

Cable and Wireless Jamaica Ltd. (CWJ)
Comments on the Response
To the OUR's Second Consultation on Liberalizing Directory Information Markets

April 26, 2002

Cable and Wireless Jamaica Ltd. ("CWJ") has reviewed the response by Digicel to the OUR's Second Consultation on Liberalizing Telecommunications Directory Information Markets (Products and Services), and the following represents CWJ's reply comments.

CWJ will address the following points. Failure to address any particular argument raised by Digicel should not be construed as acceptance of or agreement with that argument, where that argument would be contrary to the interests of CWJ.

- ? The two models of the market
- ? The "first mover" issue
- ? The DQ Short Codes issue
- ? The structure of the NDD
- ? Other issues

In addition, the OUR requested in its April 12, 2002, electronic mail message additional comments on the following issues:

- ? Property rights in subscriber information
- ? Section 47 of the *Telecommunications Act*

As a preliminary matter, CWJ notes that only two parties (itself and Digicel) appear to have responded to the OUR's Second Consultation, both of which are public voice service providers. In particular, no other licensed voice service providers have chosen to intervene, notwithstanding their statutory obligation to provide a directory assistance service to subscribers of public voice services, and no parties from outside of the telecommunications industry have chosen to intervene. CWJ asks that the OUR be cognizant of the apparent level of interest in the liberalization of the directory information market when determining the appropriate means of liberalizing that market: the costs and effort required should be commensurate with the interest.

The Two Models

CWJ proposed a model of the market in which it would offer a complete Interconnect DQ service to other licensed service providers through the RIO regime. This service includes DQ query and number inclusion components, as well as a branding feature in order to customize the greeting heard by the customers of the licensed service provider.

Consumers, regardless of service provider, would use the same access code that they have been accustomed to using in the past. CWJ considers this model best reflects the social and economic realities of Jamaica.

Digicel proposed a model where the DQ database would be unbundled from the existing DQ service and presumably handed over to a third-party “National Directory Database” operator (the “NDD”) with its own staff, assets, revenues and expenses, as well as new administrative structures to provide regulatory oversight of the NDD. All licensed service providers would use the NDD to provide their own retail DQ services.

Customers would be required to learn new access codes in order to access the various retail DQ services. CWJ considers that the establishment of a third-party NDD would involve high costs and significant complexities that have not yet been addressed in this proceeding, and would create a material potential for the disregard of CWJ’s existing property rights and for creating stranded investments.

No “First Mover” Advantage

CWJ disagrees with Digicel’s assertion that CWJ has a “first mover” advantage merely because CWJ currently offers DQ service. CWJ notes that Digicel also offers DQ service to its customers, through the Interconnect DQ service. The fact that CWJ offers Digicel the means for Digicel to offer a service to its customers does not detract from the fact that it is Digicel, not CWJ, which is offering DQ services to Digicel’s customers and that it is Digicel, not CWJ, which is charging Digicel customers for the use of those DQ services.

In addition, both CWJ and Digicel customers who dial “114” access the same unbranded, generic DQ service. CWJ submits that, in the circumstances, consumers expect a generic service, and not a branded service associated with a given carrier or service provider. The end-result of the liberalization process may be a series of branded DQ services, one or more of which may be more successful than others, but an uncertain end-result should not be used to justify a claim that one party has a “first mover” advantage prior to the start of the liberalization process. CWJ would also point out that it provides the means to offer DQ services to CWJ Mobile on exactly the same terms as to the other mobile service providers, Digicel and Centennial. Concerns that CWJ might leverage a non-existent advantage in the market are clearly unfounded.

Consequently, CWJ also disagrees with Digicel’s claim that artificial restrictions should be placed upon CWJ’s ability to upgrade or improve the existing generic DQ service. First, as noted above, CWJ has no “first mover” advantage that must be countered, because the DQ service is generic and offered by Digicel as well. Second, CWJ does not believe that it was the intent of the *Telecommunications Act* to prevent Jamaicans from receiving improved services in the name of competition. Third, it would be unfair and inappropriate for a regulator to create an artificial competitive advantage for some competitors in an otherwise level playing field, by placing unnecessary regulatory restrictions on one competitor.

In any event, CWJ submits that Digicel may be overstating the value of the so-called “first mover” advantage. After only one year of operation, Digicel appears to have at least 365,000 customers (as reported during Digicel’s first year celebrations). CWJ’s prior presence in the market clearly appears to have had little impact on Digicel’s ability to rapidly penetrate the market.

New DQ Short Codes

CWJ proposed a model for the market that would not require the use of new short access codes by consumers to access DQ services. This is because of the significant disruption that this would create in consumers’ dialing habits and the significant monies that would be required for marketing campaigns in order to properly inform consumers of the changes. Digicel, on the other hand, is minimizing or has not fully understood the importance of both of these.

As CWJ has noted before, dialing habits are difficult to change. Changes in blocks of numbers are also not as painless as Digicel has suggested – Digicel only sees the end of the process through notices in the papers, but CWJ expends considerable effort to advise all of the affected customers prior to that. When CWJ changes a telephone number for customers, all affected customers are advised of the change, and a permissive dialing period of several months is put in place for all customers. The advertisement is placed subsequent to this process. It should be emphasized that a change of codes for a few customers is not of the same magnitude as changing a code that is used by all customers.

The OUR should also not underestimate the marketing campaigns required to advise consumers to alter behaviour that has become automatic. In this particular circumstance, though, consumers are unlikely to accept that it was necessary to require them to alter their behaviour, as the DQ service they will receive after the disruption (whether they are CWJ or Digicel consumers) will be identical to the service received before. This means the effort to advise consumers of the change will be commensurately greater. CWJ also notes that OFTEL had suggested twelve months for complete implementation of new access codes, three months for network implementation and nine months for the “parallel run” or “permissive dialing” period.

In the event the OUR determines that consumer dialing habits must be changed, CWJ notes that the change would be required only by the model proposed by Digicel, while most of the customers that would be adversely affected would be CWJ’s. In the circumstances, CWJ submits that it would be inappropriate for CWJ to assume most of the marketing and advertising costs required. CWJ also submits that it would be more appropriate to wait until the Jamaican numbering plan has been finalized. This would ensure that the new DQ services numbering scheme is consistent with the overall numbering plan and to allow all dialing changes that may be required to occur at the same time.

CWJ urges the OUR to consider that, in the final analysis, it is consumers who will have to pay, through increased costs as well as through inconvenience, for any changes to existing short codes. The OUR should balance these costs against the benefit that such changes would deliver to consumers. CWJ proposes that, in light of the overstatement regarding the “first mover” advantage, should there be a requirement for additional DQ short codes, 114 be retained for its existing use and other codes assigned to those service providers who wish them for other DQ services. With proper promotion, these should become as familiar to consumers, just as Digicel’s mobile service has become as familiar as CWJ Mobile’s in a short time. CWJ believes this approach would appropriately balance and promote the interests of customers, carriers and service providers.

Structure of the NDD

Under CWJ’s model, the ownership and operation of the database used in the provision of DQ services would not be affected. Digicel, on the other hand, has proposed a third-party NDD that would be variously a “partnership” or a “company”. “Membership” would be restricted to those licensed service providers who wish to list their numbers in the NDD, and all members would have “equal access” to the NDD to perform queries and have the right to demand audits of the NDD. In the event the OUR determines to adopt a model other than CWJ’s, the OUR should ensure a more detailed proposal is developed for comments by interested parties, and should have regard to minimizing the costs to society and to licensed service providers.

The Digicel proposal would require much more elaboration before CWJ could consider its feasibility in the event the OUR determines to create a third party NDD, which CWJ does not support. There is a significant difference between a “partnership” and a corporate entity with a board of directors, yet the proposal uses the two interchangeably. The concept of “equal access” was not defined in any detail, even though this would be the core responsibility of the NDD. While Digicel notes that smaller operators should not be discriminated against, CWJ believes that neither small nor larger operators should be discriminated against and that, in this instance, new voice service providers are likely to view both CWJ and Digicel as “larger” operators.

Other important issues remain outstanding. For example, will other voice service providers who have not expressed, in writing, an interest in this proceeding be required to participate in the NDD, regardless of the cost? If there is a lack of interest, how will the NDD be properly capitalized, and yet minimize the need for start-up capital from its (few) members? Will the OUR effectively be establishing the third-party NDD for Digicel alone? CWJ does not believe these considerations are “detailed technical specifications” that can be dealt with at a later date, as they fundamentally affect the viability of the third-party NDD model.

CWJ considers the audit proposal requires a particularly close review. Digicel proposes that all “members” of the NDD have the right to demand an audit of the NDD. This right is unlimited. Where the audit finds no breach by any party, the costs of the audit

would be borne by all members in proportion to the number of entries in the database. This means that a member with few entries could demand an audit simply in order to see the other members incur costs. CWJ submits that it would be more appropriate that the member demanding an audit in such circumstances bear the full costs of the audit. At the very least, the right to audit the NDD should be subject to review and prior approval by the OUR, in order to guard against frivolous audits.

In addition, the proposal does not address issues such as the source of the third-party NDD's assets and such as compensation for infringement by other licensed service providers or expropriation by government of CWJ's intellectual property in the compilation of information as well as in the tools used to build the database. While it may not be in Digicel's interest to raise these issues, the public interest demands that they be resolved prior to a determination in this proceeding. CWJ notes that some of these issues become less prominent if CWJ remains the owner/operator of the database, and that in some countries, such as Ireland, the incumbent operator was favoured as NDD by the regulator, in part because of its experience in providing DQ services.

Other Issues

Digicel has proposed that the Unlisted or Ex-directory classification be modified. CWJ considers that the current classification best meets the needs of Jamaicans and their interest in privacy, and should not be modified. The OUR only has to refer to CWJ's January 18, 2002, answer to the second question of the OUR's DQ Market Questionnaire (submitted in confidence to the OUR) to see strong interest of Jamaicans in protecting their privacy. The high proportion of CWJ's customers choosing the ex-directory option has developed despite the fact that CWJ does not actively promote it.

Property Rights in Subscriber Information

CWJ reiterates the views it expressed regarding intellectual property rights in section 2 of its October 18, 2001, Comments on Responses to the First Consultative Documents. Most parties have recognized that liberalization of the DQ information market must take into account the property rights of both CWJ and of any third-party suppliers.

For example, CWJ has copyrights in the compiled and organized database used to provide DQ services. These rights are independent of any rights CWJ may have in the information being compiled, and independent of the rights CWJ has in the various classification tools used to organize the information.

Section 47 of the *Telecommunications Act*

Section 47 provides that carriers and service providers must "regard and deal with as secret and confidential, all information regarding the type, location, use, destination,

quantity and technical configuration of services used by their customers,” with some exceptions such as with the written consent of the customer to disclosure of the information.

Article 27 of the terms and conditions of service for CWJ’s direct exchange line services currently provides for the disclosure of name, address and telephone number information for purposes of preparing a telephone directory, which would include DQ services. CWJ is, therefore, currently authorized to disclose only those three items of customer-related information, and no others, and only for the purposes of providing DQ services and directories. A subscriber who has asked for ex-directory treatment has refused disclosure by CWJ of any information. CWJ would also be currently prevented by section 47 from disclosing some of the information that the OUR has proposed be included in a listing in its Proposed Code of Practice, such as type of number and type of business.

The terms and conditions for CWJ’s pre- and post-paid mobile services do not include any written consent by the customer to the disclosure of any customer-related information. Accordingly, section 47 applies to prevent CWJ from disclosing to other persons the name, address and telephone number, and indeed any other information, of its mobile customers for any purposes. This is certainly consistent with the strong expectations of CWJ’s mobile customers that their telephone numbers will not be made available in the DQ database or in the printed directory.