



CABLE & WIRELESS

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February 21, 2008

Mr. George Wilson
General Counsel
Office of Utilities Regulation
36 Trafalgar Road
Kingston 10.

Dear George,

Re: Application for Reconsideration of OUR Determination Notice Titled 'Proposed Changes to the Regime for the Assessment of Regulatory Fees', Document No. Gen 2007/1.2, Dated February 8, 2008

Pursuant to Section 60 (4) of the Telecommunications Act 2000 ("the Act"), Cable & Wireless Jamaica Limited (C&WJ) hereby applies to the Office of Utilities Regulation ("the OUR"/"the Office") for a reconsideration of its decision to issue *'The Regime for the Assessment of Regulatory Fees'* (the Determination Notice).

C&WJ is of the view that the Determination Notice is based upon material errors of law and hereby applies for the Determination Notice to be withdrawn.

The Determination Notice states *"This document is approved by the Office of Utilities Regulation and the decisions therein become effective on February 8, 2008."* In applying for reconsideration of the Determination Notice, C&WJ also applies for a stay of the implementation of the Determination Notice and any other proceedings or processes directly or indirectly related thereto, pending the OUR's reconsideration.

C&WJ argues that the OUR erred in the interpretation of section 16 (2) and (3) of the Act. Section 16 (2) states that :

The amount of the regulatory fees shall be such sum as, in the opinion of the Office, is a reasonable estimate of the costs which will be incurred by the Office in relation to the regulation of the specified services to which the licenses relate (hereinafter in this section referred to as "regulation costs")

Directors:
Mr. Leonardo deBarros - Chairman
Mr. Phil Green - President & CEO
Ms. Lisa Agard
Mr. Andrew B. Cocking
~~Mr. Francis Mount~~
Hon. Patrick Rousseau, O.J.
Mr. Jorge Diaz



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Section 16 (3) states that:

In determining the amount of the regulatory fee payable by a licensee, the Office shall apportion regulation costs reasonably and equitably among licensees.

Over the years C&WJ has had reason to comment on the size of the OUR's budgets, making specific reference to several large and increasing items of expenditure. In the main, the OUR has defended its budgets and has not made adjustments, citing comparisons with C&WJ as unreasonable. We believe that the OUR's budgets are not reasonable. The OUR's budget for fiscal 2008/09 is 17% greater, in real terms, than its budget for fiscal 2007/08 which was 8% greater than the budget for 2006/07 which itself was 37% higher than the previous fiscal.

The OUR rents office space in the expensive business district of New Kingston, while less expensive office space is available in downtown Kingston. Moreover the OUR's budget for rental of office space, in New Kingston, was increased by 68% in fiscal 2007/08. Over the last five (5) fiscal years to 2007/08, the OUR has spent J\$75.1M on training. The OUR's staff complement has now increased to fifty five (55) and there seems that there is no cap in sight to the growth in the OUR's staff complement. The knock on effect of increasing staff is a resounding 22% increase in staff cost. C&WJ does not believe that the burgeoning costs of the OUR machinery is in keeping with the spirit of section 16 (2) of the Act.

In the Determination Notice, the OUR capped the contribution of each licensee, to regulatory fees, at 0.03% of that licensee's revenues. This cap is not a concession to C&WJ, whose average contribution to the OUR's budget over the years has not exceeded 0.22%. Nor does the cap incentivize the OUR to be efficient, because the cap does not relate to the OUR's budget but to the allocation of that budget to the licensees. Further, it is an unreasonably high threshold. There is no logic for any telecommunications service provider, in Jamaica, to be paying as much as 0.3% of its revenues as regulatory fees. The OUR's budget needs to be capped to make it reasonable. An efficiency measure like CPI-X would be useful in this regard.

The OUR makes mention of how it intends to allocate regulatory fees but it has not demonstrated that the fees will be assigned equitably. It has therefore not adhered to the directives of Section 16(3) and by so doing erred in law. At section 4 (3) of the Determination Notice the Office prescribes the minimum regulatory fees, but makes no attempt to provide a list of service providers who will be liable for the payment of the fees. Nor does the Office provide a list of the larger players in the industry and the extent of the liability of those players. Without such transparency the equity of the regime becomes doubtful and in its absence doubt has already been established.



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The effect of the revenue based methodology for the apportionment of regulatory fees is inequitable to C&WJ based on C&WJ's calculated estimate of its liability, which liability is not yet available from the OUR. Based on C&WJ's calculated estimate the Company will be paying more in regulatory fees for no other reason than that the OUR has changed the basis of allocation of regulatory fees from lines to revenues. The inequity of this situation is magnified because, based again on C&WJ's calculated estimates, the payment by another major supplier is proportionately smaller, which was previously not the case, whereas C&WJ's contribution has increased.

The inequity and unreasonableness of paying increased fees is further exacerbated in that the revenue based apportionment of regulatory fees has not advanced the achievement of the OUR's objectives, which were stated as:

- *Timeliness of advice to industry*
- *Certainty and predictability*
- *Imposing prudence on the expense side by constraining the ability to grow revenues*
- *Transparent allocation mechanism*
- *Improved accountability.*

Regarding timeliness of advice to the industry, the OUR had stated, in the consultation titled 'Proposed Changes to the Regime for the Assessment of Regulatory Fees' that this issue had already been resolved. The only certainty and predictability of the regime is that the proportion of the OUR regulatory fees to be paid remains fixed for the individual licensee for 2- 3 years but the OUR's budget is still unknown until published. Under the regime of apportioning fees on the basis of lines, the OUR's budget is unknown and before publication the OUR would have obtained the lines in service count for the affected licensees. The regime has imposed no prudence on the OUR's expenses because it only affects the apportionment of the OUR's costs to the licensees, it does not constrain the OUR's cost drivers. Revenue is a transparent allocation mechanism so is lines in service. There is no improvement in accountability delivered by the approach of allocating regulatory costs on the basis of proportion of industry revenues because the OUR's cost is driven by its budget and the OUR has proposed no mechanism to keep its budget in check.

C&WJ had already made a provision for regulatory fees in its budget for 2008/09. The provision was based on the Company's falling line count and the customary rebates from the OUR. On this basis the provision in the budget, which is in keeping with an allocation based on lines, is inadequate to fund the calculated estimate of C&WJ's regulatory fees liability to the OUR, using the proposed revenue based allocation methodology.



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Having proposed a methodology with significant financial consequences, it would be expected that the OUR would have provided sufficient time for transitional relief, that being at least the upcoming fiscal, for provisions to be made for the proposed change in the regime. In other words, no changes in the regime should be effected before fiscal 2009/10 and until then the current regime of allocating regulatory fees on the basis of lines in service should continue to subsist.

C&WJ has been paying regulatory fees since fiscal 2001/02, using the methodology of apportioning regulatory fees on the basis of lines in service. The consultation on regulatory fees has spanned approximately one (1) year. The OUR issued the Determination Notice on Friday, February 8th which changed the basis of apportioning regulatory fees from lines in service to proportion of industry revenues. C&WJ's new fiscal year, 2008/09, begins on April 1, 2008 and yet the OUR proposes to implement this regime for the new fiscal commencing April 1, 2008. The lack of adequate notice period is outside the spirit if not the letter of Section 16(3). C&WJ, by its calculated estimates, expects an increase in regulatory fees in double digits. It would be unreasonable for the OUR to expect that C&WJ would have made a provision to absorb what is tantamount to a rate shock.

We recognize that it can become a reflex reaction for regulators, like the OUR, to dismiss claims of difficulties in paying fees as a standard response from profit oriented companies in a regulated industry. It however, remains the reality that in this competitive telecommunications industry in which revenues are under pressure and operators are constantly required to reduce costs, any increase in fees undermines the ability of the Company to remain competitive

Yours sincerely,

MELESIA SUTHERLAND CAMPBELL

Regulatory Advisor

Legal, Regulatory & Public Policy