

**Comments on Office of Utilities Regulation Document TEL 2004/0 “Consultation  
on Reference Interconnect Offer (RIO 5)  
5, August 2004**

The JCTA has some general comments before dealing with specific areas.

1. We find it unacceptable and incredulous that CWJ can only provide cost data through March, 2003. It is fundamental to its business that it must provide cost, revenue, expense and other related figures to investors, CW Plc. and the Jamaica stock exchange. In addition, since CW Plc. is listed on the London and New York exchange, the rules and regulations of these exchanges require this type of information for financial filings in 10k and annual reports. CW Plc. **HAS** to have this information from all its operations in order to be in compliance with filing requirements.
2. CWJ’s assertion that that “increased volumes lead to increased per unit cost goes against fundamental economic principles. As unit volume goes up unit cost go down or has CWJ instituted a new economic theory that the rest of the world is unaware of. For the OUR to give this any semblance of credence is inappropriate and unacceptable.
3. Surely with two rate increases in the past year plus the redundancy of over 1000 people in the past two years, CWJ’s costs and thus cost for international termination services must have been reduced. Has the OUR taken this into consideration?
4. It is common practice in every regulatory environment for the process to include time for questions, interrogatories and further comment on ALL aspects of regulated activity. The OUR has seen fit to virtually eliminate this aspect of the determination by leaving no time for discussion or public discourse, thus leaving the process open to further legal action by the industry.
5. Accepting CWJ’s proposed rates before they are thoroughly investigated is an unacceptable way to regulate an industry, particularly in light of the very large increase in the effective termination rates for Incoming International Traffic to the PSTN. If the proposed rate is too high, then it represents a subsidy to CWJ paid by their competitors and is therefore anti competitive and an abuse of dominant power. These issues make it imperative that the OUR thoroughly investigate and confirms the basis of these increased rates before accepting them and forcing the licensed International Carriers to pay them.

**Section 2.3 – 2.7**

The OUR list the Telecoms Act as to the granting of interconnection between carriers with public voice network only. We would like to remind the OUR that in their Document #TEL 2004/08 “ Termination Charges for Incoming International Calls” they

pointed out, and we support, that this would “*frustrate the objective of government policy*”

## **Section 2.8**

Section 35 of the Telecommunications Act 2000 (TCA) requires the following of dominant voice carriers:

- Separation of Accounts
- Keeping of Records
- Provisions to ensure that information supplied by other carriers for the purpose of facilitating interconnection is not used for any uncompetitive purpose

To the best of our knowledge, none of the above has been achieved. We are unable to understand how the OUR can make any determination, not only on this matter, but any other matter where cost is a major component, when there is no separation of accounts and keeping of records for such separation. The JCTA has no confidence that the cost information submitted by the dominant carrier, in this case Cable & Wireless Jamaica (CWJ) is valid in light of the above. We also are very uncomfortable that it is impossible to determine if any cross-subsidy is occurring within the business, specifically in regards to the Mobile Division and Carrier Services.

The JCTA has lodged a formal complaint with the OUR and FTC regarding the sharing of information between the unregulated and regulated parts of CWJ (JCTA Letter of 29, March), for which no action has been taken by the OUR or FTC. We have no comfort level that confidential information is not being shared within CWJ which allows them to set prices advantageous to CWJ.

The OUR has consistently said “if CWJ will not provide Direct Interconnection to CWJ Mobile, than they cannot charge a transit fee. A member of the JCTA has requested a refund of transit charges from CWJ (Reliant Letter of 30, January 2004) and this issue has not been addressed by the OUR. **Yet once again we see transit rates from CWJ Fixed to CWJ Mobile.** Specifically Reliant has been asking for Direct Connection to CWJ Mobile since March of 2003.

## **Recommendations**

- 1. The OUR reaffirm that interconnection will not be limited to only carriers with public voice carriers.**
- 2. The OUR provide documentation that Separation of Accounts has been implemented and assurances that there is no cross-subsidy in the ICTR.**
- 3. The OUR rule on the security of information within CWJ and assure the industry confidential information is not being shared and what the existing safeguards are. Also, that they rule on the complaint of 29, March 2004.**
- 4. That no Fixed to Mobile transit charges between CWJ and CWJ Mobile be allowed as CWJ has had ample time to develop and submit a Mobile RIO.**
- 5. The OUR respond to the JCTA’s questions in letter dated 5, April 2004.**

## **Sections 2.11/2.13**

The JCTA does not accept that the OUR cannot alter proposed rates but it can only deny them in whole or in part. If the OUR denies parts then they are open to commercial negotiations which is unacceptable. It presupposes that parts not dealt with have no impact on interconnection or cannot be a barrier to entry or anti competitive. The OUR must approve all aspects of a RIO to have it valid.

### **Section 3.5**

The JCTA rejects totally the assumption that LRIC leads to entrants opting for buying service rather than building out its own network. The OUR has completely failed to recognize the history of Telecommunications deregulation and existing conditions. History and indeed the market today has a number of players who buy services rather than building their own infrastructure, including CWJ. In fact, Cable & Wireless did the same thing in the UK when they first were granted a license to compete with BT. It is not the role of the OUR to determination market dynamics or behavior, but rather to protect the consumer.

Once again without Accounting Separation, the competitive industry has no way of determining if costs are allocated properly per service or in the most efficient manner.

### **Section 3.9**

We would appreciate it if the OUR would explain how CWJ is able to revalue their assets at a higher level and at the same time use replacement value for cost information. We also would like to know what are the inputs regarding replacement factors. The cost today for gateways and new switching equipment is less than it was when CWJ acquired its installed base. Also, CWJ primarily purchases software of “front end” platforms for their existing switches not brand new switches.

It is incorrect to allow CWJ to project current estimated values for old and outdated platforms as though they were newly purchased. A significant portion of CWJ,s PSTN is still equipped with NEC switches which have been **manufactured discontinued** for many years and are not able to revalue as new. In fact, the entire NEC network was **used equipment** when purchased over a decade ago!

Technology has changed significantly since the passage of the TCA. The introduction of “soft switches” has significantly reduced the overall cost of providing service as well as VOIP which CWJ has been using since 2001. An accounting of the existing switches used for ICT needs to be addressed as well as how CWJ internally terminates calls to assure they do not have a lower internal termination cost than the market price, thus bestowing an unfair advantage.

**Allowing CWJ to revalue assets every year is anti-competitive, provides a distorted cost picture, allows higher than normal depreciation expenses thus inflating cost and bestows a de facto “guaranteed rate of return” upon CWJ.**

### **Recommendations**

- 1. CWJ not be allowed to revalue their assets every year UNLESS they are using the same depreciation schedule on the revalued assets for their financial reporting results.**
- 2. The OUR investigate replacement values based on new technology available to determine if CWJ is using accurate replacement values.**
- 3. The OUR not provide CWJ with a de facto guaranteed rate of return but let the company earn a rate based on business, operational and market efficiency.**

### **Section 3.11**

The OUR admits that LRIC is the best way of fostering competition and rapidly achieving efficiency. Yet because of the “details, the time and resources that would be required”, the office has not taken the time to use this methodology. Also, the office believes that existing data may be less than robust enough to determine true LRIC results. The JCTA finds this totally inappropriate and leads us to believe the OUR is not following the law as defined in the TCA, Sec .30, iii

We find it difficult, in the fourth year of deregulation that CWJ cannot provide the office with accurate data and is still supplying historical data. We believe CWJ is “throwing up roadblocks” as the data required would **HAVE TO BE PROVIDED** to investors and for financial reports to CW Plc. For the OUR to just accept this, is not appropriate or reasonable.

### **Recommendations**

- 1. The OUR perform a LRIC study and complete the mission as put forth in the TCA, Sec 30, iii. Doing the study correctly and accurately is much more important than saving time.**
- 2. CWJ be required to provide current data as they would to their parent company, investors and lenders to assure current cost data is being employed.**

### **Section 3.18**

The JCTA rejects this entire premise based on the lack of accounting separation, lack of operational cost for the wholesale group (Carrier Services) and a full accounting of the cost factors, not actual cost numbers that they use for maintaining their business structure. For example, how much does CW Plc. charge CWJ for services corporately and regionally and how are they integrated into the business maintenance costs.

### **Recommendations**

- 1. The OUR provide a detail of the cost inputs, not the actual costs, to the industry so we can feel comfortable that all business maintenance cost are justifiable and allocated correctly.**
- 2. The issue of Accounting Separation et al have been dealt with previously. To reiterate, any cost study that is performed without Accounting Separation having been done and safeguards in place, is totally invalid in the JCTA's view.**

#### **Section 4.9**

Until there is a true liberalized market these items should continue to be included in RIO 5. In fact, these are still part of the “bottleneck facilities’ and should be treated by the OUR as such.

It is not appropriate for the OUR to define issues as contractual or commercial where the impact a competitors ability to either enter the market or sustain its position in the market can be compromised. It has been proven historically in telecommunications regulation and indeed even with CWJ, that issues “labeled” as contractual/or commercial can be used to delay or inhibit competition. The OUR has an obligation under the TCA to assure that anti competitive behavior and barriers to entry are not instituted by the dominant carrier.

#### **Section 4.10**

**The office has consistently stated “for those carriers who have requested direct interconnection to CWJ Mobile and it has not been provided, than CWJ cannot charge transit fees. The JCTA expects the OUR to continue to honor this. After four years there is no excuse for CWJ Mobile not to have an interconnect agreement. CWJ has increased the transit fee 100% from the original RIO 5. What is the justification for this?”**

#### **Recommendations**

**1. The OUR provide substantive proof for this type of increase. We do not expect to see confidential numbers, but a written narrative supporting such an increase is appropriate.**

#### **Section 5.0**

The JCTA rejects the comments made based on previously stated positions.

#### **Sections 5.5 - 5.6**

If USF charges are to be added that they be on both incoming and outgoing international calls. We believe that a charge on just incoming international is discriminatory, anti competitive and favors dominant carriers.

We are totally opposed to any USF charge being part of a RIO of a dominant carrier. USF charges are levied against companies doing business in a particular market and should be assessed against that company’s revenues separately and discreetly.

#### **Recommendations**

- 1. That the OUR recommend to the Minister that the USF be assessed on both incoming and outgoing international calls in order to assure fairness and not “single” out a particular market or service.**
- 2. The OUR not include this or any future USF as part of any RIO. The USF is a “cess or tax” levied against individual operators by the government, not part of any interconnect or RIO regime.**

## Sections 5.7,5.8, 5.9

We have commented on the all of these previously in this document and have rejected the fundamental principles of the assumptions.

### Section 5.10

The OUR has never dealt with the internal CWJ process for allocating capital to acquire the equipment necessary for joining services. This is clearly a “barrier to entry” and needs to be addressed. A more efficient way for all would be for the establishment of a “meet me” room by CWJ where all could interconnect.

CWJ has indicated its willingness to permit carriers to purchase, at their expense, both ends of the joining service equipment but **MUST “SELL” THE CWJ END FOR \$1.00!! This is necessary they claim, to accelerate the process of interconnection with new carriers and avoid the potential for delays associated with gaining approval for capital expenditures from senior management and CW Plc. The \$1.00 sale is necessary because CWJ will not permit a carrier to work on or maintain the equipment and thus it must be done by CW technicians, requiring the asset to be “sold” to CWJ. It will be returned in kind at the end of the contract but, again, represents a significant outlay of working capital which is unnecessary if proper interconnect facilities were in place, such as the “meet me” room operated by most other carriers around the world. This is yet another barrier to entry which CWJ implements in an effort to stall competitive entry.**

Does the OUR really approve of such an arrangement? How is the money used to purchase and then sell to CWJ used to offset the ICT charges, at least for individual carriers?

The JCTA strongly believes this is inappropriate, abuse of dominance and anti competitive. We wish the OUR to stop this practice immediately.

### Section 5.11

CWJ’s network should be operating no less efficiently than its peers in global telecommunications. Based on that, we find that CWJ’s proposed wholesale terminating rates for International Calls is double that of the following”

- USA: US\$0.0148 to \$0.019
- UK: US\$0.013 \$0.0145
- Canada: US\$0.0131 to US\$0.0145

How does the OUR account for this disparity? Is CWJ that inefficient? Does the OUR really believe their cost and operations are that much more expensive?

### Section 5.16

Principals established throughout other jurisdictions that any service provided by the dominant carrier that has not been deregulated continue to fall under the purview of the regulator until such time as the market has been opened up. The exception to this would be 119 service. Consequently, cost based tariffs must be established until such time as competition has been introduced as these services are “bottleneck” in nature. The OUR

can use as reference any number of other regulatory jurisdictions for precedence in this area.

**Section 5.18**

The JCTA supports CWJ in their concern and desire to protect revenue streams and potential bad debt exposure. We feel the office should play an active role in assisting the entire industry in developing OPTIONS based on criteria that protects CWJ and at the same time is not a barrier to entry or anti competitive.