

August 30, 2004

Ms. Elaine Leung  
Head of Economics and Regulation  
Information and Communications Technology Authority  
PO Box 2502 G.T.  
Grand Cayman  
Cayman Islands

Re: **Public Consultation – Indirect Access  
WVCIL Responses to 8/16/04 Interrogatories**

Dear Ms. Leung:

Wireless Ventures (Cayman Islands) Limited (“WVCIL”) hereby responds, as requested, to Interrogatory 3.D, submitted by the Authority on August 16, 2004.

WVCIL will respond to the balance of the interrogatories from the Authority within the sixty (60) days provided for in your letter.

If you have any questions regarding our responses, please do not hesitate to contact me.

Sincerely,

/s/ \_\_\_\_\_

Raul Nicholson-Coe

General Manager  
WVCIL

Cc: Mr. Rudy Ebanks, Cable & Wireless (Cayman Islands) Ltd.  
Mr. J.D. Buckley, Digicel Cayman Ltd.  
Mr. Tom Mix, TeleCayman Ltd.  
Mr. Kevin Mahler, WestTel Ltd.  
Mr. Alva Suckoo, Blue Bison  
Mr. Gene Thompson, Blue Sky  
Mr. John Robertson, E-Technologies  
Mr. Paul Simon, Foster Cayman  
Mr. Randy Merren, Infinity Broadband  
Mr. Herbert Huddleston, West Indian Electronic Technologies  
Joseph Faber

**RESPONSE TO  
ICTA INTERROGATORY NO. 3.D  
DATED AUGUST 16, 2004**

**Interrogatory No. 3.D:**

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."

A) **n/a**

B) **n/a**

C) **n/a**

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).

#### **WVCIL Response to Interrogatory No. 3.D:**

The restrictions described in this Interrogatory all relate to efforts by C&W to prohibit the use of data services in any manner that would compete with C&W's own fixed-line services. They are not surprising, in that C&W maintains monopoly control over the fixed-line market, and new technologies (such as Voice over IP) represent a potential threat to that monopoly position. As competitors to C&W become more capable of delivering voice traffic over the IP network, C&W faces the risk that its customer base will erode.

The ICTA law and the C&W license were drafted in order to allow for the proper regulation of a monopoly provider. Such regulation is needed to prevent the monopolist from abusing its dominant position or engaging in anticompetitive practices; hence the prohibitions on such conduct found in the ICTA Law and the C&W license.

However, when competition develops in the telecommunications market, as it has in the wireless industry and as it is beginning to develop in the VoIP industry, there is not much (if any) need for regulation of the new entrants. They face an uphill battle against the entrenched business of the monopoly provider and they are in a competitive mode, meaning that their conduct will be governed by the competitive market. C&W, continuing to hold monopoly power (though it may eventually fade), is necessarily a continued proper subject of regulatory oversight.

In fact, C&W has recently deployed an entirely new VoIP infrastructure, including a Nortel IP switch. (See, for example, the article on this deployment at [http://www.nortelnetworks.com/corporate/news/topnews/2004a/01\\_06\\_04\\_cw\\_cayman.html](http://www.nortelnetworks.com/corporate/news/topnews/2004a/01_06_04_cw_cayman.html).) C&W also announced very recently that it would offer VoIP services using the services of Net2Phone. (See article located at

[http://biz.yahoo.com/bw/040617/175174\\_1.html](http://biz.yahoo.com/bw/040617/175174_1.html).) Tariff and service restrictions that limit other providers from offering VoIP services on C&W facilities are particularly egregious where C&W is now directly competing in that very marketplace.

Thus, restrictions imposed by C&W such as the ones described in this Interrogatory should be looked at very closely. C&W is selling services over which it has essential monopoly control, and is doing so in a manner that explicitly prohibits the use of those services in any manner that would compete with C&W's voice services. As such, it is easy to see that these types of restrictions could be inconsistent with the ICTA Law. They can just as easily be seen as an abuse of C&W's dominant position. Certainly they fall within the concept of anti-competitive practices, designed as they are to limit competition for voice services.