
Office of Utilities Regulation

RECONSIDERATION OF THE OFFICE'S
DECISION: DETERMINATION NOTICE
(2017/TEL/003/DET.001) "COST MODEL FOR
FIXED TERMINATION RATES – THE DECISION
ON RATES"

PUBLIC VERSION

2017 September 8



OFFICE OF UTILITIES REGULATION

3rd Floor
PCJ Resource Centre
36 Trafalgar Road
Kingston 10
Jamaica

DOCUMENT TITLE AND APPROVAL PAGE

1. DOCUMENT NUMBER: 2017/TEL/007/RCN.002

2. DOCUMENT TITLE: Reconsideration of the Office’s Decision: Determination Notice (2017/TEL/003/DET.001) “Cost Model for Fixed Termination Rates – The Decision on Rates” - Public Version

3. PURPOSE OF DOCUMENT
 This document contains the decisions of the Office of Utilities Regulation regarding Cable & Wireless Jamaica Limited’s application for reconsideration of the Office’s decision on the timeline for the implementation of the Fixed Interconnection Rates

4. ANTECEDENT PUBLICATIONS

Publication Number	Publication Title	Publication Date
2017/TEL/004/DET.002	Cost Model for Fixed Termination Rates – The Decision on Rates – Public Version	2017 June 07
2017/TEL/003/DET.001	Cost Model for Fixed Termination Rates – The Decision on Rates – Confidential Version	2017 June 07
2016/TEL/011/CON.003	Cost Model for Fixed Termination Rates – Draft Model Consultation Document – Public Version	2016 June 22
2016/TEL/010/CON.002	Cost Model for Fixed Termination Rates – Draft Model Consultation Document - Confidential Version	2016 June 22
2015/TEL/006/DET.002	Determination Notice - “Cost Model for Fixed Termination Rates – Principles and Methodology”	2015 July 1
2015/TEL001/CON.001	Cost Model for Fixed Termination Rates – Principles and Methodology Consultation	2015 January 19

5. Approval

This document is approved by the Office of Utilities Regulation and the decisions therein become effective on 2017 September 8.

On behalf of the Office:



Chairman
 Joseph Matalon

2017 September 8

Date

Abstract

The Telecommunications Act (the “Act”) requires that all dominant public telecommunications carriers permit interconnection of their public network with the public network of other carriers for telecommunications services, and that the prices at which these services are to be provided shall be set based on the principles outlined in Section 33 of the Act. The Act also provides that the Office of Utilities Regulation (“OUR” or “the Office”) shall take the principle of cost orientation into account when determining an operator’s call termination charges.

In the Determination Notice *Cost Model for Fixed Termination Rates – The Decision on Rates* (Document No. 2017/TEL/003/DET.001) published on 2017 June 7, the OUR determined that new interconnection charges will apply based on a two-step glide-path, with the first reduction becoming effective on 2017 July 1 and the second step becoming effective on 2018 January 1.

Cable & Wireless Jamaica Limited (“C&WJ”) does not agree with the approved glide-path and has applied for the reconsideration of the timeframe. The OUR shared C&WJ’s application with relevant stakeholders to gather the views from the industry.

This Reconsideration Decision summarises C&WJ’s requests and comments provided by the industry, and presents OUR’s decision on the final glide-path that should be applied for the implementation of the new interconnection charges for fixed termination.

Table of Contents

Abstract	iii
Chapter 1 : Introduction	1
Purpose of this Reconsideration Decision.....	2
Legislative Framework	2
Chapter 2 : Overview of C&WJ's request	5
Chapter 3 : Analysis of arguments provided by stakeholders.....	7
Legitimate expectation regarding glide-path duration and anticipation.....	7
Effect on C&WJ's wholesale carrier services business.	14
Reasonableness of the glide-path.....	16
Chapter 4 : Analysis of remedies proposed by C&WJ.....	20
Glossary	23

Chapter 1 : Introduction

- 1.1. On 2017 June 7, the OUR issued a Determination Notice – Cost Model for Fixed Termination Rates – The Decision on Rates (Document No. 2017/TEL/003/DET.001 (Confidential Version) and Document No. 2017/TEL/004/DET.002 (Public Version)) on Fixed Termination Rates for the fixed market in Jamaica. In the Determination Notice – Cost Model for Fixed Termination Rates – The Decision on Rates, the Office approved the interconnection rates associated to fixed networks, and determined that the rates should be implemented on a glide-path. This Determination Notice was the result of a long consultation process in which the OUR engaged the operators and other stakeholders in the industry. Specifically, there were three main interactions with the industry: a) a public consultation process on the methodology that should be applied to calculate interconnection rates, b) a data gathering process to ensure the model is aligned with the Jamaican networks reality and c) a public consultation process on the model used to determine the interconnection rates.
- 1.2. On 2017 June 21, Cable & Wireless Jamaica Limited (“C&WJ”) submitted an application for reconsideration (“the Application”) of the glide-path set by the OUR for the implementation of the interconnection rates. The company also applied for a stay in the effective date of the first step of the glide-path of 2017 July 1. The Office considered the request and granted a stay of the effective date of the first step of the glide-path until it issues a final decision on the Application.
- 1.3. On 2017 June 22, the OUR shared the Application with industry stakeholders and invited their comments.
- 1.4. The Consumer Advisory Committee on Utilities (“CACU”) submitted its views on 2017 July 10; Digicel (Jamaica) Limited (“Digicel”) submitted comments on 2017 July 12; and Verge Communications Limited (“Verge”) provided comments on 2017 July 13.

- 1.5. The above comments were shared with the industry and, on 2017 July 20, C&WJ and Digicel submitted comments on responses.

Purpose of this Reconsideration Decision

- 1.6. This Reconsideration Decision summarises the Application, the comments provided by stakeholders, and details the Office's views. It also details the Office's decision on the glide-path that should be applied in the implementation of new interconnection rates for fixed termination services, after considering C&WJ's and other stakeholders' feedback.
- 1.7. In keeping with the approach adopted during the consultation process, the OUR will issue a public and a confidential version of this Reconsideration Decision. The proprietary information of C&WJ mentioned in the Reconsideration Decision, as well as other information which the OUR has classified as confidential in light of the provisions of the Telecommunications Act, will be excluded from the public version. The confidential version of the Reconsideration Decision will be shared with C&WJ.

Legislative Framework

- 1.8. Applications for the reconsideration of a decision of the Office is allowed under section 60(4) of the Act. The subsection states: *“(4) A person who is aggrieved by a decision of the Office or Authority, as the case may be, within fourteen days of receipt of that decision, apply to the Office or Authority, as the case may be, in the prescribed manner for a reconsideration of the matter.”*
- 1.9. Sections 60(5), (6), (7) and (8) also address the reconsideration process:

“(5) An application under subsection (4) shall be heard only if the applicant-

(a) relies upon new facts or changed circumstances that could not, with ordinary diligence have become known to the applicant while the matter was being considered by the Office or Authority, as the case may be; or

(b) alleges that the decision was based upon material errors of fact

or law.

- (6) *The Office or Authority, and the case may be, may in relation to an application under subsection (4), confirm, modify or reverse the decision or any part thereof.*
- (7) *Where a decision is confirmed, the confirmation shall be deemed to take effect from the date on which the decision was made.*
- (8) *Where an application is made under subsection (4)-*
 - (a) *the Office or Authority, as the case may be, on an application by the applicant, order that the decision shall not take effect until a determination is made under subsection (6); and*
 - (b) *the Appeal Tribunal shall not hear an appeal under section 62 in relation to that decision until such a determination is made by the Office or Authority, as the case may be.”*

1.10. Upon review of the Application, the Office has determined that it qualifies for reconsideration under section 60 of the Act for the following reasons:

- (a) The Application was submitted within the required fourteen (14) day period prescribed in the Act. The OUR’s decision, which is the subject of the Application, was issued on 2017 June 7, and C&WJ submitted its Application fourteen (14) days later on 2017 June 21;
- (b) C&WJ has relied upon new facts that it could not or would not have known prior to the issue of the Determination Notice – *Cost Model for Fixed Termination Rates – The Decision on Rates*. The new facts relate to the Office’s final decision on the implementation of a glide path and the timeline within which the new wholesale interconnection rates for fixed termination services, would take effect; and
- (c) The Application alleges that the decision was based upon material

errors of law. C&WJ suggests in the Application that the decisions complained of were a wrongful exercise of discretion and resulted in frustration of a legitimate expectation.

1.11. C&WJ also included in its Application a request that the effective date of the first step in the determined glide path be stayed pending the determination of a new glide path by the Office, or pending an appeal to the Appeal Tribunal. Having regard to: (i) the fact that the Application specifically related to a reconsideration of the implementation dates for the newly determined rates; (ii) the reality that the Office would not be in a position to complete its reconsideration before the first step in the glide path, i.e. 2017 July 1, and (iii) the desire for the maintenance of stability in the industry, the Office granted a stay of the effective date of the first step of the glide-path until it issues a final decision on the Application for reconsideration.

Chapter 2 : Overview of C&WJ's request

2.1. Chapter 2 of this Reconsideration Decision summarises the Application submitted by C&WJ.

2.2. C&WJ states that the application of the glide-path as proposed by the OUR “is (i) a wrongful exercise of the discretion of the OUR and (ii) a frustration of a legitimate expectation by [C&WJ] of a longer glide path, which together provides grounds on which it can argue that the OUR's decision is an error of law pursuant to section 60(5) (b) of the Act”. C&WJ considers that the determined implementation glide-path is not appropriate due to three factors:

- i. The company, states that the OUR has raised the legitimate expectation of a longer glide-path, considering that “...in the context that the OUR had indicated a glide-path of a maximum period of two years in the course of the consultation leading to the Determination of Rates...”. C&WJ therefore “...had a reasonable expectation that the OUR would have implemented the new rates over a glide path which was longer than six months, and specifically with a longer notice than twenty three days for the first reduction”.
- ii. C&WJ believes that the OUR has not considered the effects that the adoption of Pure LRIC rates will have on C&WJ's wholesale business. C&WJ states that if its wholesale business is “forced to implement the drastic revenue reduction over a six-month time period, it will have a deleterious effect on [C&WJ]'s ability to maintain and invest in its Wholesale Carrier Services Operations”.
- iii. C&WJ thinks that the determination of the glide-path made by the OUR does not balance short term welfare gains of immediate price reductions with the effect the reductions on rates has on efficient investment incentives. C&WJ argues that “...in this instance, the OUR has failed to properly conduct that balancing exercise”. C&WJ states that the OUR has not considered the effect the reductions will have on “the immediate cash flow of the company, and the immediate and direct impact this

reduction will have on working capital, investment incentives and potentially the long-term welfare of the society itself”.

2.3. C&WJ proposes two “remedies”, namely:

- i. “a glide-path of a minimum of two years or a maximum of three for the implementation of the reductions in Fixed Termination Rates as set out in the Determination on Rates”*
- ii. “a stay in the effective date of the first reduction from 1 July 2017 to a date when the new glide path is determined by the OUR or pending an appeal to the Appeal Tribunal”*

Chapter 3 : Analysis of arguments provided by stakeholders

3.1. This Chapter discusses the arguments submitted by stakeholders and presents OUR's views on them. The arguments have been grouped into the following categories:

3.1.1. Legitimate expectation regarding glide-path duration and anticipation

3.1.2. Effect on C&WJ's wholesale carrier business

3.1.3. Reasonableness of the glide-path

Legitimate expectation regarding glide-path duration and anticipation

3.2. C&WJ states that a legitimate expectation for a longer glide-path was established by OUR's promise or practice, in the process of determination of the Pure LRIC rates. C&WJ points out that the OUR *"had indicated a glide-path of a maximum period of two years in the course of the consultation leading to the Determination of Rates"*. After the Pure LRIC rates were revealed and given the size of the reductions, C&WJ had *"a reasonable expectation that the OUR would have implemented the new rates over a glide-path which was longer than six months, and specifically with a longer notice than twenty three days for the first reduction"*.

3.3. C&WJ points out that, in its response to the OUR's *Cost Model for Fixed Termination Rates – Principles and Methodology* submitted on 2015 March 2, C&WJ expressed its disagreement with the maximum timeframe set by the OUR for the glide-path. C&WJ stated that *"if the OUR feels that the glide-path adjustment period should be capped, three years is the more relevant timeframe"*, expressing that the glide-path for the FTR should be capped at the same maximum timeframe as the MTR's glide-path (i.e. a maximum of three years).

3.4. C&WJ asserts that, in the consultation process, *"the OUR gave no indication*

that it was moving away from the two year glide-path previously determined". Giving the context of the consultation proceedings and the size of the reduction, C&WJ *"had a legitimate expectation, that any glide-path determined by the OUR would be at least a two year glide-path"* and that the OUR had frustrated this legitimate expectation of a longer glide-path.

- 3.5. C&WJ further intimates in its comments, that as a public body making administrative decisions, the OUR is under a duty to exercise its discretionary powers reasonably, in good faith and on proper grounds. It is of the view that in setting a six (6) month glide-path for the implementation of the fixed termination rates, the OUR had unreasonably and improperly exercised its discretion.
- 3.6. Digicel affirms that the consideration of a *"reasonable"* glide-path by C&WJ is biased. Digicel supports this claim by stating that *"as an entity facing revenue reductions C&WJ's view of reasonable will be subjective and tilted towards a longer timeframe"*.
- 3.7. Verge states that the legitimate expectation professed by C&WJ has no basis in law *"since the OUR had never given an undertaking or promised to implement the maximum period."* It argues that the *"...doctrine of legitimate expectation rests on the principle that when a public authority has promised to follow a certain procedure, it is in the interest of good administration and transparency that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty"* and *"...that the public body, which is the OUR in this case, must have made a representation, either by way of an express promise or implicitly through its past conduct, that it would act in a particular way, therefore giving all interested stakeholders a reasonable and legitimate expectation that it would proceed in accordance with its representation"*. Verge asserts that the OUR *"...never promised to implement a glide path of two years to introduce the new rates"* and on the contrary stated that *"...the maximum time period that it would consider for rates to adjust to costs is two years."* It feels *"...[t]herefore, a more realistic expectation would have been for a glide-path that was less*

than the maximum suggested period of two years". Digicel affirms in its comments on the responses made by the stakeholders that Verge's conclusions on the issue of C&WJ's expectations of a longer glide-path is broadly aligned with its own. Digicel states that *"this common view is that C&WJ could have had no legitimate expectation of an extended or even any glide-path."*

- 3.8. C&WJ does not agree with the conclusions expressed by Verge and Digicel, and argues that its legitimate expectation comes from the statements made by the OUR. C&WJ highlights the principles of legitimate expectation as summarised in the British case – Rowland v Environmental Agency [2005] Ch 1 – which include *"A legitimate expectation may arise from "the existence of a regular practice which the claimant can reasonably expect to continue", and in particular that "It is not always a condition for a legitimate expectation to arise that there should be a clear, unambiguous and unqualified representation by the public authority...: the test is whether the public authority has acted so unfairly that its conduct amounts to an abuse of power"*. C&WJ points out that *"the OUR has advised that it will implement a glide-path of maximum two years after reviewing the rates from modelling. After its lengthy consultations and statements on various matters, the determination includes a single paragraph explanation as to why it implemented a six-month glide-path, with the first cut of the rates to be implemented twenty-three days after the determination is issued. Given the magnitude of the ordered rate reduction and their direct impact on the welfare of the company, [C&WJ] stands firm in its conviction that the OUR's explanation for ordering a six-month glide path is insufficient"*.
- 3.9. C&WJ further states that *"the OUR did not accurately quantify the costs and benefits, and questions whether all relevant information was given proper consideration"*. It argues *"...that the fundamental unfairness of the OUR's six-month glide path lies in the fact that, even by the OUR's own admission, it has not dealt with the current scenario found in rates from the modelling in its consultation. What it promised [C&WJ] was that it would implement a two-step glide path of up to two-years, based upon the modelled rates..."* C&WJ

is concerned that “...the OUR has not fulfilled its promise...”.

3.10. The Office does not challenge the description of legitimate expectation as set out in Verge’s response, nor the summary of its principles as set out in the case cited by C&WJ in its comments on the responses of stakeholders. It however agrees with Verge and Digicel that there is no basis upon which a legitimate expectation, as suggested by C&WJ, could have arisen in the present circumstances.

3.11. The United Kingdom Privy Council in the Clico Case (The United Policyholders Group and others (Appellants) v The Attorney General of Trinidad and Tobago (Respondent) [2016] UKPC 17) provides a comprehensive discussion of the development of the principles governing legitimate expectation in English law. In the judgement of Lord Neuberger, the Privy Council’s understanding of the law relating to legitimate expectation is summarised as follows:

“37. In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”, according to Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffman in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2009] AC 453, para 60.

38. Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body’s statutory duty – see eg Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629,636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part,

circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement.

39. Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context (see again Ng Yuen Shiu [1983] 2 AC 629, 636). However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called “the macro-political field” (in R v Secretary of State for Education and Employment, Ex p Begbie [2000] 1 WLR 1115, 1131), or indeed the macro-economic field....”¹.

3.12. The burden of proving the existence of legitimate expectation lays with the person claiming the expectation. Lord Carnwath, in his discussion of the principles governing legitimate expectation in the Clico case indicated that:

“108. The initial burden lay on an applicant to prove the legitimacy of his expectation, and so far as necessary his reliance on the promise. But once these elements had been proved, the onus shifted to the authority to justify the frustration, and to identify any overriding interest on which it relied (following Laws LJ in Nadarajah, para 68). It was then for the court “to weigh the requirements of fairness against that interest”.”²

3.13. C&WJ has failed to establish the existence of a promise or course of practice

¹ The United Policyholders Group and others (Appellants) v The Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago) [2016]UKPC 17, at pages 12 - 13

² ibid at page 32

of the OUR that is “*clear, unambiguous and devoid of relevant qualification*” so as to give rise to a legitimate expectation of a longer glide path than that determined. The Office agrees with Digicel and Verge that the OUR has not promised a specific duration for the glide-path. On the contrary, in the Determination Notice – Cost Model for Fixed Termination Rates – Principles and Methodology (Document No. 2015/TEL/006/DET.002) published 2015 July 1, the OUR clearly stated that the “...*Office may resort to glide paths for adjusting termination rates*” and “...*the Office will only consider a glide-path up to a maximum of two years*”. The logical inference from these statements, would be that the OUR **may** decide that a glide-path should be applied or not and, if applied, that the glide-path will have a maximum duration of two years.

- 3.14. Additionally in the Determination Notice 2015/TEL/006/DET.002, the Office confirmed its intention to decide on the implementation of any glide path only after the results of the modelled rates had been reviewed, and in its decision making in this regard, to take account of such matters as the need for rates to be quickly aligned with costs to be compliant with the Act, and to curtail the negative effects of having a termination rate above cost. Both have been done. Therefore, there has been no frustration of any procedural or substantive legitimate expectation, as suggested by C&WJ, in the current circumstances.
- 3.15. As mentioned earlier, C&WJ alleged that the Office’s decision on the implementation of a six-month glide path was unfair, an unreasonable and improper exercise of its discretion and amounted to an abuse of power. The Office declares however, that its decision on the glide path is within the ambit of its statutory powers, takes into account relevant matters, is rational and was made after giving persons who would be affected by the decision, an opportunity to be heard on the matter. In particular, and contrary to C&WJ’s assertion, the OUR confirms that the costs and benefits of the reduction of interconnection rates to the new values were analysed by the Office when taking the decision on the glide-path to be applied. This is detailed further in the section which discusses Reasonableness of the glide-path in this chapter.

3.16. C&WJ suggests in its comments that the magnitude of the FTR reductions produced an unexpected cost on operators such as C&WJ who have committed large investments in fixed networks in Jamaica. It states that given the extremity of results, a maximum allowable glide path of two years is at minimum necessary. The company however would have been made aware of the likely cost reductions in the wholesale fixed termination rates when the draft model was shared with it for consultation on 2016 June 22, almost a full year prior to the issue of the Office’s final decision on rates on 2017 June 7. As can be seen in Table 3.1 below, the costs in the draft model increased only slightly in the final determination on rates with exception of the services using call centre. The slight increase in the charges resulted from the inclusion of wholesale specific costs which were provided by C&WJ during the consultation. The large reduction in the costs associated with services that use the call centre resulted from the movement in-house of these services which were previously outsourced by C&WJ.

Service (JMD cents/minute)	Average 2017-2020		
	Draft Model subject to consultation	Final Model	Difference
To fixed local	7.45	9.39	26%
To fixed national	7.60	9.58	26%
To emergency services*	44.31	12.28	-72%
To weather warning service	17.46	18.62	7%
To national DQ*	51.39	12.28	-76%
To international DQ*	51.39	12.28	-76%
To national freephone access service	7.60	9.58	26%
To own freephone access service	7.34	9.11	24%
To international freephone access service	7.58	9.57	26%

Table 3.1: Comparison of results between model subject to public consultation and final model used for the determination of rates [Source: LRIC Model]

Note (*): Costs associated to services using call centre are measured in JMD/min and include the costs associated to the use of the call centre

Effect on C&WJ's wholesale carrier services business.

- 3.17. C&WJ states that the reductions of the rates for the Incoming International Call Termination Service on PSTN will cause irreparable harm to C&WJ's Wholesale Carrier Services Operations and will generate an increase in arbitrage between the termination rates and the settlement rate. C&WJ affirms that the *“effect will reduce the settlement rates paid by overseas carriers and further diminish the resources required by licensed operators in Jamaica to maintain and invest in their networks”*.
- 3.18. While Digicel notes C&WJ's concern regarding the arbitrage gap between the Pure LRIC FTR and the corresponding international Settlement Rate, Digicel points out that *“this gap exists for MTRs and that there has been no form of regulatory intervention to mitigate its effect”*. The company also notes that *“The provision by the OUR of a regulatory support for [C&WJ]'s fixed carrier services business while failing to provide an equivalent support to the mobile carrier services business of Digicel would amount to a discriminatory and competitively distortive regulatory intervention in the market. Digicel believes that extension of the fixed glide[-]path based on such consideration would be unlawful in the circumstances where the OUR has not also allowed the mobile operators to maintain their prices above the Pure LRIC level for the purposes of shielding their wholesale carrier services businesses.”*
- 3.19. C&WJ contests the assertions made by Digicel and asserts that *“a decision to extend the glide-path for implementing fixed termination price reductions would apply to all fixed network operators. Thus, it would not be limited to traffic terminating to [C&WJ]'s fixed network, but would apply to all fixed networks in Jamaica, including Digicel's”*. The company also states that the fact that the glide-path would not apply to Digicel's mobile terminated traffic is not discriminatory because it would also not apply to all mobile networks.
- 3.20. C&WJ states that it is not looking for a shield, but *“a reasonable approach to implementing interconnection price reform, considering the changed methodology of calculation and the severity of the fixed interconnection price*

reductions at issue". C&WJ states that it is not seeking to indefinitely maintain prices, but its application is specific to the OUR's ordered six-month glide-path and seeks specific, temporary relief by extending the duration of this path from six to twenty-four or thirty-six months.

- 3.21. It is important to highlight that the model is already considering those aspects which justify a different provision cost for international termination compared to national termination. Specifically, the model is considering the international exchange used for interconnecting traffic with operators overseas. Additionally, the model also recognises differentials in carrier relation costs associated to domestic and foreign operators. Other than those, and based on the information provided by the operators, no other costs differentials have been found that justify a higher international termination rate.
- 3.22. The OUR agrees that the application of the Act's new methodology (i.e. Pure LRIC) will have an impact on the revenues associated to interconnection services. However, even if the impact in specific services may be of relevance, it is important to bear in mind that the fixed network is shared among a number of revenue-generating services (such as retail fixed voice, broadband, etc. See Table 3.). We observe that the revenues associated with interconnection services represent a relatively small portion of C&WJ's revenues associated with the fixed networks. Observing C&WJ's latest financial statements (i.e. at 2016 December 31), PSTN interconnection net revenues represented [X]% of fixed network revenues³, as detailed in Table 3. below:

³ Considering all revenues associated to the fixed network, namely: "Fixed voice", "broadband and video" and "managed services and other".

	Revenues (\$m)
Mobile	9,754
Broadband and video	2,065
Fixed voice	5,079
Managed services and other	2,299
Total revenues	19,197
Total Fixed Network revenues	9,443

Table 3.2: C&WJ's revenues at December 31st, 2016 [Source: C&WJ's Financial Statements⁴]

[CONFIDENTIAL]

	Actual Net Revenue 2016 (\$m)
PSTN Domestic	
PSTN International	
Total	
Percentage over Fixed Network Revenues	

Table 3.3: C&WJ's net revenues associated with interconnection services [Source: C&WJ's application for reconsideration]

[END CONFIDENTIAL]

Reasonableness of the glide-path

3.23. C&WJ believes that the OUR has failed to ensure that it balances short term welfare gains on immediate price reductions with the long term interests of protection of efficient investment incentives in determining the glide-path. In C&WJ's opinion, this is evidenced by the way that the OUR has exercised its discretion to implement a six month glide-path with almost immediate effect for the first reduction, to the detriment of the *"efficient investment incentive"*.

3.24. C&WJ states that the *"OUR does not appear to have given consideration to the magnitude of such sharp reductions on the immediate cash flow of the*

⁴ <https://www.jamstockex.com/cable-wireless-jamaica-limited-cwj-audited-results-year-ended-march-31-2016/cwj-2016-year-end-report/>

company, and the immediate and direct impact this will have on working capital, investment incentives and potentially the long-term welfare of the society itself”.

- 3.25. C&WJ submits that *“there is no provision in the determination on rates which indicates that the OUR moved from the academic exercise of setting the fixed determination rates, to taking into consideration the impact of its determination on a business”.*
- 3.26. Digicel highlights however that the OUR indicated in its determination that it took into account the impact that an immediate reduction of the rate to the Pure LRIC level would have on the C&WJ revenues and states that the *“... fact that the OUR balancing exercise did not produce a result to the liking of C&WJ does not invalidate the procedure”.*
- 3.27. Verge considers that the losses caused by maintaining the existing market fixed termination rates for a prolonged period will significantly impact the minor operators in the market.
- 3.28. C&WJ does not contend that the balancing procedure undertaken by the OUR is invalid or lacks legal force. C&WJ acknowledges that it is an appropriate and legally binding procedure, but instead its challenge is with how the procedure has been applied. C&WJ is concerned that *“the OUR did not accurately quantify the costs and benefits, and questions whether all relevant information was given proper consideration”.*
- 3.29. The OUR attests that based on the information before it, which included information provided by C&WJ, it considered the costs and benefits, including the magnitude of the reduction in revenues, and the possible attendant consequences flowing therefrom on the company and the fixed sector when deciding the glide-path and the application date. The OUR agrees that the main “cost” of the measure is associated with the impact on C&WJ’s cash flow and incomes. It is important to bear in mind, however, that based on the information presented, the interconnection revenues represent a small part of the regular cash incomes associated to the fixed network. In particular,

according to the information presented in C&WJ's financial statements (2016 December 31) and its Application, the impact on net revenues of the reduction in interconnection fees to be applied in the first step is estimated to be [~~8~~] % of C&WJ's fixed network monthly revenues, as presented in Tables 3.4 and 3.5 below:

	Revenues (\$m)
Mobile	9,754
Broadband and video	2,065
Fixed voice	5,079
Managed services and other	2,299
Total revenues	19,197
Total Fixed Network revenues	9,443
Monthly Fixed Network Revenues	787

Table 3.4: C&WJ's revenues at December 31st, 2016 [Source: C&WJ's Financial Statements⁵]

[CONFIDENTIAL]

	Decline in Net Revenues (2017) (\$m)
PSTN Domestic	
PSTN International	
Total	
Monthly total⁶	
Percentage over Monthly Fixed Network Revenues	

Table 3.5: Impact on C&WJ's net revenues associated to interconnection services after glide-path first step [Source: C&WJ's application for reconsideration]

[END CONFIDENTIAL]

3.30. After the second glide-path step is enforced, the impact is expected to amount

⁵ <https://www.jamstockex.com/cable-wireless-jamaica-limited-cwj-audited-results-year-ended-march-31-2016/cwj-2016-year-end-report/>

⁶ Monthly total during the 6 months of the first step of the glide-path.

to ~~18~~% of C&WJ's fixed network annual revenues, as presented in Table 3.6 below:

[CONFIDENTIAL]

	Decline in Annual Net Revenue (2018 vs 2017) (\$m)
PSTN Domestic	
PSTN International	
Total	
Percentage over Fixed Network Revenues⁷	

Table 3.6: Impact on C&WJ's net revenues associated to interconnection services after glide-path second step [Source: C&WJ's application for reconsideration]

[END CONFIDENTIAL]

3.31. Based on the materiality of the impact on C&WJ's incomes, the potential impact on its cash flow and on its capability to invest is not considered to outbalance the benefits of a prompt alignment with the Pure LRIC values, such as the potential reduction of customers' expenditures, alignment with the requirements of the Act, etc.

⁷ Based on figures presented in Table 3..

Chapter 4 : Analysis of remedies proposed by C&WJ

4.1. C&WJ proposes two “remedies”, namely:

- i. *“A glide-path of a minimum of two years or a maximum of three for the implementation of the reductions in Fixed Termination Rates as set out in the Determination on Rates”*
- ii. *“A stay in the effective date of the first reduction from 1 July 2017 to a date when the new glide-path is determined by the OUR or pending an appeal to the Appeal Tribunal”*

4.2. Digicel highlights that in contradistinction to the mobile market, there has been a four year lag in the application of the same legislation to the fixed market. Therefore, it considers *“not only the six-month timeframe for the first reduction reasonable, but a longer timeframe would be unreasonable”*. Digicel argues that the large time delay in aligning the basis for regulating the fixed and mobile sectors, requires a significant immediate adjustment followed by complete alignment within six months.

4.3. In these circumstances, Digicel states that the initial price reduction should be effective as soon as possible, but in any event Pure LRIC pricing based FTRs should apply in Jamaica from first January 2018 so as to align the regulatory frameworks for the fixed and mobile sectors.

4.4. Verge believes that *“[a] prolonged glide-path of two to three years will only serve the purpose of maintaining a fixed termination rate which is above cost, thereby enabling C&WJ to continue to collect high revenues at the expense of other licensed operators whose interests the OUR is also required to take into account as a part of its mandate to promote fair and open competition”*.

4.5. C&WJ argues that the proposal of extending the glide-path looks for *“a reasonable approach to implementing interconnection price reform, considering the changed methodology of calculation and the severity of the fixed interconnection price reductions at issue”*.

- 4.6. C&WJ criticizes Verge’s claim of the financial harm of prolonging the glide-path, stating that “*Verge would enjoy a financial windfall from the faster implementation of lower FTRs, that windfall is patently distinguishable from any “financial harm” it can claim it would suffer from a two-year glide-path from the implementation of the new FTRs*”.
- 4.7. C&WJ also refers to Verge’s claim of financial harm by rejecting the impact the application of Pure LRIC FTRs will have on Verge’s business. C&WJ states that **[CONFIDENTIAL] “X” [END CONFIDENTIAL]**. C&WJ asserts that Verge’s claims are exaggerated **[CONFIDENTIAL] “X” [END CONFIDENTIAL]**.
- 4.8. As previously indicated, the Office observes that the impact of the new interconnection rates is limited to and represents a small percentage of C&WJ’s fixed network revenues. Therefore, the potential impact on C&WJ’s cash flow and on its investment incentives is not considered sufficient justification for a glide-path longer than six months, nor extending the date for implementation of the new rates. The Office takes the view however, that the date for the application of the first step of the glide-path should be revised to take account of the time taken to address this application for reconsideration.
- 4.9. Additionally, the Office notes that the glide-path determined in the Determination Notice - *Cost Model for Fixed Termination Rates – The Decision on Rates*, is aligned with previous determinations. Specifically, the glide-path length is in keeping with the two years maximum that was determined.

Decision 1: The first step of the glide-path defined in the Determination Notice “Cost Model for Fixed Termination Rates – The Decision on Rates” (Document No. 2017/TEL/003/DET.001) should be applied on 2017 October 1 and the second step on 2018 April 1.

Decision 2: C&WJ will have ten (10) working days from the effective date of this Reconsideration Decision within which to submit to the Office, a revised RIO 6 Tariff Schedule which reflects the rates established in the Determination Notice “Cost Model for Fixed Termination Rates – The Decision on Rates” (Document No. 2017/TEL/003/DET.001) and which accords with the implementation dates specified in this Reconsideration Decision.

Glossary

BULRIC Bottom-up Long Run Incremental Costing model

LRIC Long-Run Incremental Cost

MEA Modern Equivalent Asset

TLRIC Total Long-Run Incremental Cost

PSTN Public Switched Telephone Network

FTR Fixed Termination Rates

MTR Mobile Termination Rates

TSLRIC Total Service Long-Run Incremental Cost