



**CABLE & WIRELESS**

**CABLE & WIRELESS JAMAICA LIMITED'S SUBMISSION**  
**OF PROPOSED CHANGES TO REFERENCE**  
**INTERCONNECTION OFFER (RIO) 5**

## **Background**

The Office of Utilities Regulations (OUR) has issued a Public Notice inviting “*all interested parties to submit comments on the existing RIO and the major issues that need to be addressed.*” Cable & Wireless Jamaica Limited (C&WJ) is pleased to participate in this public consultative process.

## **Issues To Be Addressed**

C&WJ would like to point out that its submissions are designed to raise issues for matters to be addressed, however, the substantial wordings for clauses and tariff propositions will be included in the submission of C&WJ’s proposed RIO. In circumstances where C&WJ will be requested to provide a draft Reference Interconnection Offer 6 (RIO6) in respect of which there will be public consultation, this document is not intended to be an exhaustive representation of all proposed amendments to the existing RIO 5, but rather a preliminary submission ahead of the draft RIO6 of “major issues” to be addressed. Moreover, as C&WJ conducts its cost analysis and reviews the procedures and provisions included within the existing RIO, additional matters may arise which are not evident at this time.

Notwithstanding the foregoing, C&WJ would like to raise the following matters for consideration:

### **Fixed to Mobile (FTM) Regime**

The OUR’s Determination dated February 2001 **Cable & Wireless Jamaica’s Reference Interconnect Offer, Determination Notice (Issued February 2001)** provided *inter alia* that the retail rates for FTM should include a cost-oriented charge for mobile termination plus a cost-oriented retention charge. Accordingly, mobile operators were able to effectively set the retail rate which C&WJ charges its retail customer, and thereby determine the FTM termination rate, as mobile operators are paid the retail rate less the retention and bad debt provision.

Subsequently pursuant to its May 22<sup>nd</sup>, 2002 Determination the OUR made the following decisions:

### ***Determination 2.5***

*The price of FTM calls shall continue to be set by participating mobile carriers, subject to cap. The cap for domestic FTM calls shall be the sum of C&WJ's mobile termination costs plus the imputed cost of spectrum plus the retention for the fixed network costs, which includes allowance for bad debt.*

### ***Determination 2.6***

*The following maximum termination charges shall be applicable as of July 1, 2002:*

- \$6.838 per minute peak*
- \$5.593 per minute off-peak*
- \$4.349 per minute weekend*

Determination 2.6 was included in challenges made to the Supreme Court of Jamaica (Suits Nos. 2002/M074 and 2002/M136) in regard to the OUR's authority to make Determinations that affected the mobile industry, given a Directive from the Minister prohibiting such intervention. However, on the 30<sup>th</sup> May 2007, pursuant to Supreme Court Civil Appeal Nos.: 4&5/04 **The Office Of Utilities Regulations v Minister of Industry, Commerce and Technology et al (30<sup>th</sup> May 2008)** the Court of Appeal found that the Minister acted *ultra vires* his power when he gave the OUR specific directions "*not to intervene in the mobile market*". The Court found that the direction was "*unlawful and null and void*". The Court also found among other things that Determination 2.6 of the OUR's May 2002 Determination, Interconnect Pricing (RIO 4) was a valid exercise of its statutory powers.

The Court has therefore cleared the way for the OUR to regulate the FTM regime and as such C&WJ is requesting that the OUR conduct a general review of the FTM regime. The current situation where Mobile Operators are able to determine the charge is anomalous to international standards. C&WJ is seeking a termination rate regime consistent with industry norms in the Caribbean and indeed the rest of the world under a Calling Party Pays (CPP) regime. Accordingly, the OUR would set a cost based mobile termination rate, same to be paid on a per second basis consistent with industry norms for FTM traffic. C&WJ (and other fixed operators) will, consistent with industry norms, set its FTM retail rate subject to its own price cap obligations (i.e. quantum & per minute vs. per second). The 'origination

service' regime now in place in Jamaica (for C&WJ fixed only), is known to have been previously implemented only in Japan where it has since been replaced by the termination rate regime articulated above.

### **Forecasting**

C&WJ has found that in many instances interconnection seekers under/over forecast their interconnection requirements. Under forecasting results when a carrier makes a request for service/facilities for which no prior provision has been made, resulting in the inability to provide the requested service/facility in the expected time frame. This can further lead to loss of revenues and frustration for all parties.

Over forecasting results when there is an agreed plan for services/facilities within an agreed timeframe, and the party for which these services/facilities have been provisioned fails to utilize these services/facilities within the planned timeframe. Over forecasting therefore leads to over allocation of resources and lost opportunities.

In light of the foregoing C&WJ is recommending that as a consequence of under forecasting, there be removal of C&WJ's obligation to provide additional services on demand, but instead that these facilities/services be provided pending C&WJ's resource availability.

In regard to over forecasting C&WJ is proposing that a charge be imposed contingent on the number of facilities over forecasted, the duration of the over forecast and the revenue opportunity that has been foregone by C&WJ.

### **PLMN Terminating Access Service/PSTN Termination Access Service**

In the **Assessment of RIO -5 and Tariff Schedule RIO5A issued November 19<sup>th</sup>, 2004** the OUR ruled that *"The words "or ultimately terminating outside Jamaica" in clauses PSTN Termination Access Service 1.1.4 and PLMN Access Service 1.1.4 is to be removed"*. C&WJ contends that the removal of the words "or ultimately terminating outside Jamaica" as mandated by the Office is an imposition of a form of Indirect Access on C&WJ. The statute at section 36 sets out particular guidelines for the imposition of Indirect Access on a dominant public

voice carrier. The Office is directed by statute that it “may make rules subject to affirmative resolution imposing on a dominant public voice carrier, the responsibility to offer a particular form of indirect access...if the Office is satisfied on reasonable grounds that such rules are necessary in the interest of customers...”

C&WJ submits that as the OUR is currently conducting a consultation on Indirect Access to satisfy itself of the necessity of the imposition of Indirect Access, the removal of the words is a breach of the statutory provisions. C&WJ requests that the words “ultimately terminating outside Jamaica” be reinstated in the descriptions for the PSTN and PLMN Access Service.

### **Costs for Joining Service**

The statute provides at section 33 (1)(a) that the Office shall be guided by principles including “*costs shall be borne by the carrier whose activities cause the costs to be incurred.*” As such, in circumstances such as where an operator seeks to enter solely in the market for the termination of international incoming voice traffic, this does not fall within the parameters set by the statute.

C&WJ’s experience over the last six years has shown that there have been carriers interconnecting with C&WJ that have not passed even one minute of traffic, and carriers that have commenced the termination of international minutes and within two to three months, closed down operations, and disappeared from the island. The result is tantamount to an unrecoverable cost/loss to C&WJ. The OUR has previously determined that, “*that where applicable, they [the costs] shall be split 50/50*”. C&WJ is submitting that this consultative process should result in a clear determination of circumstances in which the 50/50 is applicable and circumstances such as those mentioned above where the interconnection seeker should bear the full cost of interconnection.

### **Devaluation**

C&WJ is proposing that the RIO rates as reflected in the Tariff Schedule should be adjusted to account for devaluation at any time during the term of the agreement once there is a greater than 5% devaluation/revaluation since the last adjustment. This should replace the current system where rate adjustments can only be accomplished once in any six-month period.

### **Disputed Amounts**

RIO 5 at clause 9 provides that *“if the amount in dispute is less than 5% of the total amount of the invoice, then the invoice is deemed payable in full”* C&WJ is proposing that this percentage is reduced to 3% or J\$3 Million (whichever is less) and that disputed amounts should be in respect of individual interconnection services invoiced rather than the full invoiced amount. This in C&WJ’s view will result in more effective payment administration for the parties.

### **Review and Amendment of Interconnection Agreements**

C&WJ will be proposing amended wording intended to simplify the process for review and amendment of Interconnection Agreements especially in instances of changes in regulation and/or an OUR approved RIO.

### **Guarantees/Security Deposits**

Incoming international traffic to both the PSTN and third party PLMN networks has posed a very high financial risk to C&WJ from the inception of full liberalization and continues to do so to date. Consequently, the Service Taker should continue to cover the risk for these services and deposits should remain in force for the duration of the term of the interconnection agreement.

### **Review Of The Voice Market**

C&WJ urges the Office to bear in mind in the conduct of the RIO6 Consultation Process, that a Review of the Voice Market is currently underway. In light of this review C&WJ

expects that some services, which are included in RIO5 as a consequence of C&WJ having previously been ruled the dominant fixed voice carrier, may be removed.

**Submitted by Cable & Wireless Jamaica Limited**

**January 14, 2008**