



CABLE & WIRELESS
JAMAICA

**RESPONSE TO THE OUR'S SECOND CONSULTATIVE
DOCUMENT ON:**

**TOWARDS UNIVERSAL SERVICE/ACCESS
OBLIGATION FOR TELECOMMUNICATIONS SERVICES
IN JAMAICA**

C&WJ's Response to the OUR's Consultative Document:
Towards Universal Service/Access Obligation for Telecommunications Services in
Jamaica.
November 21, 2003

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1. Introduction

Cable & Wireless Jamaica ('C&WJ') is pleased to respond to the Office of Utilities Regulation's ('OUR' or 'Office') Second Consultative Document "Towards Universal Service/Access Obligation for Telecommunications Services in Jamaica". C&WJ has read this document with interest and notes that the framework for Universal Service Obligation ('USO') now being put forward is a radical departure from the previous Consultative Document.

The OUR's proposal to provide Internet service to public institutions by dividing the island into Regional Broadband Networks is being introduced for comment for the first time. The detailed nature of the proposal seems to indicate that the OUR has invested considerable resources in its formulation. In light of this C&WJ is requesting that the OUR indicate whether the December 5 target date for comments on responses will be the only other opportunity the industry will get to comment on the proposal before a final decision is made. The Company goes further and submits that the OUR should treat the Second Consultation as the first Consultation on the RBN proposal, and issue another consultation document which provides the players in the industry with the basis of the RBN proposal.

Within the context of this departure from the previously established framework, C&WJ is still addressing the practicalities of the proposal and the question of whether it fits within the legislative framework for universal service established by the Telecommunications Act. As a result of the shift in the focus of USO to limiting regulatory intervention to the promotion of Internet access to public institutions through the implementation of Regional Broadband Networks (RBNs), it should be noted that the views and comments offered by C&WJ in this submission are preliminary and may be modified as the proceedings on this issue are discussed over the next few months.

In preparing our response, C&WJ has attempted to follow the structure of the Consultative Document.

The Public Meetings

The OUR has indicated that it has conducted public meetings in the parishes of Manchester, St. Mary and Portland "in an effort to solicit as much information as possible from a wide cross section of the society". The selected parishes represent the Eastern and Central regions of the island and there is a noticeable absence of representation from the Western parishes and the Corporate area. C&WJ questions whether "a wide cross section of the society" was reflected in a scenario where there was little if any input from persons residing in or around the two cities. In the circumstances C&WJ recommends that prior

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to advising the Minister, the OUR “*consult with members of the public on the matter in order to ensure that any such recommendations are based on the most complete and reliable information available...*” in accordance with section 39(5) of the Telecommunications Act (‘the Act’). C&WJ suggests that a starting point is the hosting of additional public meetings to fully realize the purpose of public input in the decision making process.

2. Policy Framework

Market Efficiency and Access Gaps

Do you agree with the OUR's view that a time period should be set for any assessment of the voice market?

There is a significant disconnect between how the Office defined these two concepts in the first Consultation Document and the current document. In the first consultation document both concepts were being measured in terms of fixed line penetration or teledensity. In addressing these concepts the Office has now introduced the notion of a voice telephony market and commented that in its view “the voice market (fixed and mobile) is still in its developmental stage and therefore more time is needed to truly assess any access gap that might occur” and has expressed “the intention to allow the market to develop to its full potential before any assessment is done”. Prior to addressing the question of the proposed timeframe for an assessment of the “voice market”, C&WJ submits that this is a radical departure from its previous position and that such a shift merits a thorough explanation and consultation.

Furthermore, reference is made to the Office's framework for defining markets presented in “Dominant Public Voice Carriers No. 3”. The OUR's conclusion was that the markets for fixed and mobile voice services were separate. In light of the OUR's conclusion in the referenced Consultative Document there is inconsistency in the OUR's definition of the “voice market”; accordingly C&WJ reserves comment until the Office clarifies its position on this issue.

“The OUR seeks comments from C&WJ on the effect rebalancing and competition are having on its fixed line customer base.”

The liberalization of the telecommunications industry has led to the development of a competitive marketplace, and this is delivering benefits to the people and to the economy of Jamaica. However, the transition from a market in which one vertically integrated network and service provider was exclusively licensed, to one in which a number of providers are licensed to compete in all sectors of the market creates complex challenges which must be carefully managed by both the industry and regulator to achieve the best outcome. An example of this is the gradual unraveling of the cross-subsidy from international call revenues, which covers the shortfall between costs and revenues in local services.

The subsidization of fixed line telephone services by settlement revenues from

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International Incoming Calls terminating on the C&WJ's Public Switched Network (PSTN) has allowed C&WJ to provide domestic telephone services to the Jamaican consumers below cost. Thirty- four International Carriers ('IC') and twenty- four International Service Providers (ISPs) have been licensed since the commencement of Phase III. C&WJ has concluded negotiations with several ICs and these carriers now terminate a significant proportion of the international call traffic into Jamaica. One of the results is that not only are the settlement rates plummeting, but the volumes on which the subsidy was predicated have been drastically reduced, as a significant proportion of international calls are being terminated on mobile and fixed networks other than C&WJ's. Accordingly the effect of competition is that C&WJ is no longer in receipt of the international revenues, which had previously subsidized the provision of the domestic telephone service.

The Price Cap Plan implemented in 2000 established the upper limit by which C&WJ could increase its prices in any given year for services that fell under the plan. This protects the consumers from dramatic rate increases while simultaneously facilitating the gradual increase in the price of domestic telephone services. This rebalancing process is essentially focused on protecting consumers from the rate shock which could result from massive domestic telephone price increases, while at the same time ensuring that telephone service providers are allowed to recover their costs and make a fair return on their investment.

The fixed network is the framework on which liberalization of the telecommunications industry pivots. It is C&WJ's submission that in considering the public interest with regard to the telecommunications industry, it is essential that fixed telephone service continues to be offered at affordable rates.

The effects of immediate rate rebalancing would be:

- Significant sudden increase in line rental and call charges for the island's businesses and residential customers, which place much reliance on the fixed network;
- Even more households will fall off the network;
- There will be a reduction of revenue from fixed to mobile, and mobile to fixed calls and international inbound settlements;
- The Internet Service Providers who, through service to households and businesses facilitate Internet penetration in the island, would be obliged to increase their charges to their customers which will lead to fall off in the use of the Internet.

Rebalancing should therefore continue to be a managed process to provide proper

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alignment of costs with prices over time, whilst avoiding the market shocks which result from extreme sudden price changes, and ensuring that all market participants contribute to the residual local service deficit through a transparent and competitively neutral system of cross-subsidy.

Do you support the OUR's view that the prepaid option could be used to address the affordability concerns of household? Explain.

C&WJ does not take issue with the OUR's conclusion that "fixed operators, should afford their customers the opportunity of signing up for a prepaid plan." In fact C&WJ is in the process of finalizing arrangements for a prepaid option for its fixed line customers. C&WJ continues to provide the Low User package to its customers and has also introduced Toll Limit monitoring as a means of affording its fixed line customers with more control over their monthly bills. It is to be noted that the success of these tools has not yet been determined and at this time a conclusion cannot be drawn that they will fully address the "affordability concerns of customers."

3. The Legal Framework

As a preface to a discussion on the Legal Framework C&WJ considers it useful to present and comment on the relevant sections of The Telecommunications Act 2000 (“the Act”)

The Act

Section 3(b) of the Act states that one of its objectives is “*to promote universal access to telecommunications services for all persons in Jamaica, to the extent that it is reasonably practical to provide such access*”.

The principles governing the provision of Universal Service as per section 38 of the Act include that:

- a) *connection to the public voice network shall be reasonably provided to all customers upon request, to the extent that such connection is technically feasible and economically reasonable*
- b) *any obligation imposed by this Act with regard to the provision of universal service shall be fulfilled as efficiently, economically and practically as possible*”

At section 39(2) the principles which guide the obligation to provide universal service shall be based:

- a) *to the extent technically feasible and economically reasonable, to promote access to single line telephone services throughout the Island to persons regardless of place of residence or work;*
- b) *to ensure that payphone services are reasonably accessible to customers on an equitable basis;*
- c) *to permit access to free calls to emergency services; and*
- d) *to the extent technically feasible and in so far as the necessary resources are available, to promote Internet access throughout the Island in schools, public libraries and post Offices.”*

C&WJ submits that in any interpretation of the relevant sections of the Act the clear intention of the policy makers is the reasonable, economically efficient and technically feasible provision of Universal Service. Therefore, the availability and utilization of existing resources is vital.

As stated in C&WJ’s earlier response “the underlying objective of most universal service schemes is to ensure that those on low incomes or in high cost areas can have access to a basic level of telecommunications services”. Accordingly one of the mandates faced by the Office in assessing the provision of Universal Access is whether this basic level of the access to telecommunications services is being achieved and based on this analysis make

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recommendations to the Minister mindful of the principles mentioned above.

Single Line Voice Telephony

Do you support the OUR's view on voice telephony?

“The Office is of the view that the single line voice telephony service objective has been substantially met or will be substantially met in the near future. Hence no universal access or service regulatory intervention is required with respect to single line voice telephony.”

This conclusion assumes that the Office has declared the market for fixed line telephony and mobile telephony as one market. Reference is again made to the “Dominant Public Voice Carriers Supplementary Consultative Document: Market Definition for Telephony Access” issued by the OUR on the 15th August, 2003. In this document the OUR has stated *inter alia* that “the markets for fixed access and associated calling services are different from mobile telephony access and associated calling markets. Furthermore, with regard to substitutability, the Office has stated at paragraph 1.16 that:

“Since mobile phones are widely available, with over two years of aggressive competition in the retail mobile market, potential customers remaining on the fixed line waiting list should be rapidly approaching zero if mobile and fixed access were substitutes. However the large number of potential customers remaining on the fixed line waiting list suggests instead, that customers view mobile and fixed telephony access lines as complementary.”

It is C&WJ's position that if the OUR recognizes that the market requires time to develop its full potential, then any conclusion that the objective of single line telephony has been substantially met is flawed.

In light of the contradictions outlined above C&WJ does not agree with the OUR's conclusions, as the company's position is that regulatory intervention is required specifically with regard to the designation of a Universal Service Provider for fixed voice services.

It is to be noted that the primary advantages of fixed as opposed to mobile for the provision of Internet access are bandwidth availability, quality and costs. Accordingly, C&WJ restates its earlier position as follows:

- The intention of the Government as exhibited in the Act is the universal service provision via the fixed line to homes and businesses.

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- Fixed line telephony benefits a number of people both in the households and in businesses rather than the individuality that is associated with mobile telephony.
- Fixed lines have traditionally been considered more suited to Internet access.
- Fixed service is cheaper than mobile service.

Additionally C&WJ reiterates that in the EU, US and Australia, fixed access is still considered the key to delivering universal service. C&WJ therefore, takes issue with the Office's statement in paragraph 3.9 that "the comparison made by C&WJ is misleading".

Public Payphones

Do you support the OUR's view on payphones? Please explain.

C&WJ maintains its view that the demand for payphones has declined. The main factors which have led to this decline that were outlined in C&WJ's earlier response are still applicable and for ease of reference will be summarized as follows:

- Competition between payphones and mobile telephony:
C&WJ has observed that the increasing coverage of mobile networks has seen a substantial decline in payphone usage revenues. Payphones and mobile phones share the characteristic of availability to individuals "on the move".
- High maintenance cost:
This is due mainly to vandalism. C&WJ has placed 1,000 payphones, each fiscal year (beginning 1999 and ending 2002), in communities, the majority of which are deployed as replacements for payphones that have been vandalized.

C&WJ agrees with the Office's view that "public payphone service objective has been substantially met or will be substantially met in the near future". There are however areas in Jamaica that still do not have access to mobile telephony or payphones. C&WJ does not therefore take issue with the OUR's view at paragraph 3.27 that "universal service/access regulatory intervention is indeed required with respect to public payphone service in these areas." However, as will be discussed below C&WJ takes issue with the OUR's proposal "to include a public payphone component to its proposed Internet access to Public Institutions initiative".

Access to Emergency Services

Do you support the OUR's view on emergency access? Please explain.

C&WJ supports the OUR's view on access to emergency services insofar as the Office states that "the emergency access service objective is being or has been substantially fulfilled or will be substantially met in the near future in Jamaica. Hence, no universal access/service regulatory intervention is required...at this time."

Internet Access To Public Institutions

Do you support the OUR's view on Internet access to public institutions? Please explain.

C&WJ agrees with the OUR that the "levels of Internet access in schools at the primary and secondary levels are low compared to schools at the tertiary levels." C&WJ remains supportive of the view that priority should be given to schools at the primary and secondary level. In fact C&WJ as a part of its community investment in Jamaica has embarked on several initiatives which have been focused on providing Internet connectivity in schools. To date C&WJ has provided Internet connectivity to over 150 schools throughout the island.

Additionally, C&WJ supports the principle of utilizing broadband connectivity because of its "speed, economic efficiency and "always on" connections." C&WJ, however, does not support the Office's conclusion that "the universal access/service fund should be made available to provide the necessary equipment to access the Internet as required".

At paragraph 3.36 the Office asks "For example, suppose the target is to have access to institutions within three years after the designation of an operator or operators but within that timeframe not all institutions are equipped with computers, what will happen? Could the USAF administrator purchase computers or would the institutions have to wait until additional funding is sourced from these other channels?"

C&WJ maintains the view that the provision at section 39(2)(d) relates to Internet access and does not contemplate or include computer hardware or software. The provision of these facilities should be financed otherwise than by the telecommunications industry; which would be taxed to subsidize the Information Technology (IT) Industry. This would effectively distort investment decisions in these industries and divert revenue which would otherwise have been invested in telecommunications infrastructure to the IT industry. Furthermore, it is quite clear from the responses that members of the telecommunications industry share the same view on this issue and even the Office has indicated that this view is "credible".

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If as in the example given above, the target is to have access within three years then this will give the policy makers sufficient time to source and seek funding for the IT infrastructure that is required. Universal service/ access in telecommunications industry relates to the provision of telecommunications services. The Act as mentioned above contemplates that the provision of access is to be “reasonably practicable”. C&WJ does not consider the provision of the computer hardware and software as reasonably practicable. The government has the responsibility of including in its plans the means by which its objectives will be achieved, however this should be within the context of the statutory provisions. Reference is made to section 39(5)(b) of the Act which states that “*the Office shall have regard to ... (b) the need to avoid imposing an unfair and unreasonable burden on the universal service provider, persons who are required to contribute to the universal service levy or customers of specified services.*”

If a decision is made that there should be a USAF administrator, the role should be limited to administering the funds for the provision of telecommunications services, accordingly in the example above the administrator should not have the authority to earmark USAF funds for the purchase of computer hardware and software. The proposed USAF administrator and the scope of the fund must be clearly set out or this may lead to misuse of funds and ambiguity as to where funds may be applied. This would certainly corrupt the intention of the policy makers.

The comparison that the OUR has made at paragraph 3.47 between the provision of IT equipment for Internet access and the provision of the payphone apparatus is farfetched at best. Unlike computer hardware and software, public payphone equipment is telecommunications equipment which the telecoms provider is expected to provide as a means to access the telecommunications services while computer hardware and software is IT equipment. Reference is made to paragraph 3.38, where C&WJ provides Internet kiosks this is done on a commercial basis and is not as a statutory obligation. Therefore, in the same way that telecommunications providers fund the provision of Internet services policy makers should seek to receive the funding for the IT equipment from the IT industry.

4. Provision, Funding, Administration

Universal Service/ Access Provider

Do you support the OUR's view on the universal access/service provider? Please explain.

The OUR's comments and conclusion flows from its position that USO is only required to support Internet access to public institutions. As indicated before C&WJ maintains the position that the provision of fixed line service is still relevant to the achievement of universal service/universal access.

The statute as stated above contemplates that the provision of universal service should be reasonable, economically efficient and technically feasible. The intention of universal service provision is access to telecommunications services. The statute sets out the framework in which universal access must fit. If an existing service provider already has the network infrastructure available, the designation of this provider as the universal service provider (USP) would be in accord with the provisions of the statute. C&WJ maintains that as part of the overall USO strategy it should be designated the USP in areas where it already has a network presence to enable households and businesses to be or to remain connected to the network. Universal Service Fund (USF) should also be made available for the provision of fixed line services in areas where it would not otherwise be commercially feasible.

The full liberalization of the telecommunications industry has created a fully competitive marketplace. It is clear, however, that the focus of the new operators is on the international voice market, which is the most profitable sector of the market. C&WJ has invested heavily in its network and this network has fostered competition via interconnection with the networks of the new operators. The focus of universal access is not competition but access.

At paragraph 4.9 the Office has said that "it would be unfair to designate C&WJ the Universal service/ access provider for Town A without giving Digicel the opportunity to vie for this privilege if it is currently providing service in Town A". C&WJ agrees with the OUR's conclusion in the Dominance Consultation that fixed telephony and mobile telephony are not substitutable. Accordingly, unless Digicel had a comparable fixed network in Town A it would not be unfair to designate C&WJ the USP for fixed telephone services. Furthermore, it must be a relevant consideration that C&WJ has invested large sums of money in developing and rolling out the fixed network. In fact since 1992 C&WJ has consistently expanded service in rural areas, despite difficult terrain and affordability issues.

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The OUR concludes at 4.12 that “the competitive bidding approach would be the preferred mechanism to be used to select the Universal service/access provider for Internet access in public institutions.” C&WJ does not take issue with this approach with regard to Internet access to public institutions, however, C&WJ’s position is that there should be the grant of a USO in regard to single line telephony and specifically that it would be most economically efficient for C&WJ to be designated the Universal Service Provider in areas in which it already has a presence.

Do you support the OUR’s view on universal service/access funding? Please explain.

C&WJ continues to believe that while a physical fund is appropriate for the provision of service to new areas or new projects such as the RBN being proposed by the OUR, this does not effectively address the issue of continued affordable provision in existing high cost areas and low income customers as well as current unserved areas.

Universal Service/ Access Administration

Do you support the OUR’s view on universal access/service administration?

The USO objective that has been set by the OUR is focused on the provision of Internet access in schools, public libraries and post Offices. The Office has proposed the establishment of the Universal Service/ Access Fund of Jamaica (“USAFJ”) “to collect, administer, and distribute monies and to monitor, evaluate and implement universal service/ access initiatives”. This is an elaborate proposal that the Office has presented.

C&WJ notes that the Office has sought to cloak the proposed administration of the USAFJ in an idealistic autonomy, free from bureaucratic barriers. C&WJ questions just how this administration will operate in reality. According to the proposed policy direction:

- The OUR should be responsible for setting the policy, this is subject, however, to Ministry directives or a Universal Service/Access Policy.
- The OUR should approve annual plans and budgets, as well as Annual reports and audits.
- The OUR appoints the Fund director and members of the Advisory Committee.
- The OUR will when necessary act as the arbiter of disputes and appeals that cannot be resolved by the USAFJ administration.

When one examines the structure that is being contemplated what is quite evident is that

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the OUR is the governing body from which the final decisions regarding the administration of the fund will flow. Regardless of the proposed structure, the USAFJ appears to be merely a sub-committee of the OUR. Therefore, in the final analysis the issues of autonomy, independent budgeting and separation of accounts appear only as idealized theories. C&WJ is of the view is that the structure is quite elaborate for a fund that is set up solely to administer Internet access in public institutions. This structure certainly does not fall within the framework of the principles of practicality and economic efficiency.

5. Universal Service/Access Delivery

As outlined in the document, the OUR is of the view that broadband connection to the Internet is the preferred choice for public institutions. This chapter sets out some of the issues involved in the provision of the service. Detailed comments are invited on all issues proposed by the OUR. For example, what are your views on the concept of regional broadband networks? Do you support the OUR's view that the telecommunications component of Internet access should be separated from the equipment component? Should there be a minimum broadband connection speed to the Internet and what that should be? Apart from mandatory services, do you think the RBN operators should be given the opportunity of providing optional services and should there be any limit on how many of these services are provided? How do you think the RBN geographic areas should be defined?

As alluded to earlier, C&WJ is very concerned that at this stage of the consultation on USO, the OUR is articulating an approach that is radically different from the previous consultation. Based on the RBN framework outlined, there is a definite risk that new players could be encouraged into the market by the lure of funding made available by existing market players. It is also quite probable, that these new players could use the funds made available to them through the USF to compete with existing players in some markets. For instance, a RBN operator who provides optional services would be competing with existing operators who fund his operations.

Given that the market is only now getting a view of the RBN approach to USO, C&WJ finds it strange that the OUR would have developed its position to the level of detail outlined in the consultation document before sharing this view with the industry.

Notwithstanding its concerns C&WJ will offer some preliminary comments on the proposal.

The Regional Broadband Network

The proposal is that the island will be divided into a number of RBNs depending on *inter alia* the amount of USAF available and the definition of certain key cost and revenue parameters related to the RBNs. Operators will bid to provide schools, post Offices and libraries with the Mandatory Services at the lowest subsidy amount. In addition, the Operators will have the right to provide optional services.

Paragraph 5.11 mentions a timeframe for the “roll out” of RBNs. The Office has indicated that a “number of RBNs could be rolled out in the next 5 to 7 years”. However,

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“the first RBN could be licensed within a year of the completion of the document, with first expected rollout in one or two years later.” The Office also mentions that “ the actual number of RBNs to be licensed in the expected 5-7 year period will depend *inter alia*, on the amount of USAF available...” C&WJ will again make reference to the statute and its principle of the promotion of “*universal access...to the extent that it is reasonably practical... to provide access*”. If the Office intends to adhere to the principles that are laid down in the Act then the utilization of available resources is a major factor. C&WJ as stated above supports broadband internet connectivity to the public institutions, however, the Company is of the view that the roll out time put forward in this document requires review. The focus of the universal service provision is access to all the citizens of Jamaica and not the creation of subsidized networks, C&WJ submits that there are available resources that would considerably reduce the roll out time for broadband Internet access. As such C&WJ deems it vital for the OUR to consider this issue before making any recommendations to the Minister.

The OUR began in paragraph 5.12 to tentatively define Mandatory Services to include ‘broadband access to all public institutions in order to provide certain services, including Internet access and voice telephony to their serving public.’ The operators will determine the type of technology to be used.

Mandatory Services for public schools is further defined to include telephone calls to PSTN, mobile and international numbers, allowing the operator to provide telephony services to public schools that previously did not have such access. Paragraphs 5.41 and 5.42 address the issue of optional services. The OUR argues that given the significant infrastructure to be developed by the operators, they should be able to offer other wholesale and retail services.

C&WJ is concerned about the policy implications of the proposal to allow the operators to provide both mandatory and optional services. As the OUR has indicated, it may not be economically and technologically feasible to prohibit the operators from providing optional services. However, the USO provisions of the Act are very clear regarding the mandate to the providers of universal services. The effect of the possibility of providing optional services is that the operators will have a blanket provision to provide all telecom services within the RBN. The implications of this need to be thought through very carefully. If designated RBN providers supply optional as well as mandatory services, the additional revenues and economies of scope which this would generate would reduce the level of subsidy required to provide the mandatory services. The amount of subsidy required for the mandatory services should reflect the benefits that would be generated from the optional services. If an adjustment to reflect the additional benefits is not done the RBN provider would effectively be receiving an unfair cross subsidy for the provision of optional services from the RBN subsidy. The OUR must therefore develop a

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methodology for bidding which takes full account of profit generated by optional services, and a method of control to ensure that the use of optional services does not diverge materially from that which was factored into the RBN bid.

In relation to the pricing of services, the OUR proposes that Internet access pricing should be based on a flat, capacity-based, usage-independent regulated tariff paid on a monthly basis. The document, in a table, lists proposed figures for the monthly-regulated tariff that the operator may charge the public institutions. C&WJ seeks clarification of these proposed prices and the currency intended. C&WJ questions the basis of these prices. If these are in fact proposed prices it would imply that the OUR already has available a well developed model that links the costs of the RBN infrastructure with the estimated funds that will be available for the subsidy. If this is the case C&WJ would go further to question the objective of this consultation as this would imply that the OUR has more or less reached a decision on the regime.

The document states further that the regulated tariffs are below the average long-run cost of installation and maintenance. The USAF will provide a one-time subsidy to cover the difference between these costs and revenues. The OUR projects that the operator will be receiving revenues that should cover its marginal long-run cost of maintenance. This gives further credence to C&WJ's view that the OUR has already worked out a cost-structure for the RBN proposal which it is urged to share with the industry.

In relation to the size and structure of payments from the RBN operator to the public institutions C&WJ is of the opinion that a flat rate regime on a bandwidth basis would be more manageable from the standpoint of the public institutions and is in sync with the broadband configuration articulated. Rates could be further stratified on a per institution basis based on ability to pay. Hence one would expect a post office or a public library to pay more than a primary school.

The OUR suggests that public institutions should run the Mandatory Services on commercial principles. C&W questions how commercial principles could apply in situations where a subsidy has been required for provision of service. The very essence of universal service provision is to provide services in areas and to customers which would be uneconomic under normal commercial circumstances. Further, this concept needs to be further explored, to ensure that these institutions have the necessary commercial expertise to oversee this activity.

The document states that the operator will be required to provide wholesale access to its network at cost based prices approved by the OUR. Within the context of the existing regulatory framework, such treatment is reserved for an operator that is declared as dominant. C&WJ notes that at paragraph 6.41 the OUR states 'If the RBN Licensee is

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declared to be a dominant operator in respect of specific services or specific geographic areas, the licensee will be required not to behave in an anticompetitive manner.’ Notwithstanding, the treatment of the RBN operators implies the presumption of dominance. C&WJ is therefore asking the OUR to clarify whether any operator that is selected is automatically declared dominant.

The Office acknowledges that the cost faced by operators to construct infrastructure from their serving areas to the points of interconnection may be high and as such the operators should have the flexibility to build their own infrastructure. The effect is that areas that are already served by existing facilities will be more attractive to the operators thus defeating one of the general objectives of USO of bringing telecommunications facilities to previously unserved areas.

According to the Second Consultative Document, there are two principal approaches to the definition of the RBN regions. One approach is to identify the specific locations of the public institutions. The second approach is to define each of the region as one or more contiguous grouping of parishes. Given the significance of this determination, C&WJ requests that the OUR indicate the basis of its selection of the latter approach. The object must be to provide the services at the lowest subsidy. So the selection must be guided by *inter alia* the fact that having a number of regional networks could potentially not generate sufficient economies of scale resulting in inefficiency and added costs to the industry.

C&WJ acknowledges the effort of the OUR in building its numerical model of Jamaica using a wide array of data and assembling them on a parish-by-parish basis to develop a socio-infrastructure indicator. However, given the importance of this determination in the analysis to the RBN proposal, C&WJ suggests that this determination should be done in conjunction with agencies with the expertise in this type of analysis.

At paragraph 5.7 the OUR says that it is of the preliminary view that the objective of Internet access to public institutions, and the provisioning of the Internet access element should be separated from the terminal equipment component. C&WJ supports this view, particularly because in this instance, unlike the situation with the provisioning of public payphones, the end equipment which is part of the IT industry and not specifically the telecom industry. However, in paragraph 5.51 of the document the OUR contradicts this position by proposing that the fund should in fact support the supply of the terminal equipment component of Internet access.

C&WJ reiterates its objection to use of the USAFJ to provide Internet terminal equipment. The concern is not addressed by removing the responsibility from the RBN operators to having the Internet terminal providers bidding directly for the subsidy

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6 RBN Implementation

RBN Selection Process

C&WJ supports the major objectives of the RBN Selection Process – competitive bidding and transparency. C&WJ also notes and supports a third guiding factor in the selection process: ensuring a “level playing field”. As the incumbent, the company is always mindful of its responsibilities in the market. Notwithstanding, C&WJ expects to be able to compete fairly in the market.

The OUR cites three examples of cost advantage that may be enjoyed by current operators:

- Current operators will only be required to build incremental networks.
- Current operators have transmission facilities to the main international gateways in Kingston and Montego Bay. The new operators will have to construct new transmissions or lease transmission capacity.
- Current operators have international transmission capacity. One of the operators may be required to build additional transmission capacity to be offered to other operators at cost-based prices.

The Office must consider the objectives of any universal service proposal. A primary aim of USO is to ensure that those on low incomes or in high cost areas can have access to a basic level of telecommunications services. This is done in the context that access is being subsidized by a central fund. Contributions to the fund will come, using these proposals, from telecommunications revenue. Thus, it will come from the ultimate consumer of telecommunications goods and services. So, it will redound to the good of the ultimate consumer where goods and services subsidized by the USAF are provided at the lowest possible costs. Where infrastructure currently exists, and the OUR determines that new infrastructure is to be built, from subsidies from the USAF, it must be determined whether the customer is in fact receiving the service at the lowest possible cost. C&WJ appreciates the OUR’s emphasis on ensuring a level playing field, but this aim must be balanced against the cost of providing the service. For example at paragraph 6.9 the OUR cites the risk of over-dependence on one entity if it successfully bids for more than one RBN. C&WJ notes that this concern is despite the fact that the entity would enjoy certain efficiencies in equipment purchases and in organisation of its business that may be beneficial and lead to lower subsidy requirements. Further, as the OUR has indicated its preference for the RBN Operator to be selected by a minimum subsidy, C&WJ questions how the concern of over-dependence, for example, will be treated in the selection of the RBN.

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RBN Subsidy

The document cites two approaches to determining the subsidy amount: the regulator announces the maximum subsidy available or does not announce it because of concerns of collusion among bidders. The OUR has stated that its preference is for the GOJ to announce the maximum subsidy available for each of the respective RBNs. While C&WJ appreciates the advantage to the government to set a ceiling, it argues that these are outweighed by the benefits of a transparent process.

The document proposes two forms of compliance mechanisms: bid guarantees and performance guarantees. C&WJ is particularly concerned with performance guarantees and strongly supports the recommendation that the operator will be required to rollout the RBN within a defined period of time. This would be supported by USAFJ paying multiple disbursements with associated milestones rather than paying a single disbursement.

C&WJ also notes the proposal of the USAFJ retaining ownership of the assets prior to the completion of the designated mandatory licence period, with the assets reverting to the USAFJ in extreme circumstances. C&WJ questions whether the bid and performance guarantees would not suffice to protect the USAFJ's interest. Notwithstanding, C&WJ is of the opinion that if this proposal is to be implemented, it should be subject to detailed provisions as to what constitutes 'extreme circumstances.'

The OUR has identified the potential difficulties to be faced by the Spectrum Management Authority (SMA) as it attempts to provide a secure spectrum environment for the RBN operators. Specific considerations include:

- A spectrum licence fee structure that encourages fixed wireless operators to extend networks into high-cost, low revenue areas.
- A "protective licence" for RBN operators to protect them from interference from other users in the 5 GHz band.
- The 5 GHz band would be exempt from licensing and the operators protected from interfering systems.

Is a fee band approach an appropriate licence fee structure for the RBNs – should it apply to all operators willing to invest capital in these same areas?

The fee band approach suggested by the OUR has at its basis fees reflective of the economic attractiveness of the coverage areas, perhaps decreasing to zero annual fee for the most challenging areas. C&WJ is mindful of the need to balance the objective of universal service with the commercial realities of providing a service. The company is

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however concerned with the possibility of further subsidization of the RBN operators.

Are there issues concerning a 'protective licence' approach?

The 'protective licence' suggested by the OUR seems to be dependent on the "mutual cooperation basis amongst the users with the exception of the RBN operators who would be protected from interfering systems." While this is theoretically a good proposal, C&WJ is concerned with the practical implementation of this scheme in light of the experience of disputes, leading to litigation, between spectrum licensees relating to infractions of spectrum usage.

7 Other Consultation Issues

Do you support the OUR's view on service to the disabled community? Please explain.

C&WJ maintains its views on the issues of service to the disabled community and disconnection expressed in its response to the first Consultative Document. C&WJ has a number of initiatives in place to assist disabled customers for example C&WJ provides to the visually impaired members of the Jamaica Society for the Blind, access, free of charge to 114, the national Directory Enquiry service; all payphones installed are in pedestal booths or are wall mounted. In both cases access by any person in a wheelchair is facilitated. While C&WJ will continually review the services that it offers to facilitate the special needs of the disabled. It does not believe that the current USO provisions in the Act need to be widened to include services specific to the disabled.

Do you support the OUR's view on disconnection? Please explain.

In relation to disconnection, C&WJ is currently considering measures to improve affordability and to customers, including the fixed prepay scheme. C&WJ has already implemented Toll Limit Monitoring (TLM) to allow customers more control of their monthly bills. Accordingly, customers are contacted when they have exceeded 75% of their limit. In circumstances where customers exceed their limit, they are able to increase the limit and where they do not exercise this option service is only disconnected “one-way” which means in an emergency households are still able to “call for assistance”.

Do you support the OUR's view on monitoring and review? Please explain.

C&WJ refers to its earlier comments on the USAFJ and reserves any further comment.