

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

**12 December 2003**

## Introduction and Executive Summary

1. Cable & Wireless is grateful for the opportunity to comment on the ICTA's consultation on indirect access. The main part of the submission responds to each of the specific questions listed by the ICTA in its document. In doing so, we raise a number of issues which we do not believe have yet been addressed adequately in this proceeding.
2. 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 this consultation document 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.
3. 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.

4. We note that in organizing the responses to the questions below, we have not followed the original order of the questions. In some instances we have grouped non-sequential questions when they are more conveniently answered together.

## 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?**

5. Whether to introduce of IA, and if so how, is a key question in the development of regulatory policy in the Cayman Islands. Cable & Wireless is concerned that the ICTA's preferred approach - to mandate carrier pre-selection (CPS) on Cable & Wireless - has been developed without a sufficiently robust assessment of the costs and benefits of mandatory indirect access. We believe that a much deeper study is needed before the ICTA can genuinely be satisfied that its preferred approach will yield a net benefit, and before the ICTA can have discharged its obligation under paragraph 25 of Schedule 1 to the July 10, 2003, *Agreement between Cable and Wireless (Cayman Islands) Limited, the Governor in cabinet of the Cayman Islands and the Information and Communications Technology Authority*.

6. For example, the ICTA has attempted to justify application to Cable & Wireless on the grounds that incumbents "have generally retained market power with respect to fixed line interconnection and retail services". This is an insufficient market analysis, clearly does not address the specific characteristics and conditions of the market in Cayman and is premature given that can be expected from the launching of a large number of competitive fixed and mobile access providers currently underway.

7. In order to come to a reasonable judgment of the merits of mandating IA, a number of market and policy issues must be examined.

- 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.

*If lower prices, greater choice is the objective, let current policy do its job*

8. We can assume that the ICTA is concerned that the incumbent's control of the fixed network gives it market power to control prices and limit choice in international calling services. But whether the incumbent possesses market power in international services depends on whether there is a separate market for fixed international services or whether fixed and mobile international calls are substitutes for each other. If consumers can elect to make international calls either from a fixed or mobile phone, there will be competition in the market for international voice services, which will be tied to the competition in the domestic access market.

9. In this respect, it is important that the ICTA articulate its goals in imposing regulation, something it has not done with respect to IA. If the ICTA's objective is to achieve greater consumer choice and lower prices through fostering competition in international voice services, then the entry of various new mobile and fixed domestic service providers will ensure the development of a vigorously competitive market in the Cayman Islands, and lower prices, for international voice services.<sup>1</sup> This fact has been evident in all jurisdictions in the Caribbean where international liberalization has occurred, even in the absence of a requirement to provide IA. Cable & Wireless notes that, generally, this development has occurred whether the competition is introduced in either the fixed and mobile markets: lower prices for mobile-originated international calls have led to lower prices for fixed-originated international calls. Fixed network must lower prices in order to remain competitive and not lose traffic to the other networks. Because the benefits of competition (more choice, lower prices) are in fact primarily due to liberalization generally, Cable & Wireless submits that the incremental benefits of mandating IA are likely to be minimal, and less likely to outweigh the costs of mandating IA.

10. At the moment, there are several new access provider--fixed and mobile--establishing infrastructure to compete with Cable and Wireless a wide variety of market segments, including international call services. Existing regulation also provide for resale and mandate infrastructure sharing arrangements to enable the operation of new service providers that do not choose to build infrastructure or build only a part of a network. The ICTA should allow this set of regulations to work their effects on the market before mandating IA. Indeed, the incremental net benefit of IA cannot be known until the current liberalization policies are implemented and results examined.

*If ICTA imposes IA before proof of market failure, IA should apply to all*

11. If the ICTA proceeds to impose IA before allowing current policies to work. Then we must assume its objective with IA is more narrowly focused: to create a

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<sup>1</sup> We note that as of December 2003 there were already several licensees approved to build access networks (besides Cable and Wireless) in the Cayman Islands.

vertically separated mode for the provision of international voice services, i.e., a decoupling of international and domestic services. Cable & Wireless believes that, while undoubtedly likely to provide consumers more choice in the short term, this objective is a relatively unprincipled approach to imposing regulation: amounting to creating competition for competition's sake. It is unlikely to create an efficient market structure in the long term and will therefore result in a sub-optimal outcome in terms of consumer benefit.

12. However the only way to ensure such a decoupled market is sustainable and brings the maximum benefits to all Caymanians is to impose the same IA obligations on all service providers, whether incumbent or new entrant and whether fixed or mobile. A separate, stand-alone market for the provision of international voice services should in fact be agnostic with respect to access technology, and limiting the obligation to provide IA to one access service provider or only one access technology would be denying whatever incremental benefits of competition there may be to a material sector of the population.

13. In summary, our view is that indirect access is likely to provide little if any net benefit over a policy of promoting effective, sustainable competition through infrastructure-based service providers. Further, we cannot know if IA will provide incremental net benefit until we see the results of existing regulation post April 2004. However, if indirect access is deemed necessary, then we urge the ICTA to take a non-discriminatory approach and mandate IA for all operators--fixed and mobile.

14. The thinking of the Federal Communication Commission (FCC) in the U.S. in the mid-nineties provides an example this inclusive approach. The FCC established equal access requirements for all fixed exchange companies in 1985.<sup>2</sup> At that time, mobile services were not a major force in the market. However, in less than a decade, the FCC also determined in 1994 that "equal access obligations should be imposed on cellular licensees...because equal access would increase competition in interexchange and mobile services marketplace, and also foster regulatory parity between wireline and wireless services".<sup>3</sup>

15. The California and Ohio Public Utility Commissions also expressed the opinion that the extension of equal access requirements to cellular providers is important in establishing a level playing field in the local exchange marketplace, as mobile operators are expected to compete against fixed access providers.<sup>4</sup>

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<sup>2</sup> MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 94, 100 FCC 2d 860, 1985.

<sup>3</sup> FCC. Notice of Proposed Rule-Making and Notice of Inquiry in the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services (Cellular Equal Access and Interconnect NRPM), 1 July 1994, para. 3. The United States Congress disallowed such indirect access in the Telecommunications Act of 1996.

<sup>4</sup> See footnote 46 in Cellular Equal Access and Interconnect NRPM.

16. In Europe, Denmark, Spain, Finland and Portugal have indirect access imposed on mobile carriers as well as fixed carriers.<sup>5</sup>

17. With respect to timescales for introducing IA for differing types of access providers, we do not see why one set of access providers should be given a different implementation date than another. If the ICTA mandates IA, we would propose that the industry working group (see response to Question 8.1) determine the best implementation date for all mandated access providers.

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<sup>5</sup> “The Competitiveness of Mobile Telecommunications across the European Union.” Lukasz Grzybowski. Center for Information and Network Economics, Munich, 2003, pg. 9.

## 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.**

18. Again, C&W does not believe IA should be imposed before or soon after April 2004. The ICTA should allow existing policies to address any perceived market failure. If it does impose we believe the mandate should not discriminate among access providers but should apply to all. We also would urge the following limitations.

#### *If a mandate is imposed, it should not apply to unswitched services*

19. Indirect access is 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 ADSL<sup>6</sup> and VPN.

20. Cable & Wireless is also unclear as to the unswitched international IA products that the ICTA would envisage being mandated. Is it intended, for instance, that somehow consumers could select different IP providers on a session by session basis? Moreover, even if there were a clear concept concerning indirect access for unswitched services, there are other fundamental issues that discourage such a mandate:

- Technical feasibility: The capacity for indirect access to the PSTN is available on switches. No such facility is readily available for unswitched services.
- Economic justification: Regulation should be justified on the basis that it is necessary to promote competition and the benefits outweigh the costs associated with the obligation. The case to be made for unswitched services is likely to be much weaker than for switched services, because the number of competitive alternatives can be expected to be greater.

21. Cable & Wireless' firm view is that the ICTA would need to go through a process in each individual case to identify the particular competition concern (market failure), assess the remedies and conduct cost benefit analyses. It is inappropriate to suggest blanket 'access' or 'indirect access' obligations without any analysis, and it is likely that intrusive regulation in this area would undermine incentives for local investment or development of innovative data services.

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<sup>6</sup> 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.



***The obligation should be focused on switched call origination markets in which competition is unlikely to develop in the near term. Thus telephony provided by means of VPN or leased lines should be excluded.***

22. In order to ensure that the market is not over-regulated and that the appropriate investment signals are given, it is important to target regulation in areas where, in the absence of regulation, there would be market failure. International experience has shown that the provision of VPN services and services provided via leased lines becomes competitive relatively quickly, and there is every reason to believe that, given the attractiveness of the business sector, markets for these services in the Cayman Islands will be no exception. This will give medium and large businesses the choice of innovative service packages (which may include voice) from a number of providers. Additional regulation of voice services should therefore be unnecessary and will actually undermine competition, since it would impose a cost and administrative burden on business service providers and reduce their scope to offer tailored packages.

***For certain services, particularly payphones, technical and operational considerations may make indirect access inappropriate***

23. In any regulatory proceeding, it is important to avoid unnecessary complexity and cost. Applying indirect access regulation to payphones would fall foul of this principle.

- Credit card and pre-paid card payments made from payphones are processed through a different system from that for ordinary household PSTN calls. Requiring indirect access would necessitate complex and costly modifications to 2 separate Cable & Wireless platforms that would significantly outweigh the (probably limited) additional benefits that could be achieved.
- Additional processes would need to be developed to track and 'refund' payments made at coin operated payphones.
- The administrative burden and additional costs would make the payphone business less attractive to Cable & Wireless and other prospective investors, potentially undermining this important community service.
- Cable & Wireless expects competition to arise in the market for payphone-originated international voice services, in the absence of any IA requirements, through the use of toll-free access to a pre-paid card platform. Imposing additional regulatory requirements upon payphone service providers will likely not materially impact competition in this market.
- CPS is not feasible from payphones. The user of a payphone cannot pre-select an international service provider in the same way as he or she could with respect to a residential or business line, as his or her use is necessarily occasional.

***The launch date for Indirect Access is dependent on the conclusion of the appropriate analysis and agreement on the processes for implementation***

24. The ICTA has asked whether there should be any limitations set on the date of introduction of indirect access. Clearly, as April 2004 is the date of international liberalisation, this would be the earliest date from which indirect access could legally be mandated. Even if the ICTA finds it appropriate to mandate CPS before proper examination of the net benefits--which as we have argued above is the implication of a April 2004 target date--the actual date is more likely to be driven by practical considerations. If CPS is mandated, Cable & Wireless envisages that, as suggested by the ICTA, an industry working group should be set up to develop the right inter-carrier customer transfer, billing and other processes. CPS could then be offered in line with and to schedules agreed within that group taking account of the realistic timescales required to develop necessary processes (see response to question 8.1 below for further detail). In this event, the ICTA may find it practicable to mandate provision of call-by-call carrier selection for an interim period ahead of the launch of full CPS.

## Question 2.1

**Assuming a decision in favour of indirect access, are the proposed qualification criteria for indirect access operators appropriate? Should there be tighter restrictions on which Licensees can avail themselves of indirect access?**

### *Criteria for licensee eligibility*

25. In the event that indirect access is mandated, C&W agrees with the ICTA that it will be necessary to establish qualification criteria for operators requesting indirect access. In assessing the possible criteria, the ICTA will need to take account of the objectives that it hopes to fulfill through mandatory provision of indirect access, and also the benefits that it expects will result. If incorrect criteria are established, it will likely result in a sub-optimal outcome in terms of both the costs and benefits of indirect access.

26. Cable & Wireless cannot comment comprehensively on required criteria until the outcome of the full cost benefit analysis is known. In the meantime, we can offer a preliminary view that the criteria listed in by the ICTA on page 6 of the consultative document appear to be reasonable in the event that indirect access is mandated for international services. We would add some detail to the second bullet covering interconnection to specify that interconnection needs to be at an appropriate level in the network.

27. We note, however, if the ICTA imposes IA on all access providers, we urge it to consider writing those requirements in the licensing material so that all applicants understand the obligation. In particular, in order to provide access services in Cayman a licensee must be capable of delivering IA.

### *Monitoring and enforcement*

28. Cable & Wireless believes that the ICTA would need to be active in monitoring the retail markets in which indirect access operators would be active, and would also need to be ready to take enforcement action to remedy any infractions that may arise.

29. Experience in other markets shows that the availability of CPS can result in unethical practices by some carriers. For example, the practice of switching a customer's service without consent (commonly referred to as 'slamming') has created problems in some markets, and CPS requirements are therefore normally accompanied by strict anti-slamming provisions. In the event that CPS is mandated in the Cayman Islands, the ICTA will need to ensure that it establishes clear rules to prevent slamming backed by its statutory authority under the ICTA Law. As an initial comment on the ICTA's statutory authority to enforce anti-slamming rules, Cable & Wireless notes that slamming by an ICT Licensee would likely constitute a breach of section 50 of the ICTA Law and clauses 10 and 11 of its ICT Licence.

30. In addition to there being a clear legal enforcement framework to police slamming, the provision of CPS needs to be accompanied by information for consumers about how the service works. This is discussed in further detail in the section below on consumer protection.

31. Cable & Wireless proposes that these monitoring and enforcement issues be addressed by the industry working group contemplated in Question 8.1.

32. We note that necessary provisions and associated obligations designed to prevent slamming constitute another cost of mandating CPS IA.

### Question 3.1

#### Is there agreement with the above costs and benefits of mandating indirect access.

33. While Cable & Wireless appreciates that the ICTA has given some recognition to the need to conduct a cost benefit analysis, the issues need to be more fully explored and costs and benefits quantified for the ICTA to fulfill its obligations under the Liberalisation Agreement and accurately assess whether introduction of indirect access would be appropriate to Cayman. Furthermore, we do not believe a proper assessment of the incremental net benefits of IA can be assessed before allowing existing policies of liberalization to impact the market. Only then can we understand what residual market failure, if any there may be and therefore what is the magnitude of the any benefit IA might contribute.

34. Cable & Wireless would be happy to assist in preparing a model or identifying relevant costs and benefits if it would assist the ICTA in carrying out this exercise. Cable & Wireless' thoughts on the initial cost benefit analysis issues raised by the ICTA are the following.

- In relation to the benefits:
  - Again, the ICTA needs to isolate the benefits attributable to carrier selection directly over and above those relating to liberalisation. 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.
  - Increased choice for fixed line customers is only positive in so far as it results in tangible benefits, such as improved quality of service or more competitive prices.
- Among the costs associated with IA, consistent with international practice, we would need to examine:
  - a. **Discouragement of domestic infrastructure investment.** Cost should include an analysis of the long-term impact of deterring investment in domestic infrastructure. The ICTA has implicitly acknowledged this consideration in its recognition that some jurisdictions require that an operator has significant national infrastructure deployed in order to qualify for IA. In addition to qualifications on what type of operator may have rights to I, an important factor in addressing this cost will be the trade-off between investment incentives and the charge at which indirect access services are provided. To create the right investment incentives, the charges for indirect access will need to be neither too high – which would encourage inefficient entry – nor too low – which would choke off investment and result in degradation of access infrastructure. Put more simply, access providers need to be able to make an adequate return on their investments.

Charges may be based, for example, on the incremental cost of conveying a subscriber's international traffic from the access provider switch to international service provider's point of presence or one that recognizes the contribution of international services to domestic services and network development. This is true irrespective of the access network being considered. Incremental cost-based charges will push down returns to integrated service provider's investment more strongly than other approaches.

The UK regulator, Oftel, recognized this in its determination on IA for mobiles in 1999. Oftel opted for "a solution which will allow indirect access, but avoids inhibiting investment."<sup>7</sup> In particular, it determined an obligation to supply IA at "Retail minus". That is, the mobile access provider would charge the IA operator, the retail price (the price at which the mobile network would charge the customer, if the customer had not chose to use the IA operator for the call) LESS those cost elements of the service, which for an IA call would not be supplied by the mobile access provider, because they will be supplied by the IA operator. Those elements in particular are outpayments and retail costs.<sup>8</sup>

Cable & Wireless notes that the development of a forward looking long run incremental costs (FLLRIC) model is relevant in this context. Such a model is necessary to measure any shortfall between local service costs and revenues that will need to be recovered from all international carriers in a competitively neutral way.<sup>9</sup>

**b. Internal Implementation Costs.** Cable & Wireless is currently undertaking an assessment of the systems and processes that would need to be developed to introduce indirect access and will provide more information as part of the formal cost benefit analysis process. The internal costs will be associated with:

- the need to modify software in the switches, including enabling switches to recognize carrier routing prefixes;
- introducing or amending information systems to record a customer's pre-selected choice and allowing data to be changed between operators for billing and customer services purposes;
- maintaining customer records, administering the churn process, staff training and generally developing procedures for complying with a pre-selection requirement;
- establishing usage monitoring facilities/processes & procedures in order to safeguard revenue;
- agreeing, specifying, developing, testing, implementing billing modifications prior to ready-for-service date.

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<sup>7</sup> See "Customer choice: Oftel's review of indirect access for mobile networks." Oftel. February 1999.

<sup>8</sup> See, for example, "Determination under Provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 to determine Final charges for the Provision of Indirect Access by Vodafone to Intelligent Network Managements Services." Oftel. July 2000.

<sup>9</sup> We note that a shortfall between revenue and cost is only likely to occur on the fixed network.

- creating an IAA ( Inter Administration Accounting ) process
- creating and maintaining a process for fraudulent or suspicious calls handling/investigation agreed between carriers.
- dealing with the more complex technicalities for legal compliance for CALEA-type requests.

**c. Cost imposed on regulator or consumers.**

- Customer balloting and education as to the transition
- Reprogramming of customer premises equipment
- Customer protection mechanism (particularly for slamming)

***Unfair burden***

35. The ICTA has asked for guidance on the interpretation of ‘unfair burden’. Cable & Wireless considers that there are four issues associated with this concept:

- 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).

#### **Question 4.1**

**Assuming a decision in favour of indirect access, is there agreement with the proposed indirect access regime and, in particular, the proposal for the availability of both carrier pre-selection with call-by-call override capability for publicly available international voice services?**

36. As we have indicated before, Cable & Wireless believes that the ICTAs analysis of costs and benefits will need to include consideration of whether the net benefit will be optimised through the mandatory provision of call-by-call carrier selection or CPS. It is impossible to respond comprehensively to this question until such an analysis is conducted.

37. It cannot be assumed that analysis will yield the same outcome for both options (CPS and call-by-call selection). CPS provides greater convenience for customers in the event that they opt to use one carrier for all their international calls. However, they will still have the ability to make a choice for each call if call-by-call carrier selection is available. This might provide the greatest net benefit to customers who may be able to make best use of choice by using a range of call providers – for example, to take advantage of the lowest rates to a mix of destinations that may not be available from a single carrier. If this proves to be the case, the additional cost of CPS would not be worth incurring for Cayman.

38. The analysis therefore needs to take account of the additional costs of CPS. In our response to question 3.1 we highlighted the costs associated with IA. Some of these costs can be avoided if a call-by-call regime is opted for. In particular, the costs associated with development and running of systems to provision customer orders, including the necessary processes to prevent slamming. CPS also involves significantly greater requirements from retail billing platforms. This would depend on the billing solution which is most appropriate for the industry and which maximises the net benefits of CPS (see response to question 4.4. below).



## Question 4.2

**Are there implementation issues with the proposed indirect access regime which may preclude the economic and/or timely introduction of competition in international ICT services in the Cayman Islands? Are there proposed solutions to such implementation issues?**

39. As explained in the response to question 4.1 above, significant systems development activity will be necessary before CPS could be implemented on Cable & Wireless' network. Before that, there would need to be a clear mandate in terms of the billing solution(s) that need to be available and the processes to provision customer orders. It may be that the ICTA would determine that these issues could best be resolved through cooperative industry discussion (e.g. in a working group facilitated by the ICTA – see response to question 8.1 below).

40. These developments would inevitably take some time, whatever approach the ICTA favours. In the event that the ICTA mandates IA, Cable & Wireless would recommend that it adopt a phased approach by allowing the market to develop through call-by-call selection ahead of the implementation of full CPS. Precise timelines for this phasing would need to be set if the ICTA opts to mandate CPS. The timelines should be set so as to provide realistic expectations for the industry and for users (Cable & Wireless believes it is appropriate to be clear now that it would not be possible for full CPS to be ready for day 1 of international liberalisation – 1 April 2004).

### **Question 4.3**

#### **Are there additional service functions that would be required in order to implement CPS with call-by-call selection?**

41. Cable & Wireless agrees that the service features listed by the ICTA on pages 9 and 10 of the consultative document would be necessary in any CPS service. Additional functions may be necessary or desirable, depending on the precise solution required in the event of a mandate. As discussed elsewhere in this response, the mandate should not extend beyond the service markets in which the need for CPS has been identified through cost benefit analysis. Additional features may fall outside these markets and therefore be appropriate for provision through commercial agreement between carriers and not as part of any CPS mandate.

## 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?**

42. As there is not yet a competitive market for international calls in the Cayman Islands, the question of customer preference is largely untested. There are clear convenience benefits to receiving a single bill. However, it also requires an additional layer of inter-carrier accounting since one carrier would be operating as a billing agent for the other. This creates a number of issues which would need to be resolved – for example, how to cover the cost of bad debt, and how to correctly identify the services of one carrier on a bill which carries the clear brand identifier of another.

43. Separate billing may be preferred by carriers who want to send distinctive service or branding messages to their customers as part of or together with their bill. However, separate billing is likely to be costly and may be inconvenient for customers, particularly if they opt to use a number of carriers with different billing cycles for their international calls.

44. In the event that indirect access is mandated, Cable & Wireless believes that billing arrangements should be discussed and agreed in an industry working group (see response to question 8.1 below), rather than prescribed in advance. This will enable the industry collectively to design the most appropriate solution or solutions to suit carriers' commercial needs. The only conclusion which can be drawn in advance is that, if there is a mandatory single billing requirement, it should be provided by the access provider. This is because provision of a single bill by an international calls provider would require a very complex system of inter-carrier accounting among both access and international service providers to enable customers to make calls using other international carriers (either through CPS overrides or call by call selection). In particular, determining which international service provider should bill on behalf of the customer could be difficult in an environment where a customer might be using both fixed and mobile access to the international network, and might be using multiple international networks. Because all international calls originated on one access must necessarily use that one access, Cable & Wireless considers it most practical for that access provider to produce the common bill. Provision of a single common bill produced by an international carrier may have the undesirable effect of 'locking in' the customer to that carrier's service. As noted above,

though, Cable & Wireless believes billing arrangements should not be mandated, but rather left to the choice of international carriers.

## 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?**

45. Cable & Wireless endorses the need for a code of practice in the event that CPS is mandated. 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.

46. The code should establish and clearly state the principles and practice which both international calls providers and access providers will apply in provision of services using CPS. It should therefore be adopted by international call providers and access providers. Adoption of the code of practice should be a requirement for the industry, and hence access providers should be at liberty to refuse requests for service from carriers that have not adopted the code. The code would need to be enforceable through CPS contract clauses (with ICTA oversight if necessary) allowing appropriate penalties to be applied. For example, in Canada, carriers found guilty of slamming are required to pay a financial penalty and a similar system could be adopted in the Cayman Islands. The contract terms should also empower access providers to withdraw CPS services in the event of specified serious breaches of the Code.

47. Cable & Wireless believes that the best way to develop the code of practice would be through industry cooperation in a working group (see response to question 8.1 below).

48. There would be no need for a code of practice to cover call-by-call selection.

## Question 5.2

**Are consumer protection measures other than or in addition to a Code of Practice as addressed in Question 5.1 necessary to protect consumers against fraud or misuse of personal information, and, in general, to ensure consumer confidence in licensed international ICT service providers?**

49. Cable & Wireless believes that the provisions in ICT licenses related to privacy and confidentiality (Conditions 12 and 13 in the Cable & Wireless license) provide adequate protection against misuse of personal information. Other unethical or unfair practices that could arise through the provision of CPS should be covered in the code of practice. As already stated, the code needs to be enforceable with appropriate penalties.

50. It is important that the ICTA is prepared to enforce provisions of the law and license conditions to ensure that there are clear deterrents to infractions and proportionate penalties when they do occur. The ICTA needs to communicate this very clearly to the industry.

51. In addition to the mechanisms discussed above to protect consumers and competitors against abuse of the system, it may be helpful for the industry to publish a guide for consumers on CPS services. As with the code, this could be developed cooperatively by the industry. The guide would not be used for marketing, but to provide clear objective information to consumers on how the service works, how they are protected from abuses etc. A similar guide has been developed by the industry in the UK and is thought to be helpful to consumers.

## **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?**

52. Cable & Wireless is not aware of any material technical or other impediments preventing the adoption of the proposed CAC and CIC formats. The ICTA must be mindful, however, that Cable & Wireless currently uses or plans to use three dialing prefixes associated with international discount plans that resemble CACs (10-10-269, 10-10-335 and 10-10-729). Given that these dialing prefixes are assigned exclusively to Cable & Wireless and therefore can be used only on the Cable & Wireless network, this should not be an issue that needs to be addressed, unless one of the carriers that have been assigned 0269, 0335 or 0729 choose to enter the Cayman market and to use those CICs here.

## 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?**

53. The discussion of cost recovery in the consultative document focuses mainly on the costs of CPS. This is appropriate since the costs of call-by-call selection are more straightforward to allocate between carriers than CPS costs.

54. Cable & Wireless agrees that there are three categories of cost involved in the work required to establish CPS – the access provider’s general system provisioning costs, international licensee-specific enabling costs, and per-line enabling costs. In addition, once a CPS system is up and running, there are the costs of each call which will be incurred and settled according to usage on a per-minute basis as in other interconnection arrangements. These cost categories apply whether CPS is provided in compliance with a regulatory mandate or agreed commercially between carriers.

55. Cable & Wireless believes that, in the event of regulatory mandate, the ICTA will need to carry out a deeper analysis of how the costs should be shared than it has in the consultative document. One starting point for this analysis could be to apply some of the principles of cost recovery that have been used in other liberalised markets to establish how costs should be apportioned between carriers when regulatory requirements are established. Such principles were developed in the UK and have been applied in proceedings on number portability and CPS.

56. Cable & Wireless submits that the following principles are relevant to the analysis of how to assign CPS costs:

- Cost causation – costs should be recovered from those who cause them to be incurred.
- Distribution of benefits – costs should be recovered from the beneficiaries, including where there are externality benefits.
- Cost minimisation – cost recovery mechanisms should incentivise cost minimisation.
- Effective competition – cost recovery mechanisms should not weaken efficient for efficient competition.
- Practicability – cost recovery methods should be practicable and relatively easy to implement.

57. Any regulatory mandate for CPS cost sharing should include analysis of each of the categories of costs against these principles. Application of some of the principles to particular costs may yield conflicting outcomes in which case the most efficient balance between them should be judged.



58. Cable & Wireless would be happy to contribute to deeper understanding of appropriate cost recovery mechanisms. In the meantime, we note that analysis in other jurisdictions (e.g. the UK) has concluded that both licensee specific enabling costs and per line enabling costs should be met by the operator requesting CPS services. This allocation is consistent with each of the five principles listed above and so seems appropriate.

59. General system provisioning costs have given rise to more debate. It has been argued that they should also be met by requesting operators on the basis of the cost causation principle. However, others have argued that that should be shared between all carriers, including the access network since the benefits of CPS (assuming that a net benefit has been established) will be shared amongst all customers, and this will also create a better incentive for cost minimisation. This is the approach that was adopted in the UK for recovery of general system costs.

60. Cable & Wireless would welcome further discussion of this difficult question and how it would be resolved within the specific market context of the Cayman Islands. We are concerned that the ICTA's currently preferred approach would require the access provider to meet all of the general system costs and cannot understand how this conclusion is consistent with any widely recognised cost recovery principles, including the principle enshrined in subsection 47(1) of the ICTA Law. We believe that this would be highly discriminatory – requiring the customers of the access provider to bear all of the costs, raising the cost base of the access provider in an artificial way and hence tilting the playing field unfairly in favour of requesting operators. In other words, the ICTA's current preference would create an unfair burden in the distribution of general system provisioning costs.

61. We note that the ICTA is concerned that any attempt to spread general system costs more evenly would be difficult to implement because of the need to ensure that equal contributions are made by all carriers and not borne disproportionately by carriers entering the market early. These difficulties have been overcome in other markets and Cable & Wireless believes that the ICTA must reconsider its position in the event that a CPS mandate is implemented.

## Question 8.1

### **Assuming a decision in favour of indirect access, is there a requirement for the establishment of an industry committee to implement indirect access?**

62. As discussed in other parts of this response, Cable & Wireless believes that some necessary elements of any CPS framework could best be developed through cooperative industry discussion (e.g. code of practice, consumer guide, billing and other necessary processes). This will enable carriers to design solutions that best suit their commercial and operational objectives as well as a regulatory mandate.

63. Any industry working group would need clearly understood processes for escalation to the ICTA of issues on which carriers cannot achieve agreement. This could work along the lines of the committee model operated by the CRTC in Canada where industry committees, chaired by CRTC representatives, attempt to achieve consensus solutions. If consensus is achieved, it is submitted to the regulator for its review and, if the CRTC deems it appropriate, approval, at which point it becomes a determination of the regulator, with all of the force and power that entails. Where no consensus is achieved, the industry has the ability to refer issues to the regulator for determination.

64. An industry committee would probably not be necessary to implement call by call selection indirect access since the processes required to facilitate this are not so complex as those for CPS.

## **Question 8.2**

**Are there any other issues that the Authority should take into account in its determinations on indirect access?**

65. All the points which Cable & Wireless wishes to raise in response to the consultative document are covered in its responses to questions 1 – 8.1.