CABLE & WIRELESS (TCI) LIMITED
RESPONSE TO

THIRD REVIEW OF INTERCONNECTION RATES CONSULTATION

TURKS AND CAICOS ISLANDS TELECOMMUNICATIONS COMMISSION

By email to**: consultations@tcitelecommission.tc**
15 May 2020

I. Introduction

1. Cable and Wireless (TCI) Limited, trading as "**Flow**" is pleased to provide the following comments to the Commission's consultation document titled "Third Review of Interconnection Rates" ("**Consultation Document**") published 24 February 2020.

2. Flow expressly states that failure to address any issue raised in this Consultation Document does not necessarily signify our agreement in whole or in part with the Commission's position. Flow reserves the right to comment on any issue raised in the Consultation at a later date.

3. Flow responds to the Commission's questions in the order asked.

II. The Commission's Questions

Question 1: Respondents are invited to provide any comments they may have on matters related to legal and regulatory provisions relating to the establishment of interconnection rate maxima in TCI. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

4. **Flow response to Question 1:** This question, in part, seeks to address the jurisdiction of the Commission. Flow's position on this issue is unchanged from what we presented in the Commission's two prior interconnection review consultations. As we indicated previously, the Ordinance and Regulations as drafted do not permit the Commission to intervene in rate setting between operators who have an agreement between them, in the absence of a dispute. However, the Commission has recourse to seek amendment of the termination rates by issuing a recommendation to government that rate maxima be modified in accordance with the Commission decision in this consultation.

5. The Commission invoked this remedy in the prior interconnection review consultations, and has indicated it plans to follow the same approach in this Consultation. Flow does not object to this proposed approach, namely, to recommend appropriate changes to the Regulations.

6. Likewise, Flow does not object to the costing principles espoused by the Commission. In prior consultations, we have proposed that the Commission conduct a long-run incremental cost ("**LRIC**") study. Flow continues to endorse that approach. Nevertheless, without prejudice to that proposal, we are satisfied that the rates derived from a benchmark sample can produce appropriate results, given the sample is accurately specified and normalized to make it comparable to the market for interconnection in TCI. Therefore, subject to these qualifications, Flow supports the Commission's use a benchmark methodology in this proceeding to set the interconnection rates.

7. With regard to the costing principles employed to measure and implement interconnection rates, Flow continues to support LRIC-based rates that include a contribution to common and fixed costs; rate symmetry; and the phasing–in of rate reductions via a multi-year glidepath.

Question 2: Respondents are invited to comment on the Commission's proposed Benchmarking Sample selection criteria, the jurisdictions included in the proposed Benchmarking Sample, related measures used to establish an historical benchmarking sample time period as well as any other issues considered relevant to the establishment of a benchmarking sample. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

8. **Flow response to Question 2:** Flow believes the Regulations are clear in the costs to be recovered from interconnection rates. Section 14 (4) states that rates are cost-oriented so long as they do not exceed stand-alone cost and are not lower than long-run average incremental cost. Section 15 (2) (d) goes on to indicate that the costing methodology selected must include three distinct cost components:

> [1] a reasonable rate of return for that carrier or service provider on the capital employed, [2] all attributable operating expenses [and] depreciation and [3] a proportionate contribution toward such carrier's or service provider's fixed and common costs.

9. These conditions must be met in establishing an appropriate benchmark sample. In particular, any benchmark interconnection rate derived from a costing methodology that does not recover these three cost components—(1) a return on capital, (2) incremental operating costs/depreciation, and (3) fixed/common costs—must not be included in the benchmark sample, as the result would be an interconnection rate that is not cost-oriented as defined by the Regulations. Accordingly, the benchmark samples must exclude Guadeloupe & Martinique, St. Barthelemy & St. Martin and Jamaica from the MTR, FTR and TR benchmark samples. The interconnection rates in these countries are based on a "pure LRIC" costing methodology that excludes any cost recovery for fixed and common costs and are thus contrary to the cost recovery requirements in the Regulations.

10. Likewise, Flow objects to the Commission's addition of a seventh sample selection criterion based on vintage. We do not believe the length of time cost-based rates have been in place is a legitimate basis for inclusion or exclusion from the benchmark samples, nor is the Commission's explanation for adding this new criterion sufficiently justified. Accordingly, the MTR, FTR and TR benchmark samples for Aruba, BVI and Trinidad & Tobago should not be excluded on this basis. The interconnection rates in these countries are based on an appropriate LRIC methodology, and the duration the rates have been in place in these countries does not offer useful guidance for their exclusion.

<u>Question 3:</u> Respondents are invited to comment on the Commission's analysis of historical trends in MTRs, FTR and TRs, including the Commission's preliminary conclusion that the allowed maxima for all three of these interconnection rates should be reduced in TCI. Any alternative perspectives offered by Respondents should include, as necessary, supporting rationale and evidence.

11. **<u>Flow response to Question 3:</u>** FTRs are already at or near cost-based levels; that is, policies in most jurisdictions worldwide for establishing FTRs have not deviated significantly from an adherence to cost orientation. Likewise, the trend in the benchmark transit rates is correlated to the trend in fixed transit costs. As with the FTR, the transit rate is already set at a cost-based level, which is consistent with the relatively flat slope of the benchmark TR line at Figure 3 of the Commission's Consultation Document.

<u>Question 4:</u> Respondents are invited to comment on the Commission's proposed forward-looking benchmarking methodology for setting MTR, FTR and TR maxima. Any alternative methodological proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

<u>Question 5:</u> Respondents are invited to comment on the Commission's MTR, FTR and TR Proposals. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

12. **<u>Flow response to Questions 4 and 5</u>:** Flow has two comments on the Commission's proposed methodology for setting MTR, FTR and TR maxima. Firstly, as described in our response to Question 2, certain benchmark rates contravene the Regulations and thus must be eliminated from the benchmark samples, and those benchmark rates that have been excluded on the arbitrary basis of duration should be included. in the benchmark samples.

13. Second, with the delays to this proceeding and significant economic harms caused by the COVID pandemic, we believe the proposed glidepath for implementing new interconnection rates must be revised. Flow does not object to the Commission's three-phase glidepath covering a 21-month period. We do, however, object to the starting point for implementing the glidepath, and insist that proposed new interconnection rates not be implemented this calendar year or the current fiscal year. Cashflow and liquidity are key to surviving the recession brought on by Covid-19 and the Commission must be careful to do nothing to compound the challenges faced by the industry. At minimum, implementation of new rates must be moved forward from July 2020 to July 2021.

<u>Question 6:</u> Respondents are invited to comment on the Commission's proposed Recommendation to Government and Directive to operators. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

14. **<u>Flow response to Question 6:</u>** Flow objects to the Commission's recommendation to government, item (2)(b), on page 24. It appears the Commission is recommending the new proposed FTR be applied to both domestic and international calls (whereas in item (2)(a) the

Commission only recommends the new proposed MTR be applied to domestic calls only). Nowhere else in the Commission's consultation document does it mention international calling or termination rates. Fundamentally however we do not believe that termination rates on international calls, be they mobile or fixed, require rate maxima regulation. The international call market is mature and very competitive and as such forbearance is appropriate in this market.

15. In our comments to the Commission in the Second Review of Interconnection Rates Consultation, Flow explained in detail why rate maxima regulation on international calling was unnecessary and potentially counterproductive:

- First, there is no reason to regulate this service as it is already subject to constraints. The current low rates for international termination are constrained by external intervention (primarily through the FCC benchmark order) and increase in competition among international carriers.

- Second, in addition to international market pressures, arbitrage ensures that international termination rates remain reasonable.

- Third, reduction in the termination rate charged to foreign carriers does not lower retail rates abroad, and therefore offers little if any benefit to call recipients in Turks & Caicos.

- Fourth, the most significant effect will be to reduce the revenues for telecommunications service providers in Turks and Caicos and other local businesses through negative knock-on effects.

16. In summary, market mechanisms exist to keep international termination rates reasonable and protect consumer welfare. The Commission should therefore continue to forebear from regulating termination rates for international traffic as it did in its prior determination on this issue in 2014. Hence, we request that the inclusion of "or international" in item (2)(b) on page 24 be removed from the Commission's recommendation to Government.

Question 7: Respondents are invited to comment on the Commission's proposed flow-through obligation and timing of the next interconnection rate review as well as any other issues relevant to this review. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.

17. **Flow response to Question 7:** We do not believe the Commission should mandate the quantum or timing of reductions in FTM rates in this proceeding. Lower wholesale MTRs will result in lower retail prices for customers, as competition drives prices down. There is a profusion of alternatives to voice telephony that obviate the need to regulate prices for any voice services, be they originated from a mobile handset or fixed CPE. This conclusion applies equally to the Commission's unwarranted proposal to impose a wholesale pass-through requirement on retail FTM calling prices. Where competitive alternatives exist, consumers are best served by the market mechanism and not by regulatory edict.

III. Closing Remarks

18. Flow thanks the Commission for the opportunity to participate in this Consultation. Kindly send any communication in relation to this Consultation Document to:

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