Jamaica Competitive Telcoms Association/Reliant Response to Cable & Wireless Jamaica Submission on NPRM 15, September 2005

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Introduction

As with their submission on Accounting Separation, CWJ tries to use their failure in the competitive mobile market as a red herring for why they should not be required to meet the requirements of the Telecom Act 2000. The facts are in the markets the OUR has identified in the Accounting Separation document, CWJ is far and away the dominant carrier. For them to continue to try and obfuscate the facts by using mobile as a determinate is wrong and deceitful

2.4-2.9

Why is it when it comes to more transparency with CWJ they are always different. True, many jurisdictions are more mature than Jamaica, but what this really provides is a road map for the OUR and industry to follow in terms of providing information that is critical to a competitive market. Apparently CW Plc has no problem with asking others to open up, why is this different?
We disagree with CWJ that there is no industry consensus regarding the development of guidelines. It would appear from the submissions on this that the local industry is in agreement with the OUR document and consensus has been reached. We view this as another delaying tactic by CWJ.
We strongly disagree with the concept of a bipartite agreement on auditing. Any company that must perform audits normally gives a mandate that is convenient to the company and deals with how the company would like things reported. Without a third party as part of the process, CWJ is given the latitude to mandate what they want without regard to the process developed by the OUR. This is not acceptable.

We find amusing CWJ's reference to the "force of law in Jamaica" in regards to this matter. Is this a veiled threat by CWJ to the OUR that legal action will be taken? Interesting posture to take in what is a crucial matter for the future of Jamaica.

We do not believe that any cost should be borne by the industry for this matter. As previously stated, the dominant carrier traditionally has borne the cost of providing this type of data and has not passed it along to the industry. Now, if CWJ wants to take the position that the Universal Service Fund should contribute to this cost, then we are willing to discuss. The industry in Jamaica is already over burdened with cost and taxes and it would be a sever and business threatening to those of us who survive. We also feel that any negotiations which delay this is unacceptable. There is the appearance that CWJ is doing its best to delay the whole A/S as long as possible.

Additional Comments
Keith Summers
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In the preamble and the general tenor of the response C&WJ tries to downplay its dominance, decries the cost, and raises fears of too much exposure of sensitive information.

It is impossible for C&WJ to accept any status other than dominant whether from the perspective of history, market presence, physical presence, corporate identity, or any other measure of dominance. The fact that it may have lost share in a certain market sector growth does nothing to diminish its dominance. Furthermore, the history of market dominance has conferred on C&WJ a certain residual aura of dominance so that even if it is no longer completely dominant, has a perception of dominance that is as powerful as the reality.

The cost and the fear of exposure is a challenge of continuing management not a rationale for diminishing or diluting the principle of AS. Accept the fact that there is a cost attached and manage the elements, recognize the vulnerabilities of exposure and be creative in minimizing its dangers and pitfalls.

Tri-partite audit agreements

A tri-partite audit agreement is the only way that the regulators can ensure that the audit product is reliable in terms of reflecting the needs of the regulator. It is impractical to assume that C&WJ will reflect these needs when negotiating on a bi-partite basis. It is tantamount to asking C&WJ to represent the needs of the regulator when negotiating with the auditors. Resistance to the tri-partite agreement is justifiably self-serving on C&WJ's part but does not meet the needs of the regulator.

Is there a subliminal message in C&WJ's reference to the fact that these guidelines do not have the force of law?

Cost of the Audit

A statutory audit undertaken to protect shareholders was not requested by the shareholders but by the lawmakers. To follow the logic of C&WJ then the lawmakers should pay for the statutory audit. The regulatory audit is also for the protection of the shareholders because their risk of ownership does not stop at the door of a regulatory requirement. The regulatory requirements also impinge on the value and risks of ownership because it is part of the totality of operations. As a result the shareholders cannot ignore the fact that C&WJ is a regulated entity. In the final analysis a regulatory

audit is helpful in the value analysis by shareholders because it reveals compliance/non-compliance much the same as reporting to the Securities and Exchange Commission or Jamaica Stock Exchange required reports.
Consequently the cost of a regulatory audit has the same cost responsibility as a statutory audit and reports to financial regulatory authorities. C&WJ should pay it.
In terms of cost recovery C&WJ may take some hints from companies in the USA that have had to comply to the Sarbannes-Oxley requirements as to how they coped.

Audit Assurance

The requirement and basis of the OUR for a "properly prepared" assurance migrating to a "fairly presents" assurance after the first year is reasonable. C&WJ has extensive international accounting experience in this regard. Asking for more time to comply is not reasonable.