

February 18, 2015

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications for Transfer of Control of ARCOS-1 USA, Inc., A.SurNet, Inc. and Columbus Networks USA, Inc. from Columbus Networks, Limited to Cable & Wireless Communications Plc, and for Transfer of Control of Columbus Networks Telecommunications Services USA, Inc. and Columbus Networks Puerto Rico, Inc. from Columbus Networks, Limited to Cable & Wireless Communications Plc
File No. SCL-T/C-20141121-00013
File No. ITC-T/C-20141121-00304
File No. ITC-TC-20141121-00307

Dear Ms. Dortch:

On Thursday, February 12, 2015, the undersigned counsel and representatives of Digicel International and its subsidiaries met with members of the Commission's staff to discuss Digicel's concerns regarding the above-captioned applications for transfer of control. Attending this meeting on behalf of Digicel International were David Geary, General Counsel, Caribbean & Central America, Donald Connor, Director of Legal and Regulatory, Submarine Cable and Television, and Conor Clarke, Group Director of International Business. Commission staff attending this meeting were, from the International Bureau, Kathleen Collins, Assistant Bureau Chief; Walt Strack, Assistant Bureau Chief and Chief Economist; Howard Griboff, Acting Bureau Chief, Policy Division; David Krech, Associate Division Chief, Policy Division; Jodi Cooper, Senior Attorney, Policy Division; and Mark Uretsky, Senior Economist, Policy Division; and Neil Dellar, Office of General Counsel.

During the meeting, representatives of Digicel discussed the following:

- **Unauthorized Transfer of Control.** Representatives of Digicel reiterated Digicel's concern, as set forth in its Petition to Impose Protective Conditions, that the 2013 joint venture of Columbus and Cable & Wireless effectuated a *de facto*

transfer of control of the Columbus networks to Cable & Wireless. In connection with this issue, Mr. Clarke shared communications he had with Columbus and Cable & Wireless in 2014, in which Columbus initially assumed responsibility for the sale of capacity on the combined Columbus/Cable & Wireless submarine cable network, and then relinquished responsibility to Cable & Wireless. In the course of these discussions, Mr. Clarke stated that Paul Scott, the President and Chief Operating Officer of Columbus, referred to Philip Bentley, Chief Executive Officer of Cable & Wireless, as his “boss,” and, as set forth in the attached emails, stated that decisions regarding the sale of capacity (in this case from the British Virgin Islands) required consultation with the “Brits”. Mr. Clarke also stated that, in conversations with Mr. Scott and Mr. Bentley in 2015, the two companies jointly refused to provide to Digicel competitive pricing for capacity between Puerto Rico and New York that would match pricing quoted by Tier 3 providers.

- **Scope of Competitive Analysis of Proposed Merger.** Representatives of Digicel reiterated the company’s position that, under applicable Commission precedent, the Commission should analyze the proposed transaction not from the perspective of the Americas region, but from the perspective of the Caribbean region, and specific routes between the United States and Caribbean nations, where the adverse competitive impact of the proposed transaction on the market for submarine cable capacity and transport for U.S. carriers and customers will be most severe. In this regard, Digicel noted that the Commission itself has recognized the market dominance of Cable & Wireless affiliates in 17 countries in the Caribbean region. Digicel also noted that, due to the insular nature of Caribbean nations, U.S. carriers and customers have no option but to rely on direct submarine cable connectivity between the U.S. and the Caribbean region in contrast to other countries in the Americas region (i.e., nations in South and Central America). Digicel further noted the heavy reliance of U.S. companies and consumers in the insurance, airline and financial services sectors, as well in the delivery of Internet (Google, Yahoo) and entertainment services (Netflix, HBO, etc.), on the availability of competitive submarine cable capacity between the U.S. and individual Caribbean nations. For these and other high volume customers, satellite service is not an adequate substitute due to delays, capacity constraints, and quality issues. Digicel also noted that, focusing on the Caribbean region, where the negative competitive impact of the proposed merger will be most severe, the Commission’s own circuit status reports show that capacity in submarine cable systems in which Cable & Wireless and/or Columbus hold ownership interests accounts for nearly half of all submarine cable capacity serving the Caribbean region, and that if one takes into account submarine cable systems of the merging entities which are not required to be reported in the Commission’s reports (*e.g.*, ARCOS, Fibralink), Digicel believes that the percentage would be substantially higher.

- **Individual Market Analyses.** Digicel representatives reviewed the competitive analysis in their pleadings, which shows the adverse impact of the proposed merger on submarine cable capacity in Jamaica, Cayman Islands,

British Virgin Islands, Dominican Republic, and Haiti. During this discussion, Digicel made reference to a recent analysis of the proposed merger performed by Packet Clearing House, a non-profit research institute. A copy of this analysis, requested by the Commission staff, is attached hereto. During the discussion, Digicel also referenced the approval of the proposed merger, subject to assurances and commitments by Cable & Wireless relating thereto, issued by the Jamaica Minister of Science, Technology, Energy and Mining. A copy of this approval, together with the Cable & Wireless assurances and commitments, requested by the Commission staff, is attached hereto. At the meeting with the Commission staff, Digicel representatives also stated that the proposed transaction was also under review by the Jamaica Fair Trading Commission. Two days ago, on February 16, 2015, the Fair Trading Commission issued a press release, a copy of which is attached hereto, stating that it has discontinued its investigation into the proposed merger due to a Judgment by the Jamaica Court of Appeal in December 2014, which decision the Fair Trading Commission has appealed to the Privy Council. The appeal is currently pending. At the meeting, Mr. Geary also summarized the status of regulatory reviews of the proposed transaction in other Caribbean nations. A summary of that review is attached hereto.

➤ **Prayer for Relief.** Digicel reiterated the protective conditions and other measures sought in its prayer for relief. Citing, *inter alia*, the disputes which have emerged in the pleadings regarding critical issues such as the ownership of cable landing facilities and the percentage of submarine cable circuits in the region controlled by network in which Cable & Wireless and/or Columbus hold ownership interests, Digicel reiterated its specific request that the pending applications for transfer of control be designated for hearing, consistent with Commission precedent. In response to inquiry by the Commission staff, Digicel also stated that it would have no objection to the use of divestiture as a means of addressing the adverse competitive impact the proposed merger will generate.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Eric Fishman

Counsel to Digicel International
And its subsidiaries

cc: Kathleen Collins, Assistant Bureau Chief, International Bureau
— Walt Strack, Assistant Bureau Chief and Chief Economist, International Bureau
Howard Griboff, Acting Bureau Chief, Policy Division, International Bureau
David Krech, Associate Division Chief, Policy Division, International Bureau
Jodi Cooper, Senior Attorney, Policy Division, International Bureau

Mark Uretsky, Senior Economist, Policy Division, International Bureau
Neil Dellar, Office of General Counsel

Andrew D. Lipman (Andrew.lipman@morganlewis.com)
Ulises R. Pin (u.pin@morganlewis.com)

Belinda Bradberry, General Counsel
Cable & Wireless Communications Plc c/o Cable & Wireless Communications, Inc,
Columbus Center
1 Alhambra Plaza, Suite 1000
Coral Gables, Florida 33134
(US Mail Delivery)

Patrick S. Campbell (pcampbell@paul.weiss.com)

Attachments:

1. Email correspondence between Conor Clarke, Digicel, and Cable & Wireless
2. "C&W-Columbus: Quantifying the Consequences for Caribbean Competition," Bill Woodcock, Executive Director, Packet Clearing House, delivered at CTU Regulatory Forum, December 10, 2014
3. "Gov't Approves LIME/Flow Merger," Jamaica Observer web page, January 15, 2015
4. "ASSURANCES AND COMMITMENTS FROM CABLE AND WIRELESS COMMUNICATIONS PLC (CWC) RE THE TRANSFER OF CONTROL OF COLUMBUS COMMUNICATIONS JAMAICA LIMITED (FLOW) AND COLUMBUS NETWORKS JAMAICA LIMITED (CNJL) FROM THEIR PARENT COMPANY COLUMBUS INTERNATIONAL INC.," Ministry of Science, Technology, Energy and Mining, January 20, 2015
5. "Update on regulatory processes in Caribbean" prepared by David Geary
6. February 16, 2015 Press Advisory of Jamaica Fair Trading Commission

ATTACHMENT 1

Barresi, Andrea

From: Eric Fishman <eric@fishmanadvisors.com>
Sent: Tuesday, February 17, 2015 12:50 PM
To: Barresi, Andrea
Subject: Please print email string

From: Conor Clarke <Conor.Clarke@digicelgroup.com>
Subject: FW: Procing request
Date: February 16, 2015 at 3:03:47 PM EST
To: "Fishman Advisors (eric@fishmanadvisors.com)" <eric@fishmanadvisors.com>, David Geary <David.Geary@digicelgroup.com>, Donald Connor <Donald.Connor@digicelgroup.com>

All,
Trail below as discussed.

Paul was referring to Simeon Irvine as a contact in CWC who might be able to help him get traction with the Brits in response to my offer of help. He was clearly saying that he had to wait for them (the Brits) to approve or respond somehow.

Conor

From: Paul Scott [<mailto:psscott@columbus.co>]
Sent: Monday, November 24, 2014 06:17 PM
To: Conor Clarke
Subject: Re: Procing request

haha
actually for past 18 months CwC's Simeon irvine has served as Jvco CFO (part time role) while remaining cwc exec
so i am reaching out for his help /intervention re swap matter

Sent from my iPhone

On Nov 24, 2014, at 6:04 PM, Conor Clarke <Conor.Clarke@digicelgroup.com> wrote:

Brits!!?

Are they leading already?

I can ask them to listen to you if that helps?

From: Paul Scott [<mailto:psscott@columbus.co>]
Sent: Monday, November 24, 2014 06:01 PM

To: Conor Clarke
Subject: RE: Procing request

Will push to have some update news tomorrow assuming I can catch Brits early ...

From: Conor Clarke [<mailto:Conor.Clarke@digicelgroup.com>]
Sent: Monday, November 24, 2014 6:00 PM
To: Paul Scott
Subject: RE: Procing request

Yeah, I agree. We are very close and it is all possible.

From: Paul Scott [<mailto:psscott@columbus.co>]
Sent: Monday, November 24, 2014 05:52 PM
To: Conor Clarke
Subject: RE: Procing request

Let me reach out to key folks... I believe there is a good deal to be done here with you guys.. Let me go push...

Circle back..

From: Conor Clarke [<mailto:Conor.Clarke@digicelgroup.com>]
Sent: Monday, November 24, 2014 5:47 PM
To: Paul Scott
Subject: Fw: Procing request

Paul,

This is frustrating, it's going to set us back and we will wind up doing nothing in the end.

The swop is not what we asked for and was agreed to. This us driving us nuts.

Tying all the deals together will result in none of them going ahead as each market depends on another.

The offer for US capacity is not a match for our existing offer and doesn't make sense on paper no matter how much I want to get away from L3.

All in all it looks like a botch born out if small increments.

Can you help urgently?

Thanks,

Conor

Sent from my BlackBerry 10 smartphone.

From: Eduardo Gandarilla <EGandarilla@columbus.co>
Sent: Friday, November 21, 2014 1:30 PM
To: Conor Clarke

CC: Paul Scott, Steve Battick, Myrtha Curiel
Subject: RE: Pricing request

Conor,

Following please find a recap of the opportunities that we have been discussing with you and Steve, we would like to have a conference call this coming Monday to go over this recap and decide how we will move forward.

1. Jamaica to Nap – 1 X 10G

- o Digicel will buy 10G IRU from Nap to Jamaica
- o IRU Price is \$9,984,000 with O&M of 2.5%
- o CN will provide a special 50% discount if the payment of \$4,992,000 for this capacity is made by Digicel in 2014, otherwise if slips to 2015, reverts back to the \$9.984 m price.
- o Digicel can activate the Jamaica capacity when they prefer over the course of Q4 2014 to Q3 2016
- o If Digicel requires one STM16 to NY the IRU Price for BH from Manasquan NJ to 60 Hudson is \$200,000 with annual O&M of \$12,000
- o This NY capacity could be activated this year and Digicel can pay in January 2015

2. Turks to Nap – 1 X STM-1

- o Henry Williams of Digicel Turks and Caicos has to sign the SOF
- o IRU Price \$297,000 and O&M 2.5%
- o Service will be activated in 2014 and payment made in January 2015

3. Puerto Rico Capacity:

- o 2 X 10G of linear capacity from PR to NAP in Miami
- o Digicel to activate capacity and pay in 2014
- o IRU Price of \$1,500,000 for each 10 Gbps (\$ 3m total)
- o Annual O&M of 2.5%
- o SLA of 99.6 % for ARCOS Linear service
- o Backhaul in PR:
 - 2 X 10Gbps Linear Backhaul in PR
 - Loc A: CN Manhole close to Miramar
 - Loc Z: either CN Double Tree or CN MOP Pop
 - Term: 12 Months
 - MRC: \$7,500 per each 10Gbps
 - NRC: \$3,500 per each 10Gbps
 - Objective of the parties is to connect the dark fiber of GCF currently spooled in Columbus San Juan Manhole, and connect onward to the Columbus Double tree POP to enable GCF end to end connectivity from STX to PR.
- o Colocation in PR by Digicel GCF division:
 - At Columbus new Double Tree international POP
 - One Cabinet with 10 Amps (excluding demarcation and IP)
 - Term: 10 year term with Digicel right to terminate after 3 years provided 6 months' notice
 - MRC: \$1,200
 - NRC: \$4,5000
 - Digicel to advise the brand and model equipment to be installed in the cabinet
 - Columbus standard cross connection fees will apply.
- o Because of the lead time required for GCF to order and install the necessary DWDM and other related equipment in in the Columbus Double Tree POP facilities in Puerto Rico, Columbus will deliver temporarily the first 10 Gbps Linear capacity from Trinidad to NAP in Miami whereupon it will then be eventually migrated to the Double Tree POP when Digicel GCF RFS its node.
- o The 2nd 10 G IRU Columbus will provide Digicel would be immediately activated upon Digicel GCF's activation of its new node inside Columbus Double Tree POP.

4. Emergency STM-1 Service Anguilla to Antigua

- o Capacity activated on Nov 8th 2014
- o Digicel needs to sign SOF and contract schedule

- o IRU price \$275,000, Install \$7,000
- o O&M of 2.5%

5. Pending IRU's 2015

- o Digicel to confirm the following list of IRU capacities to be taken in Q2, 2015, after end of Digicel Fiscal year:
 - El Salvador to NAP 1 X STM-1, IRU Price \$375,000
 - Curacao to NAP 1 X STM-4, IRU Price \$1,400,000
 - Panama to NAP 1X STM-4, IRU Price \$600,000
 - O&M 2.5% for each location

6. C&W SWAP Agreement

Work is underway by Columbus JVCO to obtain direction and agreement on CWC LIME willingness to amend the swap agreement to extend the permitted islands to include Anguilla. Please note that it was pointed out by CWC LIME that the formal swap agreement between CWC LIME and GCF had very specific islands that were permitted for capacity exchange and Anguilla was not included in that list. If the amendment is obtain, in exchange, we expect CWC LIME to request a new location on the GCF network also.

Summary

Provided we have agreement on points 1-5, we expect to be able to finalize with CWC LIME the swap matter.

We anxiously await your response.

Thanks and have a nice weekend.

Eduardo

From: Paul Scott

Sent: Thursday, November 20, 2014 5:24 PM

To: Conor Clarke

Subject: Re: Procing request

actually making some progress today. expect to have something out to you in the morning. Eduardo has been working on it and I think it will look pretty attractive question; can you close on 2 x 10 gig IRU out of Puerto Rico this year- payment January?

regarding the swap

there's an issue. We can discuss tomorrow pending your availability for a call

Sent from my iPhone

On Nov 20, 2014, at 5:06 PM, Conor Clarke <Conor.Clarke@digicelgroup.com> wrote:

Thanks Paul,
Any feedback from the meeting?

We are also extremely anxious to hear about the swap issue. Having agreed with Eduardo previously we gave guidance to our markets on the agreed situation but now have had to go back to them and tell them to wait again.

All very CW'ish... ☺

Can you help?

Conor

From: Paul Scott [<mailto:psscott@columbus.co>]
Sent: Thursday, November 20, 2014 09:43 AM
To: Conor Clarke
Subject: RE: Procing request

Hi Conor. I have meeting with Eduardo this am on this topic. That L3 price is super aggressive but we are exploring what we can do to get much closer and meet your needs.

Hope have feedback later today, appreciate the opportunity for sure .

Cheers,

P

From: Conor Clarke [<mailto:Conor.Clarke@digicelgroup.com>]
Sent: Thursday, November 20, 2014 7:58 AM
To: Paul Scott
Subject: Procing request

Paul,

As discussed in Miami, can you not match the pricing we need for linear capacity to the US? We don't seem to be making good progress.

We need a rate of about 1.4M for linear 10G.

It would be very helpful if you could let us get away from L3.

Conor Clarke
+1 876 470 9258

Group Director
International Business

Digicel Group

<image001.png>

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ATTACHMENT 2

C&W—Columbus Acquisition: Quantifying the Consequences for Caribbean Competition

Bill Woodcock
Executive Director
Packet Clearing House

CTU Regulatory Forum
December 10, 2014



Why I'll focus on undersea fiber

Undersea fiber cables are the backbone of the network and are the primary economic input to all communications markets.

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Small changes in fiber capacity prices cause huge changes in retail prices.

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Undersea fiber cables are the backbone of the network and are the primary economic input to all communications markets.

Small changes in fiber capacity prices cause huge changes in retail prices.

You can't fix anything else until the fiber market is fixed, and once you fix the fiber market, the rest comes relatively easily.

Caveat

PCH is a global organization, rather than a Caribbean organization, so there are people in this room who know far more about the state of Caribbean cable systems than we ever will. The information that follows is the best we've been able to find and confirm from multiple public sources. If you can help us to refine our understanding of the data it will help us refine our model of the Caribbean network, and that in turn will improve the quality of the insights that can be obtained from the model. We actively solicit your help to correct, refine, and expand the data we're basing the model on.

Cable Ownership Pre-Acquisition

Two or more owners 16

Cable System	Caribbean Countries	Owners
ARCOS	5	19
Pan-Am	2	15
Americas-II	4	15
MAYA-1	1	11
ECFS	11	10
Antillas-1	2	7
Taino-Carib	1	7
PCCS	3	5
Bahamas-2	1	3
ALBA-1	2	2
GCN	11	2
BDSNi	2	2
SGSCS	1	2
East-West	3	2
CBUS	2	2
Gemini-Bermuda	1	2

Monopoly 13

Cable System	Caribbean Countries	Owners
CJFS	2	Columbus
CFX-1	1	Columbus
Fibralink	3	Columbus
EC-Link	2	Columbus
Alonso de Ojeda-II	2	Telefonica
SAm-1	1	Telefonica
GlobeNet	1	BTG Pactual
AMX-1	2	América Móvil
Amerigo Vespucci	2	Antelecom
BICS	1	C. Crossings
Challenger	1	KeyTech
SMPR-1	2	TeIEm
Alonso de Ojeda	2	SETAR

Cable Ownership Post-Acquisition

Two or more owners **13**

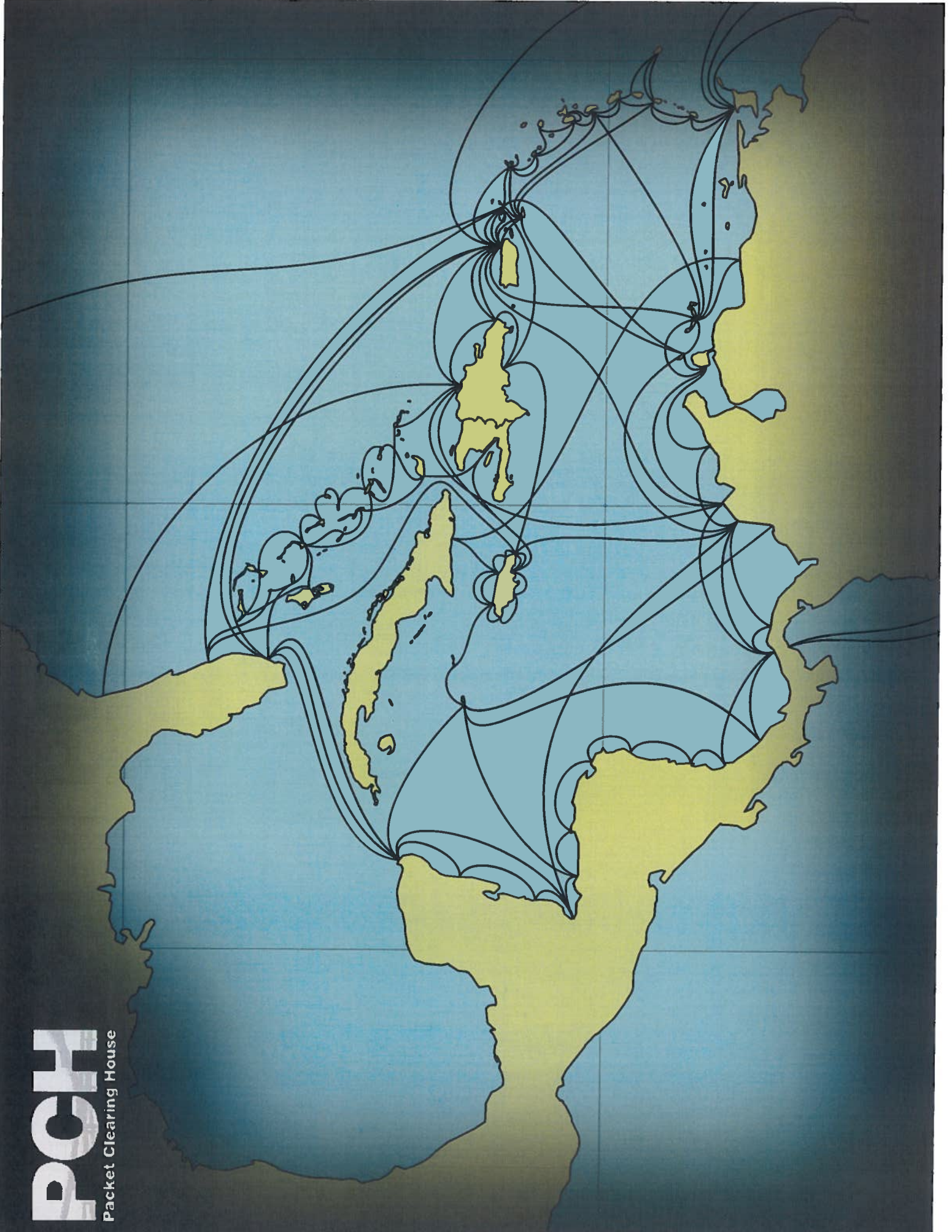
Cable System	Caribbean Countries	Owners
ARCOS	5	C&W+18
Pan-Am	2	C&W+13
Americas-II	4	C&W+13
MAYA-1	1	C&W+10
ECFS	11	C&W+8
Antillas-1	2	C&W+6
Taino-Carib	1	C&W+5
PCCS	3	C&W+4
Bahamas-2	1	3
ALBA-1	2	2
GCN	11	2
BDSNi	2	2
SGSCS	1	2

Monopoly **16**

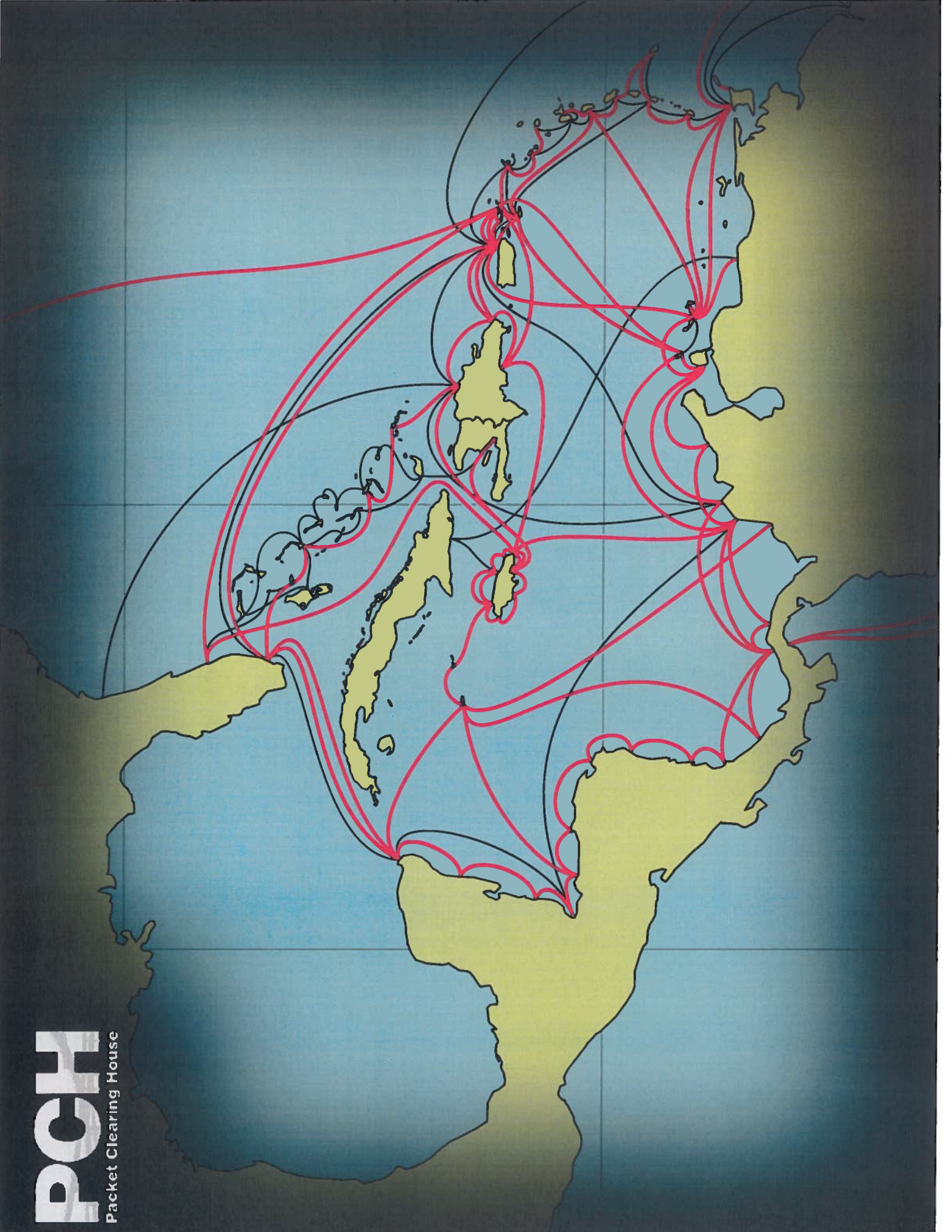
Cable System	Caribbean Countries	Owners
CJFS	2	C&W
CFX-1	1	C&W
Fibralink	3	C&W
EC-Link	2	C&W
East-West	3	C&W
CBUS	2	C&W
Gemini-Bermuda	1	C&W
Alonso de Ojeda-II	2	Telefonica
SAM-1	1	Telefonica
GlobeNet	1	BTG Pactual
AMX-1	2	América Móvil
Amerigo Vespucci	2	Antelecom
BICS	1	C. Crossings
Challenger	1	KeyTech
SMPR-1	2	TelEm
Alonso de Ojeda	2	SETAR

Connectivity is disproportionately
dependent upon a central subset of cables,

Connectivity is disproportionately dependent upon a central subset of cables, and those cables are disproportionately involved in the acquisition.



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Packet Clearing House



PCH
Packet Clearing House



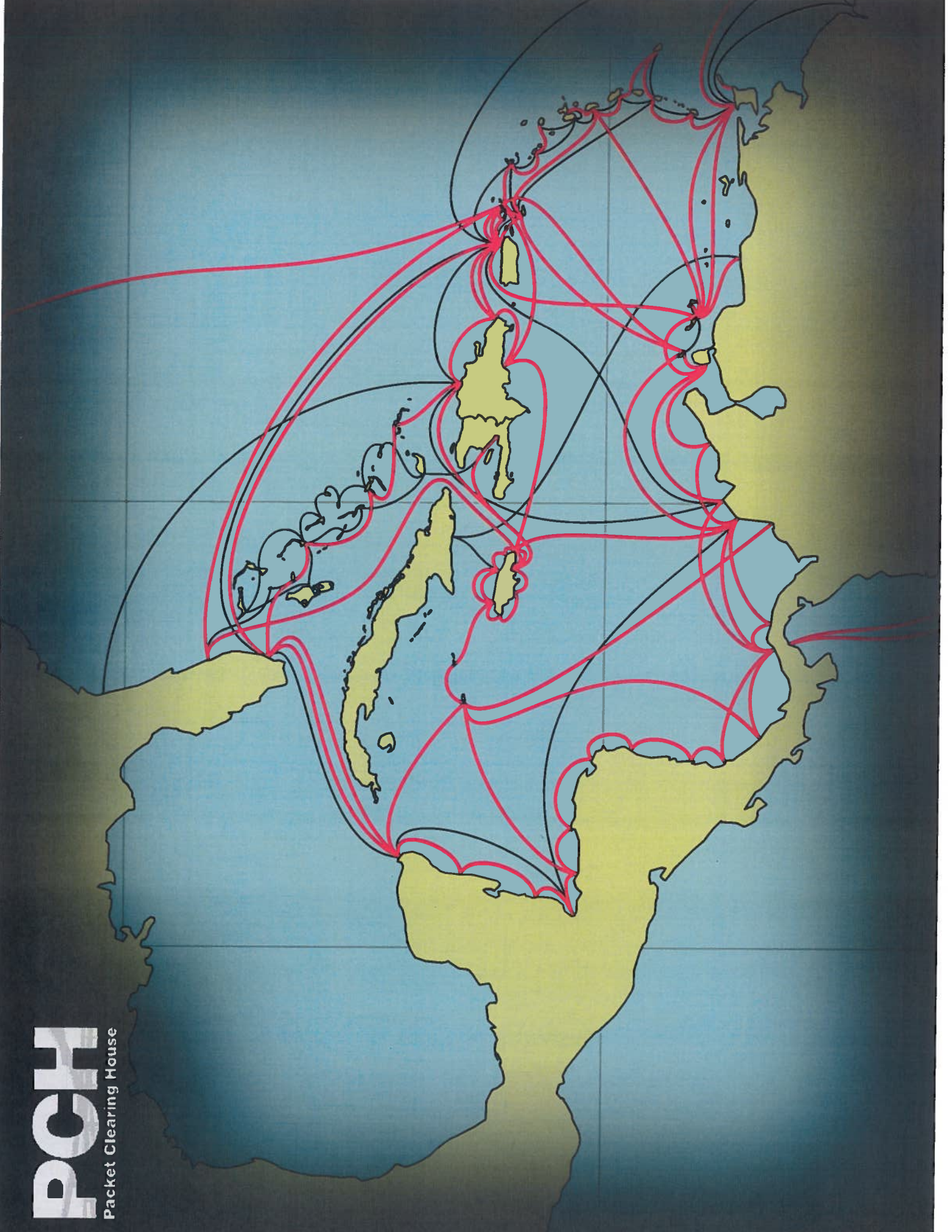
Is Digicel a Competitor to C&W?

Cable & Wireless claims that it will be smaller than Digicel, and therefore its acquisition does not threaten competition.

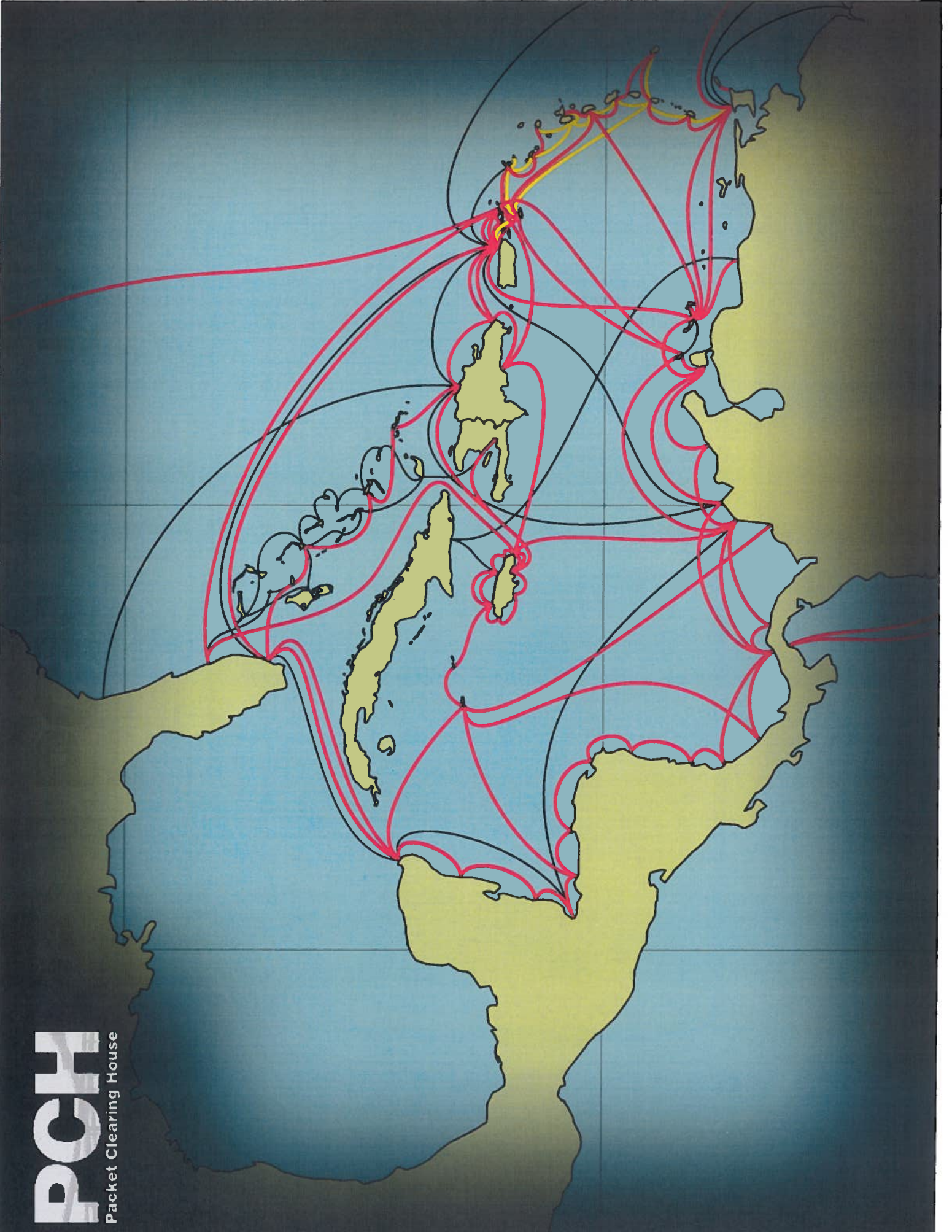
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This claim is based solely on Digicel's retail mobile business.



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Is Digicel a Competitor to C&W?

Cable & Wireless claims that it will be smaller than Digicel, and therefore its acquisition is not a threat to competition.

This claim is based solely on Digicel's retail mobile business.

Digicel's sole fiber holdings are a majority interest in the GCN system in the eastern Caribbean, which does not reach the mainland. By comparison, C&W and Columbus own most of the Caribbean cable systems, either in part or as outright monopolies.

C&W is far larger than Digicel in undersea cable systems, upon which all of the other businesses are based and wholly dependent, as well as cable TV, residential, and commercial broadband.

Digicel or any other competitor in the retail space will be gated by C&W's dominance over backhaul.

Is Digicel a Competitor to C&W?

Brendan Paddick described competing with C&W in 2007:

“We’re only interested in building retail operations where we can control our own off-island connectivity and not be held captive. When we’ve been reliant on purchasing bandwidth from a competitor, it’s put us in a tough position. Costs may be kept too high, and we’re not the highest on the priority list in case of a system problem. The agility and nimbleness of having our own off-island network is an advantage. We will only enter a market if we can secure our own off-island bandwidth”

Source: April 2007 interview with Caribbean Telecoms Analyst

Country Details

Anguilla

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners

Anguilla is currently served only by the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus. ECFS does not reach any intercontinental cable landings, so connectivity from Anguilla outside the Caribbean is achieved by pairing ECFS with Americas-II (14 owners, including both C&W and Columbus).

Impact: Reduced competition, probably minor, but we need ownership share information to quantify the effect.

Antigua & Barbuda

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
GCN	11	2 Owners

Antigua & Barbuda is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

Aruba

Cable System	Countries	Ownership
Alonso de Ojeda	1	Telefonica
Alonso de Ojeda-II	1	13 Other Owners
Pan-Am	8 (US)	4 Other Owners
PCCS	6 (US)	Columbus
		C&W

Aruba is currently served by four cable systems, two of which are Telefonica-owned cables to Curaçao, and two of which, GCN and PCCS, are major consortium-owned cables that reach intercontinental cable landings in the US. C&W is an owner in both consortium cables, and Columbus in Pan-Am.

Impact: Some impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information. No impact on connections to Curaçao.

Bahamas

Cable System	Countries	Ownership
ARCOS	14 (US)	Columbus
BDSNi	1	C&W
Bahamas-2	1 (US)	3 Owners
BICS	1 (US)	18 Other Owners 1 Other Owner Caribbean Crossings

The Bahamas are currently served by four cable systems, two of which, BICS and Bahamas-2, go directly to intercontinental cable landings in the US. Bahamas Domestic Submarine Network (BDSNi) goes directly to Haiti, and ARCOS is a major consortium cable that reaches fourteen other countries including the US.

Impact: Little or no impact on out-of-region connectivity. Reduced competition in Caribbean regional connectivity, impossible to quantify without ownership share information. No impact on connections to Haiti.

Barbados

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
GCN	11	2 Owners

Barbados is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

Bermuda

Cable System	Countries	Ownership
CBUS	1	C&W
Gemini Bermuda	1 (US)	Columbus
GlobeNet	4 (US & BR)	
Bermuda-US	1 (US)	BTG Pactual
CB-1	1 (US)	Cable Co.

Bermuda is currently served by five cable systems, three of which, Gemini, Bermuda-US, and CB-1, go directly to intercontinental cable landings in the US. GlobeNet reaches intercontinental cables in both the US and Brazil. The fifth, CBUS, goes directly to BVI.

Impact: After merger, all five of Bermuda's cables will be monopoly-held, by only three companies in total: two of them by C&W, and two by BTG Pactual.

British Virgin Islands

Cable System	Countries	Ownership
PCCS	6 (US)	4 Other Owners
East-West	2	Columbus
CBUS	1	C&W

BVI is currently served by three cable systems, and both C&W and Columbus have shares in all three. One, PCCS, also has four other owners, and reaches intercontinental cable landings in the US.

Impact: Major reduction in competition on both regional and intercontinental paths.

Cayman Islands

Cable System	Countries	Ownership
Maya-1	6 (US)	10 Other Owners
CJFS	1	Columbus
		C&W

The Cayman Islands are currently served by two cable systems: Maya-1 reaches intercontinental cable landings in the US and has eleven owners. Cayman-Jamaica Fiber System (CJFS) is a C&W monopoly cable to Jamaica.

Impact: Reduced competition in intercontinental connectivity, impossible to quantify without ownership share information. The Caymans' only Caribbean connectivity is to Jamaica, which remains a monopoly.

Cuba

Cable System	Countries	Ownership
ALBA-1	2	2 Owners

Cuba is currently served by one cable, ALBA-1, which reaches Venezuela and Jamaica, and is owned by Transbit and Telecom Venezuela.

Impact: No change in regional connectivity, since Cuba is only connected to Jamaica, and the ALBA-1 cable doesn't change ownership, but the intercontinental connectivity is dependent upon Jamaica and Venezuela, and Jamaica is hit very hard by this merger.

Curaçao

Cable System	Countries	Ownership
ARCOS	14 (US)	18 Other Owners
Americas-II	7 (US & BR)	13 Other Owners
ECLink	1	
Alonso de Ojeda	1	
Alonso de Ojeda-II	1	Telefonica
Amerigo Vespucci	1	Antelecom

Curaçao is currently served by six cable systems, two of which are major consortium cables reaching the US and Brazil, with C&W and Columbus partial ownership, and four of which are smaller monopoly cables to individual countries.

Impact: Reduced competition in both intercontinental and Caribbean regional connectivity, impossible to quantify without ownership share information. No impact on connections to Aruba.

Dominica

Cable System	Countries	Ownership
ECFS	12	Columbus 8 Other Owners
GCN	11	C&W 2 Owners

Dominica is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

Dominican Republic

Cable System	Countries	Ownership
ARCOS	14 (US)	18 Other Owners
Antillas 1	1	6 Other Owners
Fibralink	2	Columbus
East-West	2	C&W
AMX-1	6 (US & BR)	América Móvil

The Dominican Republic is currently served by five cable systems, two of which, ARCOS and AMX-1, reach intercontinental cable landings in the US, and one of those is an América Móvil monopoly cable.

Impact: After merger, two of DR's five cables will be partly C&W owned, and two will be C&W monopoly-held, while the fifth will remain an América Móvil monopoly.

Grenada

Cable System	Countries	Ownership
ECFS	12	Columbus
GCN	11	C&W 8 Other Owners 2 Owners

Grenada is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

Guadeloupe

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
GCN	11	2 Owners

Guadeloupe is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

Haiti

Cable System	Countries	Ownership
Fibralink	2	Columbus
BDSNi	1	C&W 1 Other Owner

Haiti is currently served by two cable systems: Fibralink, a Columbus monopoly cable that connects it to the Dominican Republic and Jamaica, and BDSNi, a two-owner cable that connects it to the Bahamas.

Impact: Haiti is not connected to any cables that reach intercontinental landing points directly, and within the Caribbean, it's only connected to DR, Jamaica, and the Bahamas, so its intercontinental connectivity is dependent upon two-hop connections through those three countries. Jamaica and DR will both be hard-hit by the merger, which means that Haiti's only remaining competitive path to the rest of the world will be through the Bahamas.

Jamaica

Cable System	Countries	Ownership
CFX-1	2 (US)	Columbus
Fibralink	2	
East-West	2	
CJFS	1	
ALBA-1	2	
		2 Owners

Jamaica is currently served by five cables, one of which, a Columbus monopoly cable, reaches intercontinental cable landings in the US directly.

Impact: Jamaica is the hardest-hit of any country. Four of Jamaica's five cables will now be under C&W monopoly control, including the one that reaches intercontinental cables in Miami. The fifth cable only reaches Cuba and Venezuela.

Martinique

Cable System	Countries	Ownership
Americas-II	7 (US & BR)	Columbus
ECFS	12	
GCN	11	
		13 Other Owners
		8 Other Owners
		2 Owners

Martinique is currently served by three cable systems, and both C&W and Columbus have shares in two of them. Two of the systems reach intercontinental cable landings in the US.

Impact: Minor reduction in competition on both regional and intercontinental paths, impossible to quantify without ownership share information.

Montserrat

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners

Montserrat is currently served only by the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus. ECFS does not reach any intercontinental cable landings, so connectivity from Montserrat outside the Caribbean is achieved by pairing ECFS with Americas-II (14 owners, including both C&W and Columbus).

Impact: Reduced competition, probably minor, but we need ownership share information to quantify the effect.

Puerto Rico

Cable System	Countries	Ownership
ARCOS	14 (US)	18 Other Owners
Americas-II	7 (US & BR)	13 Other Owners
PCCS	6 (US)	4 Other Owners
Taino-Carib	1 (US)	5 Other Owners
Antillas 1	1	6 Other Owners
GCN	11	2 Owners
SAm-1	8 (US & BR)	Telefonica
AMX-1	6 (US & BR)	América Móvil
SMPR-1	1	TeEm
		Columbus
		C&W

Puerto Rico is served by nine cable systems, five of which are consortiums, seven reach intercontinental landings in the US, and three in Brazil.

Impact: Although C&W will have stakes in five of the cables, there will likely be little significant reduction in competition.

St. Kitts & Nevis

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
GCN	11	2 Owners

St. Kitts & Nevis are currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

St. Lucia

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
GCN	11	2 Owners

St. Lucia is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

St. Vincent and the Grenadines

Cable System	Countries	Ownership
ECFS	12	Columbus
GCN	11	8 Other Owners 2 Owners

St. Vincent and the Grenadines are currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and the Global Caribbean Network (GCN), which has two owners, Leucadia National Corporation and Digicel. Connectivity outside the Caribbean is achieved by pairing ECFS with Americas-II or GCN with any of six cable systems that connect Puerto Rico to the US.

Impact: Minor impact on out-of-region and Caribbean regional connectivity, impossible to quantify without ownership share information.

St. Maarten

Cable System	Countries	Ownership
ECFS	12	C&W Columbus 8 Other Owners
SMPR-1	1	TeiEm

St. Maarten is currently served by two cable systems: the Eastern Caribbean Fiber System (ECFS), which has ten owners, including both C&W and Columbus, and SMPR-1, which goes solely to Puerto Rico. Neither of these reach any intercontinental cable landings, so connectivity from Sint Maarten outside the Caribbean is achieved by pairing ECFS with any of six cable systems that connect Puerto Rico to the United States.

Impact: Very minor reduction in competition both within the Caribbean and intercontinentally.

Trinidad & Tobago

Cable System	Countries	Ownership
ECFS	12	8 Other Owners
Americas-II	7 (US & BR)	13 Other Owners
ECLink	1	
GCN	11	2 Owners
SG-SCS	2	2 Owners

Trinidad & Tobago is served by five cable systems, two of which are major consortium cables, both with C&W and Columbus partial ownership, two reaching the US, and one reaching Brazil.

Impact: Minor reduction in competition in both intercontinental and Caribbean regional connectivity, impossible to quantify without ownership share information. No impact on connections to Suriname or Guyana.

Turks & Caicos

Cable System	Countries	Ownership
ARCOS	14 (US)	Columbus 18 Other Owners

Turks & Caicos are served by only one cable system, but it's a major consortium cable that reaches intercontinental landings in the US. It does not have significant connectivity to other Caribbean nations, however.

Impact: Minor reduction in competition in both intercontinental and Caribbean regional connectivity, impossible to quantify without ownership share information.

US Virgin Islands

Cable System	Countries	Ownership
Pan-Am	8 (US)	Columbus 13 Other Owners

The U.S. Virgin Islands are served by only one cable system, but it's a major consortium cable that reaches intercontinental landings in the US. Within the Caribbean, however, it connects only to Aruba.

Impact: Minor reduction in competition in both intercontinental and Caribbean regional connectivity, impossible to quantify without ownership share information.

Degraded Competition Summary

Country	Intercontinental Impact	Regional Impact
Anguilla	Minor	Minor
Antigua & Barbuda	Minor	Minor
Aruba	Minor	Minor
Bahamas	None	Minor
Barbados	Minor	Minor
Bermuda	Major	Major
British Virgin Islands	Major	Major
Cayman Islands	Moderate	None
Cuba	Major	None
Curaçao	Minor	Minor
Dominica	Minor	Minor
Dominican Republic	Moderate	Major
Grenada	Minor	Minor

Degraded Competition Summary

Country	Intercontinental Impact	Regional Impact
Guadeloupe	Minor	Minor
Haiti	Moderate	Moderate
Jamaica	Critical	Critical
Martinique	Minor	Minor
Montserrat	Minor	Minor
Puerto Rico	Minor	Minor
St. Kitts & Nevis	Minor	Minor
St. Lucia	Minor	Minor
St. Vincent & the Grenadines	Minor	Minor
Sint Maarten	Minor	Minor
Trinidad & Tobago	Minor	Minor
Turks & Caicos	Minor	Minor
US Virgin Islands	Minor	Minor

Demographic and Economic Effect

Goal: Gain a Caribbean regional overview by normalizing to per-person and per-dollar effect across all the Caribbean islands, while still identifying the effect on a per-island basis.

Demographic and Economic Effect

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Demographic and Economic Effect

Goal: Gain a Caribbean regional overview by normalizing to per-person and per-dollar effect across all the Caribbean islands, while still identifying the effect on a per-island basis.

Where will the largest number of people be at risk, and which economies stand to lose the most in absolute terms?

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Very simple analysis:

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Very simple analysis:

Grade degradation of competition 0 through 4

Demographic and Economic Effect

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Where will the largest number of people be at risk, and which economies stand to lose the most in absolute terms?

Very simple analysis:

Grade degradation of competition 0 through 4

Weight intercontinental and regional effect equally

Demographic and Economic Effect

Goal: Gain a Caribbean regional overview by normalizing to per-person and per-dollar effect across all the Caribbean islands, while still identifying the effect on a per-island basis.

Where will the largest number of people be at risk, and which economies stand to lose the most in absolute terms?

Very simple analysis:

- Grade degradation of competition 0 through 4
- Weight intercontinental and regional effect equally
- Multiply by population and GDP

Demographic and Economic Effect

Goal: Gain a Caribbean regional overview by normalizing to per-person and per-dollar effect across all the Caribbean islands, while still identifying the effect on a per-island basis.

Where will the largest number of people be at risk, and which economies stand to lose the most in absolute terms?

Very simple analysis:

- Grade degradation of competition 0 through 4
- Weight intercontinental and regional effect equally
- Multiply by population and GDP
- Normalize to 100 in each category

Demographic and Economic Effect

Country	Intercont	Regional	Population	Economy
Anguilla	Minor	Minor	0	0
Antigua & Barbuda	Minor	Minor	0	0
Aruba	Minor	Minor	0	1
Bahamas	None	Minor	1	2
Barbados	Minor	Minor	1	1
Bermuda	Major	Major	1	7
British Virgin Islands	Major	Major	0	1
Cayman Islands	Moderate	None	0	0
Cuba	Major	None	65	4
Curaçao	Minor	Minor	1	1
Dominica	Minor	Minor	0	0
Dominican Republic	Moderate	Major	100	100
Grenada	Minor	Minor	0	0

Demographic and Economic Effect

Country	Intercont	Regional	Population	Economy
Guadeloupe	Minor	Minor	1	2
Haiti	Moderate	Moderate	42	5
Jamaica	Critical	Critical	42	42
Martinique	Minor	Minor	1	4
Montserrat	Minor	Minor	0	0
Puerto Rico	Minor	Minor	14	44
St. Kitts & Nevis	Minor	Minor	0	0
St. Lucia	Minor	Minor	0	0
St. Vincent & the Grenadines	Minor	Minor	0	0
Sint Maarten	Minor	Minor	0	1
Trinidad & Tobago	Minor	Minor	5	12
Turks & Caicos	Minor	Minor	0	0
US Virgin Islands	Minor	Minor	0	1

Where do we go from here?

Data:

Ownership shares of cable systems

Where do we go from here?

Data:

- Ownership shares of cable systems
- Available remaining capacity

Where do we go from here?

Data:

- Ownership shares of cable systems
- Available remaining capacity
- Pricing

Where do we go from here?

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- Ownership shares of cable systems
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- Pricing

Analysis:

Where do we go from here?

Data:

- Ownership shares of cable systems
- Available remaining capacity
- Pricing

Analysis:

How great is the ownership concentration on critical cables?

Where do we go from here?

Data:

- Ownership shares of cable systems
- Available remaining capacity
- Pricing

Analysis:

- How great is the ownership concentration on critical cables?
- How much competition remains on unsold capacity?

Where do we go from here?

Data:

- Ownership shares of cable systems
- Available remaining capacity
- Pricing

Analysis:

- How great is the ownership concentration on critical cables?
- How much competition remains on unsold capacity?

Where should new cables be built to most improve competition at the lowest cost?

Where do we go from here?

Regulatory Goals:

Protect the interests of the public; telecom consumers

Where do we go from here?

Regulatory Goals:

Protect the interests of the public; telecom consumers

Regulatory harmonization and cooperation across the region

Where do we go from here?

Regulatory Goals:

Protect the interests of the public; telecom consumers

Regulatory harmonization and cooperation across the region

Transaction transparency for market-dominant operators

Where do we go from here?

Regulatory Goals:

Protect the interests of the public; telecom consumers

Regulatory harmonization and cooperation across the region

Transaction transparency for market-dominant operators

Guide governments to cost-effective national investment

Thanks, and Questions?

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Bill Woodcock
Executive Director
Packet Clearing House

woody@pch.net

ATTACHMENT 3

Tuesday, February 17, 2015

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KINGSTON, Jamaica - Minister of Science, Technology, Energy, and Mining Phillip Paulwell on Thursday approved the transfer of control of Columbus Communications Jamaica Limited (FLOW) and Columbus Networks Jamaica Limited (CNJL) from their parent company Columbus International Inc to Cable and Wireless Communications Plc (CWC).

A statement from the ministry said that Paulwell was formally advised of the agreement to acquire all the shares of Columbus International Inc in November 2014, at which time a request was made for ministerial approval to transfer the control of FLOW and CNJL from Columbus International Inc to CWC.

CWC is the parent company of Cable and Wireless Jamaica Limited (LIME), which has fixed and mobile carrier and service provider licences to own and operate networks and provide telecommunications services into, out of and throughout Jamaica.

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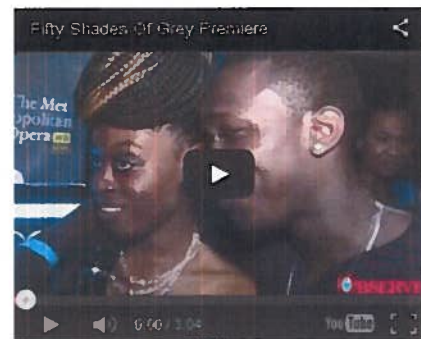
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See the statement from the Ministry of Science, Technology, Energy, and Mining below:

Minister of Science Technology Energy and Mining today, (January 15) approved the transfer of control of Columbus Communications Jamaica Limited (FLOW) and Columbus Networks Jamaica Limited (CNJL) from their parent company Columbus International Inc. to Cable and Wireless Communications Plc.

Cable and Wireless Communication Plc (CWC) by way of letter dated November 6, 2014 and Columbus November 7, 2014, formally advised the Minister of its agreement to acquire all the shares of Columbus International Inc. and concurrently requested Ministerial approval to transfer the control of Columbus Communications Jamaica Limited (FLOW) and Columbus Networks Jamaica Limited (CNJL) from their parent company Columbus International Inc. to CWC.

CWC is the parent company of Cable and Wireless Jamaica Limited (LIME) which has fixed and mobile carrier and service provider licences to own and operate networks and provides telecommunications services into, out of and throughout Jamaica.

The authority and actions of the Minister in relation to the assignment or transfer of control of licences is provided for in section 17 (2) and (3) of the Act.

In order to be satisfied as the Minister with responsibility for Telecommunications, advice was sought from the Office of Utilities Regulation. Further, in arriving at his decision note was taken of previous advice received from the Attorney General in relation to the Digicel Claro merger that the Telecommunications Act did not expressly authorise him to impose conditions in relation to the transaction.

"Nonetheless, taking into consideration the various concerns and views expressed publicly regarding the possible implications of the transaction, and as such certain assurances were sought and received including: existing termination rates agreed as a part of existing interconnection agreements will remain in effect until a new fixed termination rate is established by the OUR; CWC will be required to observe and comply with any limitations and or requirements of the licences whose control are being transferred to CWC. ; should there be a rationalization of the networks and/or the provision of different service packages offered by Flow and LIME, customers should have the option to keep their existing package or transfer to a more favourable one; customers opting to terminate their contracts should be allowed to do so without penalties; CWC should provide access to International bandwidth on a non-discriminatory basis noting that effective competition in this market segment necessitates that smaller operators have access to concessionary terms to enable competitive resale of services; all efforts and resources will be provided to ensure that the operations of LIME and Flow are ready to enable the implementation of number portability on by May 31, 2015; and in regards to Infrastructure or Facilities Sharing CWC should ensure that other Licensees are provided with non-discriminatory access to tangibles (including ducts, poles and landing stations) which could act as a competitive bottleneck prior to the development of rules governing infrastructure sharing.

"With respect to access to International Bandwidth through their subsea joint venture, CNL-CWC Networks, Inc. ("JVCO") CWC has indicated that the proposed CWC/Columbus merger has a zero net impact on JVCO or the subsea systems in Jamaica, which were already effectively operating together since the closing of the JVCO transaction in June 2013. JVCO nevertheless has sought to address the concerns by offering to continue to operate the subsea network business independently of the other business lines of CWC/Columbus as it has to date in providing all carrier and service provider customers with the requisite contractual assurances of confidentiality and that its information will not be used for unlawful activities such as price fixing and other anticompetitive behaviour", the Minister emphasized.

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ATTACHMENT 4

**ASSURANCES AND COMMITMENTS FROM CABLE AND WIRELESS
COMMUNICATIONS PLC (CWC) RE THE TRANSFER OF CONTROL OF COLUMBUS
COMMUNICATIONS JAMAICA LIMITED (FLOW) AND COLUMBUS NETWORKS
JAMAICA LIMITED (CNJL) FROM THEIR PARENT COMPANY COLUMBUS
INTERNATIONAL INC.**

Ministry of Science, Technology, Energy and Mining
January 20, 2015

The authority and actions of the Minister in relation to the assignment or transfer of control of licences is provided for in section 17 (2) and (3) of the Telecommunications Act ("the Act") which states respectively:

- (2) *A licensee may, with the prior approval of the Minister, assign its licence or any rights thereunder or transfer control of its operations.*
- (3) *An application for approval of an assignment or transfer under this section shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requirements of section 11 (1) (a) to (b) as regards the obligations imposed on a licensee by this Act or the licence.*

In order to be satisfied as the Minister with responsibility for Telecommunications, advice was sought from the Office of Utilities Regulation (OUR). Further, the Minister in arriving at his decision took note of previous advice received from the Attorney General in relation to the Digicel Claro merger that Act did not expressly authorise the Minister to impose conditions in relation to the transaction.

Nonetheless, taking into consideration the various concerns and views expressed publicly regarding the possible implications of the transaction, the Minister's consideration with respect to the requirements of section 11(1) (a) to (b) of the Act took into account a number of issues and the following assurances from CWC were sought in these regard:

1. Existing termination rates agreed as a part of existing interconnection agreements will remain in effect until a new fixed termination rate is established by the OUR.
2. No additional joining service charges should be imposed because of the migration of customers from one network to another.
3. CWC will be required to observe and comply with any limitations and or requirements of the licences whose control are being transferred to CWC.

4. Should there be a rationalization of the networks and /or the provision of different service packages offered by Flow and LIME, customers should have the option to keep their existing package or transfer to a more favourable one. Customers opting to terminate their contracts should be allowed to do so without penalties. Customer-centric arrangements should remain in place for a period of not less than 15 months after approval of the transaction.
5. Connect with the internet exchange point (IXP) and peering with other users of same should be undertaken by January 31, 2015. In relation to the IXP CWC should refrain from;
 - 5.1. behaviour which is not in the best interest of the development of a vibrant Information and Communications Technology sector; and
 - 5.2. advocating for or subscribing to any governance structure that would result in tiered membership of the IXP or otherwise prevent open membership and participation in the IXP by all possible participants whether they are other Internet or network services providers, telecommunications companies or content providers.
6. CWC should provide access to International bandwidth on a non-discriminatory basis noting that effective competition in this market segment necessitates that smaller operators have access to concessionary terms to enable competitive resale of services.
7. All efforts and resources will be provided to ensure that the operations of LIME and Flow are ready to enable the implementation of number portability on by May 31, 2015.
8. With regard to Infrastructure/Facilities Sharing CWC should ensure that other Licensees are provided with non-discriminatory access to tangibles (including ducts, poles and landing stations) which could act as a competitive bottleneck prior to the development of rules governing infrastructure sharing by the OUR.
9. CWC will offer capacity to Resale and Indirect Access operators. Further where such contracts are currently in place the terms and conditions of same should be grandfathered into any new successor contracts arising from the transaction.

ATTACHMENT 5

Update on regulatory processes in Caribbean

1. Bill Woodcock Presentation

The Caribbean Telecommunications Union ('CTU') is an intergovernmental organization that facilitates the exchange of knowledge by regulatory bodies in the region.

The CTU held a workshop on 10 December 2014 in Trinidad & Tobago at which the proposed acquisition was discussed.

Mr. Bill Woodcock, Executive Director of Packet Clearing House, gave a presentation on the impact of the proposed transaction on sub-sea fibre in the Caribbean region.

Packet Clearing House is a non-profit research institute based in San Francisco dedicated to understanding and supporting Internet traffic exchange technology, policy, and economics.

2. Jamaica

Jamaica does not have a formal merger control process. The consent of the Minister of Science Technology Energy and Mining (the 'Minister') to the transfer of control of a licensee is required.

There are no merger control provisions in Jamaican law. While the Fair Competition Act contains anti-trust provisions, a recent ruling by the Jamaican High Court held that these provisions are not a basis for conducting a de facto merger control review.

On this basis the Minister proceeded to grant his consent on 20th January 2015 in the absence of any formal investigation of the competitive effects of the transaction being undertaken in Jamaica.

As part of the Minister's approval the merging parties provided certain assurances which included:

- International bandwidth to be provided on a non-discriminatory basis; and
- Non-discriminatory access to landing stations.

A copy of the assurances is attached hereto. In addition to being somewhat loosely worded, Digicel understands that the assurances are not set out in a formal remedies agreement and no monitoring or enforcement provisions are provided for.

Digicel made submissions to the Fair Trading Commission ('FTC') requesting that it act to ensure that a remedies agreement in line with international best practice is signed by the merging parties that includes more specific details on the commitments of the merging parties including timeframes for the provision of cost based access to international cables and facilities, and effective monitoring and enforcement provisions.

The FTC also received a request from the Caricom Competition Commission to report on the transaction (see below for further details).

However on 16th February 2015 the FTC issued a press release stating that it would not take any further action in relation to the proposed acquisition. A copy of the FTC press release is attached hereto.

Further approvals required:

The Broadcasting Commission of Jamaica must approve the transfer of control of a broadcasting license

Digicel provided a detailed submission to the Broadcasting Commission on 16 January 2015 requesting that the Broadcasting Commission impose certain remedies as clearance conditions including the divestment of duplicate submarine cables.

However it is unclear whether the Broadcasting Commission will impose conditions as it may consider that its mandate is limited to a binary decision either approving the transfer of control without conditions or not approving the transfer.

Digicel understands that no decision has been taken to date.

3. A summary of the regulatory review of the transaction in the relevant Caribbean countries and details on Submissions made by Digicel

Barbados

- Barbados is the only jurisdiction in the Caribbean affected by the proposed acquisition with a formal merger control process set out in legislation
- The proposed acquisition was notified to the Fair Trading Commission ('FTC') in November 2014 whose investigation is continuing.
- In Barbados the proposed transaction will create a monopoly over fixed telephony, broadband provided by fixed infrastructure, and cable television services.
- The FTC extended its investigation beyond the initial three month period provided by the Fair Competition Act
- Digicel has met with FTC officials and has made a detailed submission, which included:
 - A request that the FTC define a relevant market of access to cable landing stations;
 - A request that the FTC mandate cost plus access pricing to cable landing stations;
 - Divestment of duplicate fixed infrastructure;
 - Prohibition of bundles that cannot be replicated by competitors until such time as competitors are in a position to offer similar bundles;
 - Structural & accounting separation of the merged entity
- Separately, the consent of the Minister responsible for Telecommunications to a change of ownership of a licensee is also required.

- In taking this decision the Minister is advised by the Chief Telecommunications Officer who has stated that he intends to consult third parties before arriving at a decision.

Caricom Competition Commission

- The Caricom Competition Commission (the 'Commission') is an institution of the Caribbean Community ('Caricom') of fifteen member states and five associate members to monitor competition
- The Commission may investigate business conduct and make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty by which it was established. (The Revised Treaty of Chaguaramas.)
- On 28 January 2015 the Commission requested competition authorities and telecommunications regulators of member states to investigate the proposed acquisition and to report to it within 30 days. As part of this investigation the Commission sent an information request to Digicel and other third parties on 12th February 2015 and Digicel will respond to this.
- Digicel is not aware of any precedent whereby the Commission intervened to impose conditions on merging parties.

ECTEL markets

- Five Eastern Caribbean nations operate a joint regulatory regime consisting of a regional body, the Eastern Caribbean Telecommunications Authority ('ECTEL') which advises and oversees the work of the National Telecommunications Regulatory Commission ('NTRC') in each member country.
- Three of the member countries are affected by the proposed transaction: Grenada, St. Lucia and St. Vincent & the Grenadines.
- The proposed transaction will create a monopoly over fixed telephony, broadband provided by fixed infrastructure, and cable television services in these countries.
- The position as regards international connectivity is less critical for these countries as the merging parties will face competition.
- ECTEL has requested the merging parties to submit an application for approval, however Digicel understands that no such application has been received.
- There is no formal merger control or anti-trust regime in these countries.
- A difficulty for these countries is that approval of the Telecommunications Minister is required only when there is a change in shareholding of an entity that is licensed in the country. Where a transaction concerns the transfer of shareholdings outside of the jurisdiction of each country the approval process does not apply.
- Digicel has made various submissions to ECTEL and the NTRCs however it is unclear whether these bodies have any ability to intervene.

Trinidad & Tobago

- Trinidad & Tobago does not have a formal merger control process. The consent of the telecommunications regulator ('TATT') to the transfer of control of a licensee is required before it can be effected.
- TATT is conducting an assessment of the proposed transaction and has sought the views of third parties.
- Digicel has made detailed submissions to TATT.
- The position in Trinidad & Tobago is complicated by two additional factors, namely:
 - Cable & Wireless is a 49% shareholder in the incumbent fixed and mobile telecommunications operator in Trinidad & Tobago, TSTT.
 - TATT is conducting a tender for the award of a third mobile telecommunications concession and for LTE spectrum. Cable & Wireless and Columbus have both applied for these, while TSTT has also applied for the LTE spectrum.
- The impact of the proposed transaction on competition on retail markets in Trinidad & Tobago will depend to a large extent on how these issues are resolved.
- The position as regards international connectivity is less critical for these countries as the merging parties will face competition.
- Digicel has requested that TATT clarify the position as regards the shareholding of TSTT before turning to analyze the impact on competition of the proposed transaction.
- TATT's review is ongoing.

Other Submissions

- Digicel has made submissions to the telecommunications regulators in Anguilla, the British Virgin Islands, the Cayman Islands, Haiti and in Turks & Caicos to request investigations into the monopolization of sub-sea fibre that will result from the proposed transaction and the imposition of conditions to ensure non-discriminatory access to these and to landing stations.
- Regulatory bodies in these countries have indicated their deep concern to Digicel.
- However, the ability of the regulatory bodies in these countries to intervene is unclear.

ATTACHMENT 6



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February 16, 2015

Court of Appeal decision halts FTC's investigation of LIME's acquisition of Flow

In November 2014 the Fair Trading Commission (FTC), pursuant to Section 17 of the Fair Competition Act, commenced an investigation into the likely competitive effect of the proposal by Cable & Wireless Communications PLC (parent company of LIME) to acquire 100% ownership and control of Columbus International Inc (parent company of Flow).

However, the FTC has since discontinued its investigation based on a Judgment delivered by the Court of Appeal in December 2014. The Court held that while the FTC has jurisdiction over telecommunications matters and all agreements that are or are likely to be anti-competitive, it does not have such jurisdiction over agreements relating to the transfer of telecommunication licence, where such transfer has been approved by the relevant Minister pursuant to the Telecommunications Act.

The FTC has applied to the Court of Appeal for conditional leave to appeal the Court's decision before the Privy Council. The FTC is committed to fulfilling its mandate to maintain, encourage and promote competition in Jamaica for the benefit of businesses and consumers.

David Miller
Executive Director