

Before the  
Office of Utilities Regulation  
Kingston, Jamaica

In the Matter of ) Consultative Document  
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NPRM )  
 )  
Proposed Changes to the Regime for the ) Doc. No. Gen. 2007/01.1  
Assessment of Regulatory Fees ) November 30, 2007

**Columbus Communications Jamaica Limited**  
**Comments on the 2nd Notice of Proposed Rulemaking (“NPRM”) for Proposed Changes to**  
**the Regime for the Assessment of Regulatory Fees.**

Columbus Communications Jamaica Limited, doing business as Flow (“Flow”) hereby submits its Comments to the Office of Utilities Regulation’s (the “OUR”) referenced Second Notice of Proposed Rulemaking (“NPRM”) regarding Proposed Changes to the Regime for the Assessment of Regulatory Fees.

Flow supports the OUR in its resolve to provide a degree of certainty and consistency for the allocation of regulation costs under its jurisdiction, as well as a fair and just apportionment of regulation costs to be levied reasonably and equitably among licensees within the various industry sectors. With respect to the Telecommunications Sector, Flow believes that the stated OUR objectives for change<sup>1</sup> and the proposed Revenue<sup>2</sup> based assessment are sound.

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<sup>1</sup> Objectives stated in the NPRM include: “Timeliness of advice to industry”; “Some level of certainty and predictability”; “Imposing prudence on the expense side by constraining the ability to grow revenues”; “A more transparent allocation mechanism”; and, “Improved accountability”. *See NPRM at 7.*

<sup>2</sup> For Telecommunications, regulatory fees will be apportioned on the basis of revenues. “Revenues’ mean revenues from the licensed business, net of out payments in the case of telecommunications companies. . . .” *See Footnote 1 at NPRM at 7.* However the fees to be derived from carriers will be determined after the impact of the service providers has been taken into account. The revenue information will be taken from the previous year’s Audited Financial Report of each Company. For example, the Budget for 2008/2009 will be informed from the financial statements as at December 31, 2006 for companies using the calendar year. For those companies whose fiscal year is other than the calendar year, March 31 will be used as the cut off for the applicable year. In other words for a company whose fiscal year ends between January and March 2007, the financial statements used would be the 2007 statements to assess the fees for 2008/09.

In circumstances where the company’s financial statements have not been audited or are not available to the OUR, then the Office will make its best estimate of revenues for the current year. Adjustments will then be made in the subsequent year. Generally, the computation of the fee applicable to a company in the telecommunications sector will be calculated as follows:

$$RF_A = R_A / R_T * TB$$

where  $RF_A$  = Annual Regulatory fee for company “A”

$R_A$  = Applicable revenues for company A

$R_T$  = Total applicable revenues of all relevant companies

$TB$  = Total applicable budget

Flow believes, however, that the OUR can be more effective in achieving its stated objectives of transparency with fuller disclosure and more specific accountability as to how and what areas the OUR is directing the use of collected regulatory fees for the Telecommunications sector. For example, Flow would like to know more about how the OUR plans to categorize, prioritize, delineate, apportion and disclose areas of specific regulatory activities it intends to undertake to which its fees are being apportioned. Flow is of the view that the telecommunications sector has a need and a right to know and have the OUR disclose more specifically where costs of regulation are being originated and how such collected regulatory fees are being directed to meet such categories of regulation.

An example of specific and distinct regulatory categories used in the United States can be seen in 7 U.S.C. §159 whereby this legislation established four broad categories of Federal Communications Commission ("FCC") activities as regulatory. These are all 1) "enforcement activities, 2) policy and rulemaking activities, 3) user information services, and 4) international activities." The statute then requires the FCC to "assess and collect" fees to recover the costs of these activities. Thus, the fees that cover the costs of these four types of activities are called regulatory fees.<sup>3</sup> It may be advisable for the OUR to have a similar approach in terms of categorizing where the funds are to be allocated depending on the particular priorities of Jamaica: for example, areas such as, complaints and litigation, enforcement, licensing review and numbering. Such a step would assist with public accountability and transparency.

In the United States, licensing application fees are distinct from regulatory fees (authorized in 47 U.S.C. §158). Application fees cover the FCC's costs related to licensing communication service providers. This includes activities such as issuing permits, testing applicants, certifying licenses, authorizing transfers, assigning or transferring call signs, and adjudicating disagreements. Hence, the particular company requesting such FCC resources covers these particular costs.

In some jurisdictions, there are distinctions made by the government between regulatory fees and application licensing fees. Some jurisdictions collect application licensing fees and forward these directly to government treasuries to be reallocated later from the general budget.

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There is a minimum fee to each company of \$150,000 and will not exceed a capped percentage of the revenues. Unless otherwise specified in licenses or other enabling instruments, the percentage for capping regulatory fees from applicable revenues for Telecommunications is at 0.30.

<sup>3</sup> The justification for companies paying such fees is that each year, as part of the passage of the federal budget, Congress establishes an amount that the FCC must collect in regulatory fees. For example, this year that amount is \$269 million - 99% of the FCC's annual budget. Based upon 47 U.S.C. §159, the FCC is obligated to collect this amount from every organization that benefits in any way from the FCC's enforcement, policy and rulemaking, user information, and international activities.

The regulatory fee section of the law does not specifically exempt any group from paying this fee; although, it does allow the FCC to waive, reduce, or defer payment of a fee "for good cause shown, where such action would promote the public interest." The FCC has interpreted this to mean that regulatory fees will not be applied to state and local governments, amateur radio operator licensees (other than amateur vanity call signs), and non-profit organizations. The FCC also allows companies in precarious financial situations or bankruptcy to petition for a case-by-case decision on a waiver or reduction of the regulatory fee.

Other jurisdictions use both collected regulatory fees and application licensing fees to cover the costs of regulation for both general and specific applicant regulatory matters necessitating specific Regulator oversight that is required for that specific applicant or category of applicants. Flow would recommend that some more thought be given as to which management approach should be adopted in local circumstances.

Finally, Flow would also like to suggest that the OUR organize an Application Licensing Schedule and disclose this prominently on its website. This Application Licensing Schedule should indicate what applicants will pay in order to get certain authorizations reviewed and granted by the OUR, in addition to existing authorization amendments, renewals, transfers of control, it should also clearly and specifically outline (delineated by different categories of services, where necessary,) applications and regulatory fees of a licensee once operational (whether capped/ fixed or by percentage) as well as timelines and time limits for payment. This would allow for greater transparency and predictability. Additionally, the development of OUR Schedules for the disclosure of complaints and the levying of carrier warning notices and sanctions as well as proposed complaint resolution timetables by the OUR would also be extremely helpful if posted on the OUR website so that carriers could review the information on the website and collaborate with its own experiences to an ongoing complaint proceeding. Such schedules ideally would also include time limits to which the OUR would be held accountable to meet with respect to its particular review and resolution activities.

## CONCLUSION

Flow respectfully submits that the OUR's proposed changes referenced herein will have a positive impact on the development of predictable, consistent and transparent regulatory fee assessments as well as OUR regulation of the Jamaican telecommunications sector generally. Flow would greatly welcome the OUR's continued effort to more specifically categorize areas of regulation, only where regulation is reasonable and absolutely necessary, and to which the OUR's activities and costs would be more transparent and to which the OUR would be held accountable. Additionally, Flow believes that the OUR must be sensitive to industry regulatory priorities as well as its need to continually strive for efficiency in the administration of regulation if and when reasonably required.

Respectfully submitted,

**ON BEHALF OF COLUMBUS COMMUNICATIONS JAMAICA LIMITED**



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