



ICT Decision 2006-1

Grand Cayman, 13th July 2006

Decision on Cable & Wireless Application for Determination of Transit and Termination Rates

Summary

The Authority grants the application by Cable and Wireless to determine that Cable & Wireless is entitled to pass through to TeleCayman the current mobile termination rate for transiting traffic. The Authority notes that it is open to TeleCayman to seek to enter into agreements with other service providers to terminate traffic.

(Note: This overview is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

The Application

1. On 2 March 2006, Cable and Wireless (Cayman Islands) Limited (“C&W”) applied to the Authority in accordance with the Dispute Resolution Regulations for the determination by the ICTA of rates that it is entitled to pass through to TeleCayman Limited (“TeleCayman”) for traffic transiting through the facilities of C&W and terminating on other mobile networks in Cayman.
2. C&W submitted in its application that it had sought to negotiate in good faith with TeleCayman through serving upon it, on 17 February 2006, a notice, dated 16 February 2006, in accordance with section 3(1) of the Information and Communications Authority (Dispute Resolution) Regulations, 2003 (“the Notice”). C&W argued that no answer had been received from TeleCayman, in spite of the requirement set out in section 3(2). C&W attached a copy of the Notice to its Application.
3. C&W sought of the Authority a determination that the rate of 18.45 cents per minute, which it pays to terminate traffic on other mobile networks in Cayman, should be passed through to TeleCayman by virtue of the provisions of the Interconnection Agreement between C&W and TeleCayman dated May 2004 (“the Agreement”). C&W sought in addition a determination that TeleCayman must pay the arrears owing and, further, authorization to terminate the provision of PSTN Transit services to TeleCayman in the event that TeleCayman does not pay the arrears or these charges in the future.

Process

4. On 23 March 2006, TeleCayman filed an Answer to the Application. TeleCayman argued that the rate of 18.45 cents is not cost-oriented and therefore unlawful. In addition, TeleCayman argued that the submissions of C&W are in substance the same as those made by C&W in the proceeding culminating in Decision on TeleCayman Application for Determination of Mobile Termination Rates, ICT Decision 2005-6, 24 November 2005 (“Decision 2005-6”), and, accordingly, the matter raised is *res judicata*.
5. C&W filed a reply on 24 March 2006, in which it argued that its Application relates solely to the terms of the Agreement in relation to charges passed through by C&W to TeleCayman for termination of traffic on mobile networks in Cayman other than that of C&W itself. Hence, argued C&W, the level itself of the mobile termination rate (“MTR”) itself is not the issue raised in the current proceeding, and, accordingly, the matter at stake is not *res judicata*.

Authority Analysis and Determination

6. The Authority has carefully considered the pleadings of the current proceeding in the context of not only the Notice but also the Agreement itself, which was duly filed with the Authority on 20 May 2004.
7. The Authority is of the view that the submissions of C&W accurately reflect the commercial agreement reached between the parties. Furthermore, the Authority has concluded that the requirement to pay these transiting rates is not a matter upon which the Authority has to date adjudicated and, accordingly, is not *res judicata*. By contrast, the Authority is of the view that the argument advanced by TeleCayman in relation to the appropriateness of the current level of the MTR has been appropriately addressed in Decision 2005-6 and need not be determined yet again in this Decision.
8. Accordingly, the Authority grants the application by C&W. At the same time, however, the Authority would note that it is open to TeleCayman to seek to negotiate with other service providers in Cayman in order to terminate such traffic. It would appear to the Authority that, aside from the administrative convenience of handing off all traffic to C&W as a single source, there is no reason for TeleCayman to choose to terminate traffic bound for other mobile operators in Cayman through the facilities of C&W.
9. In light of these considerations, the Authority determines as follows: (a) C&W is entitled, by virtue of the provisions of the Agreement, to pass through to TeleCayman the rate of 18.45 cents per minute which C&W pays to terminate TeleCayman traffic on other mobile networks in Cayman; (b) TeleCayman must pay the arrears owing; and (c) the Authority hereby grants authorization to C&W to terminate the provision of PSTN Transit services to TeleCayman in the event that TeleCayman does not (i) pay the full amount of the arrears owing within 30 days of

the date of this Decision, or (ii) pay in a reasonably timely manner these charges in the future.

10. Finally, as a practice note, the Authority expresses concern that TeleCayman apparently declined to file, as required by section 3(2) of the Regulations, a response to the Notice of C&W. In the Authority's view, that requirement is in the public interest, in that it seeks to minimize the intervention of the regulatory authority where circumstances are such that the parties may reasonably be expected to resolve the grievance in question themselves. It is difficult for the Authority to imagine a grievance better suited to such resolution than the matter currently before the Authority, for its resolution involves no more than a simple interpretation of a bilateral agreement between the parties.