



PO Box 2502  
Grand Cayman KY1-1104  
CAYMAN ISLANDS  
Tel: (345) 946-ICTA (4282)  
Fax: (345) 945-8284  
Web: [www.icta.ky](http://www.icta.ky)

---

Information & Communications Technology Authority

Our ref: ICTA/160/161-09  
Your ref: GRCR/GR/15.24

6 December 2007

Mr. Rudy Ebanks  
Chief Regulatory and Carrier Relations Officer  
Cable and Wireless (Cayman Islands) Limited  
PO Box 293 GT  
Grand Cayman Ky1-1104  
CAYMAN ISLANDS

Dear Mr. Ebanks,

### **Cable & Wireless request for forbearance of NetSpeak**

In a letter dated 15 August 2007, Cable & Wireless (Cayman Islands) Limited ("C&W") submitted a request for forbearance from rate regulation of NetSpeak service to the Information and Communications Technology Authority ("ICTA" or "Authority"). The request was submitted in accordance with clauses 18 and 19 of Schedule 1 to the 10 July 2003 Agreement between C&W, the Governor in Cabinet of the Cayman Islands, and the Authority.

C&W submitted that there is effective competition in the relevant market for the supply of VoIP services and that rate regulation is not unnecessary for the protection of consumers. According to C&W, the driving force behind the launch of NetSpeak was, in a large part, a response to competition in the market for international voice calls, with local calling included primarily for customer convenience.

C&W refers to the presence of three competitive VoIP providers providing services to residents of Cayman: MSN, Skype and Vonage. C&W states that Vonage charges USD 24.99 for a package offering better plan rates and lower per minute rates for out of plan calls than the NetSpeak package for which C&W must charge KYD 39.95. Reference is also made to free PC to PC calling using MSN and SkypeOut rates for international calls to fixed line telephones.

In support of its forbearance request, C&W provided the results of a Tower Omnibus Survey from April 2007. In addition, C&W points to international trends in VoIP regulation in support of its view that VoIP services should not be regulated.

## **Authority Discussion and Analysis**

The Authority's decision of 29 March 2005 determined that the local call component of the NetSpeak service is a Category 1 service, while the international call service component is a Category 3 service. As set out in paragraph 26 of Annex 5 of the C&W licence agreement, the combination of Category 1 and Category 3 service results in NetSpeak being a Category 4 service. Accordingly, NetSpeak service is subject to the rules for Category 1 services and the ex ante imputation test applies.

This does not imply, as suggested by C&W, that the cost of the service provided is fixed and that C&W must charge KYD 39.95. On the contrary, C&W is free to make an application to the Authority to lower its prices for NetSpeak subject, of course, to any proposed changes passing the imputation test.

In determining whether the Authority should forbear from rate regulation of a particular service, clause 18 of Schedule 1 states that the Authority shall have regard to, among others things, whether there is effective competition in the relevant market. Whilst C&W's letter states that it believes that, in the 29 March 2005 determination, the Authority placed undue emphasis on the fact that NetSpeak service connects with the PSTN, the Authority notes that its determination of the appropriate category for the service was based on both the local and international calling service components. The Authority remains of the view that the ability to place and receive local and international calls using NetSpeak is no different from that of making the same type of call based on traditional circuit switched technology. Therefore, in the Authority's view, the relevant market which includes the NetSpeak service is the market consisting of local and international calling from fixed-line services.

C&W is under the onus to prove to the Authority that the test for forbearance has been met. The C&W analysis focuses on a comparison of market share and competitive pressures exerted by Skype, MSN and Vonage on what C&W calls the "market for the supply of VoIP services". The Authority is of view that the C&W analysis does not address conditions in the relevant market. C&W has provided no evidence, nor does the Authority have any evidence, that there is effective competition in the market consisting of local and international calling from fixed-line services.

In addition, the Authority notes that the survey information submitted by C&W indicates that a very large portion of the calling by customers using what C&W terms as "VoIP services" is PC to PC and PC to phone calling. Neither PC to PC calling nor PC to phone calling to international locations make any use of, or interconnect, with the Cayman PSTN or Cayman telephone numbers. In the Authority's view, these types of services fall outside the relevant market.

## **Authority Determination**

As identified above, NetSpeak is a bundle of a Category 1 service (the fixed-line local call component) and a Category 3 service (fixed-line international calling). In the Authority's view, NetSpeak is just one of a number of service offerings in the fixed-line calling market. The Authority does not agree with C&W's contention that the supply of VoIP services is a separate market.

In order to grant forbearance, the Authority would need to be satisfied that there is, among other things, effective competition in the fixed-line local calling market. As noted above, the Authority has no evidence of effective competition in that market.

Similarly, the Authority also has no evidence of effective competition in the fixed-line international calling market.

The Authority determines that, as NetSpeak is a bundle of a Category 1 and a Category 3 service and as the Authority has no evidence of effective competition in the fixed-line local calling or fixed-line international calling markets, the current regulatory requirements should continue to apply. Accordingly, C&W's request for forbearance is denied.

Yours sincerely,

[signed by]

David A. Archbold  
Managing Director