



CABLE & WIRELESS
JAMAICA

RESPONSE TO THE OUR'S CONSULTATIVE DOCUMENT ON

**TELECOMMUNICATIONS MARKETS:
INFORMATION REQUIREMENTS**

INTRODUCTION

Cable & Wireless Jamaica (C&WJ) is pleased to be afforded the opportunity to respond to the Office's proposal regarding information requirements in the telecommunications industry, Document No. TEL 2003/08 dated September 16, 2003 (hereinafter referred to as "the Document").

C&W J will structure its response under the following headings:

- Reasonable Grounds and Public interest
- Confidentiality
- Cost
- Collection vs. Publication of Information
- Timing
- Conclusion

REASONABLE GROUNDS AND PUBLIC INTEREST

The Office makes reference to Section 4(4) of the Telecommunications Act 2000 (the Act) as an empowering section. However, that section clearly states that the Office must have "*reasonable grounds*" as a basis for requiring information from licensees. The Office must therefore have sound, specific reasons for requesting information, and in the interests of transparency and fairness, these reasons must be communicated to licensees. While it is noted that the Office's Document refers to the Office's role "in promoting and protecting the interest of the consumers and promoting fair and open competition", this general role cannot be deemed to be a sufficiently specific reason to constitute reasonable grounds nor to justify the level of detailed information which the Document has specified.

The OUR emphasizes the "public interest" as the basis for requesting and seeking to publish information, particularly information that is classified as confidential. It is therefore not only reasonable, but necessary for the Office to define the "public", interpret the legitimate "public interest" and demonstrate how its information requirements are in the "public interest".

C&WJ respectfully suggests that to competently answer this question the Office will have to determine a public interest test procedure, within the legislative framework and conduct and publish the public interest test and how it has been applied. Such an approach would be consistent with the general concept of "public interest" and the Office's general reliance on customer surveys and market research.

CONFIDENTIALITY

The Office cites section 10 (1) of the OUR Act as the basis for disclosing “...information that is deemed confidential...” in the “...public interest”, however C&WJ contends that the Office must first prove the “public interest” that would be facilitated by such disclosure.

C&WJ makes reference to the judgement handed down in the *Suit No. M-151 of 2002 - Mossel (Jamaica) Limited (t/a Digicel) v. Office of Utilities Regulation and Cable & Wireless Jamaica Limited* and quotes extensively from the judgement in the matter of the treatment of information submitted as confidential:

“... Section 6 of the Act reads "The Minister may give to the office such directions of a general nature as to the policy to be followed by the office in the performance of its functions under this Act as the Minister considers necessary in the public interest and the office shall give effect to those directions". Thereafter in Section 7, is reposed an "Obligation for Secrecy."

It must have been contemplated that certain information, which by necessity must come to the respondent, should be regarded as "secret and confidential" and that a regime for dealing with such information be set up. It is to this end that the Act in Section 6 (6) has defined "confidential information" as meaning "any information classified as such and information that a reasonable person would regard as confidential having regard to the nature of the information."

Section 7(3) of the Act indicates the situations when Section 7(1) of the Act, which requires that obligation for secrecy may be dispensed with.

Section (7)(3)(b) of the Act refers to the situations where in the opinion of the Office or the Minister, disclosure is necessary in the public interest. It sets out a procedure to be followed before such disclosure may be made. This involves an application to a Judge in Chambers after due notice has been given to the applicant or licensee concerned. This applicant or licensee is the person who may apply to the Judge for an order prohibiting the disclosure on the ground that it would be harmful to the interest of the applicant or licensee.

A further safeguard to the obligation for secrecy section 7 (4) provides that even where this application for an order prohibiting disclosure of confidential information is made, the party claiming confidentiality has a right to require that the information be first disclosed only to the Judge for the purpose of determining the extent of and necessity for such disclosure .

The whole tenure of Section 7 of the Act seemed designed to protect the obligation of confidentiality, to the efficacious working of the Act. The Common law positions with regards to disclosure and confidentiality re information considered by respondent as "confidential" have been made impotent by the provisions of the said Section 7 of the Act.

The Office is aware that in a liberalized market, information related to revenues, volumes, costing and even some pricing information outside of the regulated gazetted rates, is far more sensitive than it may have previously been. Consequently, where the

Office requires that such information be submitted, it has to be submitted under confidential cover. To publish such information would do real harm to the operator. Accordingly, the Office is reminded of the duality of its responsibilities “to promote the interest of customers while having due regard to the interests of carriers and service providers.” (S. 4(1) (c) of the Act).

The Office must also bear in mind that Carriers and Service Providers have agreements with other operators including international operators and that some of these agreements explicitly state that information is confidential and should not be published. These agreements further provide that the prior permission of the other parties to the agreement would have to be obtained for the disclosure of such information and the other operator would have the right to contest the disclosure. It must also be noted that some information which operators share can only be shared with the Office for its own use.

For the assurance of the industry C&WJ recommends that the Office develop and circulate a procedure which clearly articulates how confidential information will be handled, stored, administered and used by the Office.

COST

C&WJ agrees with the OUR that whatever information is requested of Carriers and Service providers should be information that is readily available from existing systems. There should be no need for expenditure on systems in order to provide the requested information. The breadth and magnitude of information which the Office is proposing to request will require C&WJ to review its existing systems and assess the possibility that system modifications may be required to facilitate the provision of the information in the required format.

In the current environment operators must exercise fiscal prudence and operating costs must be minimized. It is therefore imperative that the Office truly “*seek to minimize the burden on operators*” and not impose onerous reporting requirements which will be costly and burdensome.

COLLECTION vs. PUBLICATON OF DATA

It is C&WJ’s understanding that information which cannot be placed in the public domain because it is classified as confidential, can be submitted to the OUR based on the defined “reasonable grounds”. It is also understood however, that there may be instances in which the publication of information would fail the “public interest” test, as well as instances in which the Office intends to use the information requested for the Office’s purposes rather than for placement in the public domain. C&WJ therefore seeks clarification from the OUR on any distinction that may exist between information that is collected for the Office’s purposes and information that is to be published by the Office.

Further, unless it is a quality of service issue or is specific to the regularly published financial statements, C&WJ does not agree that information should be published on

specific companies but rather information should be published on markets and the information on all companies aggregated for that market. Further still, in markets where aggregation will not be sufficient to disguise the information of a particular operator, e.g. where there is a sole operator or two operators and the information can easily be disaggregated, it is respectfully submitted that the publication of aggregated information will be tantamount to the publication of information of specific companies and can result in material harm to the specific company.

In the case of the financial statements of publicly traded companies, the Office must ensure that its publications do not conflict with the rules of the Jamaica Stock Exchange.

C&WJ remains concerned about how the Office intends to handle requests submitted directly to the Office by third parties, for information which is not in the public domain but is in the possession of the Office in its capacity as regulator, where such information is related to the business of the Carriers and Services Providers. C&WJ looks forward to the Office addressing this matter with due consideration to the sensitivity of the businesses of Carriers and Services Providers.

C&WJ agrees with the OUR that Carriers and Service Providers will have an opportunity to agree with the Office, the accuracy of the data to be published by the latter. This same process, which C&WJ considers best practice, has been proposed with regard to the OUR's "Quarterly Performance Report" but has not been adopted.

As the Office is aware, some of the data which the Document proposes to request is presently provided to the Office by C&WJ, under confidential cover in its "Quarterly Information Submission". C&WJ takes note of the Office's indication that the information in this report is inadequate, and reminds the Office that the contents of the quarterly report were specified by the OUR and agreed with C&WJ. C&WJ further reminds the Office that C&WJ has made representation to the Office indicating that in light of the newly liberalized environment it should no longer be producing such a report. Since the OUR has now declared this report to be inadequate, C&WJ trusts that it will be relieved of the burden of producing a report for the Office which is now redundant.

Regarding the information requested by the OUR on interconnection services offered by C&WJ, and the associated tariffs, C&WJ wishes it to be noted that such information is in the public domain on the website of C&WJ Carrier Services, and can be accessed by any interested party at <http://www.cwjcarrierservices.com>. Further, each Reference Interconnect Offer (RIO) developed by C&WJ is lodged with the Office and is subject to approval by the Office. To require C&WJ to provide this information to the Office would clearly encourage inefficient use of resources by both the Office and C&WJ.

TIMING

C&WJ proposes that all licensees be allowed six (6) weeks within which to submit reports to the Office rather than four (4).

C&WJ cannot guarantee, that in all circumstances, it will have the requested information dating back to 1999.

CONCLUSION

In conclusion, C&WJ has great concerns about the reporting requirements enunciated in the Document and even greater concerns that such detailed, competitively sensitive information could potentially be released into the public domain or could, if not properly safeguarded by the OUR, be obtained by inappropriate parties. This could cause grave harm to affected carriers and service providers.

C&WJ is aware that industry information will be required for use by the Office and does not wish to constrain the Office's performance of its statutory obligations. C&WJ therefore respectfully suggests that the OUR engage the industry more fully on the issues and consult more extensively with the affected parties with a view to finding a middle ground which will allow the appropriate industry information to be made available to appropriate parties as necessary, in order to ensure that the businesses operating in the industry are not harmed.