

AGREEMENT

BETWEEN THE FAIR TRADING COMMISSION AND
TELECOMMUNICATIONS OF JAMAICA LIMITED

CASE NO. OF 1994

BEFORE THE FAIR TRADING COMMISSION

IN THE MATTER of a Complaint against
Telecommunications of Jamaica Limited
(TOJ)

AND

IN THE MATTER of the Fair
Competition Act

**BETWEEN THE FAIR TRADING COMMISSION COMPLAINANT
AND TELECOMMUNICATIONS OF JAMAICA. LTD. RESPONDENT**

WHEREAS

- (1) TELECOMMUNICATIONS OF JAMAICA LIMITED (TOJ) is a public company, with its registered and head corporate office at 47 Half Way Tree Road, Kingston 5 in the parish of Saint Andrew, AND pursuant to certain licences granted under the Telephone Act and the Radio and Telegraph Control Act, provides telecommunication services and related equipment to customers in Jamaica by virtue of which it may be considered as a dominant entity.
- (2) Since 1986, TOJ's inter-connection policy permitted the connection to its network of the equipment itemized at 1 to- 10 in the Appendix hereto subject to certain conditions.
- (3) THE FAIR TRADING COMMISSION (FTC) having undertaken certain investigations with respect to certain alleged anti-competitive practices of TOJ and having had discussions with TOJ and the Ministry of Pubic Utilities, Mining and Energy culminating in an agreement to extend certain facilities to its customers.

1. IT IS HEREBY AGREED between TOJ and the FTC with the concurrence of the Minister of Public Utilities , Mining and Energy that the parties in this issue have agreed to waive any further procedural steps in this matter as follows:-
 - 1.1 This Agreement is for settlement purposes only and does not constitute an admission by TOJ that the Law has been violated, as may be alleged in any complaint under the Fair Competition Act.
 - 1.2 This Agreement shall not become part of the public record of the proceedings unless and until it is accepted by the FTC and becomes binding upon the parties hereto and upon such acceptance, it shall be available for public access at the offices of the FTC.
 - 1.3 If TOJ fails to implement the agreed policy, the FTC may thereafter either withdraw its acceptance of this Agreement and take such action as it considers appropriate and so notify TOJ, or issue and serve a complaint in such form as the circumstances may require.
 - 1.4 TOJ understands that after this Agreement becomes effective, it will be required to file as requested by the FTC one or more compliance reports to show that it has fully complied with the agreement.
 - 1.5 TOJ understands and accepts that formal proceedings may be instituted if it fails to abide by this Agreement.
2. 2.1 IT IS AGREED THAT TOJ shall amend its policy guidelines regarding Customer Premises Equipment ('CPE') to permit customers to connect their own equipment itemized at 11 to 14 inclusive of the Appendix without prior approval subject to the following terms and conditions which shall also apply to equipment which were previously within TOJ's policy guidelines.
 - (a) Such equipment may be installed by the consumer through qualified contractors or by engaging TOJ to do so.
 - (b) At the point of interface with customer's equipment, TOJ may install or require the installation of a network termination testing apparatus (NTTA) at the customer's expense to permit remote testing of the lines.
 - (c) Each equipment must comply with:

- (i) quality standards and criteria established by the US Federal Communication Commission (FCC) and the Canadian Department of Communication; and
 - (ii) TOJ's own quality and technical standards prescribed from time to time.
- (d) Equipment not satisfying condition (c) above must be submitted to TOJ for testing and evaluation. Such testing shall be undertaken by TOJ and the evaluation of the testing result shall be done by a committee comprising representatives of TOJ and Government. The cost of testing and evaluation will be borne by the customer.
- (e) A customer whose equipment damages the network or who, in the course of installation, damages the network will be liable for such damage and will be required to cover the cost of repairs and consequential losses.
- (f) Each customer will be responsible for the maintenance of his own equipment while TOJ will continue to be responsible for the transmission line up to the NTTA.
- (g) Permission shall not be granted for the connection of any equipment if such equipment
 - (i) would cause degradation of any service being provided by TOJ; and
 - (ii) could be used to bypass the network or, result in the avoidance of evasion of any legitimate charge payable to TOJ.
- (h) Where TOJ visits the customer's premises in response to a repair by the customer call and TOJ discovers that the fault does not lie in their line or equipment the customer must be informed of this and will be required to pay visit charges which will be published after consultation with the Minister of Public Utilities, Mining and Energy.

2.2 IT IS AGREED that TOJ shall amend its "Terms and Conditions of Service" by deleting Part II 1.8 and by adding a new clause in the terms stated at 2.1 of this Agreement.

2.3 In pursuance of the foregoing, the new inter-connection policy shall permit the inter-connection of the equipment set forth in the Appendix hereto. It being understood that

equipment numbered 1 to 10 were previously approved for inter-connection as from 1986;

2.4 Subject to the conditions stated below TOJ will provide circuits on commercial terms to persons wishing to provide value added service ("VADs"). VADs are computer-controlled operations such as message handling, Internet services and alarm monitoring. VADs does not include call-back services or any other service designed to evade or bypass the network or evade legitimate charges or to utilize the network without charge. The relevant conditions are as follows:-

- (a) The service must be properly licensed under existing legislation and regulations.
- (b) Basic telecommunication services will have priority over VADs and, therefore, the availability of circuits of the provision of VADs will depend upon the availability of circuits.
- (c) The service must be such that it will not degrade the basic telecommunication service provided by the Company or damage the network.
- (d) Equipment must be approved by TOJ.
- (e) The service must not be used for the transmission of indecent, immoral, abusive, defamatory, offensive, profane, obscene or menacing messages or signals. If so used, the service may be withdrawn and/or terminated.

2.5 The implementation of the new policy will commence on January 1, 1995.

3. IT IF FURTHER AGREED THAT:

- (a) TOJ shall duly inform its officers, or representatives having responsibility with respect to implementation of the policy of the subject matter of this Agreement;
- (b) TOJ shall notify the FTC at least thirty (30) days prior to any proposed change in its structure or operations which may affect compliance with this Agreement;
- (c) TOJ shall, within sixty (60) days after the date of this agreement file with

the FTC a Report detailing the manner and form in which it has complied with this Agreement.

DATED THE 21st day of December 1994

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT THIS

21st DAY OF December, 1994.

SIGNED SEALED AND DELIVERED for and on behalf of TELECOMMUNICATIONS OF JAMAICA LIMITED by a Director and Director/Secretary in the presence of:

[Signature]
DIRECTOR

[Signature]
DIRECTOR/SECRETARY

[Signature]

SIGNED SEALED AND DELIVERED for and on behalf of THE FAIR TRADING COMMISSION by a Commissioner and Executive Director/Commissioner in the presence of:

[Signature]
COMMISSIONER

[Signature]
EXECUTIVE DIRECTOR/COMMISSIONER

[Signature]