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November 30, 2005

**VIA ELECTRONIC SUBMISSION**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Meeting, IB Docket No. 05-254

Dear Madam Secretary:

On November 29, 2005, Lawrence McNaughton, Executive Vice President, Carrier Services, and Danny Mullah, Manager International Business, for Cable & Wireless (West Indies) Limited, as well as Camille Facey, Company Secretary and Senior Vice President, Legal, Regulatory and Public Policy, and Rochelle Cameron, Legal and Regulatory Adviser, for Cable & Wireless Jamaica Limited (C&WJ), and Robert Aamoth and Randy Sifers of Kelley, Drye and Warren LLP, met with James Ball, Kim Cook, Jerry Duvall, Claudia Fox, Francis Gutierrez, Brad Lerner, David Strickland, and Mark Uretsky of the Federal Communications Commission to discuss the positions taken by C&WJ in the *Notice of Inquiry* proceeding in the above-captioned docket.

In C&WJ's view, the Jamaican Government's decision to establish a mandatory universal service surcharge earlier this year does not embody whipsawing or other anti-competitive conduct by foreign carriers, and therefore does not create a sufficient basis for any actions by the FCC. Specifically, in the case of this Government-mandated surcharge, where the role of the Jamaican carriers is to act as collection agents to obtain and remit the surcharge to the Jamaican Government, the surcharge embodies neither an increase in the rate paid to C&WJ for terminating U.S.-originated international calls nor a commercial term subject to negotiation between the parties. Moreover, C&WJ does not profit from the surcharge, and in fact has lost, and continues to lose, substantial monies due to the surcharge. C&WJ loses money because it does not recover its administrative expenses of implementing the surcharge. C&WJ also loses money each month because the higher rates resulting from the surcharge have resulted in less traffic, due both to an increase in unlawful bypass and a reduction in demand caused by the pass-

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through of the increase in payment for terminating calls to customers originating calls. C&WJ also suffered a significant loss of revenues from the traffic that normally would have been terminated during the period when circuits were blocked. To the extent that the FCC has concerns about any country's establishment of a mandatory universal service surcharge, the U.S. Government should raise such concerns directly with the foreign country or through the appropriate multilateral organizations. To the extent that the FCC believes that FCC actions may be necessary and appropriate, C&WJ submits that such actions should not have the direct or indirect result of penalizing Jamaican domestic carriers for taking actions consistent with and required by the mandates of the Jamaican Government.

In C&WJ's view, in cases where a foreign government imposes a surcharge and U.S. carriers withhold their agreement to pay the surcharge, suspension or cessation of termination service in the foreign country may be appropriate until the issue is resolved. It is neither fair nor reasonable to take the position that a foreign carrier should be required to continue terminating traffic for U.S. and other foreign carriers when such carriers have not agreed to pay the mandatory surcharge. Further, in C&WJ's view, it is never whipsawing when a foreign carrier declines to continue terminating traffic originated by a U.S. or other foreign carrier when the underlying agreement has expired, or when a foreign carrier exercises a contractual right to terminate an agreement. There is no legitimate basis in law or policy to force a foreign carrier to enter into or continue a business relationship with a U.S. carrier against its will or in the absence of an agreement between the parties.

Finally, C&WJ stated that it was dismayed by the procedural and remedial proposals offered by several U.S. carriers. C&WJ is particularly concerned by the U.S. carriers' arguments that the FCC should adopt procedures that would enable it to launch a preemptive economic strike against a foreign carrier (at the request of the U.S. carriers) without giving the foreign carrier, its government or other interested parties a meaningful opportunity to participate in the FCC's proceedings. The comments filed in this proceeding illustrate that the FCC cannot be assured of receiving a full and accurate statement of relevant facts unless it gives all parties a meaningful opportunity to participate. C&WJ underscored its view that moving forward with a *Notice of Proposed Rulemaking* in this proceeding would be harmful to the commercial negotiation process between U.S. and foreign carriers because proposed rules, such as those recommended by the U.S. carriers, would make it more difficult for parties to freely negotiate commercial terms and conditions. C&WJ urged the FCC to act consistent with its history of promoting transparency by making certain that all interested parties have a meaningful opportunity to participate before taking any action against alleged whipsawing conduct by foreign carriers.

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In accordance with Section 1.1206(b), this notice is being filed in electronic format for inclusion in the record of the above captioned docket.

Sincerely,  
KELLEY DRYE & WARREN LLP

/s/ Randall W. Sifers  
Randall W. Sifers  
*Counsel to*  
Cable & Wireless Jamaica Limited

cc: James Ball (via email)  
Kim Cook (via email)  
Jerry Duvall (via email)  
Claudia Fox (via email)  
Francis Gutierrez (via email)  
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