

Our ref: GRCR/GR15.23
17 December 2003

Mr. David Archbold,
Managing Director,
Information, Communication Technology Authority,
P.O. Box 2502GT,
3rd Floor Alissta Towers,
Grand Cayman.

Dear Mr. Archbold,

Re: Cable & Wireless Submission to the Public Consultation on Indirect Access

Cable & Wireless (Cayman Islands) Ltd. requests the ICTA accept this letter as an addendum to our submission on Indirect Access Ref: CD 2003/7 dated 12 December 2003. We recognize that this letter is dated after the formal deadline for submissions to the consultation, and we apologize for that fact. However, we believe that the letter contains useful and pertinent information to the ICTA's determination. Furthermore, we note that this letter was written and submitted in advance of the publication of any submissions on this proceeding, and Cable & Wireless has not seen any other party's submission. This letter cannot therefore be interpreted as a reply or reaction to any other party's opinions expressed on this issue. In light of these considerations, we hope that the ICTA takes into account the views expressed herein.

In its 12 December submission, Cable & Wireless made a clear case that it was premature to mandate indirect access. In particular, until existing regulatory arrangements are given an opportunity to influence the market, the net benefits of indirect access cannot be measured as required by the ICTA (Interconnection and Infrastructure Sharing) Regulations 2003. Cable & Wireless made the further point that—if and when the ICTA does make a determination that net benefits do warrant indirect access—the mandate should apply to all relevant licensees, i.e., access providers. We made the case on the basis of the principle of non-discrimination.

After further reflection, Cable and Wireless has concluded that a number of issues that the ICTA has raised are already determined by existing regulation. In particular, the application of indirect access and the means of recovering costs attributable to indirect access are clearly specified in the Interconnection and Infrastructure Sharing regulation.

There should be no doubt that indirect access is an interconnection service. This makes logical sense in view of the definition of interconnection services in Cayman law, but it is also acknowledged to be so by the simple fact that provisions relating to indirect access are covered in the ICTA (Interconnection and Infrastructure Sharing) Regulations 2003.

As such, the ICTA must recognize that there are provisions for the applicability of any indirect access mandate and cost recovery.

With respect to the licensees subject to mandated indirect access (Questions 1.1 and 1.3), the regulations require broad application interconnection obligations. Paragraph 4(1) of the Interconnection and Infrastructure Sharing Regulations states “In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement.” Thus, if the ICTA chooses to mandate indirect access, the ICTA must oblige all relevant licensees to stand ready to provide it.

With respect to cost recovery (Question 7.1), the ICTA’s suggestion that provisioning costs be borne by each of the licensees obligated to provide indirect access violates existing regulation. Paragraph 47(1) clearly states that “the cost of making any interconnection to the ICT of another licensee shall be borne by the licensee requesting the interconnection.”

We look forward to the opportunity to discuss these important matters further.

Yours sincerely,

Cable & Wireless (Cayman Islands) Ltd.

[“Signed”]

Rudy B. Ebanks

Vice-President, Regulatory and Carrier Relations

cc: Lisa Agard, EVP Legal, Regulatory and Public Policy
Timothy Adam, General Manager
Frans Vandendries, Senior Regulatory Advisor
Erik Whitlock, Advisor, Regulatory Economics

Enclosure