



# **CACU Response to OUR NPRM Infrastructure Sharing**

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Office of Utilities Regulation  
3rd Floor, PCJ Resource Centre  
36 Trafalgar Road  
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JAMAICA  
Attention : Infrastructure Sharing Consultation

The Consumer Advisory Committee on Utilities (CACU) thanks the Office of Utilities Regulation (OUR) for the opportunity to participate in the consultative process on the Notice of Proposed Rulemaking for Infrastructure Sharing for the Telecommunications sector.

In that regard, please find attached the CACU's response to the Consultation Document on the subject.

We look forward to further discourse on this important matter.

Regards.



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Consumer Advisory Committee on Utilities (CACU)

## Chapter 3: Modalities of Infrastructure Sharing

### CHAPTER 3 – QUESTIONS:

1. Do you agree with the definition of passive and active infrastructure outlined above? If not, please provide alternative definitions.

- Yes, these definitions are acceptable.

2. Are there any other infrastructure (passive and active) that you consider essential for sharing?

- No. We believe the document comprehensively covers the key areas of infrastructure sharing for the provision of telecom services in Jamaica.

3. Given the various forms of passive infrastructure sharing described above, which ones do you think are most suitable for Jamaica? Please provide reasons for your choice.

- We believe the following are most suitable for Jamaica:
  - Site sharing
  - Mast/Tower sharing
  - Trench/duct/ pole sharing
- The sharing of these physical elements has been practiced by current mobile operators which demonstrate that it works in our environment. We would state further that *site combined with mast sharing* is the ideal scenario for Jamaica. However a lot has been invested in triangle based towers while square towers would be more suitable for sharing. With the square based tower you would have a greater area to place multiple antennas in the same orientation (loading considered)

4. Are there any other forms of passive sharing that are possible between operators? If yes, please provide details.

<sup>1</sup>Joint network rollout (see footnote) in rural areas that may not be financially feasible for a single operator to build out. This could include site acquisition, construction and mast sharing. Operators could decide on whether to share active elements such as the base station and antennas.

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<sup>1</sup> <https://ai2-s2-pdfs.s3.amazonaws.com/6abf/f98c50d7e7088580660e2766890d471927e1.pdf>

5. In your opinion, should sharing of the core network be allowed? Give reasons for your answer.

- No, not at this time. This arrangement requires a strong regulatory framework along with an efficient supporting judicial system<sup>2</sup>. As the required regulatory framework does not currently exist and will take some time to develop, such an arrangement cannot be instituted in the short to medium term. While it is in the realm of future, long term possibilities, our regulatory system is not mature enough neither does it have the capacity to manage this associated risks.
- The Core network has confidential information concerning the operators business and opens the possibilities of anti-competitive behaviour if shared. Our current marketing environment is not conducive to such an arrangement.
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6. Given the various modes of active infrastructure sharing described above, which ones do you think are most suitable for Jamaica? Please provide reasons for your choice.

- We believe the following are most suitable for Jamaica
  - RAN
  - Backhaul transmission
  - National network roaming
  - MVNO
- These options will promote speedy rollout of new entrants. The national radio access network (RAN) is widely deployed providing easy ready access to new customers who fall within these coverage areas. This is also ideal for underserved and un-served areas of the country since they result in cost savings for the participating providers who can then quickly establish a network without intensive capital outlay.

7. Are there any other forms of active sharing that are possible between operators? If yes, please provide details.

- None that we can think of. We believe the paper comprehensively covers this area.

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<sup>2</sup> <https://ai2-s2-pdfs.s3.amazonaws.com/6abf/f98c50d7e7088580660e2766890d471927e1.pdf>

8. What in your view accounts for the failure to attract the entry of MVNOs into the Jamaican market? Is the mandating of active infrastructure sharing a prerequisite for the emergence of MVNOs? Do you consider MVNOs as a viable option in the Jamaican market?

- The proper regulations are not in place to sustain them<sup>3</sup>. A few had actually existed in Jamaica up to 2007 (MegaPhone, People's telecom, Worldphone)<sup>4</sup>. However the regulatory framework will need to be established to retain them as it would be difficult for potential entrants to operate in an environment of regulatory uncertainty
- It does not seem to be economically feasible for them to operate given the disposable income within the economy.
- We do not believe that the mandating of active infrastructure is a prerequisite for the emergence of MVNO's. The cost of setting up a core IP network has fallen over time and is much easier and faster to establish. Therefore it may not be necessary for a new entrant to piggyback on an existing operator for this service.

9. Please provide examples of how active and passive infrastructure is being shared in Jamaica.

- We are not aware of current active infrastructure sharing
- Passive infrastructure sharing in the form of tower sharing is currently practiced between Digicel and LIME/FLOW this is largely reciprocal .

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<sup>3</sup> <http://www.bnamericas.com/en/news/telecommunications/caribbean-roundup-jamaican-mvnos-st-lucia-broadband-indotel>

<sup>4</sup> <http://mythoughtsontechnologyandjamaica.blogspot.com/2015/07/MVNO-Licenses-Telecom-Providers-benefit.html>

## Chapter 4: Benefits and Challenges of Infrastructure Sharing

### CHAPTER 4 – QUESTIONS:

1. Do you agree that infrastructure sharing will encourage faster deployment of broadband networks throughout Jamaica? If not, please provide the reason(s) for your answer.

- No we do not agree. While infrastructure sharing can result in faster deployment of the physical network ( specifically passive infrastructure sharing among existing industry players), the broadband network also needs bandwidth which may be limited or costly to acquire.

2. In your opinion, how do you think infrastructure sharing will encourage service based competition?

- Given the level of maturity of the Jamaican market, which we believe is somewhat mature, infrastructure sharing should make for a better business case for operators to extend their footprint in the market. Given our level of maturity, reciprocal sharing may be more suited for this. Existing operators may be able to fill service gaps or offer niche services where they may not have the advantage of full coverage when sharing with another provider.

3. Do you feel infrastructure sharing will give rise any competition concerns among the operators? If yes, please identify the concerns and suggest how they should be addressed so as to ensure that there will not be any adverse impact on consumers' benefits regarding choice of service providers, availability of services, service variety, QoS and pricing.

- Yes, we feel that there will be some competition concerns especially in the areas of coverage (existing or non-existing) and coverage quality (good or poor).
- Where service provider A has coverage that service provider B does not and infrastructure sharing is mandated/allowed so that B now has coverage. Then service provider B can underprice A (for example) to get customers to switch, made easier now with number portability. To address this concern, an anti-competitive clause could be included in infrastructure sharing agreements **where** the infrastructure sharing will result in the seeker having a **new** service footprint along with the provider.
- Another strategy that could be used by a seeker is to get the results of an independent market survey which demonstrate consumers demanding their service or the improvement of service. These results should be a part of the seekers request to the provider for wanting to share. This will govern the nature of the sharing and clarify the objective of same.
  - See report by International Competition Network  
<http://www.internationalcompetitionnetwork.org/uploads/library/doc384.pdf>



4. Should the sharing of active infrastructure beyond Level 4 in Figure 4-4 above be allowed? Provide reasons for your response.

- It should be allowed if the service providers are initiating this between themselves, it should not be mandated. The regulatory environment should ensure that there is no collusion where sharing parties inflate their prices to the consumer or engage in other behaviors that will be detrimental to the consumer.
- If our regulatory and judiciary bodies are not sufficiently equipped to handle sharing below level 4, it should not be allowed at this time.

## Chapter 5 : Regulatory Options and Trends

### CHAPTER 5 – QUESTIONS:

1. What measures could be introduced to incentivize network operators to voluntarily provide access to their infrastructure?

1. The provider can claim a refund on taxes paid for the equipment that is being shared. Alternatively, consideration may be given to the appropriateness of including such matters in the Governments Fiscal Incentives Framework (Omni-Bus legislation). It could be explored whether productive input relief may be attached to shared infrastructure equipment that are imported.
2. The industry could be given a lowered tax rate for certain infrastructure, mainly towers. This would make the cost of sharing that particular infrastructure, low, in relative terms.

2. Are there particular telecommunications infrastructure in Jamaica for which you think sharing should be mandated? Please provide reasons for your answer.

- Yes, towers. For environmental, health and aesthetic reasons, there are a number of areas where towers are literally next to each other where it is clearly more practical to have just one.

3. Do you believe that requiring all operators to provide information to enable OUR to compile a detailed inventory of the nature, location and capacity of Jamaica's telecommunications infrastructure is necessary, or should the information only be required from operators on which sharing obligations have been imposed?

- No we do not believe this is necessary. We do not believe it should be required from operators on which sharing obligations have been imposed. Seekers should do their engineering/groundwork and where they encounter a facility that they would like to share, they should initiate the request and follow through as the process stipulates. With this, the OUR will build up a database over time.

## Chapter 6 : Infrastructure Sharing in Jamaica

### CHAPTER 6 – QUESTION:

1. What are the main bottlenecks (practical, behavioural, administrative, technical or legal) that operators wishing to deploy high-speed communication networks have been confronted with when attempting to access existing telecommunications infrastructure in Jamaica?

- While the CACU is not in the position to definitively state the main bottlenecks, we would like to suggest the following, based on the collective experience of our committee members:
  - The lack of bandwidth in current networks. The backhaul was not built for the current speeds being demanded hence they are under-dimensioned.
  - The availability of fibre, more needs to be rolled out
  - IP availability, more is needed
  - There is a high cost to acquire additional spectrum licenses for the deployment of other networks
  - The length of time taken to get planning approval

## Chapter 7: Framework for Infrastructure Sharing in Jamaica

### CHAPTER 7 – QUESTIONS:

1. Do you agree with the basic infrastructure sharing principles outlined in Section 7.2?

- Regarding item 1: It should be clear why specific rules will apply only to certain Licensees
- Regarding item 2: It is not clear how a telecom provider has an infrastructure that it does not make available to itself (and therefore by extension, not available to others)
- Regarding item 3: We agree
- Regarding item 4: This is fine as long as we can guard against subterfuge
- Regarding item 5: We agree especially using independent verification such as the Professional Engineers Registration Board (PERB) or the Jamaica Institution of Engineers (JIE)
- Regarding items 6, 7, 8 : We agree
- Regarding item 9 ; Providers should collectively agree on a time that the OUR can then accept as the standard
- Regarding item 10: This seems reasonable
- Regarding item 11: We propose the use of templates
- Regarding item 12 : The Dispute Resolution Foundation may also be considered through it Court, Corporate & Commercial Mediation & Arbitration Services Division.
- Regarding item 12 : We do not agree that this is necessary. The OUR should maintain the focus on regulating.

2. Do you agree with the proposed factors to be taken into account by OUR in considering when to impose an infrastructure sharing obligation on a Licensee? Should you disagree, kindly provide a detailed explanation for your views and suggest additional or alternative factors.

- Under Matters relating to the public health; we believe that where a permit has been refused, it should be incumbent on the seeker to propose the alternative sharing option and make said request following the process. The OUR should be guided by the decisions of the relevant authorities. For the OUR to make the suggestions it would put them in the remit of ICT Engineers rather than regulator. If sharing has been refused, it has to be given that there is a valid reason for this refusal, otherwise the provider could be mandated to share. Taking on a consultative role with relevant authorities introduces unneeded bureaucracy.
- Under Economic Inefficiencies, we believe that given the right incentives providers will be motivated to share. We believe that unnecessary bureaucracy is introduced for a provider to justify why an infrastructure should not be shared. If a request is made for sharing it is sufficient for the provider to give a valid reason why it should not be shared. Alternatively we support the rationale of the OUR mandating a dominant player to share on the basis that, that dominant player already controls the infrastructure and a new operator would have difficulties deploying new infrastructure. Such a mandate would reduce barriers to entry and make it easier for new players to enter the market which would ultimately be beneficial to consumers.

3. Do you agree with the considerations outlined by the OUR for assessing physical and technical impracticability? If you disagree, please suggest alternative principles which OUR should consider.

- We do not fully agree with the considerations under Physical or Technical Impracticability, the OUR should ensure that it is not taking on the role of ICT Engineer by mandating sharing based on technical feasibility. An independent engineer should be asked to make a recommendation based on technical feasibility. In that regard the OUR should not put itself in the position to render a decision made on technical feasibility.
- The areas that are considered under “issues for the OUR’s consideration” should form the written justification from the seeker.
- We believe that it is outside of the remit of the OUR to rule on Physical and Technical considerations. NEPA and Town planning should be asked to make the determination for physical (im)practicability while technical determination should be made by an independent engineer (PERB or JIE)



4. Do you agree with OUR's proposed costing principles for the setting infrastructure sharing charges? If you disagree, please suggest alternative principles which OUR should consider.

- There are areas that we disagree with.
- Regarding the unbundling of costs allowance should be made where this may not be practical and so an apportioning may have to be accepted.
- Regarding the following statement • ***Infrastructure sharing charges shall not include compensation for loss of business as a result of providing infrastructure sharing services to the Infrastructure Seeker.*** This seems counterintuitive as sharing is being promoted for, among other things, cost saving hence increased profit for a provider. The opportunity cost in lost business may reduce the motivation to share.

5. Do you agree with OUR's proposal on the costing methodology for determining charges for infrastructure sharing? If you disagree, please suggest an alternative method of cost allocation along with evidence to support the same.

- Yes. We agree with cost-based price setting.