



CABLE & WIRELESS
JAMAICA

RESPONSE TO THE OUR's
NOTICE OF PROPOSED RULE MAKING
ON
UNIFORM DOMESTIC DIALLING PLAN

March 2, 2007

Introduction

Cable & Wireless Jamaica (C&WJ) is pleased to have an opportunity to comment on the issues surrounding '1+' dialing in Jamaica as addressed by the Office of Utilities Regulation (OUR/the Office) in its Notice of Proposed Rule Making (NPRM) on the Uniform Domestic Dialing Plan (UDDP). In its response C&WJ will, not unlike the OUR in the NPRM, discuss '1+' within the context of its historic development in the North American Numbering Plan (NANP) and the unfortunate reframing of the NANP standard as anti-competitive.

C&WJ is of the view that where the competitive environment has evolved, as in the case of Jamaica, there may be an opportunity to review current practices that were acceptable and required, as in the case of '1+', during earlier periods where market structures tended to be more homogenous. The Company, however, is fundamentally disturbed where previously acceptable and required use of '1+' is now being reframed as anticompetitive by the OUR.

With regards to the announcement played when a C&WJ fixed line customer omits to dial '1+' before the number assigned to a third party operator, the Company had agreed to change the recording to reflect that customers are in fact not making *'a long distance call'*.

C&WJ expressly states that any failure to address any particular issue raised by the OUR in this NPRM does not represent agreement in whole or in part with the OUR's position on that issue. Further C&WJ reserves all rights to comment on any matter in this NPRM, in the future, that has not been addressed in this response.

History of '1+' Dialling

'1+' is widely used in the North American Numbering Plan (NANP), of which Jamaica is a part, as a toll indicator. Its use indicates to customers that the call that they are making will cost more, whether that call will terminate on their own provider's network or on the network of a third party. This is not an approach that was created by C&WJ but is used throughout the NANP.

The use of '1+' dialing usually predates the liberalization of the market, as it was normally used by early entrants to distinguish between fixed domestic local calls and fixed domestic long distance calls. This was the case in Jamaica, up to August 2005, where there was domestic local calling or intraparish calls at a lower rate vis-à-vis domestic long distance calling or interparish calls at a higher rate. '1+' dialing was required for making interparish calls. This structure has been replaced by a Single National Rate (SNR) where there is a flat call charge, the only differential being between rates for peak and offpeak calls.

As it stands today, C&WJ requires its fixed line customers to dial '1+' when calling any mobile network, including bmobile where call charges are higher and for cross network calls where call charges are also higher.

As the Office has indicated the most common prefix associated with the NANP is '1+' which identifies a sent paid toll call.

As the OUR has indicated, both the USA and Canada were forced to migrate from '1+' dialing because they have multiple Numbering Plan Areas (NPAs) or area codes as they are generally called. This was a matter of necessity and not expediency as the OUR is suggesting in this NPRM. The USA and Canada chose a closed numbering plan which has as a major feature, a uniform dialing procedure. This is in contrast to an open numbering plan, which has separate local and trunk dialing procedures. In an open plan the length of codes and subscriber numbers may vary. Jamaica has an open plan.

Eliminating '1+' dialing in and of itself does not create a closed or open plan. Should we need additional NPAs or should number portability become a reality there would be a more convincing basis for changing '1+' dialing.

In light of the history of the use of '1+' indicator in the NANP, C&WJ is disturbed that the OUR is now seeking to reframe this NANP numbering standard as evidence of anti-competitive behaviour on the part of C&WJ, with the intent of putting competitors at a disadvantage. Nowhere in its NPRM has the OUR recognized that even if a change is necessary, it is necessary because of a changed environment. Instead, the OUR has sought to reframe an acceptable NANP standard as anticompetitive and to accuse C&WJ of behaving anti-competitively. This is both erroneous and defamatory.

Purpose and Context of Existing 1+Dialling

The OUR has indicated that this NPRM is partly in response to local carriers who have complained that C&WJ requires its customers to dial '1+' when making a cross network call.

C&WJ has had several discussions and exchanged much correspondence, with the OUR, on the context of the use of the '1+' indicator, including a letter to the OUR dated June 23, 2006 in which C&WJ stated that:

In response to the OUR's letter dated March 14, 2006, C&WJ stated in its letter of March 24, 2006 that C&WJ has "*strong customer experience reservations*" as the *"1"* indicator alerts customers that they will be making a call that will attract a higher rate than a domestic call. This is so for all call types other than domestic fixed to fixed calls on the C&WJ network." The said letter is attached and forms a part of C&WJ's total submission on this matter. You will note that before C&WJ instituted a Single National rate (SNR) in September 2005, its customers were billed at a lower rate for calls within their

exchange area (intra parish) than for calls outside of their exchange area (inter parish). To make an inter parish call, C&WJ’s customers had to dial the “1” prefix...

We remind the OUR that by way of letter dated February 17, 2006 and titled “*Increased Rates From C&WJ Fixed to Third Party Fixed Networks*” C&WJ had advised that rates from C&WJ fixed to call Gotel, Columbus Communications (Merit Communications) and ODJ are:

	RATES (J\$)		
Company	Peak	Off Peak	Weekend
Gotel	2.82	2.82	2.82
Merit	2.82	2.82	2.82
ODJ	3.40	3.40	3.40

In contrast the rates for calls on C&WJ’s PSTN network is :

	RATES (J\$)	
Company	Peak	Off Peak
C&WJ	0.9	0.6

C&WJ believes that it has to give its customers some indication that they will be making a call that is at least 300% more expensive than the domestic call charges that they are accustomed to. Dialing the “1” prefix achieves this.

Each fixed network operator is dominant on its own network for call termination. Columbus Communications (Merit), Gotel, ODJ and PTJ are all dominant on their own network for fixed call termination. As such they can set any call termination rate. C&WJ learned this painful experience with fixed to mobile calls. As the Office is aware the Fixed to Mobile (FTM) retail rate that was in the market for at least two (2) years, set by Digicel, was J\$12. Customers did not recognize that the call charges were so high and moreover customers believed that C&WJ had set the retail rate while Digicel refused to publicly take responsibility for setting the rates. The result was that thousands of customers, unable to pay their bills, churned off the C&WJ network.

Having been penalized by the anomalous fixed to mobile regime established by the OUR, where the mobile operators are allowed to set the retail rates, C&WJ is adamant that it needs to maintain systems that allow its customers to manage their spend and prevent ruin to its business. To do otherwise is irresponsible.

Therefore C&WJ maintains that 1+ dialing is necessary to protect its customers and has addressed the fault in its network to continue this policy.

C&WJ is encouraged that following our previous discussions the OUR has acknowledged that there must be a facility that alerts customers that a cross network call will attract higher charges, and has now proposed that a tone or recording be used. This is the objective that C&WJ has achieved with its recordings.

Prior to the suitability of the recording being raised as an issue by the OUR, C&WJ had made the decision to change the recording played when a customer on its fixed network attempts to make a cross network fixed call without dialing '1+'. This decision had been taken in response to a letter received from the Consumer Affairs Commission (CAC). In its response to the Commission dated August 16, 2006, C&WJ advised that:

C&WJ believes it prudent and in the interest of our customers to continue the use of the '1' plus toll indicator which tells our customers that the number that they are calling will cost more than a call on the C&WJ fixed network. Calls to other fixed networks are at least 300% more expensive than on-network C&WJ calls.

I note however that you are particularly concerned that the message that a customer receives when the '1' is not dialed may be interpreted to be misleading as your view is that the call being made should not be classified as a "long distance call". C&WJ is happy and willing to review the recording, however we must caution that any new recording must indicate to the customer that higher than normal charges will prevail...

C&WJ had advised the OUR, subsequently, in an unrelated meeting that it intended to change the recording to reflect the fact that customers were not in fact making a long distance call. The Office intervened insisting that C&WJ submit the new recording for its approval. The OUR, in the final analysis, refused to approve the new recording, citing this imminent consultation and not wanting to prejudice its position. C&WJ therefore also decided to wait for the consultation lest it would have to make changes pending the outcome of the consultation.

In a letter dated December 22, 2006, the Office insisted that C&WJ should change the recording. The Company, since January, has rolled out the new recording in most of its exchanges. Technical difficulties have been encountered in completing the rollout and C&WJ has had to request the support of its equipment vendors in Japan. The new recording states that:

"You are calling a number assigned to another network. Please redial placing the digit '1' before the seven-digit number you're calling. This is a recording from Cable & Wireless Jamaica"

As C&WJ feared, the OUR's indifference to the approach of the Company to await the outcome of the consultation has resulted in avoidable expenditure and wasted man hours as,

according to the proposal in this NPRM, the changed recording implemented by C&WJ in January of this year will not be appropriate.

The OUR allowed itself to be captured by a certain interest group of competitors to the detriment of another competitor, C&WJ. Moreover it is to be noted that Columbus Communications (trading as Flow), which was virulent in its opposition to the use of ‘*long distance call*’, in C&WJ’s original announcement, has now, in a recent response¹, indicated that the change in the C&WJ recording does not resolve their issue. It would be in the best interest of the industry for a mechanism to be established which would hold the OUR accountable for its decisions in much the same way as the market holds companies accountable.

Competition Issues

C&WJ is not aware of the current limited competition in the voice market, which the OUR makes reference to in paragraph 2.3. C&WJ has been very deliberate in speaking to the voice market and not the fixed voice market. The Price Cap Plan that the OUR makes reference to is six (6) years old and does not reflect market realities. As such and by way of letter dated January 25, 2007 C&WJ has applied to be classified as non-dominant in all the markets in which the Office had previously determined the Company to be dominant based on a much wider voice market facilitated by the development and penetration of technology and C&WJ’s continuously falling market share.

At paragraph 2.5, the Office speaks to the absence of Indirect Access in the market. The Office has proposed Indirect Access for international outgoing calls. In accordance with the Telecommunications Act, the provision of Indirect Access is mandated for dominant carriers. As at December 2006, C&WJ fixed network carried less than 10% of all outgoing international calls from Jamaica. This is a market in which C&WJ is clearly not dominant. Moreover C&WJ does offer a form of Indirect Access which allows providers, usually of calling cards, to provide another facility for making international calls on the fixed network.

A carrier independent Toll-free service regime, referenced by the Office in paragraph 2.5 is within the purview of the Office. The Office’s ability to create such a regime is not controlled or hindered by the industry.

In paragraph 3.4, the OUR states that dialing parity provides a safeguard for non-discriminatory interconnection. Interconnection is a requirement of the Telecommunications Act 2000 and all licensed carriers can interconnect with the appropriate companies. Therefore C&WJ is puzzled by the Office’s statement on dialing parity facilitating non-discriminatory interconnection and incredulous about the Office’s creation of a link, albeit tenuous, between the elimination of ‘1+’ dialing and market entry. C&WJ requests that the

¹Page 7, Comments on Responses to Draft Rules on Competitive Safeguards, February 16, 2007

OUR provide evidence that any service provider failed to invest in the industry because, not their customers, but the customers of another provider have to dial '1+' to call them.

With reference to paragraph 5.30, the Office is well aware that mobile networks do not have the history of the fixed network in Jamaica. For many years C&WJ fixed was the Universal Service Provider in Jamaica and it was expected that the Company would protect customers and even now the expectations of C&WJ fixed are greater than for the mobile networks. Therefore it is should be of little surprise than none of the unregulated networks, like the mobile networks, including *b*mobile use '1+' dialing on their networks.

Further to paragraph 5.34, C&WJ requests that the OUR provide further and better particulars on how '1+' dialing distorts competition in C&WJ's favour. C&WJ customers also dial '1+' to access mobile networks yet the OUR has never indicated that C&WJ was taking upon itself "...*the role of protector of consumers' interest outside the existing legal framework...*"

The Compelling Reason for Abolition of '1+' Dialing

The NPRM speaks to number portability and NPA growth, overlay and exhaust as being facilitated by a uniform dialing plan. C&WJ does not disagree that that is so. However in NPA growth, overlay and exhaust and number portability, the UDDP is only one aspect of the process which can be addressed simultaneously with all the other issues.

Neither portability nor increase or augmentation of the NPA is a simple process. Both issues will take a significant amount of time to resolve and implement. Regarding number portability, the Telecommunications Act mandates that a cost/benefit analysis must be done and in the case of exhaust, an application must be made to the NANP within three (3) years of the projected exhaust. The timeframes for resolving these issues will be instructive for the assessment of the UDDP. C&WJ requests that the Office advise of the timeframes for the implementation of both or either.

Consumer Protection, Cost Recovery and Bad Debt

In the event that the OUR determines to abolish 1+ dialing in Jamaica , C&WJ seeks assurance from the OUR that:

- i) The Company's customers will not be adversely affected by the elimination of 1+ dialing.
- ii) The Company's bad debt will not increase due to the elimination of 1+dialing.
- iii) The Company will be allowed to recover all cost associated with the elimination of 1+ dialing.
- iv) Any timeframe and technical solution(s) relevant to the elimination of 1+ dialing will be subject to agreement between C&WJ and the OUR.

END DOCUMENT