



**CABLE & WIRELESS**  
JAMAICA

**C&WJ's Response to the OUR's  
Proposed Drafting Instructions for Regulatory Accounting Rules  
Notice of Proposed Rule Making**

## **Introduction**

C&WJ welcomes the opportunity to comment on the NPRM. On reviewing the NPRM C&WJ note that in many instances the OUR have referred to regulatory precedent in the UK and other markets such as Guernsey and Bahrain, but particularly the accounting separation (AS) process and audit requirements made of BT by Ofcom. C&WJ accepts that there are benefits from drawing information from other jurisdictions however significant differences can be identified between the Jamaican market and the UK and other markets in which accounting separation has been introduced. In particular C&WJ believes that the broad telecommunications landscape in Jamaica, most notably fixed mobile penetration and the respective market share held by various operators in each of these markets, should be considered more fully by the OUR.

C&WJ reiterates its commitment to working with the OUR to implement a robust accounting separation and audit process. However C&WJ set out below arguments setting out its concerns with regards to:

- The requirement for a tri-partite audit agreement and associated costs;
- The appointment of the auditor;
- The burden of administration and cost for the regulatory audit;
- The content of the audit report;
- The appropriate level of audit assurance in the initial years of accounting separation;
- The function of, and timing for, the production of Accounting Documents;
- The proposed drafting instructions; and
- The statement of responsibility

### **2.4 - 2.9 Tri-partite audit agreements**

The OUR cite precedent for a tri-partite audit agreement in the UK between BT, PwC and Ofcom. C&WJ would point to the specific context of the UK market in which this decision was made. The UK market has been liberalised since 1984 and the regulatory framework and accounting separation requirements have evolved greatly since. The new rules now being developed for BT follow on from a framework incorporating accounting separation that has operated for more than 10 years. The market, regulatory framework and accounting separation process in the UK is therefore mature. The same cannot be said of C&WJ just two (2) years after full liberalisation and entering into its first run of accounting separation. Comparisons between communications markets and regulatory and accounting separation solutions in the UK and Jamaica are therefore difficult and unlikely to always yield helpful conclusions.

The OUR makes extensive reference to the guidelines developed by the Institute of Chartered Accountants in England and Wales (ICAEW) in the ICAEW technical release titled “ *Reporting to Regulators of Regulated Entities*”. The OUR concludes that the tripartite agreement between British Telecom (BT), BT’s Auditors Price Waterhouse Cooper (PwC) and Ofcom produces the benefits that the OUR wishes to derive from the audit relationship, contained in paragraph 2.7 of the NPRM.

C&WJ notes that the guidelines referenced above were arrived at after extensive consultations with all the affected parties, being the regulators, the regulated companies and the accountancy profession in England and Wales. No such engagement has occurred in Jamaica where one can say that there is industry consensus to develop such guidelines. The Office cannot circumvent the process that is necessary to arrive at some consensus for benefits that C&WJ is convinced can be otherwise achieved.

C&WJ is further constrained to note that these guidelines do not have the force of law nor are they enforceable in Jamaica. Further at paragraph 7 of “*Reporting to Regulators of Regulated Entities*” there is a disclaimer that states that “.....*this guidance should not be regarded as a substitute for the specific legal and professional advice which firms may need to take on particular matter of engagements*”

C&WJ rejects the OUR’s proposal that the contractual agreement with the auditors should be tripartite, which the ICAEW guidelines recognize at paragraph 15 as being uncommon. C&WJ believes that a bipartite agreement between the Company and the auditor is most suitable.

Therefore paragraph (ix) and (x)(a) of the OUR’s “*Auditing Guidelines for Regulatory Accounts*” would be inapplicable.

C&WJ further believes the additional costs that will be incurred through such an agreement will outweigh any benefit. C&WJ would also point to other jurisdictions, such as Guernsey, where no such tri-partite agreement has been necessary as the separated accounting model has been developed by way of regular meetings between C&W Guernsey staff and the regulator. In this case the regulator also has the ability to carry out an independent review of the model if it deems appropriate. C&WJ proposes that this type of collaborative approach is appropriate to separated accounting in Jamaica. C&WJ would like to make clear that it in no way wishes to reduce the OUR’s visibility of either the model build or the accounts themselves but simply that it believes that this can be achieved without the requirement to incur additional audit cost, to be borne by the industry, that will result from any tri-partite agreement.

Notwithstanding that C&WJ does not support a tripartite agreement as defined by the OUR, C&WJ does support a collaborative arrangement between itself, the auditors and the OUR that will allow the OUR to have confidence in the audit report that is published. In this respect C&WJ would welcome input from the OUR as to how this could be achieved.

### **2.13 - 2.15 The appointment of the auditor**

2.13. C&WJ agrees with the proposal that the Company should appoint the regulatory auditor while the OUR will have the ability to appoint an alternative if this audit firm is not deemed acceptable. Any changes however would only be effected following full consultation with C&WJ. C&WJ would stress that continuity across the audit process is essential in gaining year on year efficiency and cost reduction and this would be affected by change in auditors. Again C&WJ reiterates a willingness to discuss these issues, such as the efficiencies that may be derived from using statutory auditors for the regulatory audit, with the OUR as they arise.

2.14. Please refer to C&WJ's response to 2.4 – 2.9 above regarding tri-partite agreements.

2.15 C&WJ is prepared to comply with a 28-day notice period regarding a change of auditors.

### **2.16 – 2.18 Administration and cost of the Audit**

#### *2.17 Liability for the cost of the regulatory audit:*

The OUR states that the annual audit cost for the purposes of preparing regulatory statements must be borne by the Company alone. The OUR makes the analogy between a regulatory audit being akin to a statutory audit, in that the Company should absorb the cost of both. A statutory audit is required by law for the protection of the shareholders and the audit is in fact paid for by the shareholders. A regulatory audit is produced by a regulated entity for use by the regulator and interested parties. Were it not for specific compliance regulation as the OUR is seeking to develop, regulatory statements and the attendant audit opinion would not be produced.

C&WJ strongly believes that the industry as whole should directly bear this cost. The telecommunications landscape has changed dramatically since the OUR issued its first consultative document on this issue and indeed since C&WJ's subsequent response. It must be noted that in terms of total share of the telecommunications (mobile and fixed) market that C&WJ no longer holds the majority of subscribers. Viewed in this context C&WJ is not the only major player in Jamaica and it is interesting to note that Digicel, although misinterpreting the proposed requirements of Mobile Network

Operators (MNOs) as regards this consultation, state their belief that the resource requirements (and cost) of accounting separation and the audit process place a disproportionate burden on operators. In addition Jamaica, as has occurred globally in developing telecommunications markets, has seen high levels of churn off the fixed network. C&WJ estimates that fixed line teledensity in Jamaica is approximately 15%, while mobile penetration has reached 70%. It should be noted that Cable & Wireless holds less than 50% of the total mobile market share.

The points above are very important when considering a fair and proportionate mechanism to allocate the cost of the regulatory audit between operators. The OUR has drawn reference from other developed fixed markets where accounting separation and regulatory audits have been required. In these jurisdictions the incumbent has initially met the regulatory audit cost but is able to pass this on to other operators by driving the cost through the costing model onto regulated components and products that are constituent parts of the reference offer. Because fixed penetration in these markets is very high the costs are shared amongst the fixed and mobile industry players in a proportional manner (as all operators use fixed network components on the dominant operators network).

It should also be noted that in the other jurisdictions to which the OUR refer that the incumbents have had clear dominance in the telecommunications market as a whole, both in terms of market share and total revenue. Arguably it is more proportional in such instances to expect the incumbent to bear the regulatory audit cost. Again, the Jamaican market has evolved since the initial consultation on this issue and C&WJ have outlined above how this market differs. C&WJ agrees with Digicel *‘that it would be disproportionate to burden one operator’*, C&WJ, with such costs. To be clear, accounting separation is a requirement of the OUR and benefits other operators in the wider market. C&WJ already has in place costing systems for its internal operating purposes therefore any additional costs, particularly as regards an external audit, will bring no benefit to the Company.

On this basis C&WJ strongly believes, while it is prepared to meet the significant costs associated with the necessary systems and resource requirements of preparing separated accounts, that the audit costs should be met directly by all players in the industry. There are a number of possible ways that this could be achieved, one of which is prorating the cost by eligible revenue. Examples of this type of cost allocation between competing operators can be seen in many USO funding mechanisms. C&WJ would welcome the opportunity to discuss this issue further.

C&WJ proposes that the OUR makes it clear to the industry that the audit cost will have to be recovered and that the industry be invited to comment as to how this may be achieved.

2.18 C&WJ accepts that industry ‘best practice’ is to have regulatory accounts audited within six (6) months of the end of the financial year to which they relate. As stated in C&WJ’s response to the Supplemental Consultation, in almost all cases in other jurisdiction of which this Company is aware, for example Guernsey and Bahrain, operators and auditors have required an extended time frame to submit initial sets of accounts. The complexity and resource requirements of activity based costing and separated accounting should not be underestimated. C&WJ would ask that the OUR bear this in mind when imposing initial deadlines and suggest that a more appropriate timeframe for submission and publication in the first year would be nine (9) months, moving gradually towards six (6) months in subsequent periods.

### **2.19 - 2.23 The Content of the Audit Report**

2.22 C&WJ concurs that the auditors should assess the materiality of the separated accounts as a whole, rather than considering any analysis of the separated accounts for individual components. This approach is supported by international best practice. However, as the OUR has not provided any examples of the specific factors that it may consider material for the auditors when they are reviewing the accounts C&WJ is not able to comment on the reasonableness of this statement. C&WJ therefore reserves any further comment until such time as the OUR clarifies these factors and its position further.

2.23 See response to 2.22 above.

### **2.24 – 2.33 The Appropriate Level of Audit Assurance**

#### *Audit Assurance*

2.28 C&WJ reiterates its commitment to implementing a robust accounting separation model and producing compliant separated accounting statements. The level of audit opinion has been a contentious issue in many jurisdictions that have been subject to AS requirements. The contention primarily relates to the additional cost associated with a ‘fairly presents’ versus ‘properly prepared’ opinion measured against potential benefits. C&WJ believes that it is not widely understood how these two opinions differ as regards accounting separation and how each may affect (or otherwise) the users of the financial statements.

Putting aside the ability to sample, the predominant difference between the two opinions is that a properly prepared audit attests that the costs and revenues in the Activity Based Costing (ABC) model have been driven and / or allocated as documented in the Detailed Attribution Methodology (DAM). A fairly presents audit will attest not only that the costs and revenues have been driven and / or allocated as documented in the DAM but will also involve a review of the logic used for each of the drivers in the DAM. C&WJ

believes that the significant additional cost of a ‘fairly presents’ audit can be avoided by adopting a collaborative approach to the model build whereby the drivers, outlined in the DAM, can be agreed through discussion and reference to best practice by both the OUR and C&WJ. C&WJ further believes that the expertise within the Company and the OUR will in many cases better qualify this type of analysis and decision making than would be available to any external auditor. The OUR state in the consultative document, at paragraph 2.1 that it and other third parties, may use the regulatory accounts in the course of their business and will therefore need to place reliance on the statements.

C&WJ believes that through a transparent and consultative model build that a ‘properly prepared’ opinion will enable the users of the statements to have equal confidence in the information to that should the statements be audited on a ‘fairly presents’ basis.

Notwithstanding the above, C&WJ believes that if the OUR is determined to move the accounts from ‘properly prepared’ to ‘fairly presents’ then the Company should have a minimum two year period of being audited on a ‘properly prepared’ basis. This approach has been determined as more suitable by the TRC in Bahrain for Batelco. C&WJ would also draw the OURs attention to the separated accounts in Guernsey where a ‘properly prepared’ opinion has been provided for the published accounts for both the 2002, 2002/03 and 2003/04 submission, as opposed to ‘fairly presents’ as stated by the OUR.

### **Regulatory Accounts 2005/6**

C&WJ agrees with the OUR that it in fact is not “starting from scratch” in the preparation of the first set of regulatory accounts. Since consultations on accounting separation have begun, C&WJ has had further opportunity to refine its costing system. The Company will be implementing OROS in Jamaica by April 2006, which is the standard software used to produce regulatory accounts. This system has already been implemented in other C&W business units in the Caribbean.

C&WJ in its response, during the previous consultative period had urged the OUR to finalise any changes in methodology at least three (3) months prior to the beginning of the fiscal year to which the regulatory accounts would apply. This would facilitate systems development and information collation by the Company, which may be impossible to achieve retrospectively.

Given that five (5) months into the fiscal year the accounting guidelines and documents have still not been finalized and given that a new regulatory accounting system will be implemented in Jamaica by April 2006, it would not be possible for the first set of regulatory accounts to be published for the fiscal year ending March 31, 2006.

Even if the OUR insisted that C&WJ produce regulatory accounts for the year ending March 31, 2006, the Company could not attest to the validity or reliability of the information and in fact any audit opinion on such accounts would have to be qualified.

The current costing system, used by C&WJ and which will be replaced by April 2006, cannot produce regulatory accounts as defined by the OUR.

### **2.34 – 2.44 Audit Conduct**

2.35 C&WJ maintain that the timely completion of the regulatory audit is a function of the reasonableness of the requirements resulting from this consultation.

2.36 – 2.44 C&WJ believes that Digicel in response have in many cases misinterpreted the issues addressed in this consultation. However they have made a number of observations, particularly as regards the ‘disproportionate burden’ that separated accounting places on operators. C&WJ have drawn reference to this point elsewhere in this response.

### **Chapter 3: Proposed Drafting Instructions for Regulatory Accounting Rules**

Below C&WJ have commented on a number of the issues raised in this chapter by reference to the Regulatory Accounting Rules number reference or annex.

2. The Office has charged C&WJ to be compliant with all directives issued by the Office. C&WJ is willing to be compliant with any uncontested directive from the Office, however the Company stresses that it must be given adequate notice of any changes, three (3) months before the start of the fiscal to which the accounts apply being a reasonable time frame within which to secure compliance.

5. C&WJ agrees that the accounting documents will contain the elements as outlines in points “a” to “f”. However, as outlined in our response to the supplementary consultative document on accounting separation, C&WJ believes that the OUR have misinterpreted the timing of the production of Accounting Documents in a typical Accounting Separation process. C&WJ would expect that as an output of this and the aforementioned consultation that the OUR will publish comprehensive Regulatory Accounting Guidelines (RAG). It is these guidelines that should include, by way of example, detailed information on the regulatory accounting principles, principles of cost causality, cost allocation principles, the level of separation of the accounts, definitions of main businesses, transfer charging process and the high-level valuation approach to be taken. Only once these comprehensive guidelines are set in place will C&WJ be in a position to begin building a separated accounting model that complies with the OUR’s requirements.

The Accounting Documents produced by C&WJ will be a ‘living’ document that will develop as this model is built. For example, it could not be possible for C&WJ to provide



detail on the model structure in the Accounting Documents until the model is constructed and finalised. C&WJ note that the OUR has gone some way to provide a broad overview of this type of information within Chapter 3 of this NPRM . However, as an example of more detailed Regulatory Accounting Guidelines, C&WJ refer the OUR to the ‘Regulatory Accounting Guidelines for Cable & Wireless Guernsey’, published by the Office of Utility Regulation in Guernsey at the following link, <http://www.regutil.gg/docs/our0425.pdf>.

It is C&WJs expectation therefore that the Accounting Documents are submitted and published together with the Accounting Separation statements themselves. It is also C&WJs understanding that typically the Accounting Documents will be audited in the same manner as the Activity Based Costing model and statements themselves to ensure that they have been correctly interpreted and are compliant with the requirements of the OUR as set out in the RAG. C&WJ believes that this process has precedent in all jurisdictions where Accounting Separation is carried out. C&WJ would be prepared to submit a framework Accounting Document to the OUR prior to submission but this could only be on the understanding that this would be a ‘framework’ and would be amended as necessary as the accounting separation process and model develops.

7. Please refer to our response to point 5 above.

17. C&WJ does not agree with all requirements a set out in ‘i’ to ‘vi’, particularly as regards any regulatory reporting requirements on its mobile operation where the Company currently has less than 30% market share. Please refer to our response to the supplementary consultative document on accounting separation for further justification to this position.

#### **Annex 1:**

(v) The request here for a two (2) month notice of change of auditors contradicts the OUR position earlier in this paper (see 2.13) where 28 days notice has been proposed. For the avoidance of doubt, C&WJ support the latter proposal.

(viii) C&WJ agrees with this position and believes that many efficiencies may be gained through the potential use of the statutory auditors for the regulatory audit. In particular, this has been found to be the case in other jurisdictions as regards the disaggregation and import of statutory P&L data as well as in the disaggregation and analysis required with the Fixed Asset Register.

(x c ) – xii) C&WJ strongly disagree that the full cost of the regulatory audit shall be at the expense of the Company. Please refer to our response to 2.16 to 2.18 for further justification for this position. Moreover, where an audit firm is jointly agreed by the Company and the OUR, C&WJ will not assume any responsibility for cost incurred

where as in paragraph G.2 (x)(c ) of Annex 1, the OUR chooses to appoint auditors directly to undertake further work, subsequent to the completion of the audit.

### **Statement of Responsibility**

C&WJ in no way wish to obstruct the separated accounting process and is committed to working with the OUR to build a robust model and publish accurate and reliable regulatory statements. However, neither C&WJ as a Company nor any of its officers would sign a Statement of Responsibility as worded by the OUR in Annex 1. C&WJ does not think that this position is unreasonable and would ask that the OUR review the Statement's of Responsibility in other jurisdictions.

*C&WJ suggests that a more appropriate statement as:*

Cable and Wireless Jamaica Limited ("C&WJ") is required under Condition X of its licence to maintain accounting records in a form which enables the activities of any of its businesses specified in any direction given by the OUR to be separately identifiable, and which the OUR considers to be sufficient to show and explain the transactions of each of these businesses.

The Separated Regulatory Accounts for the year ended 31 March 200X comprise:

For each Business:

- i) a profit and loss account;
- ii) a statement of mean capital employed

They also include a:

- iii) Statement of costs of network service for the Network Business;
- iv) Transfer charge statement; and
- v) (As to be determined through consultation)

The directors are responsible for keeping proper accounting records for each of the separate businesses that disclose, with reasonable accuracy, at any time, the financial position of each separate business to enable them to ensure that the regulatory accounts comply with the Licence. C&WJ confirms that the Separated Regulatory Accounts for the year ended 31 March 200X have been reconciled to the relevant Statutory Accounts and to the best of its knowledge have been prepared in accordance with the requirements of the relevant Conditions of its Telecommunications Licences.

Senior Officer, C&WJ

**Cable & Wireless Jamaica  
August 31, 2005**