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August 30th, 2004

Mr. Philip Brazeau,
Director of Licencing and Regulation,
Information & Communications Technology Authority,
P.O. 2502GT,
Grand Cayman, Cayman Islands

Re: Indirect Access Public Consultation (Ref: CD (2003) 7) - Interrogatories

Dear Philip;

Thank you for the opportunity to respond to interrogatory 3D. Please find TeleCayman's position on the requested topics outlined below.

3. C&W's draft retail tariffs contain a number of restrictions on use which prevent a subscriber from accessing "international ICT services provided by another Licensee, through the ICT network and ICT services of the Licensee with whom the Subscriber is directly and physically connected." For example, in C&W's Draft General Tariff, Item 600 (General), at page 6.2, it is indicated that:

The Customer shall not allow the Internet Service to be used, modified or adapted to transmit voice Services on the PSTN. The Customer shall not connect to the PSTN at either the local or distant end.

In Item 603 (Asymmetric Digital Subscriber Line), at page 6.16, it is indicated that "transmission of Voice over IP is not permitted from any ADSL Internet Access connection."

Similarly, in Item 502 (Domestic Private Leased Circuits), at pages 5.8 and 5.9, the customer is required to undertake not to, among other things, use or "allow the DPLCs to connect voice conversations to the fixed public telecommunications system, mobile public telecommunications system or the Internet."

See also Items 503 (Integrated Services Digital Network), page 5.11; Item 601 (Dialup Internet Access), page 6.8; and Item 602 (ISDN Internet Access), page 6.11. There are similar restrictions in a new service filing that C&W has filed with the Authority on a confidential basis.

Such restraints are also present in certain wholesale arrangements. In the Service Schedule applying to provision of DPLCs for resale, the licensee-customer and the end-customer are not permitted to use or allow anyone else to use the service:

- to resell part or all of any portion of the capacity provided by the service (paragraph 2.3.3); or
- to connect to the Public Switched Telephone Network at either the local or distant end (paragraph 2.3.7).

The service schedule pertaining to ADSL resale service requires, at paragraph 5.5, the customer to undertake that “it shall not use or cause the ADSL Resale Service to be used for the conveyance of any form of Voice Service.”¹

D) **[All Respondents]** Provide your company’s views, with justification, as to whether restrictions of this nature are:

- i) inconsistent with the requirement, under the ICTA Law (2004 Revision), that the Authority “promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so” (subsection 9(3)(a)) and “promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure” (subsection 9(3)(h));
- ii) represent either an abuse of dominant position or an anti-competitive practice, contrary to the provisions of the ICTA Law (2004 Revision) and C&W’s Licence, by, for example, “limiting production, markets or technical development to the prejudice of consumers” or “imposing ... unfair trading conditions.” (Condition 15.2 of C&W’s Licence).

TeleCayman Response:

The position taken by the Incumbent Carrier with regard to the use of their network for anything other than traditional voice services is in direct conflict with what is considered Progressive International Practices and best utilization of existing infrastructure. As is commonly recognized, VOIP applications are rapidly becoming a way of life internationally. Based on this fact, for an Incumbent Carrier to restrict a subscriber from transmitting voice services over the PSTN and more specifically, to prevent a subscriber from transmitting VOIP from any ADSL Internet connection or Domestic Private Leased Circuits, is in direct conflict with the current direction Telecommunications Technology is taking. TeleCayman Limited is of the opinion that these positions, taken by the incumbent, are in direct conflict and inconsistent with the ICTA mandate of promoting competition in the provisioning of ICT Services and ICT Networks where it is reasonable or necessary to do so. This inconsistency exists as well with the ICTA’s stated objective to promote and maintain an efficient, economic and harmonized utilization of ICT infrastructure.

Although TeleCayman strongly believes that only facilities based carriers be licenced to provide telecommunication services in the Cayman Islands, we also support the notion that all telecommunications infrastructure should be utilized in a manner that is both efficient and cost effective to the consumer.

In summary, TeleCayman Limited is of the opinion that the position of the Incumbent Carrier is purely protectionism and clearly represents an abuse of a dominant position or an anti-competitive posturing. TeleCayman believes that this anti-competitive posturing potentially results in duplications of infrastructure that are both cumbersome and costly to the consumer.

Please do not hesitate to contact me if you require any additional information or clarifications.

Respectfully yours,

Gary Mix,
President