council, within thirty (30) days of the notice from the NTRC; and

(iii) Within seven (7) days of receipt from licensees, forward all revised tariff schedules to ECTEL for a formal review and recommendation.

Licensees should be explicitly advised that, unless an approved interconnection agreement is due to expire or is in the process of being renegotiated, interconnecting parties **are not required to submit new proposed interconnection agreements**. Parties are required to submit revised tariff schedules only, clearly referenced to the appropriate legal framework. Licensees should be advised that ECTEL proposes to recommend changes **only to the tariff schedules of existing agreements**, in order to ensure currently approved interconnection agreements comply with the legislated requirement to contain "cost-oriented" rates.

As regards the duration of currently approved agreements, NTRCs should explicitly advise that any directions to amend tariff schedules shall not affect the agreement in any other regard. Save for regulator mandated reductions of agreed rates, all currently approved interconnection agreements shall remain unchanged and parties rights under such agreements shall remain unaffected. Agreements due to expire, for example, in one year or two years do not need to be re-negotiated or re-submitted to ECTEL for review until three (3) months prior to their expiration, as stipulated section 34 of the Interconnection Regulations.

NTRCs should therefore explicitly direct licensees that all rights and obligations outlined in current agreements remain in force and binding on the parties, unless otherwise directed by the Commission, acting on the recommendation of ECTEL, as a result of, for example, the outcome of a dispute or a lawful regulatory determination (unrelated to tariffs).

The decision of the Council of Ministers on the interconnection rates follows the approval of revised Interconnection Regulations which together will ensure the improvement of the regulatory environment for competition in the telecommunications sector.

ECTEL
March 31st 2009