



**C&WJ's Comments on Responses
Local Loop Unbundling for Cable & Wireless Jamaica
Consultative Document**

Introduction

1. Cable & Wireless Jamaica (C&WJ) welcomes the opportunity to comment on the responses submitted by Merit Communications Limited and Reliant Enterprise Communications Limited.
2. C&WJ prefaces its response by reiterating, as in its response to the Consultation titled *“Local Loop Unbundling for Cable & Wireless Jamaica”* (LLU Consultation), that Information and Communications Technology (ICT), generally and broadband specifically, are key facilitators for growth and development. C&WJ is committed, in partnership with the Office of Utilities Regulation (OUR), the Government of Jamaica (GOJ), our customers and other industry players to deliver and improve on government targets for broadband penetration and uptake.

Definition of Wholesale Local Access Market and Dominance

3. C&WJ notes that Merit is of the view that the access network of the dominant provider should be unbundled, Merit goes further to assert that this dominant provider is Cable & Wireless Jamaica.
4. In the LLU consultation, the OUR made mention of a “Wholesale Local Access Market”, in its question 3, in the context of regulating C&WJ’s local loop. In its response to the OUR, C&WJ noted that it is not aware of a market defined as “Wholesale Local Access”. The OUR will have to initiate the necessary proceedings to have such a market defined.
5. In its response, C&WJ had noted that in the OUR’s Determination titled “Dominant Public Voice Carriers”, for retail markets, the OUR had placed fixed wired access and wireless access in the same market.
6. It is C&WJ’s expectation that wireless access will be included in the definition of the “Wholesale Local Access” market and also that the access network of Cable Operators will be included given the developments in that market and given that LLU will be carried out on an exchange by exchange basis which would be analogous to the zones in which Cable Operators are licensed.
7. Merit is therefore in error in i) defining the “Wholesale Access Market” ii) presuming that C&WJ is dominant and iii) presuming that C&WJ is dominant in a yet unspecified market.

Incentives to Rollout the Fixed Network

8. It is clear from Merit’s response that no facilities based entrant is willing to rollout its network if LLU is mandated. To put it simply no facilities based operator would roll out its

network simply to lease that capacity to other service providers. Facilities based operators base their returns on the services provided over those facilities and not simply on rental income from the lines.

9. The arguments put forward by Merit to preclude new entrants from unbundling their access network are the same arguments that are relevant for C&WJ as well. This is why C&WJ questions the appropriateness of Local Loop Unbundling as the policy tool to provide Jamaicans with greater access to broadband.

10. As stated by Merit, it requires “¹.tremendous investment and a well founded plan to recover the investment in the middle/ and or long term ...rather than achieving the goal of wide broadband deployment, investing in new telecommunications infrastructure for Jamaica could be a luxury...” C&WJ agrees with Merit that the crucial aspect of any LLU framework is the “...investment initiatives needed to roll-out broadband services²”

11. In its response to the OUR C&WJ discussed the major disincentives for LLU which are :

i) *Damage done to cost recovery on existing fixed service* by allowing service providers to cherry pick, that is, service providers can choose to serve only the most profitable customers, which are usually businesses and high end residential, and the most profitable areas. C&WJ understands that Merit Communications will be trading as Flow. Fibralink, an affiliated company of Flow, has already declared that the objective of Flow is to “offer Jamaican businesses ultra high speed internet, digital landline service and digital Cable TV...”³

ii) *Damage to plans to roll-out the network to underserved areas* . Due to cherry picking, C&WJ will be unable to generate the same margins which would have contributed to development in underserved areas.

iii) *Disincentive to invest in new facilities* . C&WJ is currently executing plans to install Multi – Service Access Nodes (MSAN) at cross connect facilities. These plans would have to be revisited should LLU be mandated for such advanced facilities. C&WJ noted that, in the USA, next generation fibre based loops are exempt from unbundling in order to create the right economic incentive for investment.

iv) *Disincentive effect is across the industry*. Merit has supported that mandated LLU would reduce the incentive for competitors to build their own network. Merit has stated that “...if new entrants are forced ... to offer unbundled network elements...investing in new telecommunications infrastructure for Jamaica could be a luxury...”

¹ Merit Communications Limited, Response to Consultative Document, pg. 2, March 2006

² Merit Communications Limited, Response to Consultative Document, pg. 5, March 2006

³ Financial Gleaner, Pg. 3, article titled “Information Highway Revolution to Hit Jamaica”, March 3, 2006

12. The disincentive effect of LLU is the same whether the facilities operator is the incumbent or a new entrant. Merit has sought to present new entrants as struggling compared to the incumbent. However, Merit, Flow and its affiliate company Fibralink are well capitalized and are at no competitive disadvantage.

13. It should be noted carefully, from Merit's submission, that although unbundling was mandated in 1986 in the USA, in 2005, LLU requirements on Local Exchange Carriers were lifted, in part, to encourage *investment in underserved areas*⁴.

14. Merit's position that "...there was no significant discrepancy regarding the negative effect that an unbundling requirement of general application would cause on the necessary investment to build new network facilities needed for increasing penetration of broadband services"⁵ needs clarification for better understanding.

15. C&WJ interprets that Merit is saying that there is agreement that unbundling is a disincentive to the roll-out of the fixed network. Commissioner Kathleen Abernathy of the FCC stated that "...I strongly support the decision to create a national policy that exempts new broadband investment from unbundling...this bold action should restore incentives for carriers to build next generation fibre based networks."⁶

16. Again C&WJ urges the OUR to consider that LLU could cause broadband rollout to stagnate rather than become widespread. Again C&WJ urges the Office to evaluate the suitability of LLU to deliver broadband access to 40% of Jamaicans within 5 years.

Regulating the Provision of Broadband Service

17. C&WJ agrees with Merit that legacy regulation should not be imposed on the provision of broadband services. The broadband market should be allowed to develop competitively.

C&WJ Provides Bit Rate Access, A Form of Unbundling to ISPs

18. C&WJ notes Reliant claims that C&WJ had created a *product* that was not "*fit for purpose*". In the LLU consultation, the OUR identified four (4) variations of unbundling - these are Full Metallic, Line Sharing, Sub-Loop and Bit Rate Access.

19. C&WJ currently offers two types of broadband service to Internet Service Providers (ISPs):

- i) *Bit Rate Access*: C&WJ has been offering bit rate access to ISPs since 2004 through its "Wholesale ADSL Ports" product. This service allows ISPs to lease from C&WJ DSLAM ports, Direct Internet Access (DIA) and frame circuits to create their own

⁴ Merit Communications Limited, Response to Consultative Document, pg. 4, March 2006

⁵ Merit Communications Limited, Response to Consultative Document, pg. 5, March 2006

⁶ http://hraunfoss.fcc.gov/edocs_public/attachmatch/fcc-03-36A1.pdf (See Commissioner Kathleen Abernathy Separate Statement)

broadband service. ISPs can also purchase DIA from other suppliers. Using the “Wholesale ADSL Ports” product ISPs can provide broadband service to any C&WJ fixed line customer. Both Infochannel and Kasnet use this service. At least one study has cited “Bit Rate Access” as an appropriate option for ISPs.

ii) *Whitelabel ADSL*: Whitelabel ADSL is the wholesale provision of C&WJ’s complete retail ADSL service to ISPs. The ISPs then rebrand the service.

20. While C&WJ remains unsure as to which *product* Reliant is referring to, it must be noted, for the record that Reliant takes from C&WJ none of the services that are offered to ISPs, neither C&WJ’s “Wholesale Port Product” nor its “Whitelabel ADSL”. As such C&WJ is not aware of the basis of Reliant’s allegation.

Conclusion

21. C&WJ once again reiterates its support for the delivery of broadband service to as many Jamaicans as possible. It is in support of this objective that C&WJ, ably assisted by Merit Communications Limited, questions the appropriateness of Local Loop Unbundling (LLU) as the policy tool to achieve that end.

22. LLU is known to create disincentives for the rollout of the fixed network and the provision of innovative services. Unless the right incentive framework is created for the continued rollout of the fixed network, the goal of providing 40% of Jamaicans with access to the internet in five (5) years will be in jeopardy. It is however encouraging that the Office is of the position that it does not want to discourage the further roll-out of the fixed network⁷.

CABLE & WIRELESS JAMAICA March 17, 2006

⁷ Local Loop Unbundling for Cable & Wireless Jamaica, Pg. 3, OUR, January 20, 2006