

**COLUMBUS COMMUNICATIONS JAMAICA LIMITED
DBA FLOW JAMACIA**

SUBMISSION OF INITIAL PROPOSED CHANGES

**TO CABLE & WIRELESS JAMAICA LIMITED
REFERENCE INTERCONNECT OFFER**

JANUARY 14, 2008

TABLE OF CONTENTS

	PAGE
INTRODUCTION	5
I. PROPOSED CHANGES TO C&WJ TARIFF SCHEDULE – RIO 5A1	5
1. OUR Evaluation of C&WJ Initial Projections and Pricing Methodology Compared to C&WJ Actual Results.	6
2. Amend RIO to include commercially competitive pricing schemes.	8
3. Eliminate disparity of C&WJ wholesale and retail rates.	9
4. Amend C&WJ 1-800 Services to Reflect Fair and Competitive Pricing.	10
5. Amend RIO Provisions to Prevent C&WJ blocking Access to Local Interconnection Rates.	10
6. Amend RIO Provisions to allow direct interconnection to bmobile	11
7. Amend RIO Provisions to mandate C&WJ new entrant connection to its customers at C&WJ facilities.	11
8. Amend RIO Provisions to Reflect, Enforce, and Expressly Require C&WJ Compliance to OUR Competitive Safeguard Policies and Mechanisms.	11
9. Amend RIO Provisions to require C&WJ Uniform Numbering Schemes.	12
10 Amend RIO Provisions to require C&WJ affiliate accounting separation and transparency.	12
II. THE OUR SHOULD IMMEDIATELY COMMENCE FORMULATING PARAMETERS FOR INTERCONNECTION PRICE REGULATION	12
1. International Experience Formulating Pricing Methodologies	13
III. PROPOSED CHANGES TO OTHER C&WJ RIO SCHEDULES	18
1. Interconnection Policy and Process	18

2.	Proposed Amendment to RIO Schedule – Definitions	18
3.	Proposed Amendment to RIO Schedule – Legal Framework	18
4.	Proposed Amendment to RIO Schedule – Parameter Schedule	19
5.	Proposed Amendment to RIO Schedule – Service Descriptions and Service Schedule	19
6.	Proposed Amendment to RIO Schedule – Joint Working Manual	20
CONCLUSION		20

**Before the
Office of Utilities Regulation
Kingston, Jamaica**

In the Matter of)
)
 Consultation on Amendments to C&WJ's)
 Reference Interconnection Offer)
) Document No: Public Notice
 Submission of Proposed Changes) Filed with OUR January 14, 2008

**Columbus Communications Jamaica Limited
Submission of Proposed Changes**

Columbus Communications Jamaica Limited, dba Flow (“Flow”) hereby files its Submission of Proposed Changes to the Office of Utilities Regulation’s (the “OUR”) Public Notice¹ inviting comments on the existing Cable & Wireless Jamaica Limited (C&WJ) Reference Interconnection Offer (RIO) and major issues that need to be addressed.

Per this first OUR formal inquiry requesting market input in formulating this latest RIO Amendment Consultative proceeding, Flow provides below its initial submission on proposed changes to the current RIO Schedules as well as highlights continuing major issues. Flow’s comments emphasize in particular continued C&WJ exorbitantly high tariff pricing and other interconnection abuses, to which Flow urges the OUR to address aggressively through the RIO framework in this proceeding.²

¹ *OUR Public Notice* at <<http://www.our.org.jm>>: “In keeping with the provisions of the Telecommunication Act (2000) Cable and Wireless Jamaica submitted a Reference Interconnection Offer (RIO) to the Office of Utilities Regulation on March 30, 2000. Since then, certain modifications were made to the RIO. The last assessment by the OUR was issued on November 19, 2004. Telecommunications carriers, including Cable and Wireless Jamaica have requested a review of the RIO so that it can be more reflective of the current conditions of the telecommunications industry as well as the general economic environment. The Office has already received some suggestions in relation to possible amendments to the existing RIO. The OUR wishes to invite all interested parties to submit comments on the existing RIO and the major issues that need to be addressed.”

² See *OUR Public Notice* regarding requested extension of time, released December 19, 2007:

Event	Date
Submission of Proposed Changes to the Existing RIO	January 14, 2008
Comments on Submissions	February 14, 2008
Receive Draft CWJ RIO 6	May 14, 2008
OUR Consultation Document on RIO 6	June 30, 2008
Deadline for Receipt of Comments on Consultation Document	July 21, 2008
Industry Meeting	July 28-31, 2008
Determination Notice	By September 19, 2008

INTRODUCTION

Flow, along with other new entrants, has expressed earlier in the context of formal complaints and comments to ongoing OUR Consultations, a myriad of C&WJ anti-competitive pricing manipulations, high tariff schemes, as well as other anti-competitive obstructions placed before it by dominant incumbent C&WJ. Flow believes that the RIO mechanism should be used as an interim measure for the OUR to immediately address and stop current and ensuing C&WJ interconnection abuses. Through proposed C&WJ RIO Amendments, the OUR can enforce newly developed terms and conditions reflecting current market pricing realities and provide competitive safeguard requirements and protections for competition.

Therefore, Flow also identifies as a significant issue, the OUR's need to maintain vigorous and diligent oversight in the interconnection area with C&WJ. Flow requests that the OUR wrest from C&WJ any and all prior designated unilateral roles in which C&WJ may revise RIO Agreement terms allowing it to continue to dominate and dictate anti-competitive conditions and pricing for new entrant competitors. The C&WJ RIO Schedules should also include provisions specifically mandating timely periodic OUR review and intervention, particularly when it comes to dated C&WJ cost and traffic projections used to justify C&WJ's continued high tariffs and refusals to deal fairly with competitive new entrants.

Flow also respectfully requests below that the OUR proactively address in particular, the long overdue review, updating and evaluation of earlier C&WJ cost and pricing methodology and projections which continue to justify high tariff rates and pricing compared to actual results. Such assessment will reflect today's market realities and allow for the development of more reasonable and balanced C&WJ tariff structures. Such OUR oversight and mandated provision of more reasonable C&WJ rates to new entrants will encourage and allow development of a competitive telecommunications services market in Jamaica.

I. PROPOSED CHANGES TO C&WJ TARIFF SCHEDULE – RIO 5A1

Flow continues to believe that immediate and fairly priced interconnection and access to essential facilities of the incumbent dominant operator is required in order to develop competitive customer bases and provide diversified and competitive services for Jamaican consumers. Flow has encountered C&WJ's continued refusal to provide access to interconnection facilities, reasonable pricing and oftentimes its refusal to supply services at fair prices. C&WJ also at conveniently timed moments uses technical infractions as a basis to refuse to supply services thereby frustrating competitors ability to provide alternative competitive services.

As discussed in more detail below, Flow recommends that the RIO Legal Framework, among other RIO Schedules, make clear provision for OUR prompt review and reasonable intercession where incumbent C&WJ behavior conflicts with the spirit of the Interconnection Agreement. Flow recommends that new entrants be given the right to petition the OUR under the RIO to investigate promptly any C&WJ infractions under the RIO in a timely fashion to prevent further abusive and continuing harmful action against competitors.

1. OUR Evaluation of C&WJ Initial Projections and Pricing Methodology Compared to C&WJ Actual Results

The OUR must appropriately review and determine fair and reasonable pricing mechanisms to address Jamaica's current market requirements to encourage industry competition. Flow believes that current C&WJ RIO tariff pricing, which was strongly influenced by C&WJ's dominant market position, reflects continued unfair C&WJ cost inefficiencies and former outmoded traffic projections, which have likely been excessively exceeded from original projections. The continuation of C&WJ to rely on initial projections and cost factor methodologies employed from earlier Jamaican market realities unfairly impact competitive price considerations today.

The Telecommunications Act ("Act")³ stipulates that interconnection by public voice carriers must be provided in accordance with certain principles.⁴ In addition to these principles, dominant carrier, C&WJ, is also required to provide interconnection on terms and conditions that are:

- Non-discriminatory;
- Reasonable and transparent;
- Include cost oriented charges;
- Exempt of unfair cross subsidies; and
- Such that where, technically and economically reasonable, are so diverse as to render it unnecessary for an interconnection seeker to pay unreasonable charges for network component or facilities that it does not require.

Section 30 (2) of the Act requires C&WJ to keep separate accounts in such a form and containing such particulars as will enable the OUR to assess if interconnection is being provided on the basis of the required principles.

Given the various policy statements issued through OUR interconnection pricing consultations to date,⁵ Flow believes that market changes require, at minimum, that the OUR evaluate the original C&WJ traffic and cost projections, pricing calculations, and initial tariff pricing methodology employed by C&WJ and the OUR which continues to be used to justify and maintain C&WJ high tariff prices. Flow believes C&WJ's rates are excessive and do not reflect competitive cost based pricing. Flow asserts that the OUR should immediately make the needed assessments to ensure competitive new entrant carriers have reasonable rates in order to compete effectively in the Jamaican marketplace.

We note with interest C&WJ's recent request to adjust Jamaican dollar inflation to justify

³ Telecommunications Act 2000 (Jamaica).

⁴ See Section 29(2) of the Telecommunications Act 2000.

⁵ For example, see *OUR Determination Notice* (C&WJ RIO) dated February 21, 2001, (*Modifications to RIO-3*) dated Nov. 22, 2001, Doc. No.: TEL 2002/01 (*Assessment of C&WJ RIO*) dated Feb. 7, 2002, and Doc. No. TEL 2002/04 (*Interconnect Pricing – RIO 4*) dated May 22, 2002.

higher tariff charges⁶, but what should be more significant is the OUR 's initiation to revise and bring down C&WJ high tariff prices. Therefore, Flow requests that the OUR commence immediately an evaluation of C&WJ 's initial pricing and cost projections compared to actual results. Any further delay of the OUR to assess and compare former C&WJ pricing projections and methodologies to actual outcomes, unfairly disadvantage competitive new entrant carriers by allowing C&WJ to continue to impose unjustifiably high and unreasonable rates preventing competition in current C&WJ cost and market realities.

It appears that C&WJ's initial pricing methodology for interconnection charges may have been based on forecasted traffic levels.⁷ Therefore C&WJ must disclose its initial assumptions and what the difference was between the forecasted traffic and cost projections compared to the actual traffic levels originating on its network that were earlier factored in developing its prices. The OUR must insist that such assumptions be disclosed, transparent, and reassessed since considerable revenues and traffic projections may have formulated cost factors that may not have earlier anticipated the huge volumes of mobile traffic origination in the C&WJ network. Hence, initial C&WJ revenue forecasts compared to actual revenue streams constitute a significant factor in determining price ratios, among other relevant projections. Traffic volumes have a huge impact on the cost basis, and consequently revenue is an essential factor which is just as important as other cost-based methodologies incorporated by the use of long term incremental costs (TELRIC) or benchmarks. C&WJ must undergo the comparison of projected and actual data analysis and disclose its actual traffic data, especially related to termination of traffic originating in mobile networks, as well as the corresponding revenues.

It is the OUR's mandate to provide cost driven pricing. Flow believes therefore the OUR is also required to promptly intercede and immediately make right through all mechanisms available to it, a balanced pricing policy and regulations to encourage continued competitive new entrant investments to infrastructure and diversified services implementation for the country of Jamaica. C&WJ anti-competitive market distortions, brought about in the early RIO process and heavily influenced by its market dominance, continue today. Flow believes that consistent with OUR policy and law, initial C&WJ projections and cost assumptions must be promptly reviewed and revised to bring rates down to reasonable levels.⁸

⁶ See *Cable & Wireless Jamaica Variation in RIO5A for Incoming International Call Termination on PSTN, Doc. No.: TEL 2007/16, dated Nov. 22, 2007.*

⁷ C&WJ appears to calculate charges based on forecasted traffic and revenue projections. See OUR RIO Determination, May 22, 2002: "The Office is also persuaded by the proposal (made by C&WJ) that the traffic levels used to calculate the charges should be forecasted levels for the year beginning July 2002."

⁸ See *Id.* at paragraph 2.2 "Given the statutory timeframe, the Office believes there is a strong case for setting initial charges for a relatively short period. The quality and robustness of the cost information on which some of the charges are based will improve over time as costing systems are refined and made more reliable. Since costs change over time, 3 charges will need to be subject to periodic review (as C&WJ recognized in its paper to the OUR of May 3). Furthermore, the system of accounts from which C&WJ has derived its proposed charges is quite new and typically, the development and refinement of accounting systems (or other costing models) is a process and not a one-off exercise."

See also, Tables 6.1 and 6.2 of Chapter 6 of December 2000 OUR Consultative Document "*Assessment of Cable*

Therefore, as an absolute minimum requirement, Flow requests that as part of implementing the Proposed Amendments to the C&WJ RIO, the OUR should evaluate and reassess the original C&WJ pricing calculations determining cost and tariffs to see how initial projections compare with actual traffic and revenue streams within the context of the methodology being employed. Flow believes such evaluation is required in order to properly assess, amend and justify the continuation of current C&WJ exorbitant interconnection pricing schemes. Flow predicts that a diligent and updated OUR evaluation would justify the OUR mandating that C&WJ immediately adjust its tariffs downward to reflect more reasonable tariffs with current cost and market realities.⁹ By remedying this long overdue price adjustment, competitive carriers would be better able to compete and provide broader access to competitive pricing and services diversification for Jamaican consumers.

2. Amend RIO to include commercially competitive pricing schemes

Flow finds unacceptable that the country of Jamaica has higher domestic termination costs than international termination costs. For example, with respect to the U.S. international terminations charges, Flow is paying more to terminate traffic in C&WJ's domestic network! Flow believes this C&WJ pricing situation cannot be justified and must be immediately reviewed. Therefore, given C&WJ's absurdly high interconnection charges, Flow proposes that the RIO Tariff Schedule 5A1 also be revised to reflect more reasonable and appropriate commercially competitive pricing schemes reflecting industry standards.

Such proposed revisions should include specifically, among others, the following:

- Eliminate the various, peak, off-peak and weekend rates and convert services into a flat rate.
- Eliminate the existing "regional rate" service charge and implement a dual national rate system which consists of i) a flat local rate (applying to calls within any of the three (3) counties in Jamaica, and ii) a long distance rate.
- Provide that data/fax/voice access call prices should be the same regardless of content.
- Provide a substantially reduced interconnection rate where a C&WJ customer can dial an access number to connect to a competitive long distance provider. There should be no cost for this service for either the customer or from C&WJ to the competitive long distance provider.

& *Wireless Jamaica's Reference Interconnect Offer*" where for example, the significant change in BT's costs between 1995/6 and 1998/9. The reduction in nominal terms is at least 30% over this three-year period (so the reduction in real terms is even larger).

⁹ See for example, *OUR Determination Notice (Modifications to RIO-3)*, dated November 22, 2001, whereby earlier traffic projections and cost evaluations leading to earlier high pricing determinations are no longer justifiable when compared to the ensuing years actual results. In such cases, the OUR must reassess dominant carrier current costs and pricing schemes downward to reflect market realities for competitive wholesale pricing for new entrants and ultimate consumer provision of diversified services and savings.

3. Eliminate disparity of C&WJ wholesale and retail rates

Flow requests that the OUR address in the RIO Amendments C&WJ's predatory pricing with respect to wholesale pricing differentials between competitive carriers and its retail customers.¹⁰

For example, C&WJ is charging Flow and other new entrants higher interconnection rates for wholesale services than to its retail customers. This practice means to squeeze out new entrant competitors in the marketplace wanting to provide alternative diverse services at competitive prices. How is it that C&WJ retail customers are paying less than wholesale pricing for the same services being imposed on C&WJ new entrant wholesale competitors?¹¹ This C&WJ practice means to burden wholesalers with significant costs to be unable to compete for subscribers and therefore wipe out potential competition. This egregious C&WJ practice is against the law and its continuation cannot be justified. Flow proposes that revision to the current RIO Tariff Schedule 5A1 immediately prevent such activity.

This example further highlights yet another huge barrier to entry raised by C&WJ. There is a large disparity between wholesale interconnection rates imposed on Flow and C&WJ retail rates for the same services. How can a new service provider possibly compete when the incumbent monopoly levies costs on its competitors at the wholesale level significantly higher than it provides its own same services directly to consumers! C&WJ commercial affiliates should not be permitted to provide retail services at less than the interconnection rate plus reasonable mark-up for overhead and profit. Flow also proposes that language be immediately inserted in the current RIO Legal Framework Schedule and RIO Tariff Schedule 5A1 to prevent such unfair commercial terms and market distortions to new entrants' ability to compete.

Such predatory pricing and unsubstantiated additional costs imposed on C&WJ competitors, which include by way of another example, fictitious "transit" and other costs that should not exist in a data interconnect given existing interconnection points on the C&WJ data network, are mounting unstoppable by the same institution which mandate is to regulate anti-competitive incumbent monopoly behavior. The allowance of such C&WJ predatory pricing

¹⁰ See *OUR Determination Notice (C&WJ RIO)*, dated February 21, 2001 (hereinafter "*OUR RIO Determination Notice*"), at paragraph 1.5 : "Interconnection raises very complex engineering, operational and financial questions. For example, costs change over time, so charges need to be subject to periodic review. The RIO produced by C&WJ is designed for the terms of interconnection with domestic mobile carriers. This is appropriate for Phase I, but not for Phases II and III. Phase II offers the prospects of further new network entrants with domestic fixed networks. Full liberalization can occur in Phase III, which envisages the opening up of international facilities to competition. Thus, in making a final determination on the various aspects of Cable & Wireless Jamaica's RIO, the Office was mindful of the fact that interconnection is a process and not a one-off exercise."

¹¹ See *OUR RIO Determination Notice*, dated February 21, 2001, at paragraph 5.27 " Digital modes provided to entrants should be under identical terms and conditions including arrangements for pricing – level and structure that it offers such services to its own mobile customers. Private lines should be available to entrants under identical terms and conditions, including arrangements for pricing (level and structure) that it offers such services to its large retail customers."

practices hardly promotes the competitive environment Jamaica requires for the serious development of the country's telecommunications and ICT infrastructure. Therefore, Flow proposes immediate revisions to the RIO Services Description Schedule, RIO Tariff Schedule 5A1, Joint Working Manual and other RIO Schedules to consistently eliminate any C&WJ mechanisms supporting such phantom costs and manipulative pricing schemes burdening new entrant interconnection and competitive provision of services to Jamaican consumers.

4. Amend C&WJ 1-800 Services to Reflect Fair and Competitive Pricing

Currently C&WJ is also controlling all 1-800 number services. It levies exorbitantly high charges on new entrant competitors who need these services for their customer base development. C&WJ's anti-competitive pricing practices for these services ratchets up costs for new entrant competitors to structure and compete with cost-effective and innovative services in the marketplace, such as pre-paid calling card alternatives.

Flow proposes that the current RIO Schedules be revised to eliminate such incumbent charges in line with developing OUR policy in this area. The RIO should not support C&WJ's dominant competitive conflict of interest, and should reference a requirement and criteria to measure non-discriminatory pricing practices in this area that does not burden new entrants and allow C&WJ a competitive advantage.

5. Amend RIO Provisions to Prevent C&WJ blocking Access to Local Interconnection Rates

C&WJ also blocks access to local rates even though the C&WJ RIO designates interconnection locations to which new entrant competitors would like to connect to access local rates. C&WJ blatantly denied access to FLOW of these interconnection points stating that C&WJ does not support the sites. Therefore new entrants, such as Flow, can not interconnect there and consequently benefit from local rates rather than the current exorbitant charging mechanisms currently allowed to be levied by C&WJ on competitors.¹² What is the purpose of having a benchmark RIO if it cannot be enforced to provide competitive interconnection pricing to allow new entrants to compete effectively in the market? Flow proposes that stronger enforcement language be inserted in the various RIO Schedules that mandates C&WJ access to designated interconnection locations referenced in the current RIO at local rates.

¹² See *OUR Determination Notice (Assessment of Cable & Wireless Jamaica's Reference Interconnect Offer) Doc. No.: TEL 2002/02, dated February 7, 2002* at paragraph 1.4 " . . . interconnect charges should be cost oriented and there should be no unfair arrangements for cross subsidies. Finally, where technically and economically reasonable, interconnection services should be sufficiently unbundled so that an interconnect seeker is not forced to pay for network components or facilities that it does not require."

6. Amend RIO Provisions to allow direct interconnection to bmobile

Further to section 5 above, C&WJ has refused access to interconnect directly to its network locations to which new entrant competitors would like to connect to access local rates. In one such case, C&WJ refused direct interconnection to its bmobile facilities thereby creating an artificial “transit” route resulting in the imposition of additional and unnecessary interconnection charges. Such C&WJ predatory pricing practices only serve to saddle nascent carriers with additional costs and operational complexities in their struggle to deploy competitive new services.

Flow therefore proposes that the OUR amend RIO provisions to 1) expressly allow direct interconnection to bmobile, 2) prohibit C&WJ from levying fictitious “transit” and other predatory double charging over its network, and 3) disallow C&WJ from refusing access to its network facilities for interconnection.

7. Amend RIO Provisions to mandate C&WJ new entrant connection to its customers at C&WJ facilities

C&WJ also prevents new entrant competitors from interconnecting or customers meeting FLOW facilities at C&WJ interconnection points. C&WJ prevents such access by charging outrageous rates through the local loop side. This greatly elevated C&WJ pricing scheme creates a bottleneck to access and discourages customers taking services from Flow and other new entrant providers. This C&WJ predatory pricing practice prevents the development of competitive services alternatives and continues to go unchecked without safeguards enforced. Flow proposes that language and rate revisions be inserted to the current RIO Schedules preventing unchecked predatory and anti-competitive pricing schemes. Such action supports Jamaican government efforts to provide market competition balance and checks through the RIO mechanism for new entrant investors.

8. Amend RIO Provisions to Reflect, Enforce, and Expressly Require C&WJ Compliance to OUR Competitive Safeguard Policies and Mechanisms

Flow proposes language changes to the RIO Schedules reflecting OUR jurisdiction to enforce competitive safeguard mechanisms within the context of the RIO documents to promote a balanced environment to develop competitive telecommunications services. Flow believes that the OUR must assert its relevant jurisdiction and competency as the Telecommunications Industry Regulator and play a larger oversight role within the context of interconnection matters and within the terms of the current RIO Schedules. Flow proposes that provisions be drafted to be inserted into the RIO Legal Framework, RIO Services Description, RIO Tariff Schedule 5A1, among other appropriate RIO Schedules, providing clear, immediately enforceable preventative measures which mean to stop in its tracks those C&WJ predatory and anti-competitive practices

currently devised to frustrate and quash continued investment and competition in telecommunications services development within the interconnection context in the country of Jamaica.

9. Amend RIO Provisions to require C&WJ Uniform Numbering Schemes.

As well, Flow proposes that a specific RIO provision be inserted mandating that C&WJ comply with uniform dialing and numbering patterns making it easier for new entrants to present to the consumer seamless and familiar access to the PSTN. Every digit translates into a cost to program the switch that is eventually passed on in the cost of interconnection. Further, the longer the numbers, the greater the chance for misdialed traffic which aside from inconveniencing the consumer, can tie up equipment unproductively thus increasing costs.

10. Amend RIO Provisions to require C&WJ affiliate accounting separation and transparency.

Flow proposes that the RIO Legal Framework also contain a provision mandating that any interconnection between C&WJ and any of its commercial affiliates (i.e., Bmobile and Net to Speak) be disclosed, transparent, and in the public domain. Flow and others should be in a position to access a copy of the interconnect agreement between C&WJ and Net to Speak and see why it is that such imposition of cumbersome costing and anti-competitive practices are not imposed on C&WJ commercial affiliates providing the same Flow services.

II. THE OUR SHOULD IMMEDIATELY COMMENCE FORMULATING PARAMETERS FOR INTERCONNECTION PRICE REGULATION

Amendments to the C&WJ RIO will not be enough to allow swift and fair interconnection. These also will not adequately address and resolve C&WJ current pricing abuses in the Jamaican market. Therefore, Flow requests that the OUR commence consideration of implementing practical interim pricing mechanisms in the short term, while the OUR considers and develops interconnection pricing regulation pursuant to the principles outlined in the Act observing international experience.

As discussed below, benchmarking¹³, total element long run incremental cost (TELRIC)

¹³ The Telecommunications Act requires that C&WJ's interconnection charges be cost oriented. It also provides that where the OUR is unable to obtain cost information that, "it is reasonably satisfied is relevant and reliable", the OUR may adopt international benchmarks. See OUR *RIO Determination Notice (Interconnection Pricing RIO4)*, Doc. No.: TEL 2002/04 dated May 22, 2002 (*Asset Valuation Study*). See also, *ICT Regulator Toolkit*, at Module 2, Competition and Price Regulation, at paragraph 3.3.4 *Benchmarking Interconnection Rates* at <<http://www.ictregulationtoolkit.org/en/Section.2130.html>> and at paragraph 5.7, *International Benchmarking of Prices* at <<http://www.ictregulationtoolkit.org/en/Section.2149.html>>.

methodologies and “bill & keep”¹⁴ pricing concepts are options¹⁵ which can be addressed, among other approaches, for interim and future OUR price regulation. Among them, “bill & keep” simplifies accounting and therefore contributes to reducing the administrative cost component of interconnection charges. As an interim and long-term measure, the “bill & keep” process balances and maintains equilibrium in the marketplace among competitive carriers.¹⁶

The TELRIC costing methodology is complex, but there is considerable international experience and regulation surrounding this methodology and it conforms to the provisions of the Act that interconnection pricing must be cost-based. Such costing methodology as well as benchmarking can both provide flexible costing mechanisms in that their application may allow consideration of various factors particular to the country. These cost and price setting methodologies have tended to be viewed favorably by competitive new entrants particularly when an efficient network operator is modeled in the calculations. The OUR, in devising price regulation, can take the leadership in creating hybrid approaches to more swiftly and directly meet urgent competitive market requirements.

1. International Experience Formulating Pricing Methodologies

The obligation of network operators to provide interconnection services to each other has been introduced in the majority of cases by law along with the recognition that interconnection is an essential activity that must be protected by law to ensure necessary conditions creating competitive telecommunications markets.

Original devised statutory provisions creating the obligation and establishing principles for an interconnection regime have not been sufficient in most countries. Most countries with evolving telecommunication markets have immediately identified the necessity of enacting specialized interconnection regulations to develop the principles established in their telecommunications laws and to provide further guaranties and guidelines. Furthermore, experience has demonstrated that initial regulations needed substantial changes overtime to minimize the tremendous power that operators of existing networks have when there is dominance or significant market participation.

The principle of free negotiation of interconnection agreements has important exceptions even in the most developed markets. The distinction between operators with a dominant position

¹⁴ Refers to a pricing scheme for the two-way interconnection of two networks under which the reciprocal call termination charge is zero - that is, each network agrees to terminate calls from the other network at no charge. *OECD, 2004, Access Pricing in Telecommunications, OECD, Paris, Glossary of Terms.*

¹⁵ See *ICT Regulator Toolkit at Module 3.3, Setting Interconnection Prices*, at <http://www.ictregulationtoolkit.org/en/Section.2079.html>; See also Telecommunications Authority of Trinidad and Tobago “*Proposed Costing Methodology for Interconnection and Access in the Telecommunications Sector*”, “*Proposed Price Regulation Framework for Telecommunications Services*”, “*Proposed Telecommunications (Pricing) Regulations*”, “*Proposed Accounting Separation Guidelines for the Telecommunications Sector*”, Dec. 4, 2006 at <http://www.tatt.org.tt/newdoc.htm>; and *ITU Report on Interconnection (2002-2006)*.

¹⁶ Note that “bill & keep” typically is used for local telephony.

and those with no significant market participation is common to all regulatory regimes. However, the distinction is worthless without a system to develop policies, models, methodologies, guarantees, enforcement mechanisms, and most importantly the opportunity to constantly introduce improvements and to correct distortions in the market place.

International experience shows that certain costing methodologies have been developed and used under different contexts in different countries.¹⁷ Based on ITU Study Group country inputs available, as well as numerous other country reports¹⁸, various interconnection pricing issues have been addressed by various telecommunication administrations, service providers and regulators in different manners unique to their capacities and local market conditions¹⁹. Such conditions include important distinguishing factors such as whether there are unbundled network elements and the extent to which there is continued incumbent carrier dominance in a market.

Such other developing costing methodologies²⁰ referenced briefly above include Total Element Long Run Incremental Costs (TELRIC), international benchmarking²¹ with adjustment parameters to address local considerations,²² as well as a “bill and keep”²³ mechanism used both

¹⁷ See *ITU Report on Interconnection (2002-2006)*. Section II of the Report deals with Economic Issues of Interconnection. An overview of the key interconnection economic issues, including cost study approaches is done. Bottom up Approach, Top Down Approach and Outside-In Approach is discussed in detail. Description of COSITU and Regional Cost Models and other liaison inputs from ITU-T Study Group 3 also in this Section with details and references being given in various Annexes.

¹⁸ See *Bundesnetzagentur International Tariff Comparison, Results of the International Tariff Comparison (Digital Lines a) connection charges and b) monthly rates, July 7, 2007 at http://www.bundesnetzagentur.de/enid/4e1864c3b407fc23ebb93da99d649b40.0/International_Tariff_Comparisons/Digital_leased_lines_1he.html, Interconnection rates, May, 2006, at <http://www.bundesnetzagentur.de/enid/4e1864c3b407fc23ebb93da99d649b...ational_Tariff_Comparisons/Interconnection_rates_EBC_2__6_1hk.html>, Local loop a) initial connection charges and disconnection charges, July 7, 2007 at http://www.bundesnetzagentur.de/enid/4e1864c3b407fc23ebb93da99d649b40.0/International_Tariff_Comparisons/Local_loop_1hi.html*

¹⁹ See *ICT Regulator Toolkit*, a joint product of infoDev and the ITU, at Module 2 *Competition and Price Regulation*, at 5.5.1 *Fixed and Variable Costs and Price Setting at* <<http://www.ictregulationtoolkit.org/en/Section.2151.html>>, and Practice Note, *Fixed and Sunk Costs as Barriers to Entry at* <<http://www.ictregulationtoolkit.org/en/PracticeNote.2610.html>>.

²⁰ See *ICT Regulator Toolkit at Module 3.3, Setting Interconnection Prices*, at <http://www.ictregulationtoolkit.org/en/Section.2079.html>

²¹ In assessing C&WJ mobile termination costs, the OUR received additional information from C&WJ concerning its mobile termination costs and found them to be reliable and in general agreement with international benchmarks (UK). Even though certain aspects of the principal international benchmark are being contested, the OUR found that given costs were close, it provided additional support to conclude that C&WJ estimates were reasonable. See paragraph 2.1 at OUR *Determination Notice (Interconnection Pricing RIO4)*, Doc. No.: TEL 2002/04 dated May 22, 2002 (*Asset Valuation Study*).

²² See *ICT Regulator Toolkit*, at Module 2, *Competition and Price Regulation*, at 3.3.4 *Benchmarking Interconnection Rates at* <<http://www.ictregulationtoolkit.org/en/Section.2130.html>> and at 5.7, *International Benchmarking of Prices at* <<http://www.ictregulationtoolkit.org/en/Section.2149.html>>.

as an immediate interim solution and long term market flow through costing mechanism.

As referenced earlier in the most recent ITU Study released concerning Interconnection Charges, the various countries have adopted costing methodology approaches unique to their market pricing capabilities and developing market competitive experiences. Flow requests that the OUR adopt reasonable interim pricing measures such as the “bill and keep” model while it explores appropriate and practical costing parameters and methodologies for dominant carrier interconnection price regulation suitable to meet Jamaica’s unique country circumstances. C&WJ incumbent market dominance has been experienced by other countries and as shown below has required regulators to enact vigilant oversight, review, and revisions to evolving interconnection regulation and pricing policies in order to provide adequate and balanced market conditions for new entrants to compete.

In Argentina, the regulator, Comision Nacional de Comunicaciones (CNC) (formerly the Comisión Nacional de Telecomunicaciones (CNT)) initiated in 1996 a consultation proceeding for regulation on interconnection. In 1998 the first General Regulation on Interconnection was approved,²⁴ but the administration shortly thereafter noticed a vacuum in the regulation and reformed the regulatory provisions to introduce changes aiming to ensure, among other things, that interconnection charges were 1) based on costs; 2) do not exceed prices for similar services offered to users, and 3) preserve the regulator’s right and duty to intervene when the dominance of network operators makes it unfeasible to negotiate fair interconnection agreements.²⁵

The Argentinean Regulation on Interconnection also establishes the principle that interconnection charges cannot exceed the price for similar services offered to users or customers.²⁶

The preamble of the Decree PEN 764/2000 (approving the latest Argentinean interconnection regulation) recognizes and considers important principles that must guide the regulation on interconnection, among them:

- the regulation on access to existing networks is the central axle of a competitive regime and if that regime disappears or if it is difficult to warrant access, there is no market or competition;
- the economy of the networks is an essential medium to ensure a telecommunication market highly competitive;

²³ Refers to a pricing scheme for the two-way interconnection of two networks under which the reciprocal call termination charge is zero - that is, each network agrees to terminate calls from the other network at no charge. *OECD, 2004, Access Pricing in Telecommunications, OECD, Paris, Glossary of Terms.*

²⁴ See “Reglamento General de Interconexion” approved by Decree N° 266/98.

²⁵ *Reglamento Nacional de Interconexion (RNI) approved by Decree PEN 764/2000*

²⁶ See Article 4 of the “Reglamento Nacional de Interconexion (RNI) approved by Decree PEN 764/2000, which substituted the preceding “Reglamento General de Interconexion approved by Decree N° 266/98.

- the operators of national telecommunications networks control indispensable resources and facilities, which must be interoperable and interconnected, and without them the implementation of effective competition becomes a utopia.

The Argentinean experience is particularly relevant because the barriers that new entrants face in Argentina led to a regulatory process to improve the interconnection regime. This process is documented in two Argentinean interconnection regulations that reveal the challenges that the Jamaican regulator also must overcome to favor competition. New entrants in Argentina witnessed how the regulation initially implemented failed to create mechanisms to ensure that access to essential resources were guaranteed under fair terms and prices. In Argentina, the regulation implemented in 1998 failed to consider the power of network operators with dominance or significant market participation. Argentina concluded that the free negotiation of interconnection charges when one of the parties has dominances over the relevant market is an ineffective mechanism that translates into a denial of essential resources to new entrants and makes it impossible to compete.

The latest National Regulation on Interconnection adopted by Argentina provides for the implementation of TELRIC (Total Element Long Run Incremental Cost) as the pricing methodology.²⁷ TELRIC is the calculation method that the US Federal Communications Commission (“FCC”) required ILECs (Incumbent Local Exchange Carriers) to use to charge CLECs (Competitive Local Exchange Carriers) for interconnection and facilities co-location.

Although TELTRIC has been the object of judicial challenge in the United States, the challenge has been mostly based on discussion of the limited power of the federal regulatory agency with respect to the authority of state utility regulatory commissions.²⁸ The difficulties the FCC has faced to implement TELRIC are not derived from the advantage or disadvantage that this pricing methodology would have in the marketplace, competition, and consumers, but caused by arguments and federal court decisions finding the FCC lacked jurisdiction to issue a rule on the appropriate price of establishing local exchange facilities and services. Such judicial challenges should not arise in other countries were problems derived from the federal structure of government are not foreseeable. In Jamaica, should any discussion commence about the implementation of a TELRIC costing methodology, such consideration should be introduced in conjunction with a price ceiling method to deter C&WJ abusive pricing practices.

In Venezuela, the regulator (Comisión Nacional de Telecomunicaciones (CONATEL)) is migrating from a transitory “benchmarking” pricing model based on an international comparison that considered the average range of the four lowest values or best practices in a group of countries including Chile, Colombia, United States of America, Greece, Mexico, Peru, South Africa and Sweden²⁹ to a modified version of TELRIC. The new regulation provides for the substitution of a “benchmarking” model for a pricing method obtained through the TELRIC

²⁷ See Article 4, 3.2 (d) of the Argentinean “Reglamento Nacional de Interconexión (RNI)” approved by Decree PEN 764/2000.

²⁸ The jurisdictional dispute in *Iowa Utilities Board v. FCC*.

²⁹ See Resolution N° 030 of April 09, 2001. Published in the Official Gazette of the Bolivarian Republic of Venezuela N° 37.184, April 25, 2001.

pricing model with unbundling of network elements that presupposes elimination of inefficient costs from the calculation process. This is the model that the Venezuelan regulator will use in cases where intervention is required according to its Telecommunication Act and Interconnection Regulation. TELRIC was adopted by Venezuela initially for the fixed network and subsequently implemented for mobile networks.³⁰

Similar to Argentina, Venezuela has modified its Interconnection Regulation to facilitate competition in markets where the dominant operator of fixed networks did not face effective competition from new entrants.³¹ The new Regulation on Interconnection that introduced TELRIC also provided a transitory “benchmarking” pricing methodology. The first regulation on interconnection was not conceived with a thorough consideration of the tremendous barrier that high interconnection charges for access and use represent for new entrants and for the development of a competitive telecommunication market. Undoubtedly, the recent acquisition by the Venezuelan government of the dominant carrier, CANTV, will drive all prices down, including interconnection charges, with a potential risk for distortions in the market place. However the Venezuelan experience prior to the acquisition of CANTV by the Venezuelan government is a valuable reference.

In Chile, the Telecommunications Act³² establishes the obligation of providing interconnection and the possibility of fixing prices according to the proceedings established in articles 30 and 30J of that Act. At present time, only prices for a few services are regulated. Those services include interconnection services and prices for access to unbundled network elements.

The current pricing methodology in Chile is TELRIC with a model for an efficient operator. Similarly, to the implementation methodology developed in Venezuela, a hypothetical operator equipped with the most efficient technology available in the market and subject to efficient standards was conceived. Investment figures included in the calculation costs are exclusively those needed to address the expected demand for the corresponding service. Approved charges are valid for five years and indexed within such period according to technological and economic parameters that inform the process.

Many other countries have implemented the TELRIC pricing methodology, including Germany, Greece, Italy, Japan and Switzerland. In all of these countries, the common denominator is that TELRIC is mostly applied by the regulator when a competitive carrier fails to negotiate fair interconnection charges with a dominant operator of existing telecommunications networks, in most cases fixed telecommunication networks in the local telephony, domestic and international long distance markets.

³⁰ See *Administrative Resolution N° 881 with referential values for the determination of interconnection charges for use of local telephony and domestic and international long distance networks. Official Gazette No. 5.831 Extraordinary, December 20, 2006, “Comisión Nacional de Telecomunicaciones”.*

³¹ See *“Reglamento de Interconexión,” Decree 1.093 of Noviembre 24, 2000. Published in the Oficial Gazzette N° 37.085 of November 24, 2000. This regulation substituted the Interconnection Regulation enacted by Decree N° 3.275 of January 29, 1999 and published in Official Gazette N° 5.301 Extraordinary.*

³² See *Ley 18.168 (1982) “Ley General de Telecomunicaciones” Articles 24 and 25.*

III. ADDITIONAL PROPOSED AMENDMENTS TO C&WJ RIO

In addition to the major interconnection pricing and access issues raised above, and the need for immediate interim competitive rate solutions and development of Price Regulation, Flow also proposes that further overall amendments be introduced to revise and update current C&WJ RIO Schedules to better reflect a more balanced interconnection approach between the dominant incumbent C&WJ and new entrants.

1. Interconnection Policy and Process

Flow proposes that the OUR immediately develop a thorough policy and regulations for access to facilities for interconnection purposes. Such regulation would greatly assist new entrant dealings with dominant incumbent C&WJ and its refusal to allow competitive carriers to access its essential facilities for interconnection purposes.³³

In the interim, the OUR should mandate that C&WJ provide such facilities access as provided by law, through express provision in the RIO Schedules, thereby immediately requiring C&WJ to provide open and non-discriminatory access for interconnection purposes.

2. Proposed Amendments to RIO Schedule - Definitions

Flow proposes that any outmoded Definitions contained in the RIO Schedule, particularly referring to charges or non-relevant technical matters, should be deleted. For example, such former references include Access Deficit Charges, and other former tariff or technical references no longer relevant to new entrants and the interconnection process.

3. Proposed Amendments to RIO Schedule- Legal Framework

Amend RIO Legal Framework to Include Additional Dispute Resolution Mechanism

Flow proposes that mandated complaint resolution timeframes be reasonably short and strictly enforced under the terms of the RIO to deter C&WJ continued anti-competitive practices and its debilitating effects on fledgling new market entrants desiring to build a robust competitive market for Jamaican consumers.

³³ An example of such policy and regulation has been issued by the Telecommunications Authority of Trinidad and Tobago (“TATT”). See at <<http://www.tatt.org.tt/findocdoc.htm>> “*Recommendations for Access to Facilities Regulations* (Sept. 28, 2005); *Recommendations for an Interconnect and Access Policy* (Sept. 28, 2005); *Recommendations for Interconnection Regulations* (Sept. 12, 2005); and *Indicative Specimen Reference Interconnect Offer (ISRIO)*.

To this end, Flow therefore strongly recommends that the OUR incorporate an informal dispute resolution mechanism in the RIO with clear specific timeframes for action and resolution of complaints under the RIO Schedules. This would better balance the interests of the parties under the RIO Schedules and more importantly, prevent C&WJ, the incumbent dominant operator, from unfettered leeway to stall and delay processing of competitor interconnection complaints.

Flow proposes that RIO provisions set specific timeframes for C&WJ to respond to complaints originating under the RIO framework. These complaints should not be allowed to languish over time to the extreme detriment of competitors businesses and survival. Proposed revised RIO language should provide C&WJ an exact timeframe to respond or meet on the subject complaint that should be strictly enforced under the terms of the RIO. Flow proposes that language be inserted into the appropriate RIO Schedule indicating that new entrant complaints be responded to by C&WJ not longer than five business days from receipt of notice of such competitor complaint. This provision would also provide that the OUR may intercede to expedite resolution of any such new entrant complaint under the RIO. Additionally, the provision should require C&WJ immediately remedying the contravention with enforcement sanctions to encourage the same.

4. Proposed Amendments to RIO Schedule – Parameter Schedule

Flow proposes that the OUR required C&WJ to update its fault repair times to better reflect technological improvements and regional and international industry standards in this area.

Current C&WJ RIO fault repair times are very long and do not measure up to regional and international industry standards. Flow proposes these repair times be revised to be shorter. In addition, Flow proposes that a provision be inserted in this Schedule, requiring C&WJ annual reviews on its performance in this area and to revise Fault Repair Times downward over time in reflecting regional and international industry standards (i.e., fault repair time improvements can be reviewed, updated and incorporated into the Schedule to stay abreast of international industry standards). Such periodic review and revisions will prevent C&WJ from continuing to use “technical” problems as a delaying tactic within the longer timeframes set forth back in March 2003.

5. Proposed Amendments to RIO Schedule – Service Descriptions and Service Schedule

Flow proposes that outmoded initial Service Descriptions and their associated technical explanations be revised and updated to eliminate additional unnecessary costs originally imposed by C&WJ on new entrants and to which new technology deployment and efficiency has made such original descriptions obsolete. See current Service Descriptions categories below for Parts 1 to 4:

PART 1. JOINING SERVICES	3
1 FOOTWAY BOX JOINING SERVICE.....	3
1 NON-FOOTWAY BOX JOINING SERVICE.....	8
1 SMALL CAPACITY JOINING SERVICE.....	13

PART 2. TERMINATION SERVICES	18
1 PSTN TERMINATING ACCESS SERVICE.....	18
1 PLMN TERMINATING ACCESS SERVICE.....	21
1 INCOMING INTERNATIONAL CALL TERMINATION SERVICE.....	27
1 64KHZ UNRESTRICTED AND SPEECH TERMINATING SERVICE.....	30
PART 3. SPECIAL ACCESS SERVICES.....	3
1 119 EMERGENCY SERVICES ACCESS SERVICE.....	3
1 110 EMERGENCY SERVICES ACCESS SERVICE.....	7
1 FAULT REPORTING ACCESS SERVICE.....	11
1 SPEAKING CLOCK SERVICE.....	15
1 WEATHER WARNING SERVICE.....	18
1 NATIONAL DQ SERVICE.....	21
1 INTERNATIONAL DQ SERVICE.....	25
1 1-888 CALL CWJ ACCESS SERVICE.....	29
1 NATIONAL FREEPHONE SERVICE ACCESS SERVICE.....	32
1 INTERNATIONAL FREEPHONE SERVICE ACCESS SERVICE.....	35
1 NATIONAL COLLECT SERVICE.....	38
1 OUTGOING INTERNATIONAL COLLECT SERVICE.....	41
1 HOME COUNTRY DIRECT COLLECT SERVICE.....	44
1 INCOMING INTERNATIONAL COLLECT SERVICE.....	47
1 SPECIAL RATE SERVICE ACCESS SERVICE.....	49
1 SINGLE NUMBER CONNECTION ACCESS SERVICE.....	53
1 PERSONAL NUMBER CONNECTION ACCESS SERVICE.....	56
1 NATIONAL DQ DATABASE NUMBER INCLUSION SERVICE.....	59
PART 4. TRANSIT SERVICES.....	61
1 PSTN TRANSIT SERVICE.....	61

6. Proposed Amendments to RIO Schedule – Joint Working Manual

Flow proposes that revisions also be implemented in the Joint Working Manual (JWM) (Technical document), deleting earlier developed C&WJ onerous provisions and providing language reflecting flexible technological approaches supporting lower interconnection charges.

CONCLUSION

Flow continues to believe that the regulatory process against C&WJ anticompetitive interconnection practices in the country of Jamaica is frustrated. Appropriate and updated revisions to the RIO Schedules will provide a long overdue opportunity to address head on continuing abuses by the incumbent monopoly C&WJ. Enforcement of such RIO Schedule revisions may prevent C&WJ from further stalling progress and continuing its numerous and unstopped anti-competitive practices which have arisen in the interconnection context in the country of Jamaica.

Flow requests that in the OUR RIO Amendment proceedings, particularly with respect to commercially reasonable interconnection pricing, that the OUR conduct an evaluation of actual C&WJ traffic and revenue that exceeded C&WJ initial costing projections when the OUR initially reviewed C&WJ’s determination on interconnection charges and cost basis assumptions. Such review and analysis must be undertaken by the OUR and the C&WJ in the context of this

proceeding. Furthermore, the OUR should require such review to be transparent in that C&WJ must disclose the detailed economic information so that initial traffic revenue projections can be compared to actual results. These are important factors to justify cost basis, and C&WJ initial forecasts must be reviewed and compared to actual results to fairly gauge its current pricing margins and practices.

Additionally, Flow requests that the OUR consider the development of interconnection pricing regulations where the public is granted ample opportunity to discuss different and hybrid pricing methodologies, safeguards, and guaranties protecting new entrant service providers against C&WJ dominant pricing abuses. The issues of anti-competitive practices must be addressed within the interconnection pricing context, and given the complexities of the matter, the OUR, as the specialized telecommunications agency, should be the leading government agency investigating, resolving complaints, and enforcing law and regulation in this area.

New entrants and the market require that the dominant PSTN operator, C&WJ, provide access to Essential Facilities and interconnection on non-discriminatory and fair pricing terms. C&WJ should be mandated to provide wholesale call origination product to alternative service providers, in as competitive a manner to which it currently offers to its own affiliated service entities. The implementation and enforcement of this requirement through appropriate RIO Schedules, and such other pro-active OUR policies currently being developed, would send a clear signal to investors and consumers that the country is encouraging the implementation of diversified and competitive networks and services

Flow respectfully submits that prompt implementation of the proposed changes to the RIO Schedules indicated above will have a positive impact on the development of competition in the Jamaican telecommunications sector. Providing businesses and consumers innovative and competitively priced service options will further develop and expand the Jamaican economy and market place.

Respectfully submitted,

ON BEHALF OF COLUMBUS COMMUNICATIONS JAMAICA LIMITED

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