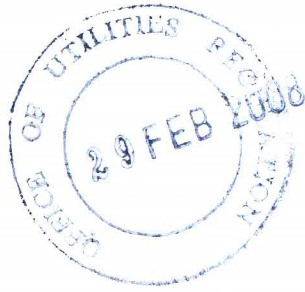




**CABLE & WIRELESS**



February 28, 2008

Ms. Diana Cummings  
Regulatory Manager  
Office of Utilities Regulation  
36 Trafalgar Road  
Kingston 10.

Dear Diana,

**Re: OUR DRAFT MANAGEMENT PLAN FOR FISCAL YEARS 2008/09 – 2010/11  
& BUDGET FOR FISCAL YEAR 2008/09**

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Cable & Wireless Jamaica (C&WJ) thanks the OUR for continuing to assist the industry in managing the regulatory environment by publishing its forward looking work plan and budget.

Like the OUR, C&WJ is adapting itself to market dynamics and technologies that challenge familiar business models and which require a different regulatory approach. C&WJ recognizes that, in grappling with the developing market structure, the OUR has embraced that the focus of regulation must change. Albeit, implementing change often has its many challenges and uncertainties. Hence, we acknowledge the OUR's courage in seeking to navigate a course in these uncharted waters.

### **Management Plan**

Since liberalization in 2000, Jamaica has experienced one of the highest rates of mobile penetration in the Americas, so much so that when combined with fixed line penetration, the teledensity of Jamaica is over 100%. Most Jamaicans have had no experience with a fixed line telephone in their homes and for the vast majority of Jamaicans, prepaid mobile telephone service is their only means of communication. C&WJ is pleased that the OUR has confronted the need to review the voice market and by extension much of the current regulations associated with a former monopolistic market structure. Like the OUR C&WJ looks forward to an environment facilitative of convergence, genuinely technology neutral and forward looking.

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We are also pleased that the OUR has been judicious and has suspended the review of C&WJ's price cap regime pending the outcome of the market review. We also recommend that the OUR suspend any further deliberation on Indirect Access as this matter is also highly dependent on the outcome of the market review. In fact, the market for international outgoing calls, which is the original market that Indirect Access was intended to benefit, will be the first market to be reviewed and a decision made, by August 31, 2008 in accordance with the OUR's timetable.

C&WJ is heartened that the OUR will be maintaining a watching brief on service quality while allowing industry self-regulation. A relationship between the OUR and the industry, which enures to the benefit of customers, within the context of industry self-regulation, is advantageous. This understanding, from section 6.1 of the OUR's Management Plan for 2008/09 to 2010/11, seems inconsistent with the appended Workplan which indicates that a determination should be made on Quality of Service (QoS) on February 25, 2008. Clarification is sought from the Office on this point.

Regrettably, C&WJ had to apply for a reconsideration of the OUR determination on '*Proposed Changes to the Regime for Assessment of Regulatory Fees*', issued on February 8, 2008. We note that the OUR has proposed that it should maintain an unencumbered surplus amounting to four (4) months of operating expenses. C&WJ awaits a definitive interpretation of what this means from the OUR but suffice to say that this development is disconcerting, particularly coming as it does on the heels of an effective increase in regulatory fees for C&WJ.

Having reviewed the workplan, C&WJ takes the opportunity to propose a few amendments to the plan, being:

- Both JPS and C&WJ own pole infrastructure and require rights of way. Any discussion on Joint Pole Use and Street Works / Way Leave Code must include C&WJ so that the Company's interests are not prejudiced by decisions made by JPS. An adjustment needs to be made in the workplan to address this.
- The OUR has scheduled discussions on the extraterritorial use of E.212 codes for late 2009. The extraterritorial use of the Jamaican Home Network Identifier (HNI), by Digicel, has been identified and communicated to the OUR since April 14, 2004. Several other letters have been written to the OUR on the matter. C&WJ is not aware that the OUR has been present or represented at the ITU when discussions are being held. In fact, the ITU is now developing a framework to govern HNIs, where these are being used extraterritorially.



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The Jamaican HNI is one of the most widely used HNI worldwide and the OUR has taken a hands off approach to influencing this framework. This is an issue which needs to be dealt with immediately, as the developments in the international arena have already overtaken the OUR's delayed timeframe.

### Budget

In a letter dated November 29, 2006 and directed to the Director General of the OUR, C&WJ had supported that the OUR must be adequately staffed. The OUR had responded that its staff complement should not grow much beyond fifty three (53). We however did not expect that the OUR would be expanding its staff complement to the proposed fifty five (55). The result of the OUR's burgeoning staff complement is a 25% increase in staff costs, with a provision of 10% for salary increases and 5% for merit increases.

C&WJ has represented its concerns with the OUR's budget(s) in its application for reconsideration of the OUR's determination on regulatory fees, which concerns bears repeating here:

*'...Over the years C&WJ has had reason to comment on the size of the OUR's budgets, making specific reference to several large and increasing items of expenditure. In the main, the OUR has defended its budgets and has not made adjustments, citing comparisons with C&WJ as unreasonable. We believe that the OUR's budgets are not reasonable. The OUR's budget for fiscal 2008/09 is 17% greater, in real terms, than its budget for fiscal 2007/08 which was 8% greater than the budget for 2006/07 which itself was 37% higher than the previous fiscal.*

*The OUR rents office space in the expensive business district of New Kingston, while less expensive office space is available in downtown Kingston. Moreover the OUR's budget for rental of office space, in New Kingston, was increased by 68% in fiscal 2007/08. Over the last five (5) fiscal years to 2007/08, the OUR has spent JS75.1M on training. The OUR's staff complement has now increased to fifty five (55) and there seems that there is no cap in sight to the growth in the OUR's staff complement. The knock on effect of increasing staff is a resounding 22% increase in staff cost. C&WJ does not believe that the burgeoning costs of the OUR machinery is in keeping with the spirit of section 16 (2) of the Act. In the Determination Notice, the OUR capped the contribution of each licensee, to regulatory fees, at 0.3% of that licensee's revenues. This cap is not a concession to C&WJ, whose average contribution to the OUR's budget over the years has not exceeded 0.22%. Nor does the cap incentivize the OUR to be efficient, because the cap does not relate to the OUR's budget but to the allocation of that budget to the licensees.*



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*Further, it is an unreasonably high threshold. There is no logic for any telecommunications service provider, in Jamaica, to be paying as much as 0.3% of its revenues as regulatory fees. The OUR's budget needs to be capped to make it reasonable. An efficiency measure like CPI-X would be useful in this regard?*

Yours sincerely,

**MELESIA SUTHERLAND CAMPBELL**  
**Regulatory Advisor**  
**Legal, Regulatory & Public Policy**