

CABLE & WIRELESS JAMAICA LIMITED'S ("C&WJ") RESPONSE
TO
THE OFFICE OF UTILITIES REGULATION'S ("OUR")
SECOND CONSULTATION DOCUMENT
ON
THE LIBERALIZATION OF DIRECTORY PRODUCTS AND
SERVICES

Submitted by: Legal, Regulatory & Public Policy Division
Cable & Wireless Jamaica Limited

To: Office of Utilities Regulation

**Cable And Wireless Jamaica Ltd. (CWJ)
Response To The OUR's Second Consultation Document On The Liberalization Of
Directory Products And Services**

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OUTLINE

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Introduction

The Telecommunication Act 2002 states two of the main functions of the OUR as:

*the promotion of the interests of customers, carrier and service providers; and
the promotion of competition among carriers and service providers.*

All players within the industry must be cognizant of the delicate balancing act presented to the regulator in always striving to attain both objectives. In all instances, industry members and the public in general expects the regulator to choose a path that prioritizes economic efficiencies and meets customer demand and expectations.

Liberalization of DQ services is but one of many consultations conducted by the OUR, and like other regulatory issues, this topic shares the common characteristic of the Office seeking to perform its mandate of promoting economic efficiency in the industry while at the same time serving the public interest.

With the economic and social objectives stated above in mind, after reviewing the second consultation document, CWJ is convinced that the model which would best meet these objectives within the context of a smaller sized economy like Jamaica, is the model that is currently in place which will be referred to in this submission as the “DQ interconnect service model”. The model has the following functioning features and capabilities:

- ? CWJ has responsibility for operating and maintaining a comprehensive DQ database and DQ service
- ? CWJ has responsibility for collating, maintaining and publishing a comprehensive White Pages printed directory;
- ? CWJ offers to other operators an interconnect DQ service, allowing their subscribers access to CWJ’s DQ services;
- ? CWJ offers to other operators a service which allows their subscribers, if they choose to take this up, A Directory Number Inclusion and Publication Service and service for inclusion in CWJ’s DQ database.

CWJ also has other features to offer our DQ interconnect partners to enable them to differentiate and brand their own DQ service. One such feature provides an option to market entrants to customize and brand their 114 greeting.

As you may be aware the current 114 greeting is a generic one in which the operator answering the call says “Good morning/afternoon/evening. This is directory listings. May I help you?” CWJ is willing to offer market entrants the option to enhance and add value to their DQ Interconnect service. This feature allows market entrants to differentiate their 114 services and in so doing builds brand recognition and enhances competition. It is important to note that even though this enhanced feature is available, there has been no subscription to the service.

CWJ is also open to considering other value added enhancements which another service provider may wish to customize their 114 service provided that such recommendations are technologically feasible, respect customer privacy and are in keeping with the laws of Jamaica.

Another benefit of the current model is the fact that DQ interconnect service is currently part of the interconnection agreement (referred to as the RIO). The provisioning of DQ 114 interconnect under the RIO regime has the following advantages and industry safeguards:

- ? The practice of offering interconnect products for directory services is in line with international best practice.
- ? The RIO wholesale products are "bought" by C&WJ in the same manner and at the same tariff as the other operators so there is no discrimination
- ? The C&WJ directory services tariffs are cost based - hence any alternative regime would imply greater cost

Assumptions Underlying The Consultative Documents (1 And 2)

CWJ is concerned that both the first and second OUR consultative documents rely heavily on models adopted in large deregulated markets such as the UK. Caution must be exercised in adopting liberalization models from markets that do not share common socio-economic and legislative similarities to Jamaica. For example, larger economies present larger economies of scale and scope, more developed intellectual property legal regimes, and specific privacy legislation. These economic and legislative elements constitute liberalization models, which can sustain the viability of multiple DQ service providers and a wide array of DQ services.

Conversely a multiple DQ service provider model may not be appropriate or necessary for a smaller economy in transition towards fully liberalization like Jamaica where to date there is limited consumer privacy rights enforcement.

This is not to reject all international models and reinvent the wheel but rather to emphasise the importance of adopting characteristics from models used in markets/countries which share a likeness to Jamaica. More specifically, in arriving at a decision on a model, the regulator should present a comparative model which will offer a workable, cost efficient means of delivering affordable DQ service to the public and which upholds consumer's rights to privacy.

Economic And Public Interest Criteria For Choosing A DQ Service Market Model

CWJ sets out below some of the main reasons and criteria by which the DQ interconnection service model is assessed as being the most viable and efficient model for the industry at this time.

Economical and promotes efficient use/allocation of existing resources

There are three main cost components in providing a DQ information service:

- ? Cost to set up a database
- ? Cost to maintain the database (updates, deletions, changes, etc.)
- ? Cost to access database

The current DQ interconnect model demonstrates the maintenance and ownership of a centralized database to which any market entrant can obtain a fully packaged DQ interconnect service. The service includes:

- ? Access to CWJ's national DQ service
- ? Access to international DQ service
- ? Customise greet if requested

A directory number inclusion and publication service to enable the market entrants' subscribers' listings to be published in the White Pages of the Directory, if the subscribers wish this service. The overriding trend to date has been that customers (in this instance mobile customers) do not wish to subscribe to this service. The worldwide trend is that mobile numbers are not listed in DQ or in the White Pages, unless specifically requested by the individual customer.

The OUR's second consultative document contemplates in section 3.61, a model consisting of a single National Directory Database (NDD) in a multiple DQ service provider environment based on real time access on a non discriminatory basis OUR's suggested model would necessitate the duplication of many resources in the industry.

Additionally it must be borne in mind that the adoption of other models which require direct access to CWJ's model will necessitate onerous compensation charges to be paid by other industry players will have to pay CWJ in respect of intellectual property rights to the database. Ultimately, such costs incurred by providers will be passed through to consumers. Therefore, CWJ believes that in choosing any model, due consideration should be given to the fact that certain competitive models may result in higher costs and limited added benefits for consumers.

Consumer interest, resources and cost efficiencies associated with maintaining 114

The suggested migration from 114 suggested by the OUR in section 2.37 of the second consultative document, presents inefficient use of a scarce resources. Three digit numbers are scarce resources which countries reserve for use in priority essential services to the public. (e.g. fire, police etc.) Migration from the traditional 114 number will not only cause wide scale confusion among consumers but may also result in allocation of several scarce three-digit numbers. In fact, should the case occur whereby the numbering plan

cannot accommodate the required amount of three digit codes there may well be need for all players to once again change their DQ numbers leading to further prolonged and unneeded disruption and inconvenience to customers.

The option of changing the 114 number to a 114X, four digit code would also result in major costs, mainly to industry players in running prolonged public relations and education campaigns to promote new numbers and change consumer dialing habits. Such a campaign would extend well beyond 18 months as was the case with the transition from Jamaica's area code 809 to the new code 876. Public relation expenditure is unavoidable during such a transition exercise in which the aim is to coerce customers into changing dialing procedures which they have practiced for years. In sum, inconvenience and reorientation of consumer behavior represent significant social costs.

The other spin off losses from changing "114" will be felt by all industry players as following the lengthy transition period there is bound to be a decrease in call completion as confused customers who have not been made aware of the changes will be unable to access DQ and therefore potential calls will not be placed.

Based on the discussion in the two preceding sections, CWJ believes that the DQ interconnect model saves costs in the following ways:

- ? Eliminates duplication of costs in creating DQSP in a relatively small market
- ? Minimizes amount of total cost to be passed through to customer, when there is only one central database offering a totally functioning DQ service to all market entrants as opposed to several DQSPs each passing through their own cost for administration and operation of their DQSP service.
- ? Reduces inter-carrier / inter DQSP billing arrangements which can increase administrative costs and also result in measurable social costs through compromised quality of billing services and an increase in customer complaints.
- ? Optimizes use of scarce three digit numbering resources
- ? Eliminates decrease in call completion caused by migration from 114

Meets expressed consumer demand and gives due regard to consumer privacy

CWJ is of the view that the current DQ model provides the public with an essential publicly accessible "114" and White Page service. Other proposals for models which are being promoted on the basis of their ability to deliver numerous value added services, rely on the assumption that there is pent up demand for such services in Jamaica and that service providers should be unfettered in their ability to offer such value added services to consumers even if such offerings violate a consumer's privacy.

Before embarking on a costly exercise of migrating to a new DQ service model, it is critical to ascertain, through sound market research, whether the market will accept increased costs associated with these proposed value added services. What has not been determined in the Jamaican DQ market is whether or not customers want more sophisticated /value added sort of DQ services. Some responses to the consultation process so far seem to assume that the average Jamaican consumer does want

sophisticated/ enhanced DQ service even though no market research data or findings are presented as the basis for such an assumption. The most accurate indicator of demand for a service is “take up” or subscription to the service and currently , CWJ offers a branding feature for DQ 114 service to market entrants since June 2001, and to date there have been no “takers”.

CWJ firmly believes that before making a determination on the type of model to be adopted the key questions which this consultation needs to answer are:

- ? Exactly what kind of DQ service does the Jamaican consumer want?
- ? Has enough market analysis been spent trying to discern the types of features the average Jamaican consumer wants?
- ? Has this consultation process recognized that some of the enhanced DQ products that are being suggested may contravene existing privacy laws?

Without the justification based on market research or a consumer survey, implementing a model to deliver a variety of DQ services will amount to a regulatory decision based on the baseless assumption that because these wide array of DQ services are available in other jurisdictions they need to be offered to consumers in Jamaica at this time.

CWJ also firmly believes that no service provider should be allowed to offer DQ services which compromise a customer privacy. This issue is expanded on below.

Protects privacy rights of consumers

The model being suggested in the second consultative document makes the broad assumption that a carrier such as CWJ would need to disclose customer information to other carriers and service providers notwithstanding the strict language of section 47 which prohibits such disclosure without customer consent.

Digicel has indicated that additional services likely to be offered subsequent to entry in the DQ market include access to preferred listings and the provision of listings to SMS. These service offerings would raise serious privacy concerns amongst customers. For example provision of DQ listings for SMS would trigger a deluge of unsolicited SMS messaging /advertising to customers without their consent.

CWJ firmly believes that much more thought and analysis has to be given to privacy issues within this consultation.

The Telecommunications Act of Jamaica has a specific provision (section 47) respecting the privacy of customer information which is very strongly worded. All carrier and service providers are required to treat as confidential “all information regarding the type, location, use, destination, quantity and technical configuration of services used by their customers” In general, disclosure of such information is prohibited without written consent of the customer.

Guarantees the smoothest transition possible for consumers and industry players

CWJ maintains the view that continuing the current DQ interconnect service that is already in place, and maintaining the 114 DQ code provides the least disruption for consumers and for the market as a whole. The point has already been made regarding the inconvenience and confusion triggered by adopting several different DQ numbers.

The model suggested by the OUR would require a complex set of billing and collection arrangements, where each carrier would have to collect information on all DQ calls in order to bill their customers and remit monies to other DQ providers. This scenario also raises issues of liability and of bad debt to be resolved.

Given the above complexities associated with transition to a multi DQ service provider model, the DQ interconnect service model, by comparison is more plausible in that it minimizes market disruption and will be more cost and time efficient to implement based on the fact that the model is already in place.

Upholds existing intellectual property rights

As pointed out in CWJ's response to the first consultative document CWJ has a proprietary right in the database, such property rights should not in effect be expropriated. By maintaining the current *status quo*, both industry and customers are spared the costs associated with paying compensation to the incumbent for use of its database.

In summarizing the above sections, it is clear that moving away from the DQ interconnect model will undoubtedly lead to consumers paying more for DQ services. The factors discussed so far, which would necessitate added costs and potentially lead to price increases, are:

- ? Any other model would involve start up costs to implement in addition to the time to do so
- ? Other models would incur significant compensation costs to be paid to the incumbent for use of their database
- ? Additional administrative costs would arise from new complex billing arrangements between DQ service providers and carriers
- ? If the new model involves an access code change this would entail significant public relations costs and loss in revenue from decline in call completion following cut over to a new access code

Based on the extensive discussion in the preceding sections, CWJ restates its position that in view of economies of scale and scope, the current DQ interconnect model is the lowest costing operation and the most socially acceptable model for the delivery of DQ services in Jamaica at this time.

Responses to OUR's 6 questions

CWJ's comments pertaining to the six questions posed by the OUR in their second consultative document are based on the position taken in the preceding sections of this document

Question 1

Should directory services and products be prescribed as specified services? If not why? What are the alternatives available to the OUR?

In keeping with our position stated above, CWJ is of the view that the practices and procedures related to the provisioning of DQ services as part of the RIO which are currently in place should not be reviewed at this time.

Question 2

Do you agree that a change in the default access code and the requirement of mandatory customer access to other DQ services should remain as a medium term objective? Why?

CWJ maintains the view that the "114" access code should not be changed. Notwithstanding the fact that some arguments against changing "114" have already been presented in the preceding section, CWJ itemizes below the main reasons why the 114 number should be maintained.

- ? *Access code change causes market confusion. The imposition of a number code change imposes behavioural change on consumers which results not only in inconvenience to the consumer but a possible decline in 114 usage and a definite loss of calls after the transition period.*
- ? *Access code change expends significant time and involves a costly public education programme. The transition exercise also spans a significant time period. Similar number change exercises have had to run for 18 months. During this time public education takes on added costs of evaluating and measuring consumer change and call volumes etc.*
- ? *Scarcity of numbering resources. Three digit codes are scarce and if the decision to give various providers different three digit numbers is taken this would put a strain on national numbering resources.*

Question 3

Do you agree that only licensed service providers should be allowed to provide directory information.

In keeping with our position stated above, CWJ is of the view that the practices and procedures related to the provisioning of DQ services as part of the RIO which are currently in place should not be reviewed at this time.

Question 4

**What method should the OUR use in designing a NDD operator? Why?
and**

Question 5 (a)

Respondents are requested to provide a detailed proposal and comments on the structure and ownership of the NDD.

CWJ's DQ database comprises one of the most comprehensive listing of the country's business and residential sectors. Other carriers currently have the right to provide CWJ with customer listings to be incorporated into the DQ database (as well as into the White Pages). Under the DQ interconnect service model the existing database would continue to be owned and operated by CWJ. Therefore conceptually the current database would be equivalent to a National Directory Database (NDD).

Question 6

Are there other status classifications that should be considered?

In the interest of expediency and efficiency CWJ proposes that based on the DQ Interconnect service model being proposed that the names of the four classifications remain as shown.