



CABLE & WIRELESS

**Cable & Wireless
(Cayman Islands) Limited**

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17 March 2008

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

Dear Mr. Archbold:

Re: C&W request for forbearance on International Direct Dial Services

Cable and Wireless (Cayman Islands) Limited (“**C&W**”) is pleased to submit the following request in accordance with clauses 18-19¹ of Schedule 1 to the Agreement between Cable and Wireless (Cayman Islands) Limited and the Governor in Cabinet of the Cayman Islands and the Information and Communications Technology Authority

¹ 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 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.

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(“**Authority**”) dated 10 July 2003. C&W is requesting that the Authority forbear from regulating C&W’s International Direct Dial (“**IDD**”) services, including voice over Internet Protocol and 1010 service offerings, on the basis that there is effective competition in the relevant market for the supply of IDD services and that rate regulation is not necessary to protect consumers.

C&W is filing portions of this submission in confidence with the Authority. Customer number and revenue information is highly sensitive and C&W would suffer direct and material harm if it were disclosed to its competitors or to the general public. A redacted version, with all confidential information replaced by “####”, will be provided for the public record.

Definition of the market for IDD services

The relevant market for the purposes of this application consists of the market for the supply of International Direct Dial voice calling services, whether originated on a fixed-line/fixed-wireless telephone or a mobile handset. As defined under C&W’s 10 July 2003 ICT Licence, these are “IDD” services, and include C&W’s NetSpeak (VoIP) services. C&W submits that it is appropriate to include fixed and mobile IDD services in the same IDD market because those services are substitutes for each other, and customers do not view them as different services.

First, the geographic coverage of the mobile and fixed networks in the Cayman Islands is equivalent, and near 100%. Second, the availability of mobile handsets is equal to if not greater than the availability of fixed network telephones. As the Authority is well aware from the Quarterly Monitoring Report filed on 15 January 2008, ####. Penetration of mobile services is even greater when the customer bases of other licensees are taken into account. Any consumer wanting to make an IDD call would find fixed telephones and mobile handsets equally available to them.

The high penetration and ready availability of mobile services has led many customers to substitute mobile for fixed lines when making calls. The evidence of “mobile substitution” available to C&W, and to the Authority through the Quarterly Monitoring Reports, is unequivocal. Not only has the number of fixed lines served by C&W declined by #### between the fourth quarters of 2004 and 2007, while the number of mobile handsets served has increased by ####, customers are increasingly using their mobiles to make their IDD calls. The minutes of use per quarter per C&W fixed customer has increased by #### between the fourth quarter of 2004 and the fourth quarter of 2007, while the minutes of use per quarter per C&W mobile customer has increased over the same period by ####. Similarly, in absolute terms, the number of C&W fixed-line billed IDD minutes has increased by ####, while the number of C&W mobile billed IDD minutes has increased by #### over that same period. ####.

In addition, C&W’s fixed and mobile prepaid and postpaid IDD rates are the same. As a result, C&W customers are indifferent, as far as the cost of a call is concerned, as to whether to make an IDD call from a fixed line or a mobile handset.

The relevant market, therefore, is the market for the supply of both fixed and mobile IDD services.

Competition in the supply of IDD services

There are currently four licensed providers of IDD services operating in the Cayman Islands: C&W, WestTel Limited (“**WestTel**”), TeleCayman Limited (“**TeleCayman**”) and Digicel Cayman Limited (“**Digicel**”). The three licensees other than C&W have been providing IDD services since 2004 or 2005, depending on the licensee, that is, as soon as they launched their domestic voice network services. We expect Blue Sky Wireless Ltd. will also launch its own IDD services some time in the second half of 2008. Finally, there is competition from services provided by unlicensed parties, such as P2P operators like Skype and VoIP providers like Vonage. Clearly, entry into the market, and as a result competition, has been increasing steadily over time and C&W expects it to continue to intensify.

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

C&W notes that the market is also highly contested. The impact of competition is clear: rates have fallen significantly since liberalization in this country and C&W’s average turnover per IDD minute has fallen #### since the last quarter of 2004. All four licensed operators compete for the traffic of consumers and businesses in the Cayman Islands, and the evidence suggests that C&W’s three competitors have been highly successful. Notwithstanding falling prices, C&W has lost many fixed-line business customers and seen declines in its fixed-line IDD traffic, ####. The Authority has not published aggregate statistics on IDD traffic in the Cayman Islands, but C&W submits that the Quarterly Monitoring Reports filed by the four operators will readily show C&W’s declining market share, both in terms of numbers of customers and number of minutes. C&W has also seen a significant decrease in its per-customer IDD revenues, meaning the remaining customers are generating less revenue for the company.

All of this highlights an undeniable fact. Competition in the IDD market in the Cayman Islands is effective and strong, and C&W has no significant market power or dominance. There is certainly no evidence to support the traditional definition of market dominance, namely “a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, consumers and ultimately of its customers”. Rate regulation by the Authority is not necessary to prevent unreasonable or discriminatory practices, or for the protection of consumers.

Regulation of the supply of IDD services

C&W’s IDD 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 wishes to make to its terms and conditions or to its prices in order to compete in the market must first be

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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's prices to a price-floor "imputation" test and to require changes to those prices. New service proposals tend to be subject to rigorous and resource-intensive imputation tests right from the start.

Regulation of the competing services provided by WestTel, TeleCayman and Digicel is, to put it succinctly, non-existent. Regulation of unlicensed P2P and VoIP service providers is even less.

This differential regulation puts C&W at a disadvantage, and hampers 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 believes that consumers are being denied the full benefits of competition by the asymmetrical regulation of C&W compared to other suppliers.

Conclusion

C&W would be grateful if the Authority would consider this application and forbear from regulating C&W's IDD 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"². 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 would be pleased to meet with the Authority to discuss our application at the Authority's convenience.

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

Please contact me regarding any questions you may have.

Yours faithfully,
Cable and Wireless (Cayman Islands) Limited



Rudy B. Ebanks
Chief Regulatory and Carrier Relations Officer

c.c. Hon. V. Arden McLean, Minister for Communications, Works & Infrastructure (redacted copy only)
Timothy Adam, Chief Executive C&W
Ian Tibbetts, Chief Operating Officer C&W
Frans Vandendries, VP Legal and Regulatory C&W