



**CABLE & WIRELESS**

Cable & Wireless  
(Cayman Islands) Limited

P.O. Box 293  
Grand Cayman KY1-1104  
Cayman Islands.

www.cw.ky

Telephone +1 (345) 949-7800  
Fax +1 (345) 949 7962

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09 November 2007

Mr. David Archbold,  
Managing Director,  
Information, Communication and Technology Authority,  
P.O. Box 2502,  
3<sup>rd</sup> Floor Alissta Towers,  
Grand Cayman, KY1-1104

Dear Mr. Archbold:

**Re: C&W request for forbearance on High Speed Internet Access Services**

Cable and Wireless (Cayman Islands) Limited (“**C&W Cayman**”) is pleased to submit the following request in accordance with clauses 18-19<sup>1</sup> of Schedule I to the Agreement

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<sup>1</sup> 18. At any time from two (2) years after the Effective Date, the Authority will entertain applications in relation to forbearance. If the Authority determines that rate regulation is not necessary:

- to prevent unreasonable or discriminatory practices; or
- for the protection of consumers,

and that forbearance is consistent with the interests of the public including promoting competition among Licensees, then the Authority will forbear from applying rate regulation to an ICT Service. One of the factors that the Authority shall have regard to, among others, in deciding whether to forbear shall be whether there is effective competition in relation to the relevant market.

19. Any Licensee making an application for forbearance is under the onus to prove to the Authority that the test for forbearance has been met. The Authority will make a finding in relation to an application within nine (9) months of receipt of said application. The Authority may exercise its power to forbear conditionally or unconditionally as it determines is appropriate in all the circumstances. Nothing in this section prevents the Authority from exercising its power to forbear or reduce the level of rate regulation of

between Cable and Wireless (Cayman Islands) Limited and the Governor in Cabinet of the Cayman Islands and the Information and Communications Technology Authority (“**Authority**”) dated 10 July 2003. C&W is requesting that the Authority forbear from regulating C&W’s high-speed Internet access services on the basis that there is effective competition in the relevant market for the supply of high-speed / broadband Internet access services and that rate regulation is not necessary to protect consumers.

C&W Cayman is filing portions of this submission in confidence with the Authority. Customer number information is highly sensitive and C&W Cayman is not authorized to release to the public the results of the Tower Omnibus Survey, which remain the property of Tower Marketing and Publishing Limited. A redacted version, with all confidential information replaced by “###”, will be provided for the public record.

### **Competition in the supply of high speed / broadband Internet access services**

The relevant market for the purposes of this application consists of the market for the supply of Internet access services with “speeds” in excess of 56 kbps. As defined under C&W Cayman’s licence, these are “high speed Internet access services”, and include C&W Cayman’s Asymmetric Digital Subscriber Line (“**ADSL**”) and Direct Internet Access (“**DIA**”) services. However, customers generally do not view these as defined by any specific technology, and consider wireline and wireless-based services to be substitutes for each other. Customers do, however, distinguish these high speed Internet access services from traditional “dial-up” Internet access services.

There are currently four providers of high speed / broadband Internet access services, each serving all segments of the market in the Cayman Islands: C&W Cayman, WestTel Limited (“**WestTel**”), TeleCayman Limited (“**TeleCayman**”) and Digicel Cayman

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ICT services in the absence of a finding as contemplated above, or from making a subsequent finding that it is no longer appropriate to forbear, and therefore that rate regulation should be reinstated.

Limited (“**Digicel**”). While there are some barriers to entry in this market, to the extent the service providers need to build out networks, these barriers are not particularly high, as evidenced by the evolution of the market in the Cayman Islands. While WestTel began offering services in November 2004 (as soon as the market was liberalized), TeleCayman started offering their services in 2005 and Digicel launched their high-speed Internet access services in October 2007. Further, we fully expect Blue Sky Wireless Limited will be offering its own high speed Internet access services when it re-launches in the future. Clearly, entry into the market, and as a result competition, has been increasing steadily over time and C&W Cayman expects it to continue to intensify.

In addition, C&W Cayman does not control any upstream or downstream bottlenecks in this market. None of these competing operators rely on any C&W Cayman network or services (or, to the best of C&W Cayman’s knowledge, on each others’ networks or services), either for their local access networks or for their connectivity to the world-wide Internet. In particular, each of these four operators (C&W Cayman included) has its own international submarine capacity and its own arrangements for connection to the Internet overseas. Neither C&W Cayman nor any other party is in a position to exercise any form of market control or dominance over the others.

As the Authority is aware, C&W has estimated in the past that its share of the market is approximately ####%. Whilst C&W has #### broadband customers, we have estimated that our competitors collectively have about #### customers, which makes a total broadband take-up in the Cayman Islands of nearly ####. These estimates were confirmed by independent market research, a copy of which was provided to the Authority in confidence in August 2007.

This market research was undertaken in March 2007, when C&W commissioned a Tower Omnibus Survey to provide us with a detailed insight into the ICT market in the Cayman Islands. The survey was conducted via telephone and 1,000 people were

interviewed. This survey represents the largest telephone survey ever conducted in the Cayman Islands. The methodology used for the survey was pure random sampling achieved by including all fixed and mobile telephone number prefixes issued in the Cayman Islands. Interview calls were made during the day and in the evenings to ensure a random sample was selected. The survey consisted of two parts; one answered core demographic questions focusing on areas such as gender, age, income levels etc. whilst the other sections concentrated on questions specific to the ICT sector. Included in this section were questions relating to the use of broadband services in the Cayman Islands.

The results have confirmed what up until then had been simply anecdotal evidence. In response to the question “Who supplies your high speed Internet?”, some ####% indicated C&W Cayman, ####% indicated WestTel and just over ####% indicated TeleCayman.

However, as the Authority is aware, these results are now increasingly out of date and C&W Cayman believes that its market share has in fact declined and will continue to do so as competition increases. Because of the full-scale entry of Digicel into the market in October of this year, C&W Cayman expects an increasing proportion of the market will be served by service providers other than C&W Cayman. Anecdotal evidence suggests Digicel signed up ### or more broadband customers in their first two weeks after launch.

### **Regulation of the supply of high speed / broadband Internet access services**

C&W Cayman’s high speed Internet access services are currently classified as “Category 3” services, under the terms of Annex 5 of its ICT Licence. This means that every change C&W Cayman wishes to make to its terms and conditions or to its prices in order to compete in the market must first be notified in writing to the Authority and subject to a three-day waiting period. Even after the waiting period, the Authority has

up to 180 days to subject C&W Cayman's prices to a price-floor "imputation" test and to require changes to those prices.

Regulation of the competing services provided by WestTel, TeleCayman and Digicel is, to put it succinctly, non-existent.

This differential regulation puts C&W Cayman at a disadvantage, and hamstrings its attempts both to compete proactively by introducing new and innovative packages, and to compete reactively by responding to other suppliers' offerings, in a highly and increasingly competitive market. This is fundamentally unfair and, as highlighted above, is completely unnecessary to protect the interests of consumers. Indeed, C&W Cayman believes that consumers are being denied the full benefits of competition by the asymmetrical regulation of C&W Cayman compared to other suppliers.

## **Conclusion**

C&W Cayman would be grateful if the Authority would consider this application and forbear from regulating C&W's high-speed / broadband Internet access services so that we are able to compete fairly in the provision of those services. The Authority has itself stated that "As many regulatory authorities have come to recognise, in such a dynamic environment, it is important that regulation encourage, rather than impede, the provision of efficient, innovative and affordable service"<sup>2</sup>. In this case, regulating one competitor while leaving the others free of any regulatory obligations creates a fundamentally unfair market where that regulated competitor is impeded in its efforts to provide efficient, innovative and affordable service.

C&W Cayman would be pleased to meet with the Authority to discuss our application at the Authority's convenience.

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<sup>2</sup> ICTA Determination dated 29 March 2005 ICTA/160/161-09

Yours faithfully,

Cable and Wireless (Cayman Islands) Limited



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Rudy B. Ebanks

Chief Regulatory and Carrier Relations Officer

c.c. Hon. Arden McLean, Minister for Communications, Works & Infrastructure

Timothy Adam, Chief Executive, C&W

Ian Tibbetts, Chief Operating Officer, C&W

Frans Vandendries, VP Legal and Regulatory Affairs, C&W