

Public Consultation on
Indirect Access

**Response of WestTel Limited
to ICTA Consultative Document CD(2003)07**

5 March 2004

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Introduction

1. WestTel Limited (“WestTel”) hereby seeks an opportunity to submit the following response to the Information and Communications Technology Authority’s (“ICTA” or “the Authority”) Consultative Document CD(2003)07, Public Consultation on Indirect Access launched 12 December 2003. On 12 February, 2004 ICTA authorized the assignment of some licenses previously held by WestStar TV Limited. Because WestTel now holds licenses to provide Type B and Type S ICT networks and Type 5 and Type 9 ICT services, we have a keen interest in the Authority’s examination of Indirect Access and resale of services provided by facilities-based carriers. Accordingly, we seek acceptance by the Authority of these late-filed comments.
2. Through this Public Consultation the Authority has recognized the potential for resale services to support the potential for robust, full and fair information and telecommunications service competition in the Cayman Islands. The Information and Communications Technology Authority Law, 2002, (“ICTA Law”) has made resale and the Indirect Access provided by facilities-based carriers to resellers a lawful method for the achievement of pro-competitive goals. WestTel hereby endorses the Authority’s initiative.
3. Most nations’ legislative and regulatory efforts to achieve competition in the ICT sectors use a combination of deregulation, liberalization, and licensure of resellers and facilities-based competitors to foster competition.
4. In seeking immediate competitive benefits, the ICTA Law emphasizes facilities-based competition, but resale competition remains an additional, and possibly significant, benefit to consumers. WestTel believes that Indirect Access will accrue pro-competitive dividends to both consumers and carriers, because the greater the number of competitors vying for international service customers, the greater the downward pressure on rates that likely will occur.
5. We note that the United States Federal Communications Commission, an early innovator in promoting resale,¹ opted to eliminate resale requirement for all commercial mobile radio

¹ The FCC authorized resale and shared use of private lines and long distance telephone services in the early 1970s. *See* Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261 (1976), *modified* 62 F.C.C.R. 2d 588 (1977), *aff’d sub nom.* AT&T Co. v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) (involving private line resale); *See also* Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switch Network Services, 83 F.C.C.R. 2d 167

service carriers only after the Commission had confidences that resale would thrive in the marketplace without the need for regulator-mandated resale agreements.² WestTel does not believe that market-driven resale options will appear in the Caymans without the Authority implementing the legislative mandate for its implementation of an Indirect Access regime. Cable & Wireless surely has no incentive to make competitive alternatives to its international services easily accessible. If Cable & Wireless does not have to provide off-island carrier selection and selection overrides, it surely will not volunteer to make such options available. Consumers lacking access to international services via one or a few extra dialed digits, may not know of their competitive options.

6. WestTel supports the Authority's campaign to foster both facilities-based and resale competition. WestTel anticipates that competition among facilities-based carriers and resale options will narrow margins and provide consumers with cheaper and better service options than if the Authority limited competition to facilities-based carriers. At this point no one can determine with certainty that facilities-based competition alone will so narrow margins that reseller ventures will lack arbitrage opportunities to exploit. WestTel believes in just the opposite: that the Authority should allow the maximum possible level of competition for Cayman consumers. No commenter has demonstrated that the cost of providing Indirect Access will exceed the financial and service benefits accruing to consumers.
7. Set out below, we respond to the questions posed in the Public Consultation, based on the assumption that the Authority will pursue an Indirect Access regulatory regime.

Questions 1.1, 1.2, 1.3 and 1.4 Whether, when and on which carriers to impose IA requirements

8. WestTel believes that Indirect Access ("IA") will provide a particularly strong competitive boost to international services provided by wireline pay telephones and to mobile

(1980), *aff'd sub nom.* National Ass'n of Regulatory Util. Comm'rs v. FCC, 746 F.2d 1492 (D.C. Cir. 1984) (involving switched network services resale).

² First Report and Order, 11 FCC Rcd 18455 (1996) (applying to certain CMRS providers on a transitional basis resale obligations comparable to those imposed under Section 251(b)(1) of the Communications Act), *aff'd sub nom.* Cellnet Communications v. FCC, 149 F.3d 429 (6th Cir. 1998), recon., 17 Communications Reg. (P&F) 518 (1999), *further recon. denied*, FCC 00-307 (rel. Aug. 22, 2000). *See also*, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Memorandum Opinion and Order on Reconsideration, 1999 WL 759700 (F.C.C.), 17 Communications Reg. (P&F) 518 (1999).

radiotelephone users. In these two applications, IA frees users from a near captive arrangement: the limited ability to access an alternative international carrier other than the one pre-selected by the pay telephone and mobile radiotelephone carrier. Absent IA, pay telephone and mobile radio users can access alternative international carriers at a higher cost, or only after they learn and apply a comparatively more difficult dialing pattern, typically involving access to second dial tones and the dialing of lengthy personal identification numbers.

9. WestTel endorses the Authority's proposal that consumers have available the opportunity to override carrier pre-selections made by carriers and not customers. Specifically we suggest that consumers have "dial around" capability at pay telephones and when using mobile radiotelephones. Absent this option, customers have no option, or a more cumbersome and expensive alternative to using the international carrier selected by the provider of the local pay telephone and mobile telephone service.

10. In its comments, TeleCayman mentioned that C&W has charged \$1.50 per minute at its payphones for calls to the United States. IA would enable the sophisticated occasional caller to override the C&W pre-selection and thereby access the services of another carrier offering possibly much lower rates. Additionally, IA also would provide an opportunity for WestTel and other facilities-based carriers to offer long haul services to wireless customers thereby enhancing competition and downward pressure on off-island rates paid by mobile radio telephone users.

Question 2.1 Limitation on IA eligibility

11. WestTel supports the Authority's proposal to limit IA availability to licensees offering retail telephony services, holding interconnection agreements, telephone number assignments and able to provide global service. We recognize the possibility that such limitations may limit the number and type of resellers even as facilities-based carriers already will have incurred the expense in retrofitting their networks to provide IA. However, the carriers qualifying for IA will have the financial and operational resources to provide reliable services for the long term. Such carriers are less likely to engage in slamming and other abusive practices.

Question 3.1 IA Costs and Benefits

12. WestTel estimates that it can reconfigure its switching facilities to provide IA services without substantial additional expense. Typically software-driven telecommunication switches can accept and handoff multiple Primary Interexchange Carrier ("PIC") codes. Additionally WestTel believes that Operations Support System integration between carriers also can occur without significant expense and extraordinary extensive coordination among carriers. WestTel will work to ensure that its carrier-to-carrier interconnection agreements and operations manual fully support the ability of multiple carriers to receive and hand off caller line identity, PICs and other non-conversation traffic routing and billing information. However, WestTel does not believe that facilities-based carriers should have to offer bill rendering and collection services on a common carrier basis, available to any reseller.

Questions 4.1-4.5—Mechanics of IA

C&W as the wireline default international carrier

13. WestTel believes that the key issue in IA mechanics involves what the Authority should do about consumers who do not make an international carrier selection. It appears that the Authority proposes to make C&W the “default” carrier for consumers failing to select an international carrier. Worse yet, it appears that the Authority has not considered what disincentives default carrier status creates regarding the conscientiousness of C&W’s efforts to explain the carrier selection and override process.

14. At the very least, the Authority should require C&W to allocate non-selecting consumers on the percentage basis of selecting consumers, i.e., if 50% of C&W customers select carrier A for international traffic, then carrier A should get assigned to it 50% of the non-selecting consumers. Alternatively, a more effective and simple process would require C&W to block international calling access until consumers make an off-island carrier selection. If the Authority decides to apply CPS to mobile telephone carriers the same procedure should apply.

Single Bill Benefit

15. WestTel recognizes that some customers will welcome a single bill option that consolidates a variety of ICT services. In a digital switching environment, interconnection agreements should be able to ensure the hand off and receipt of the needed PIC codes, caller line identity and billing information. The Authority may need to ensure that carrier-to-carrier interconnection agreements and service manuals promote seamless connectivity and access to such information.

Remaining Questions 5-8: Consumer Protection; Numbering; Cost Recovery, Misc.

Code of Practice

16. In addition to slamming protection, the Authority needs to ensure that the incumbent carrier fully supports a fair and transparent international carrier selection process. As C&W starts with a 100% market share, market power and a formerly captive subscriber base, the Authority will need to implement comprehensive safeguards to ensure consumers face no disincentive to consider new carrier alternatives. The Authority should establish and apply such safeguards prior to the first round selection of international carriers by existing telephone service subscribers and when C&W activates a new local telephone number.

17. WestTel believes that the Authority needs to guard against deliberate efforts by any carrier to frustrate consumer choice and to thwart competition. With the onset of carrier choices, consumers need to consider their competitive options. During this transition to competition, incumbent carriers can create the perception that service problems and delays will occur should a customer seek a competitive alternative. Additionally incumbent carriers can use customer proprietary network information, needed to process a service transfer, as a trigger for making “win back” marketing pitches to a customer contemplating a competitive alternative.

18. The Authority must ensure a transparent and fair process by which consumers learn of their new competitive alternatives and by which they access alternative carrier services. For example, a Code of Conduct or Authority-promulgated regulations should preclude incumbent carriers from scanning their networks to determine which high volume or most profitable to serve consumers have extensively used IA. With such customer proprietary network information, the incumbent carrier could target specific consumers for special, “win back” service pitches. Similarly carriers, notified of a new or changed CPS should not use such notice as a trigger for customer-tailored counteroffers to forestall loss of the customer’s international traffic. In the United States, the incumbent Bell Operating Companies now have long distance authority in most states making it essential that the FCC ensure a level competitive playing field. The FCC has established extensive rules regarding customer proprietary network information with an eye toward ensuring that incumbent local exchange carriers do not favor their long distance affiliates by hinting to consumers that they would get better service if they opted for a joint local and long distance service package.

Numbering

19. C&W and all other local carriers can and should offer Feature Group D direct distance dialing to the selected carrier, along with 10XXX or 101XXX over-ride access. Feature Groups A-C should be considered transitional, or eliminated altogether as unnecessarily adding extra digits for consumers to dial. Additionally all CPS overrides should use the same number of digits.

Respectfully submitted,

WestTel Limited