

January 23, 2004

Philip J. Brazeau  
General Counsel – Head of Licensing and Compliance  
Information & Communications Technology Authority  
85 North Sound Way  
Alissta Towers  
PO Box 2502 G.T.  
Grand Cayman

Via E-Mail and by Facsimile

Dear Mr. Brazeau:

AT&T Wireless (“AW”) hereby submits the following comments in the ICTA’s public consultation re wholesale and carrier services (Ref: CD (2003) 08):

**Question 1: Among Cable & Wireless’ retail services, are there services other than those listed in Attachment 1 to Schedule 4 that are required to be made available to licensees in order to facilitate resale competition?**

AW believes that the scope of the services set forth in Attachment 1 of Schedule 4 will be sufficient to foster resale competition in the Cayman Islands. However, AW also believes that the dispositive factor in establishing and maintaining effective resale competition will be the approved rates to be charged by C&W for the aforementioned services.

**Question 2: The principles for setting wholesale rates are set out in Schedule 4. The Authority contemplates applying the following additional pricing principles for wholesale services:**

- **wholesale prices should not discriminate in a way which reduces efficient competition; and**
- **wholesale prices should not be inflated to reduce competition in dependent markets.**

**Are the above additional principles appropriate? Are the above principles consistent with the ICTA Law and the wholesale regime set out in Schedule 4? Are there additional pricing principles in addition to those listed above and those set out in Schedule 4 that should be implemented?**

AW suggests the following changes to the pricing principles listed above:

- wholesale prices should not discriminate in any way between customers for those wholesale services; and
- wholesale prices should be purely cost-oriented, plus the approved rate of return for that service, and said costs should not be inflated or manipulated in any way that would reduce competition.

**Question 3: The Authority seeks comments on the whether the terms and conditions of wholesale services need to be reviewed and if so, the principles that ought to be used. Comment on the**

**following principles for determining the appropriateness of proposed terms and conditions for wholesale services:**

- **wholesale services are to be made available on terms and conditions that are reasonable and non-discriminatory;**
- **when an ICT service is made available only to a limited group of customers, such a service is to be made available on a wholesale basis such that the wholesale service could be resold to the same limited group of customers that have purchased such a service in the past;**
- **wholesale services are to be provided with the same quality and in the same provisioning time intervals that C&W provides to itself; and**
- **absent prohibitions to the contrary, a competitor could lease residential telephone services and subsequently resell it to a business customer. Resale of services between categories of customers should be prohibited.**

AW comments as follows:

1. AW agrees with the first bullet above, although we suggest that it be rephrased to “wholesale services are to be made available on terms and conditions that are non-discriminatory and commercially reasonable with reference to regional norms for the same or comparable services.”
2. AW agrees with the second bullet above, although we suggest that it be rephrased to “when an ICT service is made available only to a limited group of customers, such a service is to be made available and priced on a wholesale basis such that the wholesale service could be resold to the same limited group of customers that have purchased such a service in the past.”
3. AW agrees with the third bullet above, although we suggest that it be rephrased to “wholesale services are to be provided with no less than the same quality and in no more than the same provisioning time intervals that C&W provides to its wireline, wireless, and other affiliated operations.”
4. Regarding the fourth bullet, AW believes that economic reason should be the determinant in assessing which services get sold by whom to the end-user customer. The hypothetical situation posed by the fourth bullet assumes that it would be economically rational for a competitor to purchase a given residential telephone service and resell that service (presumably at a profit) to a business customer. AW respectfully suggests that any regulatory cure for this alleged problem should focus on rationalizing the approved residential and business rates that gave rise to the transaction, rather than a general prohibition on resale of services across customer categories.

**Question 4: Is the definition of carrier services set out in Section 4 “Carrier Services” above, an appropriate one?**

AW suggests the following definition of “carrier services”:

“Carrier services” are telecommunications services, other than retail services and interconnection and wholesale (for resale) services, provided by one licensee to another, including but not limited to such services as unconditioned local loops, large capacity digital networks, dedicated leased circuits, pay telephone basic access line service, and access to all international long distance transmission facilities.

**Question 5: Are carrier services such as leased services and unbundled network elements required to be made available on a mandatory basis to licensees in order to facilitate the provision of their own services in a timely fashion and in an economic manner? If so, provide:**

- **a detailed description of such services,**

- **why they are required to be made available, and**
- **the implications if such availability is not mandated.**

AW comments as follows:

Until such time in the Cayman Islands as there are multiple, viable competitors to C&W for each of its currently-offered telecommunications services, other licensees have no choice but to deal with C&W in order to launch and operate their businesses. Without commercially reasonable, non-discriminatory access to facilities such as intra-network transport from cellsites and international long distance transmission facilities (including colocation rights at submarine cable landing sites for carrier-specific equipment), one simply cannot operate a competitive wireless telephone network.

Moreover, to the extent that access is provided to such facilities at commercially-unreasonable rates, the resulting increased costs must either be absorbed by the new entrant or passed onto consumers. Either outcome is harmful to the interests of the Cayman Islands. Any attempt by the new entrant to absorb the commercially-unreasonable carrier service rates impairs the enterprise's ongoing viability both at launch and during continuing operations, thereby endangering the nation's competitive telecommunications marketplace. Similarly, if the new entrant elects to pass these unjustifiable costs onto consumers in the form of higher prices, Cayman consumers will be less able to purchase the types and quantities of competitive wireless services that they desire.

**Question 6: The Authority seeks comments on how carrier services should be regulated. Provide comments the following regime for regulating carrier services:**

- **Carrier service prices and terms and conditions would be subject to prior written approval by the Authority**
- **Carrier service rates would be priced at long-run incremental cost plus mark-up. In the absence of an incremental costing model, C&W's proposed rates would be based on its adjusted fully-allocated cost model.**
- **Carrier services would be provided in a manner that:**
  - Maximizes the use of public ICT networks and infrastructure,
  - Minimizes the potential for negative environmental impacts, and
  - Enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner.
- **Carrier services would be provided:**
  - At reasonable rates. Charges are to be cost-oriented and sufficiently unbundled so that parties are obliged to pay only for the services they require,
  - On terms and conditions that are non-discriminatory, and
  - For reasons of liability, with limitations to sub-lease such services to another licensee.

AW comments as follows:

1. As to the first bullet above, AW believes that the regulatory scheme regarding carrier services should encourage the licensees to negotiate directly and in good faith, with referral to the ICTA only where good faith negotiations are impossible or unsuccessful. Regarding terms and conditions, absent a dispute between the parties, the regulator's role should be limited to review and, as appropriate, approval of the completed agreement. Prices for carrier services should be as negotiated in good faith by the parties based on regional norms for the same or comparable services, except where such negotiations are impossible or unsuccessful. Regulatory intervention in such cases should always include reference to regional norms for comparable services.

2. AW agrees with the general cost-based concept of second bullet above. However, AW notes that any cost-based pricing basis, be it long-run incremental, adjusted fully-allocated, or other methodology, tends to discourage the regulated entity from seeking and achieving the efficiencies (and consequent cost reductions) that are necessary for survival in a fully competitive marketplace. AW therefore respectfully suggests that all cost inquiries include an extensive analysis of the regulated entity's costs and prices for comparable services elsewhere in the region. Failure to refer to regional norms may result in unjustifiable claims of higher costs in the Cayman Islands, which in turn will lead to higher end-user prices and diminished telecommunications competition.

AW therefore suggests that the second bullet above be rephrased to "carrier service rates would be priced at long-run incremental cost plus a reasonable, nondiscriminatory mark-up to allow for a commercially reasonable profit. In the absence of an incremental costing model, C&W's proposed rates would be based on its adjusted fully-allocated cost model, subject to analysis of those costs with reference to regional norms for the same or comparable services."

3. AW agrees with the third bullet above.

4. AW agrees with the fourth bullet above, with the exception of the reference to limitations on subleasing. AW believes that this issue is better resolved by the parties via good faith negotiations.

Should you have any questions, I can be reached at 917-941-3713 or by email at [peter.white@attws.com](mailto:peter.white@attws.com).

Sincerely,

Peter White  
Director, Government Affairs  
AT&T Wireless Services -- International