

**Reliant Enterprise Communications Ltd. Response to OUR Questions Regarding  
Local Loop Unbundling**

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## **Overview**

The OUR has a historic opportunity to finally introduce real competition within the telecommunications sector if it takes a proactive position with unbundling and separation. For the past six years little has been done to foster and encourage competition to the benefit of the consumer. Investment in the non mobile sector has been slow due to a perception the CWJ is able to maintain its monopoly because of lack of regulatory oversight. lax regulations, a Fair Trade Commission with no powers, a regulator who is unwilling or unable to make the tough decisions and police the incumbent and no real penalties for non compliance. Even in the mobile area where there are clearly issues of barriers and high prices by all, the OUR has refused to act, even by using a “bully pulpit” to do so as OFCOM has done. It would appear the OUR is more interested in not going to court than enacting true regulations that foster competition.

We implore the OUR to take decisive action in these matters so that consumers may finally benefit from a true open and competitive environment.

## **Question 1.**

In conjunction with Accounting Separation, we believe LLU is a key enabler of true competition within the Telecommunications Sector. One of the biggest issues for this review is the problem of discrimination as regulating to prevent discrimination remains the key unsolved problem. In practice, there has no effective regulation or mechanism in preventing CWJ from favoring its own operations. The examples are endless. In broadband, CWJ was allowed to create a product which was prohibitively expensive and not fit-for-purpose, which meant that it was entirely unsuitable for the mass market take up. The result is there is little competition in the broadband LLU market. In the world of narrowband voice, there is a similar story. The basic building blocks to narrowband competition, such as call origination, carrier pre-selection and wholesale line rental have not been made available to CWJ’s competitors. CWJ has been permitted to retain an artificially high market share in narrowband voice to the detriment of innovation and of end users.

## **Question 2**

As in every other jurisdiction that has been deregulated, we believe CWJ should be required to provide LLU services. It is clear that the failings of competition at the access layer are manifest at the wholesale and retail level. CWJ’s ability to leverage its dominance from access into the backbone networks constrains the ability of operators to provide innovative wholesale services to consumers. This is because CWJ uses its access network to favor its own downstream backbone and retail businesses and is repeatedly able to starve competitors of the basic building blocks needed by alternative operators to meet their customer’s needs. If current backbone operators were able to receive their wholesale access inputs on an equivalent basis to CWJ, then those operators in the backbone segment would be free to compete to provide innovative services to those companies operating in the retail segment. The ability of CWJ to weaken network competitors to construct fit-to-purpose, fast to market innovative products for their customers means that retail operators are limited typically to competing primarily on

**price rather than innovation in services.** CWJ's ability to leverage its dominance into this segment has led to it continuing to have a market share that is excessive relative to that which would be likely to emerge over the past six years given the underlying economics of telecommunications retail markets.

If, however, backbone operators were able to receive their wholesale access inputs on an equivalent basis to CWJ, then those operators in the backbone segment would be free to compete to provide innovative services to those companies operating in the retail segment. The future of retail competition as a force for delivering high value, innovative services to end-users, is absolutely dependent on there being a competitive backbone market. Hence, the effectiveness of retail competition can be greatly enhanced by imposing the appropriate regulatory measures as the access level (LLU).

### **Question 3**

History has demonstrated that if the regulator does not regulate LLU in order to address the monopolies market dominance and power in the wholesale market, the possibility of abuse is increased dramatically. Regulation of CWJ's access network must be central to the new framework. Regulation is needed both to prevent CWJ from setting excessive charges and from favoring its own downstream businesses. By far the biggest issue for this matter is the problem of discrimination as regulating to prevent discrimination remains the key unsolved problem of regulation. In practice, there does not exist rules, procedures and structures to deal with the problem of discrimination, and in reality there is no effective way in preventing CWJ from favoring its own operations.

CWJ must be required to provide its access products to all operators, including its own downstream operations, to the same specification, at the same price and using the same processes. This is not a scenario that exists in practice today.

The second key element of regulation is the organizational structure that is put in place to ensure maximum transparency in the monitoring of the wholesale access arrangements. This is why accounting separation is so important to the process. It is clear that the Carrier Services Group **cannot** be the organization that manages this for CWJ.

### **Question 4**

Yes, a Reference Unbundling Offer should be required of CWJ.

### **Question 5**

Yes to all although the OUR should consider one time charges for some of the LLU services as opposed to annual or monthly. There also should be an establishment of LLU as an "al a carte" offering with no bundling of LLU's; providers should be able to pick and choose individual LLU based on requirements.

### **Question 6**

The OUR should avail itself of other documents/regulations and procedures in regards to LLU unbundling to assure itself that all areas are covered.

The guiding principle for wholesale inputs should be that they are as simple as possible and stripped back to the basic commodity. The basic input facilitates the greatest degree of downstream innovation, as the downstream operator is not constrained by the service characteristics of the wholesale access input. All operators, including CWJ's downstream operations, should purchase the basic unbundled copper/fiber. This provides a simple input, which can then form the basis for differentiated services sold both at the wholesale and retail level.

It follows that all competitors should be offered the same price for the regulated access network product. For example, if it is the same LLU product, the same basic commodity input, then it would be absurd for there to be any debate about price.

### **Question 7**

No, we do not believe that initially the OUR should specify the contents of the SLA/SLG for LLU services. We believe these should be negotiations between the operator and CWJ. Each operator potentially has different requirements that may make these agreements difficult to "boilerplate." Flexibility should be given to the operator and CWJ. However, the OUR should position itself as an arbitrator if the parties cannot reach a reasonable agreement. However, requiring CWJ to contract for basic wholesale inputs using the same processes and systems will place all operators on a more equal footing, removing this unfair advantage that CWJ can gain through discrimination. On the same processes it will be far more straightforward to measure whether CWJ does receive preferential treatment. LLU would need to deliver clear SLA's for the delivery dates and other key performance criteria. It would also need to deliver key performance indicators (KPI), so that we could measure that the effective SLA's that CWJ provides to itself and to competitors are the same. Without these, CWJ would be able to offer pricing and delivery certainty to its own end customers while preventing its competitors from doing so. A unified contracting service for all operators would be consistent with the principle of equivalence.

### **Question 8**

I am not sure I understand this question. However, assuming that CWJ has the same capacity to sell any customer, then cost should be spread across all lines. It must be taken into consideration that not all geographical areas have access to broadband and narrowband. In some areas, the competitors will be deploying network facilities to the Main Distribution Frame (MDF) to "collect" the LLU customers. Here then it appears that the bottleneck extends only as far as the MDF. By contrast, in some rural areas, it may not be viable to deploy network to the MDF and instead it will be necessary for the operators to connect with CWJ's access network at a switching point. Here, it would appear that the access monopoly includes the backhaul and the first switching point. It is key to understand if narrowband and broadband are provided over different networks or the same network and the extent the access monopoly differs if there are two networks.

### **Question 9**

While CWJ continues to have access over the bottleneck and remains vertically integrated, it will always have an incentive to discriminate in favor of its own businesses.

An important part of a transparency model is a means of monitoring CWJ'S performance in the provision of access services (as well as other monopoly services).

While the OUR has a pending regulatory accounting separation determination before it, it is inadequate to the task of monitoring for discrimination. Depending on the level of separation required, it may be impossible to fully understand allocation of common costs and potential cross subsidies between competitive and non-competitive services.

An operational separation, however, would go a step further in requiring CWJ to be re-organized such that its monopoly businesses were operated separately from its downstream business. It would have its own profit and loss account and balance sheet. What we would have is separate CWJ divisions actually transacting with each other using the same processes that are used with competitors. Experience with other jurisdictions, shows that it is possible to split the lines of business and has been proven successful in the US, Canada, et al. It allows the regulator and competitors the ability to assure that equal treatment is being provided to all.