

**Jamaica Competitive Telecoms Association/Reliant Response
To Cable & Wireless Submission on Accounting Separation**

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**Submitted By:
Stephen P. Twomey
VP Jamaica Competitive Telecoms Association
President Reliant Enterprise Communications Ltd**

Objectives of Separated Accounts

CWJ's assertion that their importance in the market has been greatly attenuated is misleading and false. There is any number of examples to verify this:

- ISP's reselling of ADSL dependent on wholesale rates from CWJ. The ISP's have publicly said they cannot compete based on the rates quoted and have had meetings with CWJ and the OUR regarding the matter
- Monopoly over off island access and prices charged for International Circuits. Assuming a fiber cable does get built, it will be at least another year before it is operational.

- VOIP/DIA dependency with prices that effectively form a barrier to entry for local resellers
- VOIP market is dependent on current market size for ADSL which is minimum and CWJ will soon announce its own product
- Local access for outgoing International is prohibitive in terms of competing with Retail rates. **In fact, we have evidence that CWJ Retail is selling below quoted Wholesale rates to competitors for the same service**
- We challenge CWJ to provide irrefutable proof that their international market has decreased by 90%. Since there are only two carriers terminating traffic at this time, this is an outright falsehood.
- The provisioning of Internet by alternative means is minimal in Jamaica. The majority of Jamaicans utilize dial – up for access and this is wholly dependent on CWJ landlines

It is interesting that CWJ is concerned about commercially sensitive information, as they have access to similar information on their competitors by the nature of business. For example, CWJ knows exactly how many minutes Reliant terminates on it's network(s), yet we have no idea how many minutes CWJ terminates in total.

Interconnection Rates

We disagree with CWJ as we feel the IR have components included that would be disallowed under accounting separation. There also is no proof that the appropriate Retail and Mobile entities that sell these services are paying transfer rates to CWJ or the Carrier Services Group. While we would not presume to usurp OUR prerogatives and may argue about inputs, the information required and made public should be:

- The number of total incoming/outgoing minutes per month (fixed, mobile, VOIP; what entity sold these minutes for CWJ; the transfer price paid by the entity to CWJ for services; deposits paid by these entities; retention rates paid by these entities and any bad debt charges incurred as imposed on other competitive entities
- **It is truly amazing that five years after the Telecom Act CWJ Mobile does not have a RIO, we have no idea if they are paying transfer charges to Carrier Services for transit calls and they are not separated from at least an accounting perspective**
- It is also the duty of the auditor and regulator to assure that there is an equal playing field and every one is being charged the same for services and illegal cross-subsidies are not occurring

Cost of Accounting Separation

We are consistently amazed at CWJ's focus on cost of separation as opposed to the benefits the industry, consumer and Government. It is also interesting that their position is 180 degrees different than their parents position (CW Plc.) in the UK regarding the same issues for BT.

If CWJ as a company is in a position that they cannot immediately provide the information requested by the OUR, than they are also violating any number of Securities

Laws, at least in the US, as this type of information would have to be available to the parent in order for them to provide proper regulatory filings. This is a smoke screen and inappropriate response for a company like CWJ.

Mr. Stephen Twomey and Mr. Stan Gilkinson having worked at CWJ can attest to the fact that at Senior Management meetings products and services were reviewed individually on a profit and loss basis going back to 1998.

Question 3.1

We have no argument regarding sensitive commercial information regarding CWJ Mobile. However, CWJ misses the point here. There are areas of commercial activity between the two entities in which competitors can be adversely affected:

- Why does CWJ fixed transit all of CWJ Mobiles calls from competitors?
- Does CWJ Mobile pay a transfer charge to CWJ for this service?
- Why are competitors forced to transit the PSTN network for call completion to Mobile? Reliant, since March of 2003 has requested on numerous occasions for Direct Interconnect to Mobile without satisfaction.
- Digicel and ODJ both provide direct interconnect to their networks, yet CWJ Mobile does not.
- At a minimum, the A/S should provide the financial information on CWJ Mobile in terms of: transfer fees paid to the PSTN, fees paid to the Retail arms of CWJ for services, customer care and network access, deposits etc. This is not sensitive commercial information and has a direct impact on the competitive landscape
- We believe CWJ Mobile utilizes high speed circuits and Internet Service from CWJ; are they paying deposits for these services; what is the wholesale price for these services to Mobile etc.
- The argument that other Mobile providers should have to provide the same type of information is disingenuous as they do not operate the same way as CWJ and have put forth Interconnect agreements for others. This type of information should at least be public to the industry.

In fact, the JCTA believes CWJ Mobile should be split off entirely from CWJ as is done in most other countries.

Once again CWJ misses the point in terms of the Fixed Access business. To the best of our knowledge, CWJ owns the access business including all associated costs as mentioned in their response. The issue becomes are they charging appropriate wholesale rates for each category of cost to competitors and their various retail entities. At some level the cost is immaterial; if the wholesale cost is J\$1 or J\$100 dollars are they charging the same to all. These are clearly bottleneck facilities and complete transparency in wholesale charges must be achieved. We need to understand if Retail or another distribution channel is selling products at a loss and why. If they sell at a loss then this could be viewed as predatory pricing. Similarly, if distribution channels are waiving install charges then this is anti competitive. A recent example of this is CWJ waiving

install charges on ADSL in some areas but charging competitors who resell install charge which adds to the total cost.

Question 3.2

We disagree with CWJ in terms of the information being made public. It is clear that in the past three years complaints made by the industry have not been acted on due to lack of information. We do agree that not all information needs to be disclosed, but at a minimum we must be able to view required information that provides clear evidence that charges are being applied equally. We would define “public” in this instance as legitimate license holders.

In 2002 Phase II introduced competition in the local calling market. Those firms that entered this market, primarily via Pre Paid Calling Card are now out of business. There were a number of complaints that CWJ was not allowing enough margin to be made and that CWJ calling cards were undercutting the competitive market. In fact, Mr. Courtney Jackson has publicly stated that the OUR believes CWJ utilized anti competitive practices in this market. The issue is the same; are the distribution entities for resale of local calls paying the same wholesale rate as competitors that offer this service.

In the same area, if a company wanted to resell CWJ dial up service for Internet access than we must be assured that CWJ retail channels are paying the same wholesale rate per minute as the competitor. Even taking the retail plus prescribed margin, is the margin adequate for competitors to effectively enter this market and is Retail under the same price scheme. We do not agree with CWJ’s position on this area.

It is clear that the Public Payphone market has diminished greatly due to the significant mobile penetration. However, there are still some “islands” of pay phone use that are very lucrative: hotels, airports and some communities. Consequently, if a company wants to offer the service utilizing CWJ fixed line, than appropriate wholesale charges must be in place. While the generation of revenue may come from calling cards, are the distribution arms of CWJ paying the appropriate costs to CWJ for utilization of the service? Additionally, what if a competitor used a different calling card or credit card; it must be clear that cost to every one is the same.

Imminent competition in the Data Market does not mean existing competition and recent requests by ISP’s to meet with CWJ, The Minister and OUR regarding wholesale prices due to their unhappiness with existing wholesale rates is a direct contradiction to CWJ’s statement. We need to focus on the wholesale rates for ADSL and dial-up access and not where a competitor may get the same service. As with all of the above, the question remains are CWJ’s distribution channels paying the same wholesale rate as their competition? We have already cited one example where that is not so, as retail waives installation charges where ISP’s are charged. CWJ has all the information regarding both ADSL and dial – up accounts for their competitors and in fact quotes each ISP the

number of minutes per month they generate via dial – up. Consequently, their position that they do not have this type of information is a fallacy.

We would have a tendency to agree with CWJ on there having to provide commercially sensitive commercial volume data regarding the sale of prepaid calling cards (Supplemental Retail Services). However, we do believe they must provide data that clearly shows retail pays the same wholesale rates as competitors that may be reselling the card.

Question 4.1

Once again, based on personal knowledge, we know that CWJ Mobile financials are split out separately and include P&L, Balance Sheet etc. While we agree that CWJ Mobile should not have to divulge information that would put it at a competitive disadvantage, in those areas where dominant carrier facilities or services are utilized is CWJ Mobile paying the same wholesale rates as a competitor would? **We still do not understand how a regulated business entity, Carrier Services, is allowed to represent an unregulated entity, CWJ Mobile. To the best of our knowledge, this is not allowed in the vast majority of other countries.**

Issues such as cost for Customer Service, Installation, Business Offices etc. and transfer charges need to be clear and identifiable as well as termination, fixed services, repair etc. payments between the entities.

4.2 Keith

4.3 Keith

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Cost, complexity and timing of Separated Accounting

Cost

Being the dominant carrier places specific burdens on a company and this has been true throughout telecommunications deregulation. Cries of “unfair” have been heard from every dominant carrier in the world, and CWJ is no different. In order to achieve true competition and protect consumers, it is incumbent on CWJ to provide the regulators and industry players proof that there is equality in how they do business. **We would recommend that the OUR review practices in other jurisdictions and determine how this cost is borne and follow that practice. If in fact the industry in other countries**

provides some of the cost, then we would expect that the industry would have approval over the final audit engagement terms.

It is interesting and instructive that CWJ quotes Digicel as saying that the resources requirements and cost of A/S and the audit process places a disproportionate burden on operators. However, in Digicel's submission to the OUR on A/S is clearly stated on page 2 "the separation of accounts of the dominant public voice carrier Digicel believe this can be achieved without overburdening Cable and Wireless. In addition, the welfare loss that is negated by the use of accounting separation will more than compensate for any increase in cost associated with providing separated accounts".

Paragraph 2 of this section is egregious in its content and intent. The unregulated mobile market has nothing to do with this cost except as previously mentioned. What is most insulting is CWJ posturing that they are not the major player in categories outlined by the OUR document by using the mobile market as a red herring. The fact is CWJ **LOST** their 100% share in the mobile market to a better competitor and that is their fault. It is not the OUR's or industries' job to make up for their mistakes and lost revenues in this market. The lack of penetration in the fixed line market is also a direct result of CWJ's actions, not the rest of the industry:

- CWJ agreed to install 217,000 fixed lines as part of the Telecom Act 2000 within three years. In fact, this was trumpeted by the Minister and government very publicly. CWJ has since admitted in the press that they did not meet this requirement. If we follow the time line, the two mobile competitors did not enter until April 2002 and December 2002 respectively, which means CWJ should have installed at least 70% of the fixed line commitment before Digicel even started offering service. We maintain if CWJ had lived up to its commitment, the fixed line market would be much larger. The OUR estimates that unmet demand for fixed line service is 267,000 and would be higher except consumers have taken mobile service due to lack of fixed line availability.
- CWJ continues to under invest in fixed line infrastructure using the high penetration rates of mobile as an excuse. Clearly, based on OUR estimates there is a robust fixed line market demand that CWJ, as the dominant carrier is not satisfying.

CWJ's position that they cannot pass along cost to other operators due to this low fixed line penetration is an insult to the OUR, competitive market and consumers. Fixed line displacement would not have happened if CWJ had met their commitments nor would it be an issue if they had been an able competitor to the other mobile operators. We do not agree with this assessment at all.

CWJ has a clear, undisputable dominance in the areas outlined by the OUR document. Once again CWJ tries to use the mobile market as a red herring for the fixed market. The accounting separation is to benefit operators in the non-mobile markets primarily and therefore the cost should be borne by the dominant carrier. CWJ should understand that this is not an exercise that brings benefit to them, but to the competitive marketplace and most importantly, the Jamaican **consumer**.

If in fact CWJ believes that all should bear the cost, and we do not agree, then the OUR must be sure that all parties including CWJ retail, mobile etc. bear the same audit cost as competitors. Once again, equal treatment for all.

There are issues as to what role does Carrier Services play in the whole mix of interconnection; who within CWJ has agreements to terminate international traffic; does this entity pay the full termination charge plus cess on calls to CWJ; is Mobile paying the termination rate plus cess from calls that originate overseas to the fixed network etc.

Complexity and Timing of A/S

Clearly a delay tactic by CWJ. In the absence of any competitive safeguards, an FTC that has no power, no definition of what the OUR can and cannot do, immediate Accounting Separation is a must if there is to be true competition in these markets. Systems, software, procedures etc. aside, at a minimum, by December, the industry needs to be able to view the following:

- Payments by all the retail entities that sell the products listed in the OUR documents made to CWJ on a monthly basis
- Payments made by all the retail entities and Mobile for the use of such services as Business Offices, Customer Service, Network Services, Operator Services, Yellow Pages etc. made on a monthly basis.
- Any other transfer or assessment payments made by non regulated entities on a monthly basis.
- Wholesale charges billed to the above entities and payments made
- Proof that these payments have been made by the entities monthly

At a minimum, this will assure that every one is charged equally for the services outlined in the document. This hardly places a burden on CWJ in terms of overall reporting requirements, as they are able to bill their competitors for these services on an ongoing basis. We encourage the OUR to have full A/S available no later than May, 2006 which is the beginning of CWJ's next fiscal year and only under the assumption that the above points are satisfied.

Conclusion

There is 25 years of law, practice, regulation, judicial settlements, State/Local and Country procedures for this very practice. The OUR should use these as a test against what needs to be revealed and what not. We would remind the OUR that we believe many of CWJ's arguments and positions are not in line with regulations in other countries and in fact not in line with CW Plc in terms of their position regarding the same issues. It is not the job of the OUR or the industry to make up for failings in any market by CWJ nor is it right for them to use this as an excuse. The end result of this exercise has to be clear, definable, available information for the OUR and competitive carriers that all are paying and being treated equally in regards to the product and services as outlined in the document.

**Jamaica Competitive Telecoms Association
And Reliant Enterprise Communications Ltd
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