

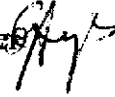
MEMORANDUM

File Classification: JA-M1004

RE3/FI3/79/2005

DATE: MAR 23 2005

TO: Mr. Noriaki Kishimoto, Deputy Manager
Multilateral Investment Fund (MIF)

FROM: Camille Gaskin-Reyes, Deputy Manager
Regional Operational Department 3 

SUBJECT: JAMAICA. Strengthening Enabling Competitive Telecommunications Market-Support to the Office of Utilities Regulation (OUR) (JA-M1004). MIF Project Abstract.

Please find attached the Project Abstract for the above-referenced operation with the purpose of being considered at the MIF Policy and Operations Committee (POC). Pursuant to your review of this document, we would appreciate your issuing the Eligibility Memorandum.

For consultations regarding this document, please contact Ms. Margaret Walsh (RE3/FI3), Team Leader at extension (1745).

Attached:

Abstract and Annex

Cc: A. M. Rodríguez-Ortiz, Chief RE3/FI3
D. Currea, Chief RE3/OD5
A. Giro, POC Secretary
M. Woscoboinik, MIF Coordinator
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K. Evans, Representative COF/CJA
RE3 Files

MULTILATERAL INVESTMENT FUND

MARCH 21, 2005

I. BASIC PROJECT DATA

Country/Region:	Jamaica		
Project name:	Strengthening Enabling Competitive Telecommunications Market- Support to the Office of Utilities Regulation (OUR)		
Project number:	JA-M1004		
Country team:	Team leader: Margaret Walsh (RE3/FI3); members: Asako Yamamoto (MIF) and Karlene Francis (COF/CJA)		
Executing agency:	Office of Utilities Regulation		
Beneficiaries:	Office of Utilities Regulation		
Technical and Basic Responsibility:	RE3/FI3		
Financing plan:	MIF:	US\$	500,000
	Counterpart		
	Local:	US\$	135,000
	USTDA	US\$	290,000
	Total:	US\$	925,000

II. BACKGROUND AND JUSTIFICATION

A. BACKGROUND

- 2.1 The Office of Utilities Regulation (OUR) is the regulatory agency responsible for overseeing the telecommunications sector in Jamaica. The OUR is a statutory body and is charged with the responsibility of regulating the provision of all utility services including water and sewerage, electricity, public transportation and telecommunications. The OUR, although an independent regulatory institution, reports to the Minister responsible for Development in the Cabinet Office.
- 2.2 The OUR receives and processes license applications and makes recommendations to the relevant Minister for the provision of utility services and also regulates the quality of services and prices of utility services. The OUR commenced operations in January 1997 and its initial start-up was supported through a technical cooperation grant (ATN/MT-4529-JA) to the Government of Jamaica (GOJ). This technical cooperation grant was executed successfully.

- 2.3 In addition to the OUR, there are a number of other regulatory bodies with influence over the telecommunications sector or telecommunications service providers. These other regulatory agencies include the Spectrum Management Authority (SMA), the Broadcasting Commission, the Fair Trade Commission (FTC), and the Consumer Affairs Commission (CAC). The FTC and the CAC have responsibility to enforce competition and protect consumers, respectively.

B. Evolution of the Telecommunications Industry in Jamaica

- 2.4 The Telecommunications Act of 2000 (the "Telecom Act") provides the framework through which the country's telecommunications market was opened to competition. The objectives of the Telecom Act include the following: (a) to promote and protect the interests of the public; (b) to promote universal access to telecommunications services for all persons in Jamaica, to the extent that it is reasonably practicable to provide such access; and (c) to promote the telecommunications industry in Jamaica.
- 2.5 The Telecom Act is comprehensive covering such issues as interconnection, tariffs, spectrum management, numbering, competitive safeguards, universal service and consumer protection. The implementation of the Telecom Act established an open and competitive telecommunications market, bringing greater choice, reducing international calling rates, and encouraging the deployment of services in Jamaica. The responsibility for administering the licensing process which is an integral part of the Telecom Act is shared between the OUR whose role is primarily administrative and advisory, and the MICT, which issues telecommunications licenses upon the recommendations of the OUR.
- 2.6 The telecommunications industry has been one of the most dynamic utility sectors in Jamaica largely as a result of the GOJ's successful liberalization policy. The liberalization of telecommunications has led to the auction of licenses to two mobile operators and significant increases in both the number of mobile subscribers and licenses issued to telecommunications carriers and service providers. Although the increase in subscribers has been dramatic, the Jamaican telecommunications market is not yet saturated and is poised for further growth. Set forth in Annex I is comparative analysis of cellular mobile and main line penetration rates in 24 countries of the region.

C. Justification

- 2.7 The OUR must confront a number of regulatory challenges which have arisen as a result of the growth of the telecommunications industry. Included among these challenges are the needs to create an enabling environment for competition and to consolidate position as the national regulatory body for telecommunications carriers and service providers. The OUR has identified the following priority areas which need urgent attention to address the above-mentioned challenges: (1)

drafting of key enabling regulations (including interconnection, licensing, price regulation and universal services) as related to the Telecommunications Act; (2) human resources development in the specialized areas of telecommunications regulation and policy; and (3) the need of OUR to supplement the skills available through the current Advisory Group (Ref. 3.5b).

- 2.8 The OUR has provided ongoing regulatory support with respect to the liberalization of the telecommunications sector. Its operations are to be funded from regulatory fees that are levied on operators in the industry as stipulated by the Telecommunications Act 2000. This budget level (US\$2.9 million for 2004/2005) does not support the implementation of the necessary activities to improve the regulatory framework for the development of sustainable competition in the industry or to build human resource capacity to the required level. The scope of activities included in this proposal must be undertaken so as to safeguard the advances made to date and ensure a level-playing field.
- 2.9 OUR is requesting consideration for funding from the Multilateral Investment Fund to address the regulatory and training needs and would serve as the counterpart agency. The proposed initiative would complement the Information and Communications Technology Project (1438/OC-JA) and the Oceanic Digital Limited Project (1513/OC-JA) that are in execution.

III. OBJECTIVES AND DESCRIPTION OF THE PROGRAM

A. Objectives

- 3.1 The main objectives of this program are to provide support to the OUR to implement specific activities to improve the regulatory framework for the development of sustainable competition in the telecommunications sector and to build human resources capacity in OUR. Specifically, this technical cooperation will support the drafting of implementing regulations for the Telecommunications Act so as to promote a competitive environment for investment in the sector and will develop human resource capacity in the OUR to increase its knowledge base as related to regulatory issues.
- 3.2 Developments in the international telecommunications sector since liberalization in March 2003 have underlined the urgency of the need for comprehensive regulatory rules for the telecommunications market. The referenced regulatory rules were envisioned in the Telecommunications Act of 2000 but have not yet been developed. The OUR requires consultancy services and financial support to expedite the execution of this critical task.

B. Description

- 3.3 **Regulatory Framework.** High level expertise is required on a range of regulatory issues and processes related to competitive safeguards, tariff reviews, the setting of efficiency targets, technical standards, asset valuation, development of

regulatory accounting rules, benchmarking, and other defined topics such as submarine cable regulations.

3.4 The Program will support the following regulatory areas:

- 1) Competitive Safeguards including costing and administrative procedures for incumbent provided facilities and services required by Internet Service Providers (ISP), Accounting Separation, costing and administrative procedures for loop unbundling, regulatory accounts and pricing of leased circuits, as well as the drafting of regulations for the establishment of these competitive safeguards.
- 2) Toll-Free service: Rules and procedures for a fair, non-discriminatory cost-based toll free (1-800) service.
- 3) Assessment of the current Reference Interconnection Offer (RIO5)¹ by Cable & Wireless Jamaica (CWJ) to determine whether the terms contained therein provide a fair basis for competition in all relevant areas of the market.
- 4) Automation of Central Office code administration so as to increase the efficiency of the system.
- 5) Unbundling of the local loop² and investigation of the pricing of essential inputs to the services of competitors such as Internet Service Providers (ISPs). These essential inputs include leased lines and Internet bandwidth.
- 6) Regulation of Submarine Fiber Facilities. Supports the development of a comprehensive, fair and transparent regulatory environment for submarine fiber facilities (submarine cable) thereby encouraging additional investments for increased capacity and promote competition in an area currently served by a single provider.

3.5 **Human Resources Development and Capacity Building.** The project also will finance the strengthening of the human resource staff within OUR and general capacity building.

3.6 The following specific areas will be strengthened:

- a. *Human resources development.* Human resource development will be targeted primarily to senior professionals and mid and entry level professionals. The training will include general topics such as contract administration as well as in depth technical training on policy and industry regulation.

¹ The Reference Interconnection Offer forms the basis of commercial interconnection agreement between Cable & Wireless Jamaica and providers of publicly available communication networks who have been granted a right to interconnect

² The local loop is the wired connection from a telephone company's central office in a locality to its customers' telephones at homes and businesses

- b. *The Advisory Group.* The OUR has adopted a successful approach where under it appoints international specialists in specific areas to serve as a resource pool to advise the Office. The OUR convenes annual meetings of the Advisory Group in Jamaica in order to review the work of the OUR and to advise on future direction, emerging policy issues, and other relevant topics. This Program would permit the expansion of this Advisory Group to include the appointment of telecommunications regulatory advisors.

IV. PROJECT COST AND FINANCING

4.1 Total project costs are estimated at US\$ 925,000, which includes US\$ 500,000 in financing from the MIF, US\$ 290,000 from United States Trade Development Agency (USTDA) and US\$ 135,000 from the GOJ of which an estimated US\$ 95,000 will be in kind and US\$ 40,000 in cash. The submarine cable regulation work to be financed by USAID will be coordinated with the proposed operation and is an integral component of the telecommunications industry development.

Components	MIF US\$	GOJ US\$	USTDA US\$	TOTAL US\$	%
Competitive safeguards	180,000	25,000		205,000	22.2%
Toll-Free Number Adm.	220,000	40,000		260,000	28.1%
Review of RIO 5-cost based mobile termination	20,000	15,000		35,000	3.8%
Automation of Number Administration	30,000	20,000		50,000	5.4%
Unbundling of local loop	30,000	35,000		65,000	7.0%
Submarine cable regulation			290,000	290,000	31.4%
Evaluation, audit and contingency	20,000				2.1%
TOTAL	500,000	135,000	290,000	925,000	100%

V. EXECUTING AGENCY AND EXECUTING STRUCTURE

A. Executing Agency

- 5.1 The executing agency is the OUR, which was established for the sole purpose of regulating the provision of utility services. The OUR is under the Ministry of Development in the Office of the Prime Minister. The OUR is composed of a Director General and two Deputy Director Generals and 32 additional staff.

B. Executing Mechanism

- 5.2 The execution period of the project will be 36 months, with a disbursement period of 42 months. The expected project results are implementing regulations and trained regulators in the OUR. Project execution provides the required time to develop, draft and implement the required regulations and to train the personnel.

VI. MAJOR ISSUES AND SUSTAINABILITY OF INITIATIVE

- 6.1 As previously noted, there are several regulatory bodies with influence over the telecommunications sector or telecommunications service providers. The Government of Jamaica has future plans to consolidate these dispersed responsibilities and to create a single regulatory agency for telecommunications and communications. The creation of this single-body regulator was to be financed with the proceeds of the previously cited loan 1438/OC-JA.³ The benefits to accrue under the proposed technical cooperation would be transferrable to the new consolidated regulatory agency when it is formed. In the interim, the sector would realize the benefits derived from the regulations and the enhanced competitive operating environment.
- 6.2 The GOJ has committed to promote competitiveness in the industry and to promote the involvement of the private sector in the provision of these services. In turn, this private sector involvement is expected to generate revenues for the GOJ in general and OUR in particular so as to assure future sustainability.

VII. ACTION PLAN

- 7.1 Many of the activities for project preparation have been completed. The Donors Memorandum is expected to be completed by June 2005.

VIII. ENVIRONMENTAL AND SOCIAL ISSUES

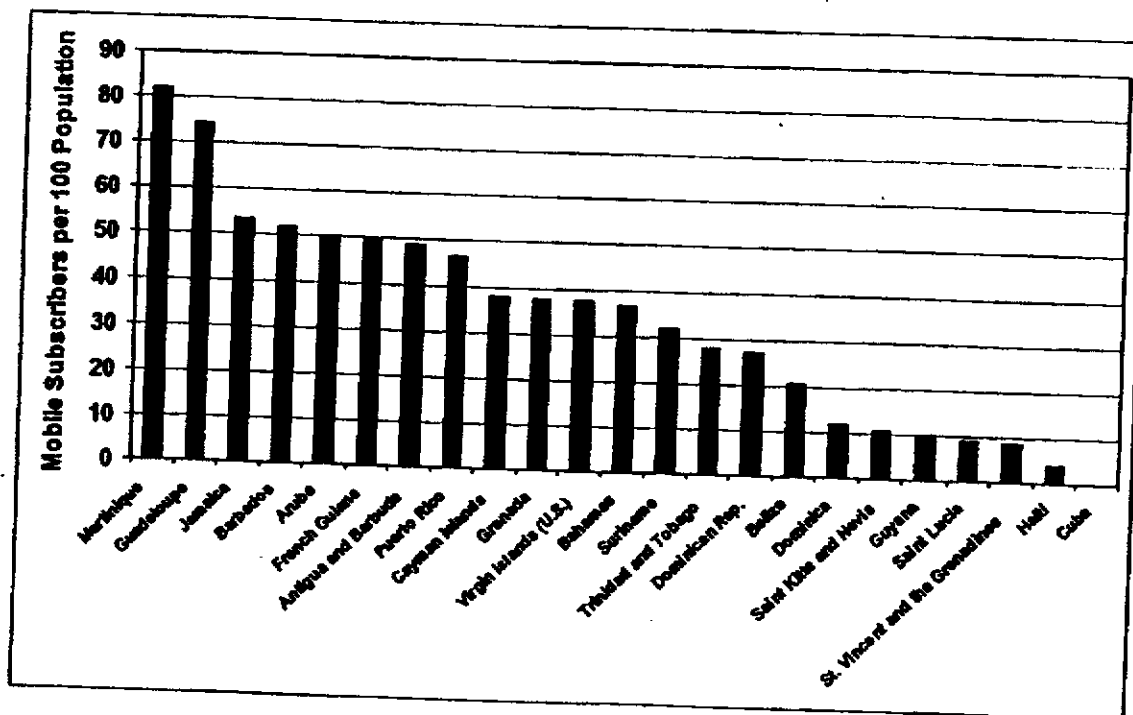
- 8.1 The project team does not foresee any negative environmental or social impacts of the project. The regulatory framework to be developed is expected to address the environmental and social issues involved in the provision of telecommunications services by the private sector.

³ 1438/OC-JA is being redimensioned and its final content/scope is not yet determined

Prepared by: Margaret Walsh, RE3/FI3 Margaret A Walsh Date: 3/21/05
Vo.Bo. Ana Maria Rodriguez-Ortiz, RE3/FI3/CHF ^{PD} am Date: 3/21/05
Vo.Bo. Dora Currea, RE3/OD6/CHF Dora Currea Date: 3/21/05
Approved by: Camille Gaskins-Reyes RE3/DEP Reyes Date: March 22, 05

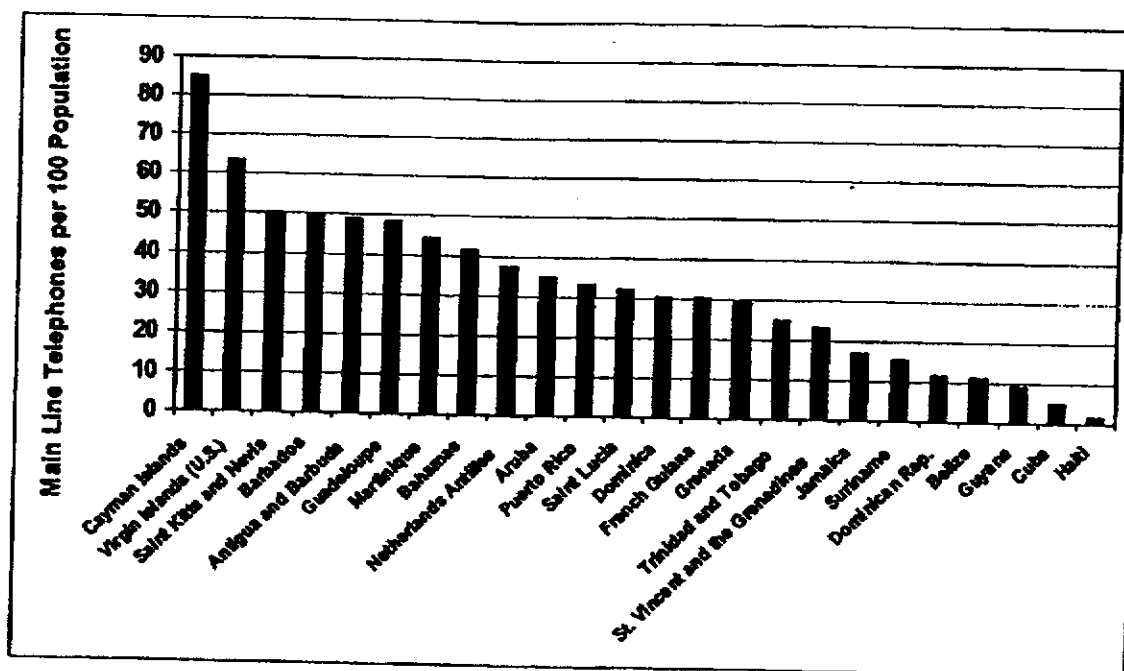
Attachment: Institutional Assessment of the OUR

Cellular Mobile Penetration In the Caribbean



Source: ITU WTI 2004

Main Line Telephone Penetration In the Caribbean



Source: ITU WTI 2004

Institutional Assessment

General instructions: The intent of this checklist is to assess the institutional qualifications and attributes of an entity that has submitted a proposal to the MIF for a Facility II or IIIA project, since these two facilities require comparable attributes. A similar checklist for Facility I will be developed. While it is understood that much of this instrument involves subjective interpretation, the idea is to utilize the criteria and elements and compare the given institution with other similar institutions in the country or region (depending on the nature of the proposed initiative). The first part of this instrument should be completed by the Specialist in the Representation prior to the project being presented to the MIF for eligibility. Once completed, it should be attached to the project abstract when submitted to the MIF Office. The second part is intended to be used after receiving MIF eligibility and is related to the institutional analysis that should be a part of the design and preparation of the project. The scoring is intended to assist in the identification of areas that merit further attention in the design. There is not a minimum score needed to be able to continue forward with the project design and ultimate Donor Committee approval.

Proposed Executing Agency: Office of Utility Regulation (OUR)

I. Minimum points to verify prior to presenting the project abstract:

1. Executing agency has legal statutes or proposes a clear institutional arrangement mechanism to permit MIF/IDB to enter into a legal agreement.
 - **The OUR is a body corporate established under the Office of Utilities Regulation Act, 1995 (Sec3 (1)).**
2. Indication of availability of counterpart resources.
 - **The OUR is financed through a cess (tax) on tariffs (regulatory fees) charged to regulated utilities companies and income which it earns as a result of its functions. Office of Utilities Regulation Act, 1995 (Sec 6 (a)(c))**
 - **The OUR has secured \$290,000 from the USTDA which will be used as counterpart resources**
3. Internal administrative, financial and audit system in place.
 - **The OUR is complying with the requirements of the Financial Administration and Audit Act, which mandates the use of a full financial and audit system.**
4. If executing agency has had experience with MIF in the past, it must have been (must be) positive/successful.
 - **The MIF financed the Establishment of the OUR, ATN/MT-4529-JA. It was a successful project.**
5. No criminal allegations or other legal claims that may interfere with the ability of the executing agency to carry out the project or cause entanglements for the Bank.
 - **There are no criminal allegations or legal claims.**

COF Specialist: Karlene C. Francis

Date: November 19, 2004

II. Detailed institutional evaluation for the analysis phase:

Criteria (& weight)	Elements	Assessment	Rating
Organization (5)	<ul style="list-style-type: none"> • Number of years of existence • Clear vision and mission • Strong management organization • Turnover in leadership in past three years • Demonstrated administrative capabilities • Existing useful infrastructure • Existing number of staff, especially those involve in project related areas and on staff for more than one year • Clear hierarchy and decision making structure • Presence of board that meets regularly • Operations rooted in manuals and other documents • Access to beneficiary groups (e.g. SMEs, local service providers, etc.) • Experience with project monitoring / tracking 	<ul style="list-style-type: none"> • 7 years, established in 1997 • Yes, see Annual Reports • Yes, see Annual Reports • Yes, former Director General did not seek reappointment in September 2002. Mr. J. Paul Morgan was appointed as the new Director General. In 2004, a Deputy Director General for Electricity & Water was hired. • Yes, low staff turnover • Yes, includes IT infrastructure, office furniture and other equipment. • 9 members of staff • Yes, see organizational chart • No, the Director General and Deputy Director Generals have monthly meetings to discuss the operations of the OUR. • Yes, Office of Utilities Regulation Act 1995, Office of Utilities Regulation (Amendment) Act 2000, Personnel and Accounting Procedures. • Yes, access to beneficiary groups and stakeholders. There is a Consumers Affairs Department which collect and resolves public complaints and the Community Services Department which has programmes to educate the public about the OUR and hear citizens concerns regarding utility services particularly in rural and inner city communities. • Yes, has worked with MIF, CIDA, DFID and the World Bank projects that required monitoring/tracking. 	4

Criteria (& weight)	Elements	Assessment	Rating
Financial capacity (4)	<ul style="list-style-type: none"> • Variation in revenue stream over past three years • Demonstrated ability to attract interest from other donors 	<ul style="list-style-type: none"> • Yes, see Annual Reports • Yes, the USTDA is providing \$290K of counterpart resources. 	3
Expertise in sector or project area (3)	<ul style="list-style-type: none"> • Demonstrated experience in project area • Demonstrated track record • Number of similar projects in past three years • Increase in technical staff over last two years 	<ul style="list-style-type: none"> • Yes, the Projects include: Tariffs and other aspects of economic regulations, licensing, liberalization of the telecommunications sector, enforcing the legislative requirements and license conditions, monitoring and analysis of the performance of the sector. • Yes, implemented certain actions to foster competition and advance the process of sector liberalization. • Three • Two, an Engineer and an Economist 	2
Knowledge of related thematic areas (3)	<ul style="list-style-type: none"> • Experience in activities related to proposed initiative • Knows local conditions (economic, political, etc.) 	<ul style="list-style-type: none"> • Limited experience, need to ensure Knowledge transfer to OUR team • Yes 	2
Independence (3)	<ul style="list-style-type: none"> • Not involved with competing activities • No conflicts of interest • If a membership organization, ability to work with other entities besides members 	<ul style="list-style-type: none"> • No • No • No 	3
Ability to work with other institutions (2)	<ul style="list-style-type: none"> • Experience working with other institutions both public and private • Effective relationship with other similar institutions • Number of joint efforts in past three years • Experience with bilateral or other multilateral organizations 	<ul style="list-style-type: none"> • Yes; Ministries, utility companies, Internet Service Providers (ISPs), Spectrum Authority of Jamaica (SMA), Fair Trading Commission (FTC) and the general public. • Yes, this includes the SMA, FTC and the members of the Organization of Caribbean Utility Regulators (OOCUR). • Numerous. The OUR works in conjunction with the FTC and the SMA on a continuous basis. They also provide work with the members of OOCUR. • Yes, these include MIF, World Bank, DFID, CIDA and UNDP. 	2

Criteria (& weight)	Elements	Assessment	Rating
Network within the geographic area of project (2)	<ul style="list-style-type: none"> • Networked within country / region • Strong communication system in place • Large number of members 	<ul style="list-style-type: none"> • Yes. Evidenced by interactions with OOCUR, SMA, FTC and other government Ministries • Yes, through the Communications Services Department • Yes in OCCUR where the Director General of OUR has the Vice Chairman position. 	2
Reputation (2)	<ul style="list-style-type: none"> • Well known in country, region or internationally • Respected among other organizations 	<ul style="list-style-type: none"> • Yes • Somewhat. The OUR has the legal and structural underpinning to effectively regulate the telecommunications sector in Jamaica but has come under growing criticism by stakeholders and especially the new entrants and the ISPs who suggest that it reacts too slowly to rapidly changing circumstances in the sector, has not been giving sufficiently high priority to telecommunications, is too cautious and lacks the will and determination to take the difficult and sometimes unpopular decisions that are required to regulate a sector where a powerful incumbent continues to dominate. 	1
Demonstrated interest (1)	<ul style="list-style-type: none"> • Strong and well defined institutional strategy • Ambitious with drive • Demonstrated interest in taking on the role and sufficient capacity and interest to continue past use of MIF resources 	<ul style="list-style-type: none"> • Yes • Yes • Yes 	1

Total possible score: 25

Total: 20

Overall Conclusions:

The activities to be financed under the proposed project are critical to the promotion of fair competition and development of the telecommunications sector in Jamaica. The OUR has extensive experience with implementing multilateral/donor financed projects. In addition, they have secured \$290K from the USDTA to use as counterpart resources. They have the capacity to implement the proposed project, however, mechanism should be put in place ensure adequate knowledge transfer and capacity building.

Project Team Leader: Margaret A. Mabel

Date: March 23, 2005