
Office of Utilities Regulation

Assessment of RIO-5 and Tariff Schedule RIO/5A

Determination Notice



OFFICE OF UTILITIES REGULATION

Document No: TEL 2004/11

November 19, 2004

Determination on Reference Interconnect Offer (RIO-5) and Tariff Schedule 5A
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DOCUMENT TITLE AND APPROVAL PAGE

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**DOCUMENT TITLE: DECISION ON C&WJ'S REFERECNE INTERCONNECTIO
OFFER (RIO-5) AND TARIFF SCHEDULE RIO/5A**

1. PURPOSE OF DOCUMENT

This Determination Notice sets out the Office's decisions regarding Cable & Wireless Jamaica's RIO-5 and Tariff Schedule RIO/5A. The document addresses both tariff and non-tariff issues and indicates the elements of the RIO that the Office has take a decision to give explicit approval. In some instances the Office has also prescribed changes to terms and conditions contained in the proposed RIO.

RECORD OF REVISIONS

Revision Number	Description	Date

APPROVAL

This Determination is approved by the Office of Utilities Regulation and becomes effective on **November 26, 2004**.

By Order of the Office:

.....
J. Paul Morgan
Director General

November 19, 2004
Date

Abstract

This document sets out the Office's determinations with respect to pricing and non pricing issues in Reference Interconnect Offer (RIO-5). Specifically it summaries the results of the consultations undertaken by the Office in respect of the various proposals in RIO-5 and its Tariff Schedule (RIO/5A), the analysis carried out by the Office's staff, the decisions arrived at and the underlying rationale.

As indicated in the Office's consultation document, Reference Interconnect Offer (RIO-5), Document No: TEL 2004/09, the Office's focus in reviewing RIO-5/5A has been to ensure among other things:-

- The rates proposed for interconnection services incorporate asset values that are consistent with the principles and procedures set out in the Office's previous determinations on asset valuation;
- That allocation of cost follows the principles previously approved by the Office.
- The rates are consistent with the provisions of the Telecommunications Act, 2000;
- That decisions on pricing and non-pricing issues properly reflect all the obligations of a dominant carrier; and
- That where there are proposal for changes from terms and conditions set out in the preceding RIO, these are fully justified

In keeping with the provisions of the Telecommunications Act, the tariffs and terms of conditions of Offer approved herein will take effect on **November 26, 2004** in respect of all new interconnection agreements and will be incorporated into existing agreements as provided for in the terms of those contracts.

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CHAPTER 1: INTRODUCTION

Background

- 1.0 In its May 2002 Determination Notice on the proposed charges for mobile interconnection set out in RIO-4 the Office gave an undertaking that a review of fixed network charges would be carried out consequent on the Office's approval of new asset values submitted by C&WJ (using MEA principles). Assessment of those tariffs was interrupted by court actions and C&WJ subsequently issued RIO-5 (incorporating the approved MEA Valuation¹) on June 8, 2004. Tariff schedule 5A reflects the updated asset valuation for the ensuing two years and was submitted to the Office in May 2004.
- 1.1 The Office subsequently directed C&WJ to make the tariff schedule (RIO-5A) available on its website along with the non-pricing aspects of RIO-5 and by way of a consultation document published on July 20, 2004 invited comments. Responding to comments from interested parties, the Office took the decision to extend the time allowed for responses on the non-tariff issues in RIO-5 but indicated that it would hold to the timetable for tariff issues given their commercial imperative and implications for efficient entry in the telecommunications sector. In arriving at this decision, the Office also considered the following:-
- (i) the principles and methodologies for asset valuation and the allocations of interconnect costs has largely been settled in a previous determination;
 - (ii) the requirement for confidentiality in the treatment of the underlying costing data submitted by C&WJ; and
 - (iii) a great deal of the activities in regard to assessment of the tariff schedule involved work by the Office's staff to check the confidential cost and asset valuation data to determine if they satisfied the valuation and allocation principles previously determined by the Office.
- 1.2 During the course of its review of C&WJ's submissions particularly in respect of Tariff Schedule 5A, the Office submitted various questions and request for information regarding *inter alia*, cost allocations, changes in traffic patterns, network configuration, traffic profile, and network usage. As a consequence of the need to obtain additional information and to subject the information submitted by C&WJ to closer scrutiny publication

¹ Principles and Methods of Asset Valuation for C&WJ (Document No: Tel 2003/06, August 7, 2003)

of the Office's decisions has been delayed well beyond the initial deadline initially set for publication. One effect of this delay is that the Office is now able to revert to the initial position of whereby it is able to deal with both tariff and non-tariff issues together. This determination therefore incorporates decisions on both the tariff (RIO-5A) and non-tariff issues in RIO-5.

- 1.3 Parties to the consultation process continue to express disaffection that in a number of instances they were not privy to the data submitted to and analysed by the Office in arriving at its decisions. The Office has always accepted the need for transparency and so where possible but with due regard to its obligations for confidentiality as per Section 7 of the Act, has included in previous as well as this document, such explanations and disclosures as it deems prudent and relevant.

Response to Consultation

- 1.4 The stakeholders responding to the Office's consultation document on RIO-5 and Tariff Schedule 5A were Digicel Jamaica Limited, C&WJ, Oceanic Digital (Miphone) and the Jamaica Competitive Telecommunications Association (JCTA). Additionally comments on responses were received from C&WJ and JCTA. The responses and comments on responses with respect to tariff issues are summarised and addressed in Chapter (2) and the Office's decisions with regard to these issues are set out in Chapter 3. Chapter 4 summarises the comments on non-tariff issues, outlines the Office analysis and sets out its decisions on specific non-tariff issues.

Assessment of RIO-5/5A

- 1.5 Notably, the Office's approach to assessing RIOs to date has been incremental and cumulative with each new RIO incorporating principles embodied in earlier RIOs. This determination notice maintains this approach and so it does not repeat decisions made in previous RIOs except in so far as there are proposed changes or variations or to the extent that there is a need to restate the principles.
- 1.6 As part of its consultation on RIO-5/5A the Office restated its understanding of the RIO process and in particular that it has the option of approving a RIO in total, rejecting in total or approving/rejecting parts thereof. Previous RIOs were approved in part and the Office has adopted a similar approach with respect to RIO-5. More specifically the Office has focused its decisions on issues raised during the consultations and any other that in its opinion may result in a breach of any legislation. The assumption here is that those issues not raised by parties to the consultation process are not contentious and should therefore be easily resolved by commercial negotiations between the parties. This approach highlights the Office's view that while at the outset of liberalisation there

was need for substantial approvals of the various provisions of the RIO overtime it is desirable to allow carriers more flexibility to arrive at their own arrangements. Parties should bear in mind however, that such negotiated terms and conditions should be consistent with the legislative framework in Jamaica particularly with regard to, the Telecommunications and the Fair Competition Acts.

Chapter 2: Tariff Issues in RIO-5

Introduction

2.0 Responses to the pricing aspects of RIO-5/5A were submitted by: C&WJ, Digicel, and the Jamaica Competitive Telecommunications Association (JCTA). These responses in the main addressed a variety of issues including:

- Universal Service Surcharge;
- Modern Equivalent Asset (MEA) valuations;
- Development of Long Run Incremental Costing (LRIC) Model;
- Competitive safeguards for dominant public voice carrier;
- Qualification for cost based interconnection;
- Unit cost of interconnection;
- Charging principles for joining services;
- Interconnect specific charge;
- Charges for termination on the fixed network;
- Local retention;
- Allocation of C&WJ's costs between interconnect and retail services;
- Special access charges and transfer charges; and
- Bad debt provision for fixed to mobile calls.

2.1 The Office's responses to these issues are set out below. In addition to the above issues, a number of the questions and comments (particularly by the JCTA) pertain to issues dealt with in previous determinations notably, Principles and Methods of Asset Valuation for C&WJ, (Document No: Tel 2003/06, August 7, 2003) and the various other determinations notices cited in the Office's consultation document on RIO-5/5A. The Office has already directed attention to those decisions, which set out its current position on those issues. In this regard, the Office does not propose to revisit those issues in this determination notice.

Universal Service Surcharge

2.2 Both C&WJ and JCTA appear to be objecting to the inclusion of the surcharge for Universal Service (US) in the RIO. Indeed C&WJ urged the Office to reverse its imposition of a universal service levy. These comments are misplaced as the Office has not imposed nor does it have the statutory authority to impose a US surcharge. The Office's position in respect of the surcharge is simply that for purposes of transparency it must clearly be provided for in the RIO as a separate and identifiable charge. The surcharge is not part of the cost of interconnection but a levy imposed by Government to meet the cost of universal service obligation and hence the need for it to be clearly identified. This is also consistent

with the principle that a RIO should indicate all elements of costs that an interconnection seeker is likely to face.

MEA Valuation

2.3 Digicel has indicated that it is unable to provide meaningful comments on C&WJ's interconnection tariff without sight of the MEA figures submitted for 2002/2003 and has urged the Office to consider whether any of the information can be made available. The Office has often indicated to C&WJ that it should waive confidentiality on some aspect of its asset submissions. In the final analysis however, stakeholders should not be unmindful of the fact that the Office has subjected the C&WJ's costing model and the results derived from it, to various reviews. Table 2.0 below provides an overview of the movement in asset values and depreciation charges between March 2001 and March 2003.

Table 2.0 Changes in Asset Values and Cost by Broad Categories 2001-2003

	<u>% Change March 2001 to 2003</u>	
-		
<u>Total asset value March 2001 to March 2003</u>	28.8%	
-		
-		
<u>Telephone transmission Assets</u>	<u>Depreciation</u>	<u>NBV + WIP</u>
	30%	51%
<u>Telephone Switching assets</u>	66.6%	13.8%

Development of LRIC Costing Model

2.4 Parties to the consultation have reiterated an earlier expressed view that the Office should develop its own Long Run Incremental Costing (LRIC) model to allow it to derive its own costs against which to judge C&WJ's submissions. While the Office has not been averse to developing a LRIC model, it maintains that it has a legal duty to consider the FDC data supplied by C&WJ. In addition, the Office must also have regard to resources and time that must be devoted to developing such a model and the potential gain to the sector.

2.5 It is also significant that none of the parties to the consultation challenged the view held by the Office since 2001 that Fully Distributed Cost (FDC) figures, derived using replacement cost asset valuation, can be similar to Total Service Long Run Incremental Cost (TSLRIC) plus mark-up and that the UK in particular provides some example of this. Moreover the Office maintains that its continued acceptance of FDC information that is determined using MEA valuation methodology and subject to careful scrutiny of allocation methodologies satisfies the stipulations of the Act that interconnection prices should fall somewhere between "Total Service

Long Run Incremental Costs (TSLRIC) and Stand Alone Cost (SAC). Nonetheless, the Office is not averse to exploring this issue in the future. In the meantime, however, the Office is satisfied that the use of FDC on a Current Cost basis to derive interconnection charges is consistent with the provisions of the Act.

Competitive Safeguards for Dominant Public Voice Carrier

2.6 The JCTA contends that the absence of competitive safeguard rules (including accounting separation) for a dominant carrier as provided for at Section 35 of the Telecommunications Act makes it impossible for the Office to determine credible interconnection charges. JCTA's position is contradictory in some respect as in other parts of its submission, it urges the Office to set specific rates for interconnection. At the same time, it reflects a misapplication of the Telecommunications Act as it is Section 30 (2) of the Telecommunications Act that specifically addresses accounting separation with specific reference to interconnection cost. The section states:

Each dominant public voice carrier shall keep separate accounts in such form and containing such particulars as will enable the office to assess whether that carrier provides interconnection services in accordance with the principles specified in subsection (1).

2.7 The Office has carried out extensive reviews and scrutiny of C&WJ's accounts with specific reference to interconnection and in a number of instances has required changes to the Company's accounting approach to allow interconnection charges to be disaggregated. Moreover, it is known that the Office has not hesitated in the past where it feels that costing information has been unreliable to resort to international benchmarks to determine interconnection charges.

Qualification for Cost Based Interconnection

2.8 C&WJ has used the opportunity of responding to the consultation document to return to an issue it first raised in the consultation with regard to international settlement rates and termination charges in May 2004. C&WJ argues that the Telecommunications Act contemplates cost based interconnection between carriers who have customers connected to their networks. It also argues that allowing cost based interconnection to carriers who do not invest in a domestic network runs contrary to the objectives contained in Section 3 of the Telecommunications Act namely, the promoting of fair and open competition and the promoting of the telecommunications industry in Jamaica by encouraging economically efficient investment in, and use of, infrastructure to provide specified services in Jamaica. In this regard, C&WJ has urged the Office to determine a threshold level of domestic investment for carriers to be treated as public voice carriers for interconnection purposes.

2.9 Until the courts have decided otherwise or it is in receipt of alternative legal opinion the Office position on this remains as previously stated in its June 9, 2004 determination on termination charges for incoming international calls viz. while it remains cognizant of the imperative to encourage infrastructure development it does not consider it to be within its remit to make public policy nor to take decisions that frustrate the objective of stated Government Policy. It is therefore submitted that if such a limitation is to be imposed, this must first be reflected in a policy position of the Government including terms and conditions of licences. The Office is not in receipt of any such directive or policy guideline from Government.

Unit Cost of Interconnection

2.10 The JCTA has pointed out that C&WJ's tariff proposal shows an increase in the per unit charge for interconnection in a situation where the volume of interconnection traffic is expected to be increasing, a point which was not lost on the Office and was in fact raised in the Office's consultation document. In view of this, detailed breakout was required from the Company regarding its traffic volumes. Those traffic details indicate that while interconnection traffic has increased there has been an overall reduction in the amount of traffic that passes on the fixed network (see Table 2.1 below). One immediate effect of this is that since network per minute charge is determined by dividing total network cost by the total number of minutes a fall in the number of minutes with network charges remaining either fixed or increasing results in an increased per unit cost.

Table 2.1: Changes in Traffic on C&WJ's Network 2000 to 2003

Services	Volume 2000/2001	Volume 2002/2003	% Change.
Fixed to Mobile	345,986,262	586,714,879	69.58
Mobile to Fixed	66,291,209	183,157,323	176
Other Interconnect	4,212,267	265,946,453	6,213.60
Retail Services	7,159,979,947	5,502,340,858	-23.15
Total	7,576,469,685	6,538,159,513	-13.70

2.11 Additionally, as is known to all network operators, network usage is not uniform for every minute of the various types of traffic. For example, it is known that a call that originates and terminates on the fixed network (example inter parish) utilises more network resources than a call that just terminates on the network. Routing factors are developed to map the network usage of various services. The network usage of retail minutes amplifies the effect of the reduction in network minutes due to their large use of network elements. It follows from this that if the total for inter-parish minutes is falling even if that for minutes terminating on the network is on the increase the allocation of network resource charges to interconnection will record an increase due to the weight of inter and intra parish network usage.

2.12 It should be noted however, that the Office has a concern about what may be the ultimate result of this phenomena. In theory, it is possible to envisage a situation where traffic on the fixed network is zero. In such a hypothetical situation, it could hardly be envisaged that interconnection traffic would have to bear all the cost associated with the fixed network operating at full capacity. Rather an assessment would have to be done as to what is the minimum network resources required to provide interconnection and only such charges could be included in interconnection charges. It follows that if traffic on the fixed network continue to fall there will be a need to do an assessment of the extent to which there are assets that are not vital to interconnection. The Office is satisfied that the extent of volume decline is not yet sufficient for this question to be significant at this time.

2.13 The routing factors used for the RIO 3 in 2001 were derived without the benefit of data from traffic using the interconnection configuration proposed in that RIO. A routing factor study subsequent to RIO 3 has

been done and this has provided the basis for the computation of the tariffs in RIO 5A. The Office has reviewed in detail this routing factor study and has concluded that changes in the routing factors have affected the relative portions of costs attributable to various services including interconnection. However, the Office is of the view that it represents a fair allocation of the costs at this time. The Office will require a continual update of this study, at some future date, in light of the dynamism in the telecommunications market.

Charging Principles for Joining Services

- 2.14 The Office had previously ruled in Assessment of Cable and Wireless Jamaica's Reference Interconnection Offer (Document No: TEL 2002/01, determination 3.2) that it accepted C&WJ's proposal that the cost of joining service should be split 50/50. In the related consultative document, the Office raised the issue as to whether that principle of symmetry should be maintained. As it turned out however, the principle of symmetry has not been applied in respect of what C&WJ terms, "the newly interconnected carriers." C&WJ claims it requires interconnection seekers to bear the full cost of the joining services and that it urges the Office to approve this practice which enjoys wide scale acceptance by the industry and which has greatly improved C&WJ's ability to provide interconnection within the desired time. Moreover, C&WJ argues that this requirement is consistent with the provisions of the Act which requires that cost should be allocated by the party that has caused it to be incurred.
- 2.15 When the Office first dealt with this matter it indicated that the statute mandates interconnection and so it could not be simply argued that the interconnection seeker request for interconnection is the cause for the cost that are incurred. Furthermore, interconnection is beneficial to all operators and customers. Thus, the cost of joining services should reflect the distribution of benefits to all operators and customers. Additionally, the statute imposes an equal obligation on all parties. Notwithstanding, C&WJ's claims the Office sees no good reason to change its earlier position that the cost of joining services should be split 50/50 between the parties. This principle holds even in cases where the construction of joining service is done by the interconnecting seeker.

Interconnect Specific Charge

- 2.16 With regard to the charges for terminating services, Digicel has indicated that it has no objection to the move to make interconnection specific charge a flat rate while other parties have not provided comments on this matter. The Office is therefore approving these rates as proposed.

Local Retention

- 2.17 C&WJ has introduced a local retention charge option for instances in which a call is routed and handed over by service supplier (C&WJ) at the

service supplier's Interconnection Switch Location (ISL) located at an end office, to which the interconnection seeker directly connected. This compares with the instance in which the call is simply handed over at the service supplier's ISL tandem switch in the same interconnection access area. In the latter case, a regional retention applies. Digicel commented that it has no objection to this situation but is concerned that C&WJ should make it explicit that it has several interconnection switches in each interconnection area that allows service takers to incur lower retention charges. The fact, however is that the Office has previously determined that interconnection seekers should be able to connect at any end office but are required to provide C&WJ with a minimum notice of six months indicating the local switch to which connection is required.

Allocation of C&WJ's Costs

2.18 Understandably the issue of whether C&WJ is allocating cost fairly between interconnection services and its retail businesses remains a matter of concern to other sector interests. Notably however, this is an issue that the Office has given and continues to give serious attention as it is also cognisant of the potential for competitive abuse. In this regard the Office wishes to emphasize that it pays particular attention to this matter and offers its assurance that its investigations into C&WJ's costing and asset valuations has sought to eliminate such distortions. Moreover, the Office has been careful to ascertain that the current RIO submissions maintain the principles of asset valuation and cost allocations previously determined by the Office.

Special Access Services

2.19 Digicel notes as a general comment that it cannot comment meaningfully on the increases in these charges, as it had not seen the underlying cost data but that it sees no justification for the proposed increases. Moreover, Digicel has argued that elsewhere, the UK being an example, the regulator adopted a practice whereby competitors were allowed sight of the underlying cost information for BT to allow for meaningful comments. Digicel's comments fails to take account however, of the difference in the legislative provisions governing the telecommunications sectors of both countries. The JCTA for its part has argued that actual cost in the telecommunications industry is falling and so C&WJ should actually be seeing a reduction in the cost on its network.

2.20 The Office has taken all of these comments into consideration in its review of C&WJ's costing and wishes to underscore the point that it has often insisted that C&WJ allow disclosure of information, which the Company claims will prejudice its commercial interest. Indeed the Office determination on asset valuation provides one such instance in which the Office has pushed for even greater disclosure than the Company was willing to allow. The Office has also sought in this document to set out

(though in global) terms the nature of the information and the trend in cost that underpins the tariff proposal submitted to the Office.

- 2.21 Beyond the issue of the increase in the charges for these services, the Office had also sought views on C&WJ's contention that these services no longer needed to be cost based, as with liberalisation they no longer represent bottlenecks.

Transit

- 2.22 The JCTA has referred to an earlier determination by the Office, which requires C&WJ to remove the charge for transiting its fixed network, and has urged the Office to enforce this determination. Once again the Office wishes to point out that the transit charge is only inapplicable if C&WJ is not in a position to provide direct interconnection to its mobile network. However, in the case where C&WJ is willing and able to provide direct interconnection (as it has assured the Office is the case) but an interconnection seeker chooses to transit the fixed network, the transit charge is legitimate.

Bad Debt Provision for Fixed to Mobile Calls

- 2.23 The treatment of bad debt in the retention portion of the price of a call from the fixed network remains an issue of contention with Digicel continuing to insist that this is a business risk that C&WJ should bear in the same way that Digicel or any other competitor has to bear its own bad debt risk. The JCTA indicated its agreement with the position taken by Digicel and argued that it is not aware of any business which charges its customers for bad debt.
- 2.24 The specific issue raised by the Office in its consultation on this issue was whether the surcharge for bad debt applied in respect of calls from the fixed network to mobile networks should remain at the level that currently obtains. The Office has always taken the view that expenses for bad debt are legitimate and will (explicitly or implicitly) be reflected in the cost of service. It is to be noted that termination charges for other networks are not affected by the level of the bad debt expenses unless that network operator chooses to make it so.
- 2.25 The anomaly that arises in a calling party pays regime without any control on termination charges is that the originating network has difficulty controlling bad debt that can be the result of high terminating charges on mobile networks. Hence the Office has in principle approved a bad debt provision but has in the past indicated that the level is to be kept under review. Indeed, in its May 2002 determination notice titled "Reference Interconnect Offer (RIO-4), Document No: TEL 2002/04, the Office indicated that it expected a reduction in fixed to mobile charge to mitigate the problem.

- 2.26 Termination charges have seen some reductions since that report and it was in that context that the Office suggested that there might be a need to revisit the issue. At the same time, the Office notes the argument posited by C&WJ that the return to per minute billing concurrent with the reductions in fixed to mobile prices would have neutralised some of the effects of the reductions on call charges.
- 2.27 As part of its review of C&WJ's tariff the Office requested C&WJ to provide data on the current situation with respect to bad debt on the fixed network. The Office's analysis of the data submitted by C&WJ indicates that there is support for approving the maintenance of the explicit bad debt charge at the level proposed. The Office is also of the view however, that for future RIOs, bad debt should not be treated as a surcharge but simply as another element of costs. For the avoidance of doubt this surcharge does not apply to services terminating on the fixed network.

Chapter 3: Determinations on Tariff Issues

- 3.0 The Office sets out in this chapter, its findings with regard to the tariff schedule submitted by C&WJ and the information submitted under confidential cover in support of RIO-5 Tariff Schedule (5A) and its determination with regard to those tariffs (Tariff Schedule 5A is attached as Appendix A to hard copies of this document and is available along with other section of RIO_5 by electronic link at:
http://www.cwjcarrierservices.com/pdf/amended_RIO-5A_Tariff_Schedule.pdf

Findings

- 3.1 The Office in its determination titled “Principles and Methods of Asset Valuation for C&WJ” directed that for ensuing years and until new studies are done asset values for regulatory purposes (i.e. interconnection and price cap) shall be determined by applying the US Turner Index adjusted for exchange rate adjustment. In keeping with this directive C&WJ has submitted new valuation for its assets for the years March 2001 through to 2003. Notably the adjustment is taking place with a two year lag because of delays occasioned by litigation over the last two years. The Office has examined these asset values and has determined that they have been arrived at using the approved methodology.
- 3.2 The data submitted to the Office shows that over the period the book value of C&WJ’s asset for regulatory purposes have increased from \$34.4 billion Jamaican to \$44.3 billion reflecting a 29% increase in asset values in Jamaican dollar term over the period (Table 2.0). When adjusted for the changes in exchange rate this amounted to a 13.5% increase in the Company’s asset values over the period. Since interconnection charges are set in Jamaican dollars exchange rate adjustments partially account for the increases in overall charges.
- 3.3 Another contributor to changes in interconnection charges that the Office has identified, concerns changes in the distribution of the company’s principal asset values, notably central office switching and central office transmission. The Office is satisfied that the allocations of asset charges are consistent with earlier directives given by the Office.
- 3.4 With the rapid expansion in the subscription on other network it was envisaged that even if on network traffic for the fixed network fell there would be more than a proportionate increase in cross network traffic. The data available to the Office indicates that this is not the case. In fact, there has been an overall net decrease of just over 13% in fixed network traffic volume. The effect of this is that all other things being equal per minute charges have increased. The Office considers that to the extent that network assets are used to produce all services it is not unreasonable to

expect that interconnection charges will be adversely affected by falling volume in the same way that they would be favourable affected by rising volumes.

- 3.5 Miphone has suggested that the structure of the tariff schedule should be altered to be in line with the service schedule. This, it claims will make the RIO more user friendly. The Office considers that there is merit in the suggestion but does not consider that there is need to make the requirement mandatory. None the less, the Office urges C&WJ to take the suggestion on board when it updates RIO-5 to be compliant with this decision.
- 3.6 The original routing factors used in RIO-3 did not appropriately reflect the configuration used for interconnection and so a new study was done. The change in the routing factors explains a significant portion of the movements in interconnect tariffs.

Determinations

- 3.7 The tariffs schedule submitted list four categories of services: Joining Services, Termination services, Special Access Services and Transit Services. The determinations deal with these services in the categories in which they are listed and in the order in which they are set out in RIO-5A Tariff Schedule.

Joining Service

- 3.8 This category include charges for foot-way and non-foot way boxes, small capacity joining services, copper carrier systems, early termination charges and one-off installation and testing charges.

Determination 3.1: All the charges in Part 1 of RIO-5A are approved with the provision that where applicable, they shall be split 50/50 between the interconnection seekers and the interconnection provider (even in cases where the interconnect seeker construct the joining service) in keeping with the interconnect principle of equal responsibility and the recognition that interconnection is beneficial to all parties.

Termination Services

- 3.9 The charges in this category include, interconnect specific charges and usage charges relating to distance (i.e. local, regional and national) and reflecting time of day (i.e. peak, off-peak and weekend). It also include fixed retention charges for fixed to mobile calls to which C&WJ proposed to continue to apply a 8% surcharge for bad debt as well as charges for incoming international call termination services.

Determination 3.2: The charges in Part 2 of RIO5A in the above categories and the eight percent bad debt provision for fixed to mobile calls are approved and for future RIOs the fixed retention charge shall include the relevant bad debt provision.

Special Access Services

3.10 As indicated in the Office's consultation document on RIO-5, C&WJ has previously indicated that the rates for services designated under this heading are cost based although they need not be since they are not strictly interconnection services. The Office for its own part, has previously opted to defer approval of these rates as it had never conducted a comprehensive review of their cost basis. Instead, parties have been encouraged to negotiate and to request the Office's intervention in the event of a dispute. This arrangement seems to be working well to date and in this regard the Office continues to hold to this position. As indicated in the section of this notice which deals with interconnection services, the Office continues to treat these services as falling within the ambit of the RIO and therefore expects to arbitrate in the event that parties are unable to achieve amicable arrangements.

Transit Services

3.11 This category recognises the need in some instances and the option in others for fixed and mobile carriers to continue to transit the fixed network. In the instances where an interconnection request is made and the seeker, including a competing fixed network, is in a position to provide the facility on its side of the network to interconnect with C&WJ's mobile network but C&WJ mobile unable or unwilling to provide it, the Office has ruled that the transit charge shall not apply.

Determination 3.3: The charges in this category (Part 4) of RIO5A are approved but with the provision that where an interconnection seeker is willing and able to provide direct interconnection with C&WJ's mobile network but C&WJ mobile is unwilling or unable to do so thus necessitating transit of the fixed network the charges shall not apply.

Chapter 4: Non-Tariff Issues in RIO-5

4.0 Non-tariff issues involve a range of items dealing with service description, legal framework for interconnection and responsibilities of interconnecting parties in respect of forecasting, payments, notice, network safety etc. Responses to the non-tariff issues in RIO-5 were received from Digicel, C&WJ, Miphone and the JCTA. Additionally, C&WJ also provided comments on the responses, while Digicel requested and was granted a meeting with the OUR's staff to provide further clarification on its views. Responses to the consultation covered a range of issues including:-

- Timetable for public consultation;
- Format of the Tariff Schedule
- Proposed changes to particular sections of the legal framework;
- References to ADC;
- Removal of and re-categorisation of services;
- Principles governing the provision of Joining Services;
- New services, their designations and conditions of offer;
- Treatment of special access services;
- Connection to C&WJ's End Office;
- deposit requirement; and
- Backhaul Pricing and POIs for Submarine Cable Providers

4.1 This chapter summarises the comments on non-pricing issues, set out the Office's analysis and its specific determinations. As previously indicated elsewhere in this document, the Office has confined its decisions to those issues that it deems to require specific regulatory decisions. Where the Office has made no decisions and where issues have are not addressed by principles set out in previous RIOs the Office anticipates that the parties will arrive at agreement by commercial negotiation with very limited resort to arbitration.

Timetable for Public Consultation

4.2 Both Digicel and the JCTA submitted requests for extension of the time to respond to the consultation document on RIO-5. Digicel requested an additional three weeks while the JCTA requested sixty days. After examining the submissions, the Office indicated that it was reluctant to grant an extension to all aspects of the consultation given the period over which the issues have been in the public domain and the commercial imperatives involved. The Office indicated its willingness to allow extension on specific issues however, and eventually allowed an extension with regard to non-pricing issues.

4.3 The JCTA also indicated that it had filed an appeal to the Appeal Tribunal and that among the issues that were under appeal was the timetable set by the Office and so the Office should await a ruling by that body before

proceeding to issue its decisions. The Office took the view however that there was no good reason to delay its decision as the appeals process provides a recourse if parties were of the view that the Office had failed to observe proper procedures including allowing sufficient time for consultation.

Protection of Privacy of Information

- 4.4 It has also been argued that the RIO process does not provide protection for information supplied to C&WJ during the course of interconnection to be use in an anti-competitive manner. The Office finds this claim surprising as paragraph 6.1 of its Determination Notice titled, "Cable and Wireless Jamaica's Reference Interconnect Offer, February 2001" sets out extensive provisions regarding the treatment of confidential information supplied to C&WJ for purposes of interconnection. The Office considers these provisions adequate and urges parties to bring to the Office's attention any evidence of violation of these conditions. Alternatively, parties may also bring such evidence to the attention of the Fair Trading Commission. Moreover, the Office has no objection to interconnection seekers making these provisions or similar provisions terms and conditions of agreements with C&WJ.

Amendments to the Legal Framework

- 4.5 During the consultation on RIO-5 the Office received a number of comments and suggestions with respect to various clauses of the legal framework, notably: Clauses 9.2, 10.1, 10.2, 10.3, 10.4, 24.3, 24.4, and 28. Additionally, Digicel had previously submitted comments to the Office in September 2003 when RIO-5 was first published on some of the above cited clauses as well as in respect of Clauses 13, 18, 23, and 29.

Clause 9.2

- 4.6 Miphone pointed out that Clause 9.2 seeks to remove the interconnect seeker's right to set the charge for terminating calls on its network as it ties the rate to that established by C&WJ. Notably, C&WJ has proposed amendment to the language of Clause 9.2 which would then become 9.3 and reads as follows:

Unless agreed otherwise between the Parties, charges payable by C&WJ to the Telco for a Service shall be the same as the Charges payable by the Telco to C&WJ for the same Service. In the event that C&WJ's Charges for a Service are varied pursuant to Clause 10, the Telco will vary its Charges for the same Service to ensure they remain the same.

- 4.7 The concern was that C&WJ was seeking to impose reciprocal charges for all networks. The Office takes the view that it is only inclined to mandate reciprocal charges across similar networks. and approve this amendment on the basis that it refers to reciprocity for 'same' networks in accordance

with the provisions in Section 29 of the Act.. Moreover, the Office takes the position that in the absence of specific regulatory prescription of charges across dissimilar networks, rates should be determined by commercial negotiations.

Determination 4.1: The Office has determined that Clause 9.3 shall be amended to remove the mandatory requirements for reciprocal rates across networks and that reciprocity will be applicable only to interconnection between similar networks. For the avoidance of doubt rates for termination on the PSTN approved in this determination notice shall be mandatory.

Clause 10

- 4.8 Digicel proposed the following rewording of Clause 10.1-10.4 with respect to variation of charges:

“From time to time C&WJ or the Telco may notify each other of changes to charges which are subject to regulatory approval by the OUR. Such notice shall specify the date on which the variation is to become effective. The changes will take effect from the effective date approved by the OUR.

For the avoidance of doubt, the Charges for new services will be agreed pursuant to Clause 18.

For the avoidance of doubt, Charges which are not subject to regulatory controls or permissions may be changed as follows:

1/ by notification from C&WJ or the Telco to the other Party. If either Party believes that the charges notified are not attainable because of Third Party factors or other factors outside the Parties' control then the matter is to be resolved by arbitration and if arbitration is not successful then through the Courts. Notification shall take effect not earlier than 5 weeks before it is deemed to be received, or validated by an arbitrator or Court where the notification is disputed.

2/ by C&WJ or the Telco in the event that the Jamaican dollar devalues or revalues against the US dollar by five percent or more in any six month period concluding during the Term of this Agreement, in order to reflect such currency devaluation or revaluation.”

- 4.9 Digicel's response was in respect of the following wording proposed by C&WJ in respect of the same clauses:

10.1 The Telco may from time to time, and subject to the existing laws and regulations governing telecommunications in Jamaica, notify C&WJ of changes to the Usage Charges. Any such notice shall specify the proposed new Usage Charges (being an amount

which does not exceed the maximum termination rates determined by the existing law and regulations governing telecommunications in Jamaica) and the date on which it is proposed that the variation to the Charges is to become effective, such date being at least 5 weeks from the date the notice is deemed to be received. C&WJ shall, within 5 Business Days of receipt of such notice, acknowledge receipt and within a reasonable time notify the Telco in writing of acceptance of the proposed variation to the Charges or of rejection (together with any reasons for rejection). Any dispute as to the changes which may be made to the Usage Charges pursuant to this Clause 10.1 will be transferred to the OUR for resolution in accordance with Section 34 of the Act.

10.2 C&WJ may from time to time notify the Telco of changes to Charges, being

- i. Charges approved by the OUR; or
- ii. Charges determined by a decision of the court or by arbitrators appointed subject to clause 36; or
- iii. Charges changed as a result of changes made by Third Party Telecoms Providers to their charges or payments.

Such notice shall specify the date on which the variation is to become effective. In the case of changes falling within (i) and (ii) above, the changes will take effect from the effective date approved by the OUR, or the effective date as determined by a court of competent jurisdiction or arbitrators appointed subject to clause 36. In the case of changes falling within (iii) above, the changes will take effect from the date set out in the notice as being the effective date, such date being at least 5 weeks from the date such notice is deemed to be received unless C&WJ or Telco does not receive sufficient notice from the Third Party Telecoms Provider. In the case of changes falling within (iii) above, to the extent that C&WJ does not receive sufficient notice from the Third Party Telecoms Provider to give at least 5 weeks' notice of any changes, C&WJ will give as much notice as is reasonably practicable.

10.3 For the avoidance of doubt, the Charges for new services will be agreed pursuant to Clause 18.

10.4 In the event that the Jamaican dollar devalues or revalues against the US dollar by five percent or more in any six month period concluding during the Term of this Agreement, in order to reflect such currency devaluation or revaluation.

- 4.10 Notably Miphone objected specifically to the inclusion of 10.4 arguing that the each party should be required to bear the currency risk associated with pricing the cost of the service in US dollars.
- 4.11 The Office finds neither of the above wording to be totally acceptable. For one, the wording proposed by C&WJ does not sufficiently distinguish between regulated and unregulated charges, fails to apply obligations equally and appear to give C&WJ a unilateral right of rejection to proposed charges by a Teleco. At the same time Digicel's wording fails to take account of the reality that the need to change rates may arise from actions outside of the control of either C&WJ or the Telco but rather as a consequence of third party actions. The Office also regards the provision with regard to currency movement as appropriate in so far as it is applied equally.
- 4.12 In view of the above, the Office has determined that it will accept the wording proposed by C&WJ subject to the following changes:

Clause 10.2 should be modified to read at the beginning, "The Teleco or C&WJ may from time to time provide notice of changes to charges being.....". The sentence beginning with "C&WJ shall", is to be modified to, "C&WJ or the Teleco shall within five business days of receipt of such notice, acknowledge and within ten working days indicate acceptance of the proposed variation to the charges or state its intention to dispute the charge. Any dispute as to the usage charge will be referred to the OUR for resolution

At clause 10.2 the final sentence should be modified to say, "In the case of changes falling within (iii) above, to the extent that C&WJ or Teleco does not receive sufficient notice from the Third Party Telecoms Provider to give at least 5 weeks' notice of any changes, either party will give as much notice as is reasonably practicable."

Clause 10.4 should be modified to indicate that the provision with regard to devaluation or revaluation shall apply equally to all parties.

Determination 4.2

The Office has determined that Clause 10.2 shall be modified to read:

- 10.1 The Telco or C&WJ may from time to time, and subject to the existing law and regulations governing telecommunications in Jamaica, give notice of changes to the Usage Charges. Any such notice shall specify the proposed new Usage Charges (being an amount which does not exceed the maximum termination rates determined by the existing law and regulations governing telecommunications in Jamaica) and the date on which it is

proposed that the variation to the Charges is to become effective, such date being at least 5 weeks from the date the notice is deemed to be received. The Teleco or C&WJ shall, within 5 Business Days of receipt of such notice, acknowledge receipt and within ten working days indicate written acceptance of the proposed variation or of its intention to dispute the charge. Any dispute as to the changes which may be made to the Usage Charges pursuant to this Clause 10.1 will be transferred to the OUR for resolution in accordance with Section 34 of the Act.

10.2 The Teleco or C&WJ may from time to time provide notice of changes to Charges, being

- i. Charges approved by the OUR; or
- ii. Charges determined by a decision of the court or by arbitrators appointed subject to clause 36; or
- iii. Charges changed as a result of changes made by Third Party Telecoms Providers to their charges or payments.

Such notice shall specify the date on which the variation is to become effective. In the case of changes falling within (i) and (ii) above, the changes will take effect from the effective date approved by the OUR, or the effective date as determined by a court of competent jurisdiction or arbitrators appointed subject to clause 36. In the case of changes falling within (iii) above, the changes will take effect from the date set out in the notice as being the effective date, such date being at least 5 weeks from the date such notice is deemed to be received unless C&WJ or Telco does not receive sufficient notice from the Third Party Telecoms Provider. In the case of changes falling within (iii) above, to the extent that C&WJ or the Teleco does not receive sufficient notice from the Third Party Telecoms Provider to give at least 5 weeks' notice of any changes, either party will give as much notice as is reasonably practicable.

10.3 For the avoidance of doubt, the Charges for new services will be agreed pursuant to Clause 18.

10.4 By C&WJ or the Teleco in the event that the Jamaican dollar devalues or revalues against the US dollar by five percent or more in any six month period concluding during the Term of this Agreement, in order to reflect such currency devaluation or revaluation.

Clause 13.2

- 4.13 Digicel objected to the inclusion of this provision with regard to the treatment of Call Line Identification (CLI) on the grounds that if its inclusion is to guard against fraud there are sufficient provision at Clause 17 to deal with this. The Office sees no harm however, in its inclusion especially if it strengthens the capacity to enforce against fraudulent activities.

Clause 18

- 4.14 Digicel argued that the following sentence in respect of this clause should be deleted: "When C&WJ is reasonably satisfied that the Telco's System meets the technical requirements of C&WJ's then current published RIO in relation to the service or facility which Telco has requested, C&WJ shall offer to enter into an agreement to interconnect the Parties' respective Systems for the provision of the service or facility to the Telco on the terms set out in C&WJ's then current RIO". The Company argues that the stipulation is potentially unfair as it appears to leave the judgement of the Telco's readiness entirely to C&WJ. The Office agrees with this view and accepts that this provision should be deleted and replaced by a provision that requires agreement by both parties and provision for arbitration if there is a dispute.

Determination 4.3

The Office has determined that the following sentence in respect of Clause 18 shall be removed. "When C&WJ is reasonably satisfied that the Telco's System meets the technical requirements of C&WJ's then current published RIO in relation to the service or facility which Telco has requested, C&WJ shall offer to enter into an agreement to interconnect the Parties' respective Systems for the provision of the service or facility to the Telco on the terms set out in C&WJ's then current RIO". It may be replaced by suitable language indicating that determination of readiness for interconnection shall be by agreement of both parties.

Clause 23

- 4.15 Digicel noted that a clause previously designated 23.5 in RIOs 3 and 4 have been omitted in the current RIO and that it should be reincorporated to allow agreements to take account of principles set out in a new RIO approved by the Office. The Office takes the view that although elsewhere in the Clause there is provision for parties to seek a review of agreements on a revised RIOs being approved there is not a mandated requirement for approved amendments to be included in agreements. For the avoidance of doubt the Office has determined that Clause 23.5 of previous RIOs shall be retained.

Determination 4.4: Clause 23.5 of RIO 3 is retained.

Clause 24.3

- 4.16 Miphone expressed the view that Section 24.3 which provides for the termination of the agreement for arrears that are not in dispute is too harsh a penalty and should be removed from the RIO. The Office does not propose to regulate the arrangement between parties as it relates to the management of acknowledged obligation as long as they are not one-sided. In this regard the Office is leaving this matter to commercial negotiation between the parties but requires that it should be applied equally.

Clauses 24.5 (formerly 24.4), and 28

- 4.17 Both Digicel and Miphone commented on these clauses which deal respectively with deposit and guarantee. Miphone argued that the absolute right claimed by C&WJ to terminate the agreement for failure to maintain the deposit or guarantee is unfair given that there is no equivalent burden on the Company. For its part, Digicel argued that leaving the deposit requirement in place for five years imposes an unfair burden upon the Teleco. Digicel recommends a maximum period of one year to allow Teleco to establish a credit history and thereafter remove the requirement for guarantee.
- 4.18 Notably, since the consultation C&WJ has modified the proposal in respect of deposit and guarantee and the relevant clauses are now 24.5 from 24.4 and 28. These are replicated below.

24.5 In the event that Telco fails to keep in place a valid guarantee or security deposit as required pursuant to Clause 28, C&WJ reserves the right to terminate this Agreement immediately upon giving written notice to Telco.

28.1 Telco has provided to C&WJ an unconditional bank guarantee, in a form and from a bank licenced in Jamaica and approved by C&WJ, such approval not to be unreasonably withheld. The provision of any and all Services by C&WJ to Telco pursuant to this Agreement, and C&WJ's compliance with the terms of this Agreement are conditional upon Telco keeping in place such guarantee which provides, at a minimum, a financial guarantee for the payment of the maximum Early Termination Charges payable by the Telco to C&WJ (pursuant to Part 1 of the Tariff Schedule) in the event of early termination of this Agreement. In the event that Telco does not keep such valid guarantee in place continuously for a period of five years

from the date of this Agreement, C&WJ may terminate this Agreement pursuant to Clause 24.4.

28.2 In addition to the guarantee required pursuant to Clause 28.1, C&WJ may require the Telco to provide a security deposit in the form of an unconditional bank guarantee in a form and from a bank licenced in Jamaica and approved by C&WJ, such approval not to be unreasonably withheld, by the Ready for Service date of the first Joining Service provided pursuant to this Agreement (the "Deposit"). The amount of such Deposit shall not exceed the sum of three months Usage Charges for all Services forecast to be used by the Telco in the Forecast agreed pursuant to the Joint Working Manual.

28.3 In the event the Telco's usage during any billing period reasonably indicates to C&WJ that the usage charges payable by the Telco to C&WJ at the end of such billing period shall exceed the deposit required pursuant to clause 28.2, C&WJ may request that Telco, and the Telco shall, unless the parties agree otherwise, within 2 days of such request from C&WJ, increase the deposit. The increased deposit shall be a sum which covers the projected usage charges for three months usage based on C&WJ's revised calculation of the Telco's usage.

4.19 The Office accepts the need for interconnecting parties to protect themselves against default by other parties on their obligations but is also conscious of the potential burden that the requirements for deposits and guarantees impose on interconnection seekers. The Office is therefore sympathetic to the concern that there should be greater flexibility with respect to the way in which the requirements for guarantee and deposit are applied. The Office also takes the view that two days is too short a period to allow for an increase in deposit and considers that a minimum of five working days is more appropriate. The above provision is therefore approved but with the requirement that after three years if there is no default by the Teleco the requirement for a guarantee with respect to 24.5, and 28.1, shall be waived. Additionally all references to the statement "and approved by C&WJ" in respects of the bank issuing the guarantee shall be removed. The requirement is arbitrary as it allows C&WJ a veto over the Teleco's choice of bank. The period allowed parties to increase deposit as per Clause 28.3 shall be a minimum of five (5) working days.

Determination 4.5: The Office has determined that Clauses 24.5 and 24.1 respectively shall be modified to allow the requirement for a guarantee to be waived after three years without default.

Additionally, all references in the clauses to, and approved by C&WJ” shall be removed. The period allowed for increasing the deposit as per Clause 28.3 shall be a minimum of five working days.

References to ADC

- 4.20 The Legal Framework and other sections of RIO-5/5A understandable contain many references to ADC as it was drafted prior to the Office’s decision not to provide for an ADC. Parties to the consultation have therefore requested that all reference to ADC be deleted from the RIO. The Office concurs as such references are no longer relevant.

Determination 4.6: The Office has determined that all references to ADC shall be removed from the current RIO.

Categorisation of Services (new services, removals and reassignments)

- 4.21 In its consultation on RIO-5 the Office sought specific comments from interested parties on changes to the category of services described in previous RIOs. Specifically there has been the withdrawal of services, the inclusion of new services and the reassigning of services to different categories.
- 4.22 Parties to the consultation process expressed varying degree of discomfort with the removal of services from the RIO. The JCTA opined that services should only be removed once they are deregulated and no longer bottlenecks. Miphone objected specifically to the removal of PSTN outgoing international service as it argues that to date C&WJ is the only entity able to send out going traffic by undersea cable. Digicel expressed approval with the removal of a number of services but suggested that the following services remain bottlenecks and as such should be kept within the RIO process:
- 56 KBit/s Messaging Bearer Service
 - International Signalling Service
 - Directory Number Inclusion
 - PSTN outgoing International Service
- 4.23 Additionally, Digicel also emphasized the need to ensure that the addition of new services imposes no regulatory burdens on other carriers and that where services are to be eliminated or reassigned the Office take care to ensure that they do not represent bottleneck that are relied on by other carriers. Notably, however Digicel indicated that it had no objection to the removal of PSTN Outgoing International.
- 4.24 The Office does not believe that services previously offered in a RIO should be unilaterally removed from the process. Furthermore it is in agreement with the view that removal of services should be based on a

determination by the Office that they no longer represent a bottleneck facility. Since the Office has to date made no such determination the Office takes the view that those services in dispute should be reincorporated in the RIO subject to the provision that the Office will not approve rates but will allow the parties to proceed on the basis of commercial agreements. The services so specified are:

- KBit/s Messaging Bearer Service;
- International Signalling Service;
- Directory Number Inclusion; and
- PSTN outgoing International Service.

The Office will invite C&WJ at a later date to indicate why these services should be removed from the RIO process. The Office is also approving the new services provided in the RIO as well as the reassignment of services.

Determination 4.7: The Office has determined that the new services, reassignment of services and removal of services proposed in respect of Rio-5 are approved with the following requirement. The services denoted:

- **KBit/s Messaging Bearer Service;**
- **International Signalling Service;**
- **Directory Number Inclusion; and**
- **PSTN outgoing International Service shall be returned to the RIO as part of the category denote Special Services.**

Principles Governing the Provision of Joining Services

4.25 The Office specifically requested responses on whether the terms and conditions under which services are currently provided in this category satisfies the principles previously enunciated by the Office. At least one response to the consultation has affirmed that this is so.

Determination 4.8: Principles governing the provision of Joining Services are approved

Special Access Services

4.26 There were no major changes to the services listed in this category save for the addition of a number of new services including Weather Warning, National and International Collect, Home Country Direct Collect, Special Rate Service Access, Single Number Connection Access, Personal Number Connection, etc. Parties to the consultation expressed no concern about this listing and so the Office is approving them as part of the RIO.

Determination 4.9: The Office has determined that the services in this category including new services are approved.

Connection to C&WJ's End Office

4.27 The Office owns assessment of this service and the comments from interested parties do not indicate a need for it to revisit its earlier determination on this issue. That determination dated February 2001 was that starting

".....in Phase II when rates for connecting to end offices are included in the RIO, C&WJ shall, upon bona fide request, make direct connections available to any end office (except remotes) for the purpose of originating and terminating traffic at that office. A bona fide request shall be accompanied by a commitment by the entrant to connect, and the connection shall be made available within six months of the request. This provision is for originating and terminating traffic only. It is not intended to allow the use of end offices as tandems."

PSTN Transit

4.28 This service was previously part of the wholesale section of the RIO but is now a separate category under RIO-5. This service is available to fixed as well as mobile operators. It remains subject to regulatory oversight by the Office. Moreover, as previously determined and reiterated in the section of this notice dealing with tariffs, this service must be optional for interconnection seekers.

Wholesale of Outgoing International Minutes

4.29 RIO-5 proposes to remove the wholesaling of outgoing international calls as a RIO service. The OUR has no objection to this proposal but notes that its removal from the RIO does not obviate the need for the terms and conditions of it offer to be compliant with the relevant provisions of the Act especially with regard to the methodology for determining the level of discount. The Office therefore requires C&WJ to post these prices on its web site as a means of enhancing transparency.

Determination 4.10: The Office has determined that the services in this category are approved but that rates for their terms and condition of offer shall be compliant with the relevant provisions of the Act especially with regard to the methodology for determining the level of discount. C&WJ shall also publish the rates for these services on its website.

Service Descriptions

4.30 The Office is concerned that provisions in service description may be used by dominant carriers to determine what services another network can offer and thus have the effect of lessening competition. The Office is of the opinion that this would contravene the provisions of the Fair Competition Act and therefore will not approve clauses that serves to limit competition. In this regard the amendments to PSTN Terminating Access Service 1.1.4

and PLMN Terminating Access Service 1.1.4 reading “or ultimately terminating outside of Jamaica” serve to limit the type of services and customers that another network may have.

Determination 4.11: The words ‘or ultimately terminating outside Jamaica’ in Clauses PSTN Termination Access Service 1.1.4 and PLMN Access Service 1.1.4 is to be removed.

Backhaul Pricing and POIs for Submarine Cable Providers

4.31 The inclusion of this issue in the consultation was aimed at getting preliminary view on its inclusion in the RIO and the term and conditions that should apply to it. It is expected to take on growing importance given the current assessment of applications for undersea submarine cable that is underway. The Office therefore proposes to return to this issue in the near future and will provide notice of how it proposes to proceed. Issues relating to this will become clearer in light of assessment of applications for two additional licenses.