



**Telecommunications Policy
Reform in Jamaica**

**Recommendations
from the**

**Jamaica Telecommunications
Advisory Council**

to the

**Minister of Industry,
Commerce and Technology**

July 2002

**Report submitted by
The Jamaica Telecommunications
Advisory Council**

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Telecommunications Policy Reform
Recommendations from the Telecommunications Advisory Council to the
Minister of Industry, Commerce and Technology

I General

The following are key areas of focus which the Jamaica Telecommunications Advisory Council (JTAC) would like to bring to the attention of the Minister. The recommendations in this document are intended to be read in association with the report by the consultants, commissioned by the Council.

II Recommendations

1.0 Re-negotiation of Legal Constraint contained in the 1999 C&W/GOJ Agreement

The Minister's attention is drawn to the consultant's final report and to the recommendation on page 73 of the main document which refers to certain provisions of the 1999 Heads of Agreement between the Government of Jamaica and Cable and Wireless which could have significant effect on some of the other recommendations made below.

Accordingly, the Council recommends that the 1999 Agreement between the Government and Cable and Wireless Jamaica Limited should be re-negotiated with a view to removing possible limitations on the policy reform process through to 2006. See consultant's report, Executive Summary, page 23.

2.0 Pre-Qualification and Expressions of Interest

Several interested companies are currently contemplating investment and business decisions which would enable them to begin operations on March 1, 2003. It is recognized by the Council that no licences can be granted ahead of that date. However, the need to conduct the necessary preparatory and consultative work has been raised as a valid issue for consideration.

In order to advance the preparation of interested investors and existing stakeholders, it is being recommended that the Government invites early Expressions of Interest in respect of Phase 3 licensing for businesses wishing to engage in their own (or the incumbent's) gateway for international telecommunications.

To this end, such Expressions of Interest should be invited no later than September 2002. Formal submission of applications for licences would follow shortly thereafter for qualified bidders.

Companies expressing an interest should as far as possible be provided with detailed information on the formal application and licensing procedures for Phase 3. In addition, a process of pre-qualification for the grant of licences should be devised such that potentially successful applicants may begin preparations for entry into the market. This pre-qualification process is aimed at providing assurances to serious investors that their future legal status in terms of licensing would not be in doubt. This facility would be extended to both applicants intending to utilize the services of Cable and Wireless, as well as those seeking to establish their own gateway arrangements for international service delivery.

While the legal arrangements subsisting with Cable and Wireless up to March 1, 2003 continue to be respected, these arrangements are intended to enable both the incumbent operator, other companies and policy-makers to have an opportunity to realistically make plans ahead of the deadline date (see letter from one company at Appendix 2).

3.0 Licences under Phase 3

It is the view of the Council that there should be no restriction on the number of licences which could be considered for issue in Phase 3.

The regulatory body should determine a scale of fees for such applications.

The regulatory body should also be empowered to take action leading to the revocation of licences, in cases where licensees have not commenced operations after 12 months of the date of the granting of such licences.

4.0 Telecommunications Act, 2000

The preferred course of action of the Council would be repeal of the Telecommunications Act, 2000 and its replacement by new legislation incorporating elements from the existing Act, as well as from the Broadcasting and Radio Rediffusion Act and the Radio and Telegraph Control Act.

While this remains an important objective, in light of the limited time to the start of Phase 3, an interim course of action in preparation for March 1, 2003 could be radical amendment of the Telecommunications Act, 2000.

If, on examination of this proposal, the legal specialists recommend a complete re-write of the Telecommunications Act, then that option should be taken.

4.1 Suggested Areas for Amendment

Consequent to the recommendations, various amendments to the Telecommunications Act are being proposed by the Council. The sections of the Telecommunications Act that should be amended are indicated in Appendix 1, attached.

Recommendations for amendment of the Telecommunications Act are further highlighted in the consultant's report from pages 130 – 133.

4.2 Drafting Arrangements

Amendments to the Act, as recommended in the Council's report, would be a parallel and ongoing activity, complementing other non-legislative work that will be required in preparation for Phase 3.

The objective is to complete the re-draft by December 2002, for tabling in Parliament no later than January 2003.

The re-draft would create the Telecommunications (Amendment) Act, 2003.

5.0 Institutional Arrangements around Regulation

In order to ensure a clear flow of information and to enlist the support of all affected agencies/stakeholders within the Government Service, a policy-briefing session should be convened as soon as government policy decisions have been taken, this being no later than August 2002.

5.1 Single Regulatory Body

There are areas of regulatory fragmentation within the industry. Consistent with the recommendation of the consultants, the Council sees the Telecommunications Division of the OUR, the Broadcasting Commission and the Spectrum Management Authority as entities that could be brought together under a single regulatory body in order to achieve greater efficiency in service delivery. A relevant policy

document from the Broadcasting Commission is known to be before Government. Consultation with entities in the Broadcasting and Subscriber Television sector, as well as with the Office of the Prime Minister under whose portfolio the Broadcasting Commission falls, would be a pre-requisite for this proposed re-structuring.

The Fair Trading Commission (FTC), with a wider remit, would continue to remain separate from this converged entity.

Phase 1 - Relevant Agencies would be put on notice that within 18 months of a specified date, their services and institutional structures in part or whole, would be merged. During the initial part of this period, an external specialist in organizational re-structuring would be contracted to recommend the most effective methods, procedures and structures for merger, leading to the viable operation of a single regulatory agency for all telecommunications, broadcasting and IT services operated into, within and out of Jamaica.

Phase 2 - Implementation of the recommended arrangements for merger, under the direct supervision of a Minister to be designated by Cabinet. The re-structuring could possibly take place in association with the Public Sector Modernization Programme. Launch and establishment of the new (converged) entity.

Elements of the Council's recommendation on this matter vary from scenarios presented in the consultant's final report which suggested that non-telecommunications OUR activities (water, electricity etc.) should be retained in the converged entity. While this option could be explored as part of the proposed re-structuring implementation study, the Council's recommendation is for the creation of a Telecoms, Broadcasting and IT specific regulatory body).

Numerous legislative changes to the relevant Acts would also arise from this necessary re-organisation of the industry's regulation. The justification for this restructuring is discussed starting at page 100 in the consultant's report.

The timetable, as specified in the consultant's final report, would see transition to a new single regulator by March 2004 (page 21 of the Executive Summary). The respective entities, as such, would continue to function in their independent roles in the run-up to full demonopolisation of the industry.

In forming the converged entity, account must also be taken of the relationship which still exists between the Spectrum Management Authority and the Post and Telecommunications Department. The revised Telecommunications Act should speak to the Post and Telegraph Act in relation to the work of the SMA (see comments from the SMA at Appendix 2).

It is expected that the regulatory authority would report to Parliament through a designated Minister.

5.2 FTC/OUR Relationship

Further to Section 2.5 Clause C of the FTC's feedback on the consultant's preliminary report, all competition rules governing the sector – telecommunications, broadcasting and information technology – should also be encoded within the Fair Competition Act. See comments from the FTC at Appendix 2.

There has been a lack of clarity around referrals/determination of fair competition issues as between the FTC and the OUR. It is being recommended that all matters, which on the face of it appear to be competition issues, should be referred in the first instance to the FTC for determination. (If the FTC considers the matter to be other than a competition issue, it should refer the matter to the OUR. Similarly, competition issues referred to the OUR in the first instance should be re-directed to the FTC, if in the judgement of the OUR it is in fact a competition matter.)

The new regulatory body, in conjunction with the Fair Trading Commission, must monitor the sector to ensure the prohibition of business mergers and acquisitions that could lessen the effect of competition in the domestic market.

Unlike with referrals to the OUR which have recourse to the Telecommunications Appeals Tribunal, appeals to the FTC's decisions would be directed only to the Court.

Consistent with feedback from the Public Consultation held on June 10, 2002, the FTC should be required to upgrade its technical capacity in this area.

6.0 Recommended Role of the Minister

During the process of transition, the Minister would continue to exercise the authority given to him in accordance with the Telecommunications Act, 2000.

Under the proposed amended Act, the Minister would have the authority to:

- (a) appoint the Chairman and members of the Telecommunications Appeals Tribunal.
- (b) appoint the Chairman and members of the Telecommunications Advisory Council.
- (c) through Parliament, nominate the Director of the single regulatory authority.
- (d) through Parliament, give policy directives to the regulator to direct the industry.

Under the proposed new arrangements, the Minister would:

- (a) relinquish the granting of all licenses to the new single regulatory body on clearly defined terms.
- (b) relinquish his reporting relationship with the Spectrum Management Authority.
- (c) relinquish determination of matters relating to the Universal Access (Service) Fund to the converged single regulatory body.

7.0 Advisory and Appeals Bodies

7.1 Telecommunications Advisory Council

The revised Telecommunications Act should retain provisions relating to the Jamaica Telecommunications Advisory Council. The Act must, however, state the source of administrative and financial support for the operation of the Council.

JTAC should, nevertheless, be seen as a transitional body (in the absence of resources and personnel in MICT to do that work) and subsequent Councils should be appointed for a period not exceeding 3 years. The continued existence of the Council as a body should be reviewed by the Minister within 2-3 years time.

In 3-5 years, it is expected that the role currently performed by the Council would be taken up by:

- (a) an internal Research and Advisory Unit within the Ministry of Industry, Commerce and Technology; and by
- (b) a voluntary association of operating companies and other industry players.

During its existence, JTAC will continue to be the government entity with the mandate to conduct surveys to see how telecommunications facilities in service areas are utilized.

One of the roles of the Advisory Council to recommend to the Minister a nominee to the Telecommunications Appeals Tribunal would eventually be assumed by the proposed voluntary industry trade/association or grouping.

7.2 Telecommunications Appeals Tribunal

The revised Telecommunications Act should retain provisions relating to the Telecommunications Appeals Tribunal. The Act must, however, state the source of administrative and financial support for the operation of the Tribunal.

The Appeals Tribunal should be treated as a permanent body, which will meet to hear cases, as and when necessary. (In future, its work will not necessarily relate to the OUR as it is now, but rather to the regulatory body that will perform the function that the OUR currently has in relation to telecommunications operating companies.)

The Act should also require the Appeals Tribunal to determine matters within a reasonable period of time.

8.0 Universal Service/Universal Access

8.1 Universal Access

The traditional concept of universal service needs to be revised with an emphasis on universal access. By universal access, the Council refers to the extension of the network and facilities to within reach of all persons in the service area. In terms of access, the emphasis is not on access to wired telephone service by all households, but rather on contact with the network in a meaningful way – being able to use the service whether it is in your household or not. The principle (discussed later) of the non-separation of voice and data services would apply in this area of policy as well.

Where access is through wireless service, the Minister might wish to consider differential rates for this service.

The relevant provision in the Telecommunications Act should speak to universal access, as opposed to universal service. The main elements of universal access include:

- (a) Physical build-out of the network to cover unserved/underserved areas in both rural (remote) and urban (inner city) areas.
- (b) Ability to utilize the network (knowledge/expertise to use the network effectively).
- (c) Affordability of the network.
- (d) Access to the emergency services, eg. Fire Brigade, Police, Air Sea Rescue etc. (toll-free calls).
- (e) Access to the network by persons with disabilities.
- (f) Access to public telephones and call boxes (including service delivery via (including pre-paid card, credit card and coin phones).

In terms of universal access, the Council sees a mix of service provision as set out in Section 39 of the Telecommunications Act, with the exception of the specific reference to “voice” in terms of basic telephony.

It should also be recognized also that the traditional computation of tele-density and the corresponding requirement of universal access have been affected by the introduction of mobile service (wireless extension of the network). However, as indicated below, there is more to universal access than availability of primarily voice service on the wired or wireless network.

8.2 Universal Access Fund

The Telecommunications Act speaks to a Universal Service Fund. The Council endorses provisions in the existing Act for the activation of such a fund, to be operated and managed by the OUR and later, by the successor regulatory body. However, the name of the fund should be changed to the “Universal Access Fund”.

The regulatory authority should be required to designate a special officer responsible for universal access services.

It is recommended that the fund would be financed through an adjustment of the price cap and on the basis of collection from all service providers at a rate not exceeding 5% of revenue. The percentage contribution and the future of the fund should be reviewed periodically by auditors appointed by the regulator, with annual reports through the regulator to Parliament.

Provisions relating to universal access could also be incorporated into the licensing process.

The Council is aware that the OUR is currently conducting a study relating to universal service. The outcome of this study could be used to inform the present policy reform process.

9.0 Service Level Standards

The Telecommunications Act should empower the regulatory body to promulgate minimum service level standards to be met by service providers as conditions of their operating licences.

The Act should oblige the regulatory body to consult with the industry and develop these minimum service level standards to cover the fundamental precepts of telecommunications operations, including but not limited to, service provision, connectivity and access, transmission quality, customer relations management, query and complaint resolution.

The Act should also oblige the regulatory body to engage in periodic consultations with service providers, international regulatory bodies and domestic and international industry associations to ensure that the standards being observed conform with generally accepted conventions and current industry practice.

The Act should also oblige the regulatory body to amend such standards, as and where appropriate, with the provision of a minimum lead time of six (6) months notification to operating companies prior to the coming into effect of any new/amended standard(s).

The Act should also empower the regulatory body to impose sanctions on service providers who breach minimum service level standards, ranging from refunds to customers, to fines and/or suspension or revocation of operating licences depending on the severity of the breach.

The Act should impose time limits on the regulatory body to act on and dispose of matters brought before it for adjudication, including but not limited to, licence applications, queries or complaints from consumers, and

queries or complaints from service providers. See pages 128 - 129 of the consultant's report.

10.0 Interconnection

Responsibility for the design and monitoring of all systems for interconnection and technical interworking should continue to be a matter of primary focus by the regulatory body, whose detailed recommendation on this matter regarding Phase 3 should be requested.

The revised Telecommunications Act should make clear what the expectations are of the mainline wired operating company, in the event that other service providers will need to rely on its facilities as the basis to provide their service (page 61 of the consultant's report).

The provisions should not be so narrowly drafted (to target C&W), however, as to preclude the possibility that at a future date companies may rely on another entity's facilities for such services.

11.0 VOIP and related Issues

The Telecommunications Act should be neutral on technology, including technologies employed for the purposes of transporting both voice and data.

In other words, the Act should not attempt to differentiate between transmissions designated specifically as voice or data, nor between transport methodologies, such as wired or wireless transmission or VOIP (pages 116 – 118 of the consultant's report).

The Act should provide for customer choice in exploiting available technologies to access telecommunications services, and at the most affordable rates, provided that doing so does not present a large-scale health or environmental hazard or does not compromise the technical standards for access and connectivity published by the service providers.

The Act should restrict the regulatory body (or any other authority) from designating any customer premises equipment as Prescribed Equipment, unless it is proven in a Court of Law that such equipment has been connected to a publicly accessed network and its connection to said network is technically prejudicial to the efficient operation of that network, or the continued use of such equipment presents a public health or environmental hazard.

The Act should also provide for severe sanctions to be applied where a Court of Law finds that a person or group of persons or body corporate is engaged in the on-selling of telecommunications transmission services and is not a licensed carrier (bypass).

12.0 Administration of a National Numbering Plan

The Telecommunications Act should empower the regulatory body to be the sole administrator of a national numbering plan for local telephony (page 129 of the consultant's report).

The Act should oblige the regulatory body to develop and promulgate standards for the utilization of numbering schemes and minimum take-up levels before applications will be approved for the issuing of new numbering schemes within the defined or prescribed exchange jurisdictions of applicants.

The Act should also empower the regulatory body to recall previously assigned number schemes from carriers in cases where there has been no service provision within the number scheme upon the expiration of a defined time limit from its assignment.

The Act should also empower the regulatory body to recall previously used number schemes from carriers in cases where the number scheme is no longer in use for service provision for a defined elapsed period.

The Act should also oblige the regulatory body to interact with the appropriate international bodies engaged in telephony management and switching to ensure that local numbering plans are known to the international telecommunications sector.

The Act should also empower the regulatory body to make a determination as to whether or not number portability between service providers is practically desirable and economically viable, and if so, to oblige service providers to facilitate this for their customers.

13.0 Human Resource Development

While considerable attention will have to be paid to the structural and technological factors, it is of crucial importance that the human resources element of industry planning should not be neglected.

It emerged in the Public Consultation, as well as in the report of the consultants, that there is a need for development of personnel, both in the

regulatory agencies and in the Ministries associated with ICT. See pages 70 – 71 and 106 – 107 of the consultant's report.

It is recommended that an organized programme of recruitment, training and staff development in regulation and technical services be embarked upon under the leadership of MICT/MIND, drawing on local public resources as well as resources available in relevant international agencies.

14.0 Development of the Cable Industry/ ISP Sector

Despite heightened expectations about the potential of the cable sector to develop into service providers for Internet and local telephony, these expectations have to date not been fulfilled.

The reasons relate to both an incompatibility between the narrow zoning arrangements in the delivery of cable services and the broader market requirements of ISPs and other voice and data services (pages 54 – 57 of the consultant's report). The low uptake also relates to the cost of providing the service, inadequate training of in-house personnel, preparation and the need for facilitation of the operating companies in the cable sector.

In these circumstances, it is recommended, in line with the proposals of the consultants that the industry promotion agency, JAMPRO, be tasked with responsibility to assist and upgrade this sector to perform its potential functions as an alternative wired network to the main incumbent wireline service provider.

15.0 Rate Rebalancing and proposed Access Deficit Charges

The issue of access deficit charges and its implications for universal service, price caps and rate rebalancing are currently under study by the OUR (page 66 of the consultant's report). The recommendations of the incumbent operating company, Cable and Wireless, are tabled as an appendix to this document for the Minister's consideration. See comments from Cable and Wireless at Appendix 2.

It is recommended that further consideration of this matter should be given, on the basis of the outcome these studies.

16.0 Implementation Task Force

Implementation of a range of recommendations would take place ahead of the proposed legislative amendments.

Bearing in mind that the JTAC is an advisory, and not an implementation body, the Council proposes that a specially designated Implementation Task Force should be established by the Minister as a matter of urgency to oversee readiness for Phase 3. Representatives could be drawn from MICT, the Attorney General's Department, the Office of the Chief Parliamentary Counsel and the Cabinet Office.

The operational details would be worked out by the Permanent Secretary of MICT, the Chairman of the Task Force and Task Force members.

17.0 Representation on Regional and International Telecommunications Bodies

The Council endorses the recommendations contained in paragraphs 27 - 30, at page 25 of the consultant's Executive Summary.

The Council endorses the continued leadership role in regional telecommunications reform by the MICT through bi-lateral co-operation and strengthening of the Caribbean Telecommunications Union (CTU) and other regional agencies. Internationally, Jamaica should move to strengthen both its own and the region's relationship with the International Telecommunications Union and UNESCO, particularly in light of the World Summit on the Information Society (WSIS) to be held in December 2003 under the aegis of the International Telecommunications Union (ITU) and UNESCO. It is vital that the MICT leads in the early establishment of a broad-based the local preparatory committee, for participation both in the summit itself and in the 2nd preparatory meeting to be held in Geneva in March 2003.

Signed on behalf of Jamaica Telecommunications Advisory Council by

Hopeton S Dunn Ph.D., Chairman

July 11, 2002

Appendix 1

Amendment of the Telecommunications Act, 2000

Suggested Areas for Amendment

The following sections of the Telecommunications Act should be amended as reflected below:

1.0 Section 4

It is being proposed that a new (converged) regulatory body should be appointed to carry out the telecommunications functions listed as the responsibility of the OUR under the Telecoms Bill. Further, that Subsection (4) (f) ought to be the responsibility of the Fair Trading Commission.

2.0 Section 5

The Section should be amended to reflect the authority of the Fair Trading Commission to determine whether (competition) matters ought to be dealt with by the FTC.

3.0 Section 6

The Section should reflect the view that the directive to be given by the Minister should fall within the purview of the new institution designated for regulation of the telecommunications sector.

4.0 Section 7

This Section ought to be looked at in light of the New Access to Information Bill.

5.0 Section 8

This Section should also reflect the proposed change of jurisdiction from the OUR.

6.0 Section 8

The Regulator should set standards of utilization, conduct audits to ensure compliance and have the power to recall unused numbers in the event of a breach of utilization standards.

Procedures should be developed to ensure the effective distribution of numbers.

7.0 Sections 7 - 19

All sections relating to the Office should be removed and replaced by reference to the proposed single regulatory body.

8.0 Sections 23 - 26

Amendment should remove the right of the Minister to grant licences. This power ought to reside in the new regulatory body which takes over from the OUR.

With this mind, an amendment to Sections 23 - 26 will also be necessary to remove from the Minister's portfolio the power to impose an annual spectrum regulatory fee.

9.0 Section 38 (a)

Delete the word "voice".

10.0 Section 47

The Act should be amended to regulate the service provider to make available to customers a notice setting out the following:

- (a) Why personal data are being collected.
- (b) The purpose of the data and information that is collected.
- (c) Steps to be taken to protect the information, and so on.

11.0 Section 57

The Section on Service Level Standards ought to be amended to give power to the proposed new regulator to set standards for all service providers.

12.0 Sections 63 and 66

The issue of cease and desist orders is not seen as being effective in the industry. The issuing of such an order has tended to result in the perpetrators relocating.

The enforcement powers, as contained in the Radio and Telegraph Control Act, should be imported to the Telecommunications Act.

These areas should be considered alongside the other recommendations for legislative changes detailed in the consultant's report beginning at page 130 of the main document.

Appendix 2

Supplementary Information

The following supplementary documentation which arrived after the consultants concluded their report are being provided as further background information to the issues and recommendations presented in the Council's report.

Positions reflected in these documents may amplify the issues or vary from the recommendations being put forward by the Council.

1. Comments from the Fair Trading Commission dated June 10, 2002.
2. Comments from the Spectrum Management Authority dated July 9, 2002.
3. Comments from Cable and Wireless Jamaica Limited dated July 9, 2002.
4. Letter from Grace Kennedy and Company Limited (International Communications Limited) dated July 11, 2002.