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Information & Communications Technology Authority

Our ref: ICTA/160/161-09
Your ref: GR/CR/15.24

3 July 2008

Mr. Rudy Ebanks
Chief Regulatory and Carrier Relations Officer
Cable and Wireless (Cayman Islands) Limited
PO Box 293
Grand Cayman KY1-1104
CAYMAN ISLANDS

Dear Mr. Ebanks,

Re: Calling Circle

In this letter, the Authority details the correspondence involved in the review of the Calling Circle service, makes a determination regarding the 3 June 2008 C&W service filing, and requires C&W to provide additional information regarding this service and other similar services as well as information regarding its product/service introduction procedures.

Process

On 23 January 2008, the Authority became aware of a Calling Circle service offered by Cable & Wireless (Cayman Islands) Limited ("C&W") to residential customers that included fixed line originated domestic calling. According to information on C&W's website, the Calling Circle service allowed customers to nominate C&W fixed, mobile, or NetSpeak numbers to be included in a Calling Circle. For a recurring monthly fee per nominated number, all the members of the Calling Circle could make unlimited calls to all other nominated numbers in the Calling Circle.

The Authority notes that, in accordance with Annex 5 of C&W's Licence, Fixed Originated Domestic Voice calls and Fixed to Mobile Domestic calls are Category 1 Services and service offerings that offer bundles of these services with other services,

such as mobile originated calling, are required to comply with the Category 1 rules. Therefore, C&W was required to file an imputation test and obtain the prior written approval of the Authority before introducing this service. The imputation test identifies a floor price for the purposes of determining whether C&W is engaging in anti-competitive behaviour. As of 23 January 2008, the Authority had not received any service filing by C&W for that service.

On 23 January 2008, the Authority requested that C&W identify whether the service description from C&W's website was accurate and whether the Calling Circle service included fixed originated calling. The Authority requested a reply by 30 January 2008.

On 30 January 2008, C&W replied to the Authority's request indicating that fixed originated calling was included in the Calling Circle service. C&W also provided the number of Calling Circles in service as well as the number of nominated numbers.

On 11 February 2008, during a meeting with Authority staff, C&W indicated that its Calling Circle services included both residential and business service offerings, each with different rates, terms, and conditions ("Residential Calling Circle service" and "Business Calling Circle service"). Both service offerings included fixed originated calling and C&W had neither filed imputation tests for the services nor had it received the Authority's approval to introduce the services. In the meeting, C&W indicated that it would submit the required service filing and imputation test to the Authority as soon as possible.

On 10 March 2008, C&W submitted a draft service filing and imputation test to the Authority. The Business Calling Circle included a monthly rate of \$15 per nominated number and the Residential Calling Circle included a monthly rate of \$10 per nominated number. C&W noted that the draft imputation test included with this draft service filing had incorrectly categorized certain calling as being included in the Business Calling Circle service when, in fact it should have been included in the Residential Calling Circle service. C&W indicated that it would change the imputation test to match the Calling Circle traffic to the residential or business category based on which Calling Circle rate applied to the nominated number.

On 12 March 2008, the Authority requested further information from C&W on the supporting data and calculations for the call origination costs used in the imputation test.

On 25 March 2008, C&W submitted a revised draft service filing and imputation test and also provided information on the supporting data and calculations for the call origination costs.

On 8 April 2008, the Authority sent a number of questions to C&W regarding the demand estimates and calculations used for the imputation test. Among other things, the Authority questioned the appropriateness of C&W's suggested calculation of the average monthly usage by dividing usage by the year-end number of nominated numbers in service rather than the average number of nominated numbers in service

throughout the year. The Authority in addition questioned C&W's suggested calculation of dividing two months of usage data by twelve to determine the average monthly usage for the Residential Calling Circle Service. The Authority also requested additional months of calling data as it had concerns about basing the assumed usage for the Residential Calling Circle Service on the limited usage data provided by C&W. On 8 April 2008, C&W acknowledged receipt of the Authority's questions and indicated that it intended to provide responses within a week.

On 12 May 2008, C&W indicated that it was still working on responses to the Authority's questions and that it intended to reply by 16 May 2008.

On 16 May 2008, C&W provided responses to the Authority's questions and provided the additional months of calling data requested by the Authority. In explanation of the calculation of average monthly usage by dividing two months of data by twelve, C&W indicated that it believed the error occurred due to pasting formulae from the business test which contained twelve months' data. C&W also noted that the number of Business and Residential Calling Circles and nominated numbers had changed from previously filed versions because, in reallocating calling volume to the correct category, it had omitted to alter the number of Calling Circles and nominated numbers to reflect the reallocation of usage.

On 22 May 2008, the Authority communicated a number of concerns about the imputation test information submitted by C&W, suggested a number of changes that C&W should make to its imputation test methodology and requested that C&W identify by the end of business on 23 May 2008 the date by which C&W would submit the service filing.

C&W did not respond to the Authority's request that C&W identify the date by which it would submit the service filing.

On 25 May 2008, the Authority indicated that it had concerns about the data and the explanations provided by C&W, identified that a more detailed review of the underlying data was necessary and requested detailed calling and customer Calling Circle and nominated number information. The Authority's detailed request concerned Calling Circle counts and nominated number counts for February and March 2008 and the calling traffic data for March 2008. In its request to C&W, the Authority indicated that it expected the detailed data to reconcile to the summary data that was provided by C&W in support of its demand estimates used in the imputation test.

On 28 May 2008, C&W replied that it was going to take some time for it to supply the data in the format requested by the Authority as it needed to match the minute and call usage data to the customer account data in order respond to the Authority's request. C&W supplied what it characterized as the "raw data" for the usage for March and the customer number counts for March and requested a meeting with Authority staff on 29 May 2008. C&W did not supply the requested customer number count data for February.

On 28 May 2008, the Authority agreed to the 29 May 2008 meeting, again requested the February customer number count data, and again requested that C&W identify the date by which it intended to submit the service filing.

In a follow-up 28 May 2008 email, C&W indicated that it intended to submit the service filing by 2 June 2008.

At the 29 May 2008 meeting, Authority staff and C&W staff reviewed the data that C&W had supplied. The Authority indicated that whilst the total minutes and call volumes matched, it was not able to reconcile the minutes and call data by category of calling to the summary data C&W had provided. In response, C&W indicated that it had done further reallocations of the usage data to the categories which were not represented in the "raw data" it supplied to the Authority. The Authority also indicated that it could not reconcile the customer or nominated number counts in the "raw data" with the summary information that had been provided by C&W and that it appeared to the Authority that C&W had double counted a large number of nominated numbers. C&W agreed to investigate this. The Authority also explained that it was important that the nominated number count data be matched to the usage data as the Authority had concerns regarding C&W's estimate of average usage. C&W agreed to attempt to provide the data the Authority had originally requested on 25 May 2008.

On 2 June 2008, C&W requested clarification regarding the Authority's suggestion concerning the imputation test methodology for costs related to mobile originated calls. The Authority responded to that request on the same date.

C&W made a second clarification request on 2 June 2008 concerning call related and minute related costs. The Authority responded to C&W's request on 3 June 2008.

On 3 June 2008, C&W submitted a service filing and imputation test for the Business Calling Circle and indicated that it had decided not to extend the ability to nominate fixed or NetSpeak numbers to Residential Calling Circles. C&W indicated that the Residential customers who had nominated a fixed or NetSpeak line to their Calling Circle would be informed that C&W could no longer offer that service. The data submitted by C&W in support of its service filing and imputation test removed the double counting from previously supplied data and, as a result, showed a reduced number of customers and nominated numbers in the business Calling Circles.

On 8 June 2008, the Authority identified that the data submitted by C&W in support of the 3 June 2008 service filing did not appear to take into account any Calling Circles or nominated numbers that were discontinued and also showed that a number of Calling Circles that accounted for a significant number of nominated numbers had no usage associated. The Authority requested that C&W confirm that the customer count and nominated number count correctly reflected the number of Calling Circles working during the month and that the Calling Circles that were indicated as being active but had no usage were in fact billed Calling Circles.

On 9 June 2008, C&W responded to the Authority's request by stating that it would review the data and get back to the Authority as soon as possible.

On 19 June 2008, having not heard back from C&W, the Authority requested that C&W identify the date by which it would provide a reply to the 9 June 2008 request.

On 19 June 2008, C&W indicated that it hoped to be able to respond within the next day.

On 20 June 2008, C&W indicated that the customer counts and nominated number counts that it had used in the imputation test did not correctly account for Calling Circles or nominated numbers that had been terminated. C&W provided revised data which showed that it had again overstated the number of Calling Circles and nominated numbers used in the imputation test. However, even though C&W provided revised customer and nominated number counts, it did not provide a revised imputation test to adjust for the lower number of customers and the resulting calculated higher usage per nominated number.

Service Filing

In the next section of this letter, the Authority reviews and makes determinations regarding the Business Calling Circle service filing that was submitted by C&W on 3 June 2008, including the revisions to the supporting data filed by C&W on 20 June 2008.

Demand Information - Usage

In its 3 June 2008 service filing, C&W indicated that the Business Calling Circle service was launched in November 2006. C&W provided the actual number of minutes and the actual number of calls for the Business Calling Circles that were in service for each month from January 2007 to March 2008.

The Authority notes that there are usually two types of usage costs associated with local usage services: (1) per call costs that apply once per call; and (2) per minute costs that apply for each minute of usage. Whilst C&W did provide the call and minute information with its 3 June 2008 service filing, it did not provide the detailed call information in the draft service filings. The Authority determines that, for future service filings, when C&W provides usage data on which it bases its imputation test, it is to provide both the number of calls and the number of minutes data for each month in the sample period.

The Authority has reviewed the usage data related to the number of calls and number of minutes and is satisfied that the calling volume during the sample period provided by

C&W is a reasonable basis on which the usage data to be included in the imputation test for the Business Calling Circle service can be estimated.

Demand Information - Number of Customers

In its proposed imputation test methodology, C&W initially used the end-of-year in-service counts for the number of customers and the number of nominated numbers. In the 3 June 2008 imputation test, C&W used the average of the end-of-month in-service counts.

The Authority notes that when the level of demand is changing, such as during the growth phase of a product or service, the end-of-month counts can be significantly higher than the average in-service counts. Using the end-of-month or average of the end-of-month counts to calculate average usage can therefore significantly understate the average usage. This is because new customers tend to initiate the service throughout the month rather than having all new services installed at the beginning of the month. As the new customers would not have had the service for the whole month, dividing the usage by counting those customers as if they did have service for the whole month understates the average usage. To correctly count the average number of lines, those counts should be prorated for the portion of the month that the line was in service. For example, if a line was included in the service for half of the month and remained in service at month end, the line should be counted as 0.5 of a line not as 1.0 line as C&W has done.

However, the Authority recognizes that tracking the start and stop dates of individual lines could add complexity to the average in-service calculations. As an alternative to the prorated approach, the Authority will accept an estimated average in-service count calculated by adding the beginning of the month count to the end of the month count and dividing by two. In the Authority's view, such a method would provide a better estimate of average in-service quantities rather than implicitly assuming that all lines were in service for the full month as has been done by C&W's use of the end-of-month in-service counts.

In any future similar imputation test submissions where the prorated counts are not available, C&W is directed to provide the end-of-month supporting data and to calculate the average-in-service counts by averaging the monthly average in-service counts calculated as described above.

For this service filing, the Authority determines that by using an average of the end-of-month in-service numbers, C&W has overestimated the average in-service counts and thereby underestimated the average usage. In the attached imputation test, the Authority has adjusted the average in-service counts to reflect the methodology described above.

However, the Authority notes that in calculating the average in-service counts for January 2007, the end-of-month counts for December 2006 are needed. As C&W has not provided the end-of-month December 2006 counts, the Authority has estimated those counts based on the data for January and February 2007.

In addition, as described in the "Process" section above, the 3 June 2008 service filing overstated the number of customers and nominated numbers in-service because C&W did not properly account for terminated Calling Circle services during the sample period. The Authority has used the revised customer and nominated numbers provided by C&W on 20 June 2008 in the imputation test calculations.

Imputation test components for mobile calling

In its 3 June 2008 service filing, C&W requested clarification from the Authority regarding the imputation requirements for "on-net mobile services".

The Authority notes that the Imputation Test Table on page 49 of Annex 5 of C&W's licence indicates that for "Mobile", the imputation test is to use "Cost". Therefore, the Authority confirms that for C&W mobile originated calling terminating on C&W's mobile network, both the origination and termination parts of the imputation test are based on cost. The Authority also notes that, as it considers C&W mobile originated calling that terminates on the C&W fixed network to be included in the "Mobile" service category, both the origination and termination parts of the imputation test for that type of calling are also based on costs. The attached imputation test is calculated using costs as opposed to interconnection charges for the termination part of the calls for both of those types of traffic.

The Authority notes that the imputation test submitted by C&W on 3 June 2008 used a per-minute cost for Mobile calling from the Adjusted FAC model adjusted upward by 25% to reflect the Authority's determination as set out in paragraph 89 of ICT Decision 2004-1. C&W stated that it did not believe that such an adjustment is appropriate. The Authority notes that ICT Decision 2004-1 required that adjustment to C&W mobile costs and remains of the view that such an adjustment is necessary. However, the Authority notes that the FAC model does use separate per-call and per-minute cost components to calculate that average per-minute cost. As the average call duration for this service may be different from the average call duration inherent in the Adjusted FAC model, the Authority considers that the imputation test should use the per-call and per-minute costs adjusted upwards by 25%. The attached imputation test does so. The Authority also notes that the use of separate per-call and per-minute components is consistent with the approach used by C&W for the Fixed originated calling.

Imputation test - incremental retail costs

In calculating the incremental retail costs associated with the advertising for this service, C&W amortized the up-front advertising costs and added the estimated ongoing advertising cost to determine a per-month estimate of advertising costs. The Authority accepts the C&W per-month estimate of advertising costs to be reasonable.

However, when applying that cost in the imputation test, C&W first divided the monthly advertising costs by the forecasted average-in-service number of customers for the estimated life of the product and then divided that number by the actual average in-service number of nominated numbers for January 2007 to March 2008. In its suggested imputation test, this resulted in markedly different advertising costs being applied to the fixed and mobile nominated numbers. It is unclear to the Authority why C&W used that approach.

As C&W has conducted the imputation test on a per-month nominated number basis, the Authority determines that the incremental retail costs should also be calculated on a per-month nominated number basis by dividing the estimated per-month advertising cost by the per-month number of nominated numbers. However, as C&W has not provided an estimated average-in-service nominated number count over the life of the product, the Authority has estimated that number using the information provided by C&W. The attached imputation test calculates the incremental retail costs on a per-month per nominated number basis.

Proposed tariff wording

Item 805.3.5 in C&W's proposed tariff states that "Nominated numbers can make unlimited Local Calls to any other nominated number with the Calling Circle and to and from the Core Number..." As nominated numbers cannot make calls "from" the Core Number, the Authority determines that, in order to avoid potential confusion, the phrase "and from" should be deleted from that sentence.

Authority Determination

In its 3 June 2008 service filing, C&W proposed that it be permitted to charge its Business customers a rate that is below the imputation test because, in its view, it would be disruptive to customers and markets to require a change to the current rate of \$15.00 per month per nominated number.

The Authority notes that C&W's licence requires that such services receive the prior written consent of the Authority before they are introduced and that such services are also required to pass an ex ante imputation test. C&W has not complied with either of those obligations and the Authority finds C&W's proposal that it be allowed to ignore

the terms of its licence to be unacceptable. As the Business Calling Service fails the imputation test (as provided in the attachment), the service filing is hereby denied.

The Authority notes that the rate that would be sufficient to pass the imputation test is different from the alternative rate that C&W suggested in its 3 June 2008 service filing. Therefore the Authority requires C&W to respond in writing by noon on 8 July 2008 as to which of the following three options it chooses:

- 1) Cease offering the Business Calling Circle service,
- 2) Change the Business Calling Circle service to exclude the ability to nominate fixed or NetSpeak numbers, or
- 3) Change the price of the existing service so that it passes the imputation test.

If C&W chooses option 1) or 2), it must implement the appropriate changes to its service offering and marketing material no later than 11 July 2008.

If C&W chooses option 3), it must send a revised tariff incorporating the new rate and the change in the wording identified above by noon on 8 July 2008 and implement the appropriate changes to its service offering and marketing material no later than 11 July 2008.

C&W is directed to provide a copy to the Authority of its proposed draft of any written communications that it intends to send to Business Calling Circles regarding any change to the service resulting from this determination. C&W is directed to provide that copy no less than two business days before it is sent to customers. In any event, the draft of its proposed communications must be provided to the Authority no later than noon on 9 July 2008.

Residential Calling Circle

In the 3 June 2008 service filing, C&W indicated that it had decided not to extend to Residential customers the ability to nominate fixed or NetSpeak numbers to Residential Calling Circles and that it would inform the affected customers of the change in the terms of the service.

The Authority notes that as of 30 June 2008, C&W's website (<http://www.cw.ky/internet/products/mobile-services/monthly-plans/calling-circle/>) lists the Calling Circle as:

Calling Circle

Nominate 5 of your friends and family to join you in a calling circle, and for only \$10 per month per number, you and all the people in your calling circle get

unlimited calling within your circle for no additional charge. You can nominate C&W numbers from postpaid and prepaid mobiles, NetSpeak and fixed line numbers.

Additionally, the Authority notes that on 30 June 2008, Authority staff contacted C&W's Customer Service Centre and inquired about the terms and conditions of the Residential Calling Circle service. The Authority staff member was told that for \$10 a month per nominated number, a customer could add any C&W mobile or fixed line service to a Calling Circle or a new customer could establish a Calling Circle which included mobile or fixed line services.

As it has been nearly a month since C&W has indicated that it would be changing the terms and conditions of the service, the Authority is concerned with the continuing violations by C&W of its conditions of licence and the apparent lack of effort on C&W's part to align the service offering with the description provided to the Authority.

C&W is directed to immediately implement the changes to the Residential Calling Circle service to be consistent with its statement in its 3 June 2008 service filing. C&W is also directed to immediately change its website to remove references to the Residential Calling Circle customer being able to nominate fixed line and NetSpeak numbers to their calling circles. In addition, C&W is directed to immediately inform its customer service representatives that the Residential Calling Circle service does not include fixed line or NetSpeak originated calling.

Also, C&W is directed to provide to the Authority, by noon on 9 July 2008, a copy of any correspondence it sent to the Residential Calling Circle customers regarding the removal of the fixed and NetSpeak nominated number eligibility for inclusion in the Residential Calling Circle. If it has to date, not sent any such correspondence, it is to provide a draft of any proposed correspondence to the Authority by noon on 9 July 2008.

C&W's introduction of services in violation of its licence requirements

The Authority is concerned that C&W has violated the requirements of its licence by introducing two service offerings that required the prior written consent of the Authority and the satisfying of an ex ante imputation test without seeking the necessary approval or satisfying the required imputation test.

C&W is directed to provide written responses to the following questions by 25 July 2008:

1. Provide a list of all of C&W's services that include fixed originated local or IDD calling (including calling from NetSpeak lines) as a service component. For each service in the list, identify the service name, the C&W tariff item reference, and whether the fixed originated calling that is included is calling to another fixed line, calling to a mobile number, or both. If the service is not covered by a C&W tariff

item, provide a detailed description of the service including the full rates, terms, and conditions applicable to the service.

2. Provide a detailed description of, and supporting documentation for, any changes C&W has made since September 2006 to its product/service introduction process to ensure that it satisfies its regulatory requirements and indicate the dates on which those changes were made.
3. Provide a detailed description of, and supporting documentation for, any steps C&W took between 3 June 2008 and 2 July 2008 to implement the changes it identified it would make to the Residential Calling Circle service in its 3 June 2008 letter and indicate the dates on which those steps were taken. If C&W took no steps between 3 June 2008 and 2 July 2008 to implement the necessary changes, provide a detailed explanation of why it did not do so.

When responding to the question, please repeat the entire question above the response to that question.

Yours sincerely,

[Signed]

David A. Archbold
Managing Director

REDACTED

Business Calling Circle

	<u>Fixed Nominated Dialed</u>		<u>Mobile Nominated Dialed</u>		
Average in-service nominated numbers		#		#	
	<u>Fixed to Fixed</u>	<u>Mobile to Fixed</u>	<u>Fixed to Mobile</u>	<u>Mobile to Mobile</u>	<u>Weighted Average</u>
Average Number of calls per nominated number:	#	#	#	#	
Average call minutes per nominated number:	#	#	#	#	
Costs					
per call - network costs origination:	#	#	#	#	
per min - network costs origination:	#	#	#	#	
Imputation test termination components:	Interconn	Costs	Interconn	Costs	
Costs					
per call - network costs termination:		#		#	
per min - network costs termination:		#		#	
Interconnection terminating charges					
per call - call set-up:	0.0125		0.0000		
per min - call duration:	0.0091		0.1845		
per min - interconnect specific	0.00086		0.00000		
Total network and termination charges:	#	#	#	#	#
Amortized and on-going advertising costs on monthly basis:				#	
Average monthly in-service nominated numbers over life of product:				#	
Incremental retail costs per nominated number per month:					#
Royalty and Regulatory Fees					#
Imputation test:					#
C&W proposed monthly rate					15.00
Does rate pass imputation test					No

Note: # indicates provided in confidence

