Columbus Communications Jamaica limited

Response to the OUR's Invitation for Comments on Draft RIO 6

OPENING REMARKS

Flow is pleased to participate in this consultative process leading to the revision and formulation of a new Reference Interconnect Offer (RIO6), which we believe is long overdue. The views expressed herein are not exhaustive, and any issue not specifically addressed does not in any way indicate acceptance, agreement or relinquishing of Flow's rights. Therefore, Flow expressly reserves all its rights.

Executive Summary

Flow is of the view that the proposed modifications to the existing RIO do not adequately represent a number of key issues impacting the telecommunications industry in Jamaica at this time. We believe that the proposed changes and omissions largely favour the incumbent, LIME, as the dominant provider of fixed line services in Jamaica. Below are some specific areas that we believe need to be given due consideration in any updated Reference Interconnect Offer:

- Local Rate Structure
- Transit fees
- Indirect Access
- Wholesale Rate Structure – to be reflective of cost
- Bypass

- Process & Timeline for Issues Resolution

Local Rate Structure – too complex

Given the size of Jamaica both in terms of population and geography, we believe that single rates should be obtained in the fixed line business as in the case of mobile services although, mobile carriers are also charged varying rates by LIME depending on the final destination of the call. Currently fixed line interconnect rates are structured based on geographies – local, regional and national combined with peak, off-peak and weekend rates. This is too complex and is inconsistent with what is happening in the global telecom space. In the US, for example, the tendency is to simplify the rate structures and move towards a single national rate which is sometimes extended to the entire North American Continent. To move to a single rate across all geographies will significantly reduce the administrative complexity of billing and reduce the costs inherent in establishing multiple interconnection points across the country to combat the costs associated with the different rates applicable across geographies.

This should translate to better rates for the consumer.

Transit Fees

LIME does not allow direct connection to their Mobile switch. This introduces an unnecessary cost both for the termination of local calls as well as international calls destined for LIME’s mobile network. This means that calls destined for their mobile network must first traverse their fixed network. This is unacceptable as a fixed network is not a necessary requirement to facilitate the termination of calls to a mobile network as in the case of Digicel and Claro. Both Claro and Digicel facilitate direct interconnection to their switches which simplifies the interconnect process and reduces the service delivery costs. This also reduces the potential points of failure in the network topology. Under the revised RIO, Flow proposes that the issue of direct interconnection to LIME’s mobile switch is addressed and the costs associated with transiting the fixed network be removed as this simply drives up costs for operators and consumers. In any event, the proposed transit costs of JM$0.929 (approximately US$0.01) per minute is not reflective of a cost based model, and is out of line with what obtains in other jurisdiction such as the UK where transit rates are of the order of JM$0.13 per minute. The proposed rate must be revised downward to reflect global trends.

Indirect Access

This has been a long standing issue that needs to be addressed explicitly. The modified RIO must lend itself to enabling operators to provide value add services to customers across networks such as international collect calls and international DQ in the most cost effective manner rather than relying on such services rendered by the incumbent which might not necessarily be the most economical. In the case of local DQ which is a necessity for any fixed operator; the proposed rates for this service are being doubled in the revised tariffs. Clearly, the incumbent provider of this service is taking an anti-competitive stance as this service is not currently available otherwise. Flow believes that this is unjust and the rates for such services should be reflective of the costs.

Wholesale Rate Structure

While it would appear as legitimate business practice for a Carrier operating in several markets to enter into agreement with a Service Supplier to terminate calls in their several markets; it must be considered unfair business practice when rates are lowered below cost in one jurisdiction where the carrier has a position of dominance and offset in another where there is little or no competition. The RIO must have specific language to guard against this practice where wholesale prices are lowered below costs to maintain dominance and gain market share. The OUR must reserve the right to investigate and rule on such practices.

Bypass

This is a major issue affecting licensed carriers who are denied revenues by operators that do not pay the necessary governmental Service Obligation fees. This impacts not only the carriers, but the government is denied substantial revenues as well. The revised RIO must address this issue whereby the Carriers agree to share all information relating to potential bypass to the OUR for sanctions against any licensed operator participating in such activities.

Process and Timeline for Issues Resolution

Flow believes that a formal guideline with respect to timelines for handling queries or disputes relating to the RIO should be included in the revised RIO to ensure that issues are addressed in a timely manner. The OUR should ensure adherence and be able to apply sanctions against parties for non-compliance with the stipulated service level standards. The OUR should also hold itself accountable to service level standards in relation to the RIO thereby giving itself greater credibility to enforce compliance among the service providers.

Below are Flow's responses to the specific proposed changes to the Reference Interconnect Offer.

With respect to the proposed amendments to the Legal Framework, please see our response in the following Section:

Legal Framework

Charges and payment, Clause 9.6,

Flow disapproves of the proposed change from 5% to 3% in relation to any dispute for investigation and determination. LIME has not put forward any suitable rationale or justification for this change. It is our view that this reduction from 5% to 3% in an industry which is largely dependent on volume and accuracy in accounting can lead LIME to delay or not resolve issues in a timely manner. Essentially, this will absolve LIME of timely resolution of disputes raised by Carriers with whom they have an interconnection agreement. We propose that this remains at 5% for amounts in dispute.

Variation of Charges (Clause 10.4)

Flow does not believe that the rates associated with the termination of international calls to LIME's network bear any significant direct relationship to the devaluation or revaluation of the Jamaican dollar in relation to the US$. Therefore rates should not be adjusted on this basis and this clause should be removed entirely from the RIO. Any adjustments in rates should reflect the cost of providing the service. In other words, adjustments in price should not be merely tied to the devaluation/revaluation of the Jamaican dollar but more reflective of the local costs involved in the process of call termination.

Guarantee and Security Deposit

Flow has no issue with the request for deposits for the provision of service. However, given the ability of Carriers for real time billing and reconciliation of accounts, the deposit should not exceed two month's payment for any service rendered by the service provider especially with respect to call termination.

SERVICE DESCRIPTION (PART 1 AND PART 2)

Non-Footway Box Joining Services

In relation to charges for Non-Footway Box joining Services (1.5.4) Flow believes that the establishment of an interconnection agreement between the service taker and the service provider should be of financial interest to both parties and the associated costs should be borne by both parties equally and not solely by the Service Taker as proposed in this amendment.

JOINT WORKING MANUAL

Compensation for Inaccurate Forecasts (Clause 2.4.4.3)

Both the Service Taker and Service Provider has a joint responsibility to ensure that forecasts are reasonable and do not lead to over investment in capital infrastructure. The risk is therefore a joint one inherent in doing business and should be share equally. Given this, and the ability to share and reallocate resources, we believe that it is unreasonable for either party to seek compensation from the other under this agreement in relation to missed forecast.

CONCLUSION

While the providers of telecommunication services in Jamaica will have varying positions and ideas on how the revised RIO should be structured, the administration, monitoring and enforcement of the terms of the RIO must be strengthened. The OUR must asserts itself as the enforcement arm of the RIO and seek to act in a more expeditious manner which is expected of any regulator in a dynamic and competitive market. A RIO can only be effective if the agreed terms are enforceable.

Flow is willing to continue to participate in the process leading to a revised RIO and any meaningful dialogue that will bring about a more competitive telecommunications market in Jamaica.