



**Digicel's comments on FLOW's Response**

**to**

**The Office of Utilities Regulation Consultation Document  
on**

**Update of the Fixed Cost Model and Assessment of Fixed  
Infrastructure Sharing Costs – Principles and Methodology**

March 5, 2020

## **OFFICIAL STATEMENT**

We thank The Office of Utilities Regulation for providing this opportunity for Digicel to comment on Flow's response to the recent Consultation Document on the Update of the Fixed Cost Model and Assessment of Fixed Infrastructure Sharing Costs – Principles and Methodology. Digicel is, of course, available and would be happy to discuss our submission further.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the Consultation Document or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part nor does any position taken by Digicel in this document represent a waiver or concession of any kind of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to:

Digicel (Jamaica) Limited  
Andrew Foreman  
Legal and Regulatory Director  
14 Ocean Boulevard  
Kingston, Jamaica  
Fax: +1 (876) 922-7666  
Tel: +1 (876) 864-1420  
Email: [Andrew.foreman@digicelgroup.com](mailto:Andrew.foreman@digicelgroup.com)

## **Preliminary Comments**

Digicel notes that Flow's response deals with matters which were not the subject of the Consultation Document. Specifically, Flow raises a number of concerns including assertions that the draft Infrastructure Sharing Rules anticipate an ex-post approach to costing and characterising the OUR's activity in developing a cost model as an ex-ante intervention.

Digicel believes that this fundamentally mis-states the situation. While the draft Infrastructure Sharing Rules may provide that the OUR would only intervene to set a price after a dispute has arisen, this does not preclude the OUR having developed a methodology for setting a price in advance of such a dispute arising.

Given the time required to develop cost models it is prudent that the OUR develops such models in advance of the actual need as they are remedies for a market failure and delays in deploying them once the need arises ultimately results in consumer welfare deficits.

This approach reduces the scope for disputes arising as market players have certainty and clarity as to the approach that will be adopted by the OUR in determining price and provides incentives to Licensees to arrive at commercially agreed terms within the likely range that the OUR would determine. If no disputes arise after the development of a model, this is likely to be a direct consequence of the existence of the model.

Flow queries why a mobile model should not also be developed. Digicel notes that the market for mobile infrastructure sharing is fundamentally different to that for fixed. There is a wholesale only provider of mobile infrastructure active in the market in Jamaica. Further there is a history of mutual sharing between mobile operators on commercially agreed terms. Digicel believes that it is within the margin of discretion of the OUR as an expert regulator to identify that there is a greater need for the development of a model for the sharing of fixed infrastructure and to proceed on that basis.

## **Comments on Flow's responses regarding the update of the Fixed Cost Model**

Flow in general supports the continuation of the approach previously adopted by the OUR in respect of the Fixed Cost Model. Given the relatively recent status of the Fixed Cost Model, Digicel also agrees that a continuation of the previous approach is broadly appropriate at this time.

**Comments on FLOW’S RESPONSE TO OUR QUESTION 4: WITH RESPECT TO INFRASTRUCTURE SHARING, “DO YOU AGREE WITH THE DECISION OF COVERING THE PERIOD 2018-2025**

Digicel notes that Flow disagrees with the proposed timescale as it believes that “the costing should be limited to the specific infrastructure that is under negotiation, not conducted speculatively on facilities that may or may not come under dispute at some point in the future.”

For the reasons outlined above Digicel does not agree with this position. It is entirely reasonable for the OUR to develop a cost model in anticipation of its need. From a practical point of view, there are limited categories of infrastructure which can be shared and a model which can flexibly deal with these is reasonably straightforward to develop. Given that the technology underpinning infrastructure does not change rapidly, a 7 year modelling period is not unreasonable.

**Comments on FLOW’S RESPONSE TO OUR QUESTION 5: WITH RESPECT TO INFRASTRUCTURE SHARING, “DO YOU AGREE WITH THE OUR THAT THE FIXED INFRASTRUCTURE SHARING COST MODEL SHOULD CONSIDER A REFERENCE OPERATOR BASED ON THE COMBINATION OF FLOW AND COLUMBUS?”**

Digicel notes that FLOW opines that establishing a “reference operator” cost list is not only inappropriate but also likely to be misleading.

It is Digicel’s view that disputes in respect of one-off or very limited amounts of infrastructure are likely to be better dealt with on a case by case basis. However Digicel disagrees with Flow and believes that it is appropriate to establish a model and costs based on a “reference operator” to resolve infrastructure sharing disputes which are wider in scope. The nature of infrastructure sharing is that these are long term arrangements that allow for the extent of the shared network footprint to be varied over time. Reference operator pricing gives market certainty and provides incentives for efficiency over time

**Comments on FLOW’S RESPONSE TO OUR QUESTION 6: WITH RESPECT TO INFRASTRUCTURE SHARING, “DO YOU AGREE WITH THE PROPOSED DATA SOURCES TO BE USED FOR THE FIXED INFRASTRUCTURE SHARING MODEL?”**

Digicel notes that Flow agrees believes that the OUR’s proposed data sources are reasonable and concurs with this conclusion.

**Comments on FLOW’S RESPONSE TO OUR QUESTION 7: WITH RESPECT TO INFRASTRUCTURE SHARING, “DO YOU AGREE THAT NETWORK CAPEX INCLUDED IN THE FIXED INFRASTRUCTURE**

**SHARING MODEL SHOULD INCLUDE COSTS OF DEPLOYMENT, INSTALLATION AND OTHER ONE-OFF FEES?"**

Digicel notes that Flow agrees that the OUR's proposed approach to Network CapEx is reasonable and concurs with this conclusion.

**Comments on FLOW'S RESPONSE TO OUR QUESTION 8: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT NETWORK OPEX SHOULD BE INCLUDED IN THE INFRASTRUCTURE SHARING MODEL AS THE ABSOLUTE YEARLY UNIT OPEX (OR PERCENTAGE OVER UNIT CAPEX) FOR EACH NETWORK ELEMENT?"**

Digicel notes that Flow agrees that the OUR's proposed approach to Network OpEx is reasonable and concurs with that conclusion.

**Comments on FLOW'S RESPONSE TO OUR QUESTION 9: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT G&A EXPENSES SHOULD BE INCLUDED IN THE INFRASTRUCTURE SHARING MODEL?"**

Digicel notes that Flow agrees that the OUR's proposed inclusion of G&A expenses is reasonable and concurs with that conclusion.

**Comments on FLOW'S RESPONSE TO OUR QUESTION 10: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE USE OF THE WEIGHTED AVERAGE COST OF CAPITAL (WACC) FOR THE CALCULATION OF THE REASONABLE RATE OF RETURN ON THE CAPITAL OF THE OPERATOR?"**

Digicel notes that Flow agrees that the OUR's proposed use of WACC for the calculation of the rate of return on the capital of the operator is reasonable and concurs with that conclusion.

**Comments on FLOW'S RESPONSE TO OUR QUESTION 11: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE OUR'S VIEW THAT THE MODEL SHOULD UTILIZE THE ABSOLUTE VALUATION METHODOLOGY IN ITS EVALUATION OF ASSETS ON A CURRENT COST ACCOUNTING (CCA) BASIS?"**

Digicel notes that Flow believes that the use of Current Cost Accounting for the evaluation of assets is reasonable. Digicel disagrees with this position. Infrastructure assets have long asset lives and are unlikely to be replaced or renewed over the duration of the sharing agreement. The

nature of sharing means that the asset involved is likely to have been in place for some time and will have been depreciated. Unlike active elements of the network the unit costs of infrastructure elements tend to rise over time so a price based on CCA is likely to provide the infrastructure provider with windfall profits.

Given that the context of the cost modelling is a finding of dominance these windfall profits would allow the infrastructure provider to leverage its dominance into downstream markets.

For these reasons Digicel believes that HCA is the more appropriate cost standard

**Comments on FLOW'S RESPONSE TO OUR QUESTION 12: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE PROPOSED LIST OF IMPLEMENTATION AND TESTING SERVICES FOR THE FIXED INFRASTRUCTURE SHARING MODEL?" 1**

Digicel notes that Flow believes that the OUR's proposed the inclusion of implementation and testing services would be reasonable and concurs with this conclusion.

**XV. FLOW'S RESPONSE TO OUR QUESTION 13: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE WITH THE PROPOSED LIST OF RENTAL SERVICES FOR THE FIXED INFRASTRUCTURE SHARING MODEL?"**

Digicel notes that Flow believes that that OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree prices and raise a dispute with the OUR. Furthermore it believes that the costing should be relevant to the infrastructure sharing under negotiation, not conducted speculatively for facilities which may or may not be under dispute. Flow does not agree that there should be any pre-specified list of services for cost modelling.

Digicel disagrees with Flow's position as outlined previously there are limited variants of fixed infrastructure sharing and the advance modelling by the OUR of the cost of these variants creates market certainty, reduces the scope for disputes and shortens the timelines for dispute resolution should disputes arise.

**Comments on FLOW'S RESPONSE TO OUR QUESTION 14: WITH RESPECT TO INFRASTRUCTURE SHARING, "DO YOU AGREE THAT NO ADDITIONAL ANCILLARY SERVICE SHOULD BE CONSIDERED IN THE INFRASTRUCTURE SHARING MODEL?"**

Digicel notes that Flow believes that that OUR sponsored costing should be conducted only if and when the negotiating parties cannot agree prices and raise a dispute with the OUR. Furthermore Flow believes that the costing should be relevant to the infrastructure sharing under negotiation,

not conducted speculatively for facilities which may or may not be under dispute. Flow therefore takes the view that the determination of additional ancillary services should be taken for the given case at hand and not excluded ex-ante.

Digicel disagrees with Flow's position, as outlined previously there are limited variants of fixed infrastructure sharing and the advance modelling by the OUR of the cost of these variants creates market certainty, reduces the scope for disputes and shortens the timelines for dispute resolution should disputes arise.

To the extent that likely ancillary services can be identified these should be included in the cost modelling exercise.

-----