

**Before the
Office of Utilities Regulation
Kingston, Jamaica**

In the Matter of)
)
Competitive Safeguards – Data Market)
) Document No.: Tel. 2007/14
NPRM for Competitive Safeguards Rules) September 28, 2007

Response by Columbus Communications Jamaica Limited

Columbus Communications Jamaica Limited, dba Flow (“Flow”) hereby submits its Response to the Office of Utilities Regulation’s (the “OUR”) referenced Notice of Proposed Rulemaking (“NPRM”) on “Competitive Safeguards Rules - Data Market” to address anti-competitive practices by dominant carriers (“Competitive Safeguards”).

Flow restates its belief that it is in the best interests of Jamaica to promote and protect competition and supports OUR efforts to immediately implement Competitive Safeguard Rules for the data market to address current anti-competitive practices continually being wielded by incumbent monopolist Cable and Wireless Jamaica (“C&WJ”) against nascent industry competitive new entrants and investors to the country. Flow applauds OUR efforts in this regard and respectfully re-submits that the OUR must go further, faster and enforce more effective and enforceable safeguards.

In agreement with new entrant comments to the counterparts of this latest OUR proceeding¹, immediate and fairly priced interconnection and access to essential facilities of the incumbent dominant operator is required in order to develop competitive customer bases and provide diversified and competitive services for Jamaican consumers. Also in agreement with new entrant comments to the earlier voice services proceeding, and equally relevant for data services, C&WJ continues to deny such access for data services with its refusal to provide access to facilities and supply interconnection services at fair prices.

Flow responds below to the following points raised in the subject NPRM.

Reference Data Access Offer (“RDAO”)

The OUR states that with the subject NPRM, it would like to explore the

¹ “*Competitive Safeguards To Address Anti-Competitive Practices by Dominant Carriers - NPRM*”, OUR Document No.: Tel. 2006/6, June 2, 2006; “*Second NPRM for Competitive Safeguard Rules*”, OUR Document No.: Tel. 2006/7, November 30, 2006.

appropriateness of complementing these recent initiatives in the dominant voice market by designing and implementing a framework for the promotion and protection of competition in relation to data services. In this context, the OUR opines that the Reference Interconnect Offer (RIO) for voice services has proven to be a relatively effective mechanism to promote and protect competition in voice markets.² The OUR further states that given the growing absolute and relative importance of data services, that it is of the view that the reference offer mechanism should also be applied to data markets.³

It is Flow's thoughtful assessment that establishing an RDAO would appear to be an ineffective response. As has been seen and demonstrated in the Jamaican voice market, the earlier RIO model has proven to be inadequate and ineffective in promoting and protecting competition. Just one of many examples already in the public record, the dominant incumbent monopoly, C&WJ, continues to charge higher wholesale rates to its competitors than retail rates to its customers.

Flow also believes the proposed model is inefficient and unless improved upon substantially to meet today's anti-competitive challenges, which continue to exist and to which the former Reference Interconnect Offer ("RIO") has not effectively addressed, such model simply would not work and therefore as designed should not be put in place for the data market.

As with the mixed experience with the earlier RIO process, imposition of that now outmoded mechanism today for the data market may well serve as an unenlightened structure and process which may provide yet another "aiding and abetting" mechanism to which the incumbent would be furthered empowered to drag out through protracted RDAO negotiations and burdensome administrative proceedings competitive data services implementation.

Additionally, contrary to the voice market, it is Flow's view that today's data market is reasonably efficient with some very important and defining exceptions. We enumerate these exceptions below and believe that these are the imperative areas to which the OUR must focus and immediately remedy through swift enforcement mechanisms.

Therefore, Flow believes that such proposed RDAO model in this case would only serve to delay further much needed competitive new entrant relief, not to mention swift roll out of diversified and competitive data services to the Jamaican marketplace.⁴

² NPRM "*Competitive Safeguards – Data Market*", OUR Document No. Tel.2007/14, September 28, 2007 (hereinafter "*NPRM*") at 34.

³ *NPRM* at 34.

⁴ Examples of the ineffectiveness of the RIO model was cited by Flow in its "Comments to Responses" to the OUR's earlier NPRM proceeding for voice services:

"C&WJ prevents new entrant connection to its customers at C&WJ facilities"

- All carriers must be required to provide co-location facilities in their Central Offices and cable stations and allow other carriers access.
- Bilateral pricing must be established for rack space in co-location facilities and for cross connect fees.

Flow strongly recommends a model similar to the Network Access Point (“NAP”) of Americas or such other open access facilities. The NAP of the Americas routes Internet traffic between the United States, North and South America, the Caribbean and Europe. The NAP of the Americas, based in Miami, Florida, has fueled the growth of Florida’s economy by generating jobs, attracting many new companies, and creating new technology infrastructure investments and thereby assisting in closing the digital divide between North and South America.

- Definitive timeframes must be established and mandated immediately for turning on service.

Flow strongly recommends that such timeframe should not exceed thirty (30) days from the date of order, with fifteen (15) days from the date of order being a more competitive standard.

- All licensed service providers SHOULD HAVE EQUAL ACCESS TO ANY AND ALL PARTS OF THE COUNTRY. There should be no exclusions. There

C&WJ also prevents new entrant competitors from interconnecting or customers meeting FLOW facilities at C&WJ interconnection points because C&WJ prevents such access by charging outrageous rates through the local loop side. This greatly elevated pricing scheme creates a bottleneck to access and discourages customers taking services from Flow and other new entrant providers. This C&WJ predatory pricing practice prevents the development of competitive services alternatives and continues to go unchecked without safeguards enforced. The proposed Draft Rules pertaining to Unfair Price Discrimination are tantamount to preserving credibility in the Jamaican interconnection policy, which has virtually become a sham with C&WJ’s frolics into unchecked predatory and anti-competitive pricing schemes despite Jamaican government efforts to provide market competition checks through the RIO mechanism for new entrant investors.

“C&WJ blocks access to local interconnection rates

C&WJ also blocks access to local rates even though its RIO designates interconnection locations to which new entrant competitors would like to connect to access local rates. C&WJ blatantly has denied access to FLOW of these interconnection points stating that C&WJ does not support the sites, therefore new entrants such as Flow can not interconnect there and consequently benefit from local rates rather than the current exorbitant charging mechanisms currently allowed to be levied by C&WJ on competitors. What is the purpose of having a benchmark RIO if it cannot be enforced to provide competitive interconnection pricing to allow new entrants to compete effectively in the market?

should be no dominant incumbent favoritism or incumbent monopoly deals corrupting what the Jamaican government is representing to its investors, new services entrants, and most importantly, its citizens, that Jamaica requires an open and competitive playing field in order for diversified and competitive services to be accessed in all locations by its citizens.

Flow appreciates that the OUR has stated at paragraph 3.18 of the subject NPRM that it is their intention under a regulatory process to determine if there are dominant operators in any market for data services. Flow would urge the OUR that in the meantime, the above-enumerated anti-competitive abuses and barriers to entry need to be remedied urgently and now, preventing further delay of much needed competitive and diversified infrastructure and services to Jamaican businesses, citizens, government, educational and other institutions.

Proposed Enforcement of Competitive Safeguards; Complaint Procedures

Flow was most disappointed to see that once again the OUR has not committed to its constituency under currently released Draft Rules⁵ and these proposed Rules, timetables for specific action, timetables for conclusions of its determinations, and timetables for enforcement. As noted in the most recently released “Draft Rules For Competitive Voice Services”,⁶ for example, such timetables for OUR conclusions of its determinations do not exist contrary to public comment urging such requirements. Additionally there are no timeframes for specific actions and relief for complainants, which are usually new entrants fighting anti-competitive abuses by the dominant incumbent C&WJ!⁷

As earlier expressed in the record, Flow believes that it is the responsibility and mandate of any independent government agency entrusted with such important competitive infrastructure development mandates for the country that it be accountable and committed to reasonable timetables for action, decisions and results. Most regrettably such specific OUR action and conclusion timetables do not exist in the Final Draft Competitive Safeguard Rules for Voice Services and are not currently proposed in this current 2d NPRM for "Competitive Safeguards for Data Services".⁸ Flow urges again that such OUR proposed Rules for Data Services include specific action, decision conclusion and enforcement timetables and mechanisms required to halt further delay of urgent relief to ensure competitive market forces are encouraged and implemented for country investors.

⁵ See “*Draft Rules For Competitive Safeguards for Voice Services*”, OUR Document No.: Tel. 2007/13, September 28, 2007 (hereinafter “*Draft Rules*”).

⁶ *Id.*

⁷ See also, for example, *Draft Rules* at paragraphs 3.11 Complaints Procedures and 3.10 Enforcement of Competitive Safeguard Rules, at 26 to 27.

⁸ Similarly as referenced in note 6 above see *NPRM* at paragraphs 4.12 Enforcement of Competitive Safeguard Rules (DATA) and 4.13 Compliant Procedures, requiring express timetables for OUR action and determination, at 39 to 40.

The OUR has stated itself that “[g]iven the growing absolute and relative importance of data services”, it “is of the view that accounting separation should also apply to data markets.”⁹ The OUR also noted that “the principles embodied” in the Regulatory Accounting Guidelines document would be applied to any other carrier/service provider declared dominant in a relevant telecommunications market and that in such event, comparable Guidelines would be prepared for any such carrier.¹⁰

The OUR states that such new Guidelines would, once implemented, assist it to prevent and identify the following types of uncompetitive practices:

- price discrimination;
- anti-competitive cross-subsidization;
- excessive interconnection and retail charges; and,
- margin squeeze.

Should not such stated importance require OUR accountability and at minimum, timetables for action, decision-making and enforcement?

Finally, Flow reiterates that as in the Voice Services context, the OUR should implement any and all such other additional alternative immediate remedies preventing new entrants from needing to constantly go to the courts to prevent the dominant incumbent from continuing its anti-competitive behavior. This process will bleed new entrant limited resources against the army of litigation resources which C&WJ has at its disposal and to which it can conveniently and is known throughout the region to use to stall and bombard fledgling new entrants and allow inaction to keep the status quo in tact with respect to regulatory reform supporting competition. To force new entrants to get relief only by resorting to the courts just serves to discourage further investment, divert valuable resources away from the development and deployment of competitive consumer services in the Jamaican marketplace and frustrates national telecommunications policies and goals.

CONCLUSION

Flow respectfully submits that prompt implementation of Competitive Safeguards Rules for the Data Market taking into account the practical considerations indicated above will have a positive impact on the development of competition in the Jamaican telecommunications sector. Additionally, new entrants and the market require that the dominant PSTN operator, C&WJ, provide access to Essential Facilities and interconnection on non-discriminatory and fair pricing terms for all services. C&WJ should also be mandated to provide wholesale call origination product to alternative service providers, in as competitive a manner to which it currently offers to its own affiliated service entities. The implementation and enforcement of these and such other

⁹ *NPRM* at 30

¹⁰ *Id.*

OUR policies referenced herein would send a clear signal to investors and consumers that the country is encouraging the implementation of diversified and competitive networks and services. Providing businesses and consumers innovative and competitively priced service options will further develop and expand the Jamaican economy and market place.

Respectfully submitted,

ON BEHALF OF COLUMBUS COMMUNICATIONS JAMAICA LIMITED

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