FLOW's Comments on Responses to

The Office of Utilities Regulation Consultation Document on

Cost Model for the Assessment of Fixed Infrastructure Sharing Rates – Draft Model (Document No: 2021/TEL/001/CON.001)

8 April 2021

I. INTRODUCTION

1. This response is submitted on behalf of Cable & Wireless Jamaica Limited and Columbus Communications Jamaica Limited (jointly hereinafter referred to as "**Flow**"). Flow welcomes the opportunity to respond to comments to the Office of Utilities Regulation's ("**OUR**") Consultation Document, *Cost Model for the Assessment of Fixed Infrastructure Sharing Rates—Draft Model*, dated 18 January 2021.

2. We understand that, besides Flow, Digicel submitted comments to the Consultation Document. C&WJ is not responding to each statement by Digicel; however, our choice not to address any statement does not represent our agreement.

Please direct any questions you may have to Charles Douglas at charles.douglas@cwc.com.

II. FLOW'S COMMENTS ON RESPONSES TO OUR QUESTION 1: "DO YOU AGREE WITH THE PARAMETERS INCLUDED WORKSHEET '2A INP NW' OF THE FIXED INFRASTRUCTURE SHARING COST MODEL?"

3. Digicel notes that the sheet 2A INP NW indicates that all fiber is aerial (Cells F46, F47. Flow had made the same observation.

4. Digicel raises the point that there is no "category for submarine cable" which also provides inter-urban capacity in the Jamaican market, and that "the cost base for terrestrial and submarine cable will be separate and the model should provide separate costing and pricing for these distinct forms of dark fiber capacity." We have two observations on this response.

5. Firstly, it is not clear whether Digicel is asking for a separate rental service for submarine cable access. If so, this represents a comment on a question raised

in the previous consultation on principles and methodology[1]. Specifically, Digicel should have raised the point in its response to OUR's Question 13: "Do you agree with the proposed list of rental services for the fixed infrastructure sharing model?" On the other hand, however, if Digicel is merely pointing out that submarine cable fiber is simply another variant of the dark fiber service, and that its cost base may include costs other than trenches, manholes, ducts, subducts and dark fiber itself, then it should have similarly raised this point in the previous consultation, since the first consultation document carefully described the cost base of dark fiber in precisely these terms on page 39. In either case, having failed to make the appropriate response in the previous consultation, the OUR should disregard this comment now on the basis that the issue is outside the scope and process of this proceeding.

6. Secondly, and more generally, Flow believes that this issue provides yet another example of the fact that the model is not adequate to represent the diverse conditions under which these infrastructure services may be provided. We believe the best approach is not to spend additional time on "separate costing and pricing for these distinct forms of dark fiber capacity" as Digicel suggests, but rather to acknowledge that this model can only serve as an example of how the OUR's methodology can be carried out. As such, the actual costing exercise should only be undertaken in response to a legitimate and specific infrastructure sharing request by the access seeker of the infrastructure provider.

7. Further along in its response to Question 1, Digicel points out that duct and dark fiber access are often contracted in the form of an IRU. Digicel appears to be asking the OUR to extend the model such that it not only defines services and their respective cost-base, but also the contractual terms under which that

[1] Update of the Fixed Cost Model and Assessment of Fixed Infrastructure Sharing Costs – Principles and Methodology, OUR, 8 January 2020.

cost-base is recovered. If so, we ask rhetorically, why stop there? Should the OUR specify a 15-year term, a 25-year term for the IRU; what about customers that want to lease on an annual or multi-year period? Also, will the term and nature of the contract influence the cost modelling in terms of occupancy risk and depreciation of assets? What happens, for example, if the OUR has deemed that an asset that is part of the cost-base of a service is fully depreciated, and yet the asset has to be replaced within the lifetime of the contract?

8. The OUR's objective cannot possibly be to model all these scenarios. Because such an approach would be woefully impractical and unnecessary. As we have argued before, the OUR is best advised to leave review of specific infrastructure sharing cost to the specific instances that arise should they be in dispute.

9. Furthermore, the OUR risks regulatory overreach by dictating the form of commercial arrangements which would be intervention beyond its remit. In fact, Digicel's reference to existing IRU agreements, underscores that these arrangements can be commercially determined and support our enduring position that infrastructure sharing arrangements should be commercially driven.

III. FLOW'S COMMENTS ON RESPONSES TO OUR QUESTION 2: "DO YOU AGREE WITH THE RELATIONSHIPS AND USAGE FACTORS DEFINED BETWEEN THE DIFFERENT RESOURCES AND THE SERVICES INCLUDED IN THE FIXED INFRASTRUCTURE SHARING COST MODEL?"

10. Digicel expresses a concern regarding the derivation of pole cost. It suggests that somehow the treatment of cables should be differentiated based on whether they provide copper-based services or not. We understand that the model assumes the number of attached cables per pole calculated irrespective of what technology is used or the service(s) that they support. Thus, Digicel's concern is neither appropriate nor valid.

11. Digicel next raises a distinction between "used" and "useable". It states that trench costs should be apportioned across all usable ducts (and pole costs across only usable pairs of cable) even if not currently in service. We strongly disagree with Digicel and support how the OUR has modelled usage as the best practice approach for ensuring recovery of costs.

12. If the OUR were to adopt the approach suggested by Digicel then the infrastructure would not pay for itself and, going forward, infrastructure providers would not be incentivized to deploy any excess capacity and only on an as needed basis. Ultimately, Digicel's approach would result in higher unit costs as roads would be dug up each time an ordered duct would be installed, a new low-strand cable be pulled or hung, etc. Therefore, were the OUR to accept Digicel's proposals, all the unit costs would have to be revised upward, and the model would have to incorporate a hypothetical approach to network deployment that does not match reality. Digicel's proposal has no merit and should be rejected.

IV. FLOW'S COMMENTS ON RESPONSES TO OUR QUESTION 3: "DO YOU AGREE WITH THE UNIT COSTS AND USEFUL LIVES CONSIDERED IN THE FIXED INFRASTRUCTURE SHARING COST MODEL?"

13. Digicel introduces the argument that the "CCA approach should not be applied to assets that are substantially depreciated and for which there is unlikely to be an alternative competing market entry". Again, Digicel had its opportunity to comment on this issue in the previous consultation and did not do so.[2]

14. Indeed, the OUR allowed Digicel to abuse the earlier stage of this proceeding by allowing it to introduce the new issue of fully depreciating the asset in the

[2] Specifically, at question 11: "Do you agree with the OUR's view that the model should utilize the absolute valuation methodology in its evaluation of assets on a current cost accounting (CCA) basis?"

reply round thus preventing Flow from commenting on it. Were the OUR to consider these comments on CCA, the OUR would be allowing another abuse of process. The OUR is obliged to disallow this comment as it is out of process.

15. Further, Digicel's intervention on this methodological issue is not simply an off-handed comment on the use of the CCA approach, it misleadingly introduces text from European Commission Recommendation and Irish regulation on costing methodology that is applicable to operators deemed to have significant market power[3] as opposed to this regulation that is ostensibly meant to be symmetrically applied.

16. Flow does not consider it appropriate to respond to the substance of Digicel's position on this matter given its nature, and because it is indeed out of process and should be disallowed by the OUR. In the highly unlikely event that the OUR decides to consider these comments, rather than reject them as out of process, then Flow should be afforded the opportunity to respond to them in full.

17. With respect to Digicel's position on United States dollar (USD) denominated costs and Jamaican dollar (JD) denominated costs, Flow made a similar comment in its response and agree that the model should be clearer on how these costs are differentiated. We note that Flow, however, does not believe that the model need, or indeed can, reflect the differentiation accurately for each service, as the absolute and relative levels of USD and JD inputs will differ on a case-by-case basis.

18. Digicel then raises a concern with wood and concrete pole lives. Flow is grateful to Digicel for introducing the study on poles from the North American

[3] Specifically significant market power in the market for wholesale network infrastructure access (market 4) and in the wholesale broadband access market (market 5).

Wood Pole Council ("NAWPC study")[4] and encourages the OUR to read it fully as well as its accompanying references. A full reading will not only provide a reason why to reject Digicel implied approach to the treatment of pole lives but highlight a number of other aspects of the definition of "useable life" that is relevant to this proceeding.

19. Firstly, Digicel cites the statement that useful lives of wood poles might exceed 40 years based on a 2013 Oregon State University ("OSU") survey. However, only 16% of the respondents from the survey were from areas in the US that resemble the Caribbean. The Caribbean could, at best, be found within the "severe decay hazard" zone (#5) identified by the OSU.

20. Secondly, the NAWPC study highlights that useful lives are not only a function of the decay of the asset. In the case of poles, road widening, line upgrades, etc. explained 44% of pole replacements. This observation is applicable to *all* passive infrastructure not just wood poles—the useful lifetime is not just a function of deterioration. What is more, it is not at all clear whether storm damage is taken into consideration, if at all, in the study—adding another Caribbean specific factor to the calculation of useful lifetime.

21. Thirdly, the study emphasizes the importance of maintenance, which suggests another explanation for why the prices for concrete poles are sold at a premium over wood poles: the capex-for-opex trade-off.

V. FLOW'S COMMENTS ON RESPONSES TO OUR QUESTION 4: "DO YOU AGREE WITH THE INPUTS INCLUDED IN THE FIXED INFRASTRUCTURE SHARING COST MODEL REGARDING THE ANCILLARY SERVICES?"

[4] Apart from our other comments on its study included here, we note the OUR should not place much weight on the generally view of the NAWPC, since the organization would be clearly biased when it comes to an opinion on wood product lifetimes.

22. Digicel contends that the cost of any assessment that the "incumbent"[5] makes to share its infrastructure in response to an access request, should itself be shared between the access seeker and infrastructure provider as the latter benefits that from such assessments. Flow thinks this is extremely unlikely to be the case. Access seekers typically have specific requirements for assessments, and studies of this nature are unusable for internal planning purposes.

VI. FLOW'S COMMENTS ON RESPONSES TO OUR QUESTION 5: "DO YOU AGREE THAT THE SERVICES RESULTS OBTAINED IN THE FIXED INFRASTRUCTURE SHARING COST MODEL ARE REASONABLE REFLECTION OF THE INPUTS OUTLINED AND THE METHODOLOGY DETERMINED?"

23. Flow disagrees that there is anything inherent in the model structure or inputs that would lead to over-recovery of costs by the incumbent, as Digicel states. Indeed, our own comments suggests the opposite outcome.

24. Furthermore, with respect to Digicel's final comment--that it is more likely to rent space to install a subduct than rent an entire duct—we note that this again is another variation of sharing arrangement beyond what is currently foreseen with the model. Nevertheless, again, the Flow does not believe it would be worthwhile to try capture in the model this variation, nor the multitude of other unforeseeable cases of infrastructure sharing requirements. Rather, the OUR should acknowledge this model for what it is: a set of illustrative examples to suggest how the OUR would apply its costing principles should the need to do so arise.

End of document

[5] We note that Digicel continuously refers to the incumbent's infrastructure as if the OUR's draft regulation were applicable to only one player in the market.