



CABLE & WIRELESS

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21st July, 2006

Mr. Greg van Koughnette
General Counsel and Head of Licensing & Compliance
Information and Communication Technology Authority
P.O. Box 2502GI
3rd Floor Alista Towers
Grand Cayman

Dear Mr. van Koughnette,

Re: ICT Decision 2006-1 / Reconsideration

Further to the procedures established by the Authority in its email of 19 July 2006, Cable and Wireless (Cayman Islands) Limited ("C&W Cayman") hereby responds to the 14 July 2006 request by TeleCayman Limited ("TeleCayman") to the Authority (the "Request") for reconsideration of the Authority's 13 July 2006 ICI Decision 2006-1, *Decision on Cable & Wireless Application for Determination of Transit and Termination Rates* ("Decision"). TeleCayman's Request is without merit and should be dismissed, with one exception, and the Decision upheld.

TeleCayman's Grounds for Reconsideration

TeleCayman advanced three substantive grounds for the reconsideration: (1) the Authority failed to fully understand the contractual regime established by the May 2004 Interconnection Agreement between C&W Cayman and TeleCayman (the "Agreement"); (2) the Authority exceeded its mandate and legislative authority in interpreting the Agreement and (3) the Authority misinterpreted the Agreement. TeleCayman also requested that the Authority stay ICI Decision 2006-1 until the Authority makes a determination on the Request.

We will address each of these substantive grounds in turn below.

C&W Cayman notes that the absence of a response below to a specific point or issue raised by TeleCayman in the Request should not be interpreted as agreement by C&W Cayman with the position taken by TeleCayman in respect of such point or issue.



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Error in Understanding

C&W Cayman submits that the Authority has misunderstood neither C&W's original application nor the contractual regime established by the Agreement. However, the language used by the Authority in paragraph 9(a) of the Decision may have been overly broad. C&W Cayman does not believe that the Authority intended by its language in that paragraph to require TeleCayman to pay more than other ICT Licensees for terminating incoming international traffic on a mobile network. To that extent, therefore, C&W Cayman agrees that it would be useful for the Authority to clarify that the Decision is intended to apply to traffic originating on TeleCayman's network in Cayman, transited via C&W Cayman's PSTN network and terminating on mobile networks in Cayman.

With respect to TeleCayman's comment that it "does not have sight of the Digicel and C&W Interconnection Agreement", C&W Cayman refers TeleCayman to the Authority's website at www.icta.ky, where that agreement has been available since 2004.

Error in Mandate

C&W Cayman submits that the Authority is fully competent to interpret a contract that relates to matters within its area of expertise, which clearly includes interconnection of ICT networks. The fact that the courts are also competent to interpret such a contract does not exclude the Authority's competence.

Section 9 of the *Information and Communications Technology Authority Law* (2004 Revision) (the "Law") specifies that the Authority's "principle functions" include:

9(3)(c) to investigate and resolve complaints from consumers and service providers concerning the provision of ICT services and ICT networks;

9(3)(g) to resolve disputes concerning the interconnection or sharing of infrastructure between or among ICT service providers or ICT network providers;

It is notable that these two paragraphs do not limit the disputes to pre-contractual disputes. The fact that section 67 of the Law allows ICT licensees to refer pre-contract disputes to the Authority does not in any way limit the Authority's function and jurisdiction "to resolve disputes concerning the interconnection or sharing of infrastructure". Rather, it clarifies that the Authority's jurisdiction to resolve disputes begins even before there is an agreement or actual interconnection.

The Authority's jurisdiction to resolve interconnection contract disputes is carried over into section 26 of the *Information and Communications Technology Authority (Interconnection and Infrastructure*



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Sharing) Regulations, 2003) (the “Regulations”), which specifies the matters which may be brought before the Authority for resolution:

26. Where either the requestor or responder believes that the other party is not requesting, negotiating, or processing a request in good faith, or if there is a dispute between the parties as to the terms and conditions for the provision of interconnection or infrastructure sharing, either party may submit the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations. (emphasis added)

The second branch of section 26 is clearly not limited to pre-contract disputes.

Section 22 of the Regulations also permits the Authority to reject any interconnection agreement or any part thereof if it determines that the agreement does not comply with the Law, etc. It is nonsensical to believe that the Authority could do so without having the ability to review executed interconnection contracts, particularly as ICT licensees have no obligation to provide interconnection contracts to the Authority until after they have been signed.

C&W Cayman also notes that section 3 of the *Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003*, specify that a licensee “which is aggrieved by any matter relating to another licensee” (emphasis added) may refer the matter to the Authority for a determination, subject to the rules and procedures set out in the said regulations.

All of the above provisions are consistent with the proposition that the Authority has the jurisdiction under the Law to review and interpret interconnection contracts. C&W Cayman submits that TeleCayman’s arguments, that the Authority does not have such jurisdiction, are without merit.

Error in Interpretation

C&W Cayman strongly disagrees that the Authority misinterpreted the Agreement, and submits that TeleCayman has deliberately misrepresented it. TeleCayman referenced three different services, the “PSTN Terminating Access Service”, the “PLMN Terminating Access Service” and the “PSTN Transit Service”. Each of these is precisely described in the Service Descriptions Schedule. However, in an effort to support their faulty argument, TeleCayman has chosen to omit the relevant descriptions from the Request.

The PSIN Terminating Access Service is described in paragraph 1.1.2 in Part II of the Service Descriptions Schedule:



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- 1.1.2 The PSTN Terminating Access Service will provide conveyance of Calls originating on Service Taker Subscriber Connections in the Cayman Islands via the Service Supplier PSTN from the Point Of Connection defined by the Joining Service to the applicable Service Supplier PSTN Subscriber Connections in the Cayman Islands. Such Calls must be addressed to valid number ranges associated with the Service Supplier PSTN Subscriber Connections.¹

In other words, the PSTN Terminating Access Service applies only to calls that (1) both originate and terminate in the Cayman Islands; (2) originate on either C&W Cayman's network or on TeleCayman's network, as the case may be; and (3) terminate on either C&W Cayman's or TeleCayman's network, as the case may be. It is a service that does not involve any party other than the two signatories to the Agreement. This is why the PSTN Terminating Access Service does not reference "a responsibility for C&W payments to Third Party National Telecom Providers", as noted by TeleCayman, because there are none involved in this service.

Similarly, the PLMN Terminating Access Service is described in paragraph 2.1.2 of Part II of the Service Descriptions Schedule:

- 2.1.2 The PLMN Terminating Access Service will provide conveyance of Calls which originate on a Service Taker Subscriber Connection from the Point of Connection defined by the Joining Service to Service Supplier PLMN Subscriber Connections in the Cayman Islands, via the Service Supplier PLMN, and PSTN where appropriate. Calls must be addressed to valid number ranges associated with the Service Supplier PLMN Subscriber Connections in the Cayman Islands. Calls originating or ultimately terminating outside of the Cayman Islands are not conveyed pursuant to this Service Description

Because TeleCayman does not have a mobile network, only C&W Cayman is a Service Supplier of this PLMN Terminating Access Service. However, again, the PLMN Terminating Access Service applies only to calls that (1) both originate and terminate in the Cayman Islands; (2) originate on TeleCayman's network; and (3) terminate on C&W Cayman's network. As with the PSTN Terminating Access Service, this service does not involve any party other than the two signatories to the Agreement. Again, there is no reference to "a responsibility for C&W payments to Third Party

¹ The Agreement is reciprocal. Hence, the identity of the "Service Supplier" and of the "Service Taker" depends upon the specific situation, and more particularly specified in the Service Schedule. Briefly, the "Service Supplier" is the party terminating the call. As a result, C&W Cayman is the Service Supplier when TeleCayman delivers a call to it for termination on the C&W Cayman PSIN, and C&W Cayman is the Service Taker when it delivers a call to TeleCayman for termination on the TeleCayman fixed network.



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National Telecom Providers” in the PLMN Terminating Access Service, because there are none involved in this service.

In contrast, the PSTN Transit Service is described in paragraph 1.1.2 of Part 4 of the Service Descriptions Schedule:

- 1.1.2 The PSTN Transit Service will provide conveyance of Calls from Service Taker Subscriber Connections destined for (a) a Third Party National Telecom Provider Subscriber Connection in the Cayman Islands or (b) a Paging Provider Subscriber Connection in the Cayman Islands from the Point of Connection defined by the Joining Service via the Service Supplier PSTN to the Point of Handover for collection by (a) the Third Party National Telecom Provider or (b) the Paging Provider.

“Third Party Telecom Provider” is defined in the Definitions Schedule of the Agreement as “a Telecom Provider licensed to provide services in the Cayman Islands, other than a Service Supplier or Service Taker”. “Telecom Provider” is defined as “a person operating a telecommunications ICT network or providing a telecommunications ICT service”. This necessarily includes mobile telecommunications ICT network operators and mobile telecommunications ICT service providers. In other words, the premise upon which TeleCayman bases its argument that the Authority has misinterpreted the Agreement is entirely false.

Unlike the two other services discussed herein, this service involves third parties. However, the call termination charges applied by those third parties are not specified in the Agreement, as C&W simply flows through the applicable charges. In the case of third party mobile service providers, the applicable call termination charges are CI\$ 0.1845 per minute, which is the rate that C&W Cayman has been seeking to collect from TeleCayman.

TeleCayman’s description of the technical / network arrangements is also faulty. As TeleCayman correctly states, the Digicel mobile network, the C&W mobile network and the TeleCayman fixed network are all connected to the C&W fixed network. However, it is incredible that, having made this observation, TeleCayman goes on to state that “there is no need for a mobile call terminating on Digicel’s network to be carried over C&W’s PSTN”. As long as TeleCayman interconnects indirectly with Digicel via the C&W fixed network, the TeleCayman mobile calls MUST NECESSARILY be carried over C&W’s PSTN.



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In its 19 July 2006 email, the Authority requested that C&W Cayman and TeleCayman consider the effect of section 77 to 79 of the Law. C&W Cayman submits that Part IX of the Law, i.e. sections 77 through 79 inclusive, is not relevant here.

Section 77 applies explicitly to only certain types of decisions by the Authority. C&W Cayman submits that the Decision is not a decision not to grant a licence, or a decision to revoke, modify or suspend a licence, or a decision made pursuant to one of the enumerated provisions from Part IV of the Law, or a decision in relation to a pre-contract dispute under section 67 of the Law. Further, no other types of decisions have been prescribed as being subject to section 77. As a result, section 77 does not apply to the Decision.

Section 78 applies only to a subset of the types of decisions enumerated in subsection 77, and therefore does not apply the Decision.

Section 79 establishes a statutory right of appeal to the court in related to certain specified decisions and on certain specified grounds. The Decision is not a decision made pursuant to sections 55, 58 or 77. As a result, there is no statutory right of appeal from the Decision pursuant to section 79 of the Law.

However, C&W Cayman submits that the fact that Part IX does not apply to the Decision does not mean that the Authority cannot reconsider one of its own decisions, if the merits of the case so warrant (unlike this particular case). If that were the case, then the Authority would have limited ability to correct obvious mistakes or to modify its policies as circumstances warrant. It would not make sense for the legislature to hobble the Authority in this manner.

Conclusion

With one exception, TeleCayman's Request is without merit and should be dismissed, and the Authority should confirm its Decision. Nor should the effect of ICI Decision 2006-1 be stayed until the Authority issues a decision on the Request (although C&W Cayman requests that the Authority issue its decision in a timely manner, so as to render this point moot).

However, C&W Cayman does recommend that the Authority clarify that the rate of CI\$ 0.1845 referenced in paragraph 9(a) of the Decision applies to traffic originated in the Cayman Islands and terminating on a mobile network in the Cayman Islands.



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All of which is respectfully submitted.

Yours faithfully,
Cable & Wireless (Cayman Islands) Ltd.

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