

Cable & Wireless
Reply Comments to the ICTA's public
consultation on Indirect Access
(Ref: CD (2003)7)

06 April 2004

Introduction

1. Cable and Wireless (Cayman Islands) Limited (“Cable & Wireless”) is pleased to submit the following reply comments to the Information and Communication Technology Authority (“Authority” or “ICTA”) public consultation on Indirect Access, pursuant to the procedures set out in the Authority’s 10 March 2004 letter.
2. In these comments, Cable & Wireless will summarize, for convenience of reference, its position as set out in its submissions of 12 December 2003 and 17 December 2003. We will then highlight key points of the submissions of other parties, and respond generally to them. Finally, Cable & Wireless will respond to points made by other parties under specific Authority questions, as necessary. Failure to address any specific point made by another party should not necessarily be construed as agreement with that point.
3. Cable & Wireless noted the use of a wide range of terminology by various parties, and in at least one instance an inconsistent use which made it difficult to determine the party’s actual position on the issue. For the purposes of these reply comments, Cable & Wireless will refer to the domestic facilities-based carrier providing indirect access to other service providers as the “indirect access provider”, “access provider” or “IA provider”. Those other parties, providing international services, will be referred to as the “international call provider” or the “indirect service operator”. “Mandating IA” would in effect consist of requiring that a domestic facilities-based carrier become an IA provider.

Summary of the Cable & Wireless Position on Indirect Access

4. Mandating indirect access for international services is a key regulatory decision for telecommunications in Cayman involving a number of complex issues and choices. C&W believes that responses to the ICTA’s consultation can only be considered the first step towards a final determination and would support the ICTA providing further opportunity to discuss the important issues raised at this stage in the consultative process.
5. The key points of our response are:
 - The ICTA appears to have developed its preferred position with respect to indirect access (“IA”) without undertaking a sufficiently robust and detailed assessment of the costs and benefits to demonstrate that the benefits will outweigh the costs.
 - An appropriate measurement of costs and benefits would include a full assessment of the relevant market(s) to establish whether

- there are defects in the market(s),
 - if so, what, if any policies and regulations are already being implemented to address these defects, and
 - what, if any, incremental net benefits would various forms of IA create in addressing them.
- The costs associated with the mandating of IA include not only the direct costs of putting in place and modifying accounting systems, consumer protection and education, but also possible negative impact on domestic infrastructure investment.
 - *Cable and Wireless believes that an accurate assessment of the incremental net benefit must wait until international liberalization has been effectively introduced as provided for under the regulation and policies already in place. C&W urges the ICTA to allow the existing regime the opportunity to prove itself before introducing IA.*
 - *However, should ICTA make a determination to introduce IA before there is evidence of market failure, we believe that all access providers—whether they be fixed or mobile access providers—be required to provide such access. To do otherwise would violate the principle of non-discrimination.*
 - In the event that carrier pre-selection is mandated, complex processes will need to be developed to ensure that customer orders can be provisioned effectively, and to protect against unethical practices such as ‘slamming’. An appropriate billing model would also need to be developed. These processes should be developed in an industry working-group facilitated by the ICTA.
 - It would not be possible for these processes to be developed and implemented by April 2004. If there is a mandate for carrier pre-selection, the ICTA may therefore find it helpful to specify a phased approach with call-by-call selection provided for an initial period before the implementation of full carrier pre-selection.
 - We believe that a deeper analysis will be required to establish the cost recovery methodology in the event that carrier pre-selection is mandated. We are concerned that the ICTA currently favours recovery of general system recovery costs only from access networks providing carrier pre-selection. This would create an unfair burden for those networks and their customers, artificially inflating their cost base and hence tilting the market unfairly towards other carriers.
6. Cable & Wireless further notes that the *Information and Communication Technology Authority (Interconnection and Infrastructure Sharing) Regulations*,

2003 (“Regulations”) already address issues relating to the mandating and the recovery of costs associated with IA, and that any determination made as a result of this consultative process must be consistent with those Regulations.

Positions of other Parties

7. Cable & Wireless has reviewed the submissions by Digicel Cayman Limited (“Digicel”), North Rock Communications (Cayman) Ltd. (“North Rock”), TeleCayman Limited (“TeleCayman”), Blue Bison, Blue/Cool Call, WestTel Limited (“WestTel”), and Wireless Ventures (Cayman Islands) Limited (“AT&T”).
8. Digicel and TeleCayman did not support the introduction of IA at this time, although they submitted comments on the form that IA should take if it were to be mandated. The other parties generally supported the introduction of IA, although they were divided on the form it should take. In addition to Cable & Wireless, Blue Bison, TeleCayman, North Rock and Digicel provided the most detailed and substantive comments. Blue/Cool Call only provided high-level support for mandating IA.
9. Digicel opposed IA on the basis that was premature, and argued that the Authority needed to determine first whether there would be “market failure” in the provision of IDD. Digicel noted the costs of IA were high and well known, while the benefits of IA (lower IDD prices) would likely result from the competition in the market that would occur even without IA. In the event IA was mandated, Digicel suggested that the simultaneous introduction of carrier pre-selection (“CPS”) and call-by-call carrier selection or override (“CS”) would be confusing to consumers, and proposed that CS be introduced first. Digicel also opposed the “single bill proposal”, and noted the need for the development of a numbering plan consistent with the NANP before allocation of CACs and CICs. Digicel did not comment on who should be mandated to provide IA, other than to say mobile carriers should not be so mandated at this time.
10. TeleCayman also opposed IA as premature, on the basis that IA would discourage service providers from investing in facilities and infrastructure in Cayman. Because of the linkage between the mobile and fixed IDD markets, the mandating IA on mobile carriers would harm TeleCayman. In the event IA was mandated, it should be imposed only on carriers with more than 20% of the outbound IDD traffic of the Cayman Islands, and then only if that carrier’s retail prices had not declined. TeleCayman also did not support the concept of the single bill.

11. As best as Cable & Wireless can determine,¹ North Rock supported the introduction of an IA mandate, and would impose both CPS and CS upon all carriers, to provide for maximum customer choice. However, only fixed (wireline and wireless) carriers would be permitted to become indirect service operators. Given their size in the market, allowing mobile carriers to become indirect service operators would jeopardize the development of smaller, fixed new entrants. North Rock did not support the concept of a single bill, given the lack of demand in the market and the increased costs to the industry that such an approach would bring.
12. Blue Bison would also impose an IA obligation upon all service providers, including mobile carriers. Blue Bison noted that implementing a CS solution might be problematic, in light of their specific VOIP solution. Blue Bison also opposed the single bill proposal.
13. WestTel would mandate IA right way, and would impose the obligation upon both fixed and mobile carriers. The IA mandate would extend to both CPS and CS options. WestTel does not support the mandated provision of bill rendering and collection services, in other words the single bill option mooted by the Authority. WestTel suggested that C&W should not be the “default” international carrier, and should in fact allocate non-selecting customers among all indirect service operators.
14. Finally, AT&T supported the introduction of IA but, unlike the other two parties (who are fixed operators), AT&T would mandate IA only upon C&W, on the grounds that IA, initially at least, is only required to control abuses of dominance. Expanding that IA mandate to other parties would only occur after a second consultation, including a cost-benefit analysis, and AT&T expected that the development of competition post-1 April 2004 would preclude the need for any expansion of the mandate. AT&T did not propose subjecting the initial IA mandate to any cost-benefit analysis.

Cable & Wireless General Reply Comments

15. The first thing that is immediately apparent is the diversity of views but the consensus on a number of issues.
16. First, all parties who commented in detail supported the position that IA providers and operators should be subject to some sort of code of conduct or practice. Second, all parties who commented in detail agreed that the “single bill” approach mooted by the ICTA was not appropriate for the market in the Cayman Islands.

¹ The following represents Cable & Wireless’ understanding of North Rock’s position. Cable & Wireless reserves the right to modify its comments in the event that North Rock’s position is in fact different.

17. The positions put forward by Digicel and TeleCayman concur with Cable & Wireless' position that the Authority should not mandate IA at this time. Cable & Wireless agrees in particular with Digicel that the Authority should first determine whether there is in fact "market failure" in the provision of IDD services. TeleCayman's suggestion that only carriers whose prices have not declined by a sufficient amount be mandated to provide IA also suggests TeleCayman would require evidence of "market failure" first.
18. Further, Cable & Wireless' position, that there should be evidence of market failure, is not necessarily inconsistent with the views of other parties that IA should be mandated. The difference in views results from the fact that, unlike Cable & Wireless, Digicel and TeleCayman, the other parties have assumed that the benefits of IA exceed the costs. However, the ICTA cannot make any such assumptions.
19. Cable & Wireless, like Digicel, expects that there will not be any such "market failure", given the number of mobile and fixed carriers that have entered or announced their intention to enter the market. It is in particular clear that if the market is competitive in the absence of IA, the benefits of mandating IA will be much less significant, or even immaterial, and the cost-benefit analysis will result in the costs outweighing the benefits. Seen in this light, the prudent approach would be to wait and test the assumption that benefits will outweigh the costs, in order to avoid imposing unnecessary costs upon carriers, and ultimately consumers, in the Cayman Islands.
20. The Digicel and TeleCayman positions also agree with Cable & Wireless' position that the Authority should be encouraging facilities-based competition, as this form of competition will bring the most sustainable long-term benefits to the Cayman Islands. In particular, the premature mandating of IA will prejudice carriers' financial incentives to invest in the Cayman Islands.
21. While North Rock and Blue Bison argued that IA should be mandated without further evidence of market failure, they did agree with Cable & Wireless that all carriers should be mandated to be IA providers. Cable & Wireless also notes that while Digicel argued that no mandate should be imposed, particularly on mobile carriers, at this time, Digicel's position is not inconsistent with the principal that, if market failure is observed in the IDD market, that all carriers should be subject to an IA mandate. Cable & Wireless submits that the principles that the Authority should apply in such an event are non-discriminatory treatment of licensees and maximizing customer choice.
22. AT&T proposed limiting IA obligations to Cable & Wireless, but, in addition to creating asymmetric regulatory obligations that would limit customer choice, AT&T would also apparently ignore the Authority's obligation in section 18(2) of the Regulations to conduct a cost-benefit analysis prior to mandating any IA.

Cable & Wireless Specific Reply Comments

23. The responses below are responses to specific points made by other parties to this proceeding. For convenience, Cable & Wireless has kept the same grouping of questions as it used in its 12 December 2003 comments.

Questions 1.1, 1.3 and 1.4

1.1 Should indirect access be mandated on Cable & Wireless at this time, or on all licensed fixed network operators?

1.3 Should indirect access be mandated for mobile carriers in addition to the licensees addressed in question 1.1.

1.4 What is the contemplated timescale for investigating the potential extension of mandated indirect access on mobile carriers? What factors should be taken into account?

24. In its 12 December 2003 comments, Cable & Wireless urged the ICTA to conduct a proper cost-benefit analysis and even offered the market and policy issues that the ICTA must examine:
- defining precisely the market that is of concern and the nature of the problem (“the market failure”);
 - clearly stating what the objectives are in addressing the market failure;
 - identifying what, if any, current regulation or policies already exist to achieve those objectives; and
 - examining what *additional* benefits IA contributes and costs IA entails (over and above existing regulation) in the achievement of those objectives.
25. Cable & Wireless notes that other parties, including Digicel and TeleCayman, also suggested that the ICTA address the issue of market failure. Cable & Wireless reiterates, therefore, its comment that a proper cost-benefit analysis must be done. Few parties attempted to quantify the cost of implementing IA, but in Cable & Wireless’ view, they are material.²
26. Fewer still were able to quantify the benefits of implementing IA, other than the benefit IDD price reductions. However, that particular benefit is not in fact due to the implementation of IA but due to liberalization and the introduction of

² TeleCayman quoted a specific figure but, in the absence of further detail, it is not possible to determine whether that figure is complete.

competition generally. As noted earlier, all evidence available so far on the record of this proceeding suggests that the ICTA should not implement IA at this time, as the costs will likely exceed the few incremental benefits IA might bring to the Cayman Islands. In this regard, Cable & Wireless would refer the Authority to TeleCayman's comment that the "capital outlay [to implement IA] could be mandated upon TeleCayman without the prospect of any incremental revenues should the resale market not develop as a consequence of direct long distance competition among the four licensed international carriers and five mobile wireless carriers".³

27. In this regard, Cable & Wireless notes that it commented in its 12 December 2003 submission that the ICTA had developed its initial position regarding IA without undertaking a sufficiently robust and detailed assessment. For its part, TeleCayman noted in its undated submission that the Authority had appeared to have approached this issue of IA with a preconceived bias or outcome. Cable & Wireless strongly urges the ICTA to act with care and prudence, and to order the implementation of IA only if it is clear that the alleged benefits of IA are not in fact the result of the current regulatory framework.

Question 1.2

What proposed limitations should apply to the implementation of indirect access including limitations on types of access line or on implementation before or after 1 April 2004.

28. In its 12 December 2003 comments, Cable & Wireless had noted that IA was a well-defined and understood concept internationally and refers to access by interconnected operators to call selection and origination on public switched telephone fixed and mobile networks. There is no international precedent, as far as Cable & Wireless is aware, for indirect access to be applicable to unswitched services such as VOIP and those provided via ADSL⁴ and VPN.
29. Cable & Wireless notes that its view is consistent with that of Blue Bison, for example, that stated that its VOIP solution might not work seamlessly with certain forms of IA. If the ICTA should mandate IA, which Cable & Wireless considers

³ At page 4 of TeleCayman's undated submission. While the number of carriers may have changed since the time when TeleCayman wrote its submission, it has now become evident that the IDD market is competitive. Further, IDD competition in the mobile market is also clearly bringing IDD prices down in the fixed market.

⁴ Exempting ADSL lines from IA requirements does not mean the narrowband (voice) portion of the line used for ADSL (broadband Internet) services cannot be subject to IA requirements. While the same copper infrastructure might be used in both cases, the signals and traffic from each portion of the line are directed onto two very networks.

to be premature, the ICTA should limit its mandate to all public switched telephone fixed and mobile networks.

Question 3.1

Is there agreement with the above costs and benefits of mandating indirect access? Are there other costs and benefits the Authority should take into account? How should the Authority assess the notion of unfair burden?

30. In its 12 December 2003 submission, Cable & Wireless noted that it appreciated that the ICTA had given some recognition to the need to conduct a cost benefit analysis. However, Cable & Wireless also argued that the issues needed to be more fully explored and costs and benefits quantified for the ICTA to fulfill its obligations under the 10 July 2003 Agreement between Cable & Wireless, the Authority and the Governor in Cabinet of the Cayman Islands, and accurately assess whether introduction of indirect access would be appropriate to Cayman. Furthermore, we did not believe a proper assessment of the incremental net benefits of IA could be assessed before allowing existing policies of liberalization to impact the market. Only then could we understand what residual market failure, if any there may be and therefore what would be the magnitude of the any benefit IA might contribute.
31. Cable & Wireless notes that its position on this point appears to have been endorsed by Digicel in its 12 December 2003 submission and by TeleCayman in its undated submission. In particular, the ICTA needs to isolate the benefits attributable to IA directly over and above those relating to liberalization and the introduction of competition. For instance, given mobile competition and potential for substitution between fixed and mobile international calls, the additional impact of indirect access on the tariffs for international calls is likely to be much more limited than anticipated.
32. In its 12 December 2003 submission, Cable & Wireless noted that one of the “costs” of indirect access that needed to be considered by the Authority was the potential for discouragement of domestic infrastructure investment. Digicel noted in its answer to question 1.3 in its 12 December 2003 submission that the new mobile operators would not be incentivised to invest substantial amounts of money in rolling out their networks, if IA were to be mandated. This issue, that IA could harm precisely those carriers willing to assume the risk of investing in the Cayman Islands, was also a recurring theme in TeleCayman’s undated submission.
33. Clearly the ICTA should carefully consider the impact of IA on the willingness of telecommunications operators to invest in infrastructure in the Cayman Islands.

The loss of that investment could have unfortunate consequences for the economy of the Cayman Islands.

34. In its initial consultative document, the ICTA asked for guidance on the interpretation of “unfair burden”. In its 12 December 2003 submission, Cable & Wireless listed four issues that is considered associated with this concept. For convenience, these are listed here:
- The need to ensure that a licensee subject to regulation is able to recover the costs of meeting the obligation with a reasonable return (for more on this issue see the response on cost recovery).
 - The need to ensure that the costs of implementing a regulatory requirement are not borne disproportionately or unfairly on one carrier or a group of carriers.
 - The need to ensure that obligations are not introduced where the benefits of mandating them are not materially greater than the costs to operators, consumers and society.
 - Asymmetrical imposition of an indirect access mandate on a single carrier or class of carriers is likely to be discriminatory and constitute an undue burden in a market where customers will have a choice of competitive options to access international services (e.g. using mobile or fixed networks).
35. Unfortunately, few other parties to this proceeding provided much assistance, in our view. North Rock merely asserted that IA does not pose “an undo [sic] burden on the access operator.” Digicel was the most helpful in asking that the factors to be assessed, in determining whether the burden is “undue”, be transparent and well understood by the industry. However, Digicel’s later comments suggested that “unfair burden” was limited to the issue of cost recovery. WestTel stated that there was no undue burden as there was no significant expense involved. TeleCayman suggested the concept of undue burden was limited to whether or not there was a technical impediment to implementation of IA. Blue Bison stated there “should not be a great concern for unfair burden”, but limited its discussion to questions of bandwidth concerns.
36. Cable & Wireless agrees that questions of cost recovery, expense, and technical issues are important considerations, and notes that the positions of the other parties do not conflict with or contradict with Cable & Wireless’ position. However, each of the other parties limited the concept of “undue burden” to only one issue. In the view of Cable & Wireless, this is not a complete view of the issues that the ICTA should consider. In this regard, Cable & Wireless considers that its list of four issues remains the most complete statement of the issues the

ICTA should consider, and urges the ICTA to consider all of them, when assessing the question of undue burden.

Questions 4.4 and 4.5

4.4 As the industry trend is to simplify billing for customers as much as possible, is there customer demand in the Cayman Islands for a single bill option? If so, what benefits and costs would such an additional service bring and how should it be implemented?

4.5 Are there technical, legal or other impediments which would prevent one bill to be issued either by the indirect access operator or the access and local service provider? If single billing of indirect access customers was to be implemented, would single billing by the indirect access operator or by the access and local services provider be more desirable?

37. Cable & Wireless reiterates its 12 December 2003 position that there should not be a mandated “single bill option”. As noted above, no party providing comments in this proceeding suggests that a mandated “single bill option” was necessary in the Cayman Islands.

Question 5.1

Assuming a decision in favour of indirect access, is a Code of Practice required? What issues might be addressed in such a code? Which parties should be required to adopt the Code of Practice – indirect access operators only or both indirect access operators and indirect access providers? How should such a Code be developed?

38. In its 12 December 2003 comments, Cable & Wireless endorsed the need for a code of practice in the event that CPS is mandated. In our view, a code of practice would be a necessary part of the framework to as a protection for customers and the industry against unethical practices (e.g. slamming), and would be grounded in section 50 of the ICTA Law and clauses 10 and 11 of each ICT Licence.

39. We are pleased, therefore, that all parties filing comments in this proceeding endorsed the concept as well. A number of parties also commented on what should be included in the code of practice. As noted in its 12 December 2003 comments, Cable & Wireless believes that the best way to develop this code of practice, and to ensure it appropriately reflects the needs of the telecommunications industry in the Cayman Islands, would be through industry cooperation in context of a working group.

40. WestTel submitted recommendations that the Authority implement certain rules regarding “win back” and use of certain information to compete in the market place. Cable & Wireless submits that these rules will be unnecessary and premature. There is no evidence that such rules will be required here in the Cayman Islands. Further, Cable & Wireless notes that the conditions of its Licence, and the fact that it must publish the rates for its services, already adequately address the concerns raised by WestTel. Implementation of the proposed rules would represent an excessive and unnecessary regulatory response to a problem that has not been demonstrated to exist.

Question 6.1

Assuming a decision in favour of indirect access, are there any technical or other impediments preventing the timely and economic implementation of the proposed format of CAC and CIC codes?

41. Cable & Wireless notes Digicel’s comments that a national numbering plan needs to be developed before allocating CAC or CIC codes in the Cayman Islands.⁵ Cable & Wireless endorses these comments, and notes this would be consistent with the Authority’s obligations under s. 49 of the Law.
42. In its 13 February 2004 submission, TeleCayman states “Cable & Wireless already provides such equal access within its own comprehensive service offering by providing 10-10-335 services.” This is in fact incorrect. As Cable & Wireless noted in its 12 December 2003 submission, “10-10-335” and the other “10-10” numbers used by Cable & Wireless, are in fact dialing prefixes that resemble CACs, but are not actually CACs. The fact that Cable & Wireless uses a dialing prefix that resembles a CAC in no way means Cable & Wireless has implemented “equal access” or any other form of indirect access in its network.

Question 7.1

Assuming a decision in favour of indirect access, is there agreement on the proposed cost recovery proposals? Are there any practical problems in implementing any of the proposals regarding cost recovery?

43. There was limited discussion by the parties on cost recovery arrangements. Blue Bison, for example, merely “agreed” with the ICTA. Digicel “agreed” generally with the ICTA, noting a category of costs appeared to have been omitted, and suggesting the charge would in fact be a transaction charge for moves, adds and changes.

⁵ Digicel, “Response to ICTA’s Consultative Paper on Indirect Access”, 12 December 2003, at page 8.

44. TeleCayman, however, submitted that the prices should be negotiated, and addressed by the ICTA on in cases of dispute. North Rock submitted that there should be a per-minute local access charge, which would also cover the costs of establishing the interconnection between the networks.
45. Cable & Wireless is in no doubt that IA is an interconnection service, and that the Law and the Regulations have already established details principles governing rate-setting and cost-recovery for interconnection services. In this regard, Cable & Wireless agrees with TeleCayman that prices should be negotiated. Cable & Wireless also agrees in part with North Rock, with the clarification that the interconnection requestor should bear the costs of the interconnection. The practice in the Cayman Islands has been that this interconnection is paid for at least in part by an up-front charge. It is not clear whether Digicel was advocating that there be only a transaction charge. To the extent that this is the case, Cable & Wireless would disagree. There are usage-related costs involved in transporting a call through the indirect access network to the indirect service operator. However, Cable & Wireless would agree with the assumption underlying Digicel's comments, that it is important that no relevant costs be overlooked.