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The Managing Director,  
Information and Communications Technology Authority,  
3<sup>rd</sup> Floor, Alissta Towers, North Sound Way,  
Grand Cayman, Cayman Islands

Dear Mr. Archbold,

In response to the request for public consultation on the matter of Wholesale and Carrier Services (Ref: CD (2003) 08), TeleCayman Limited provides the following comments:

### **Definition of Wholesale and Carrier Service Categories**

With regard to the definition of the various categories of Service, TeleCayman Limited believes that such categorization is generally appropriate in the circumstances given the nascent state of the telecommunications environment in the Cayman Islands.

There exist a number of additional services which the ICTA should consider for inclusion in the Wholesale Service category. Notably, Cable and Wireless does not provide any tariffs for domestic or international capacity in capacity increments greater than E-1 (2.044 mbps).

The dominant carrier should be forced to publish domestic and international tariffs at the DS-3 level to accommodate mobile carriers, resellers and competing carriers. On December 16, 2003, TeleCayman was quoted an exorbitant monthly rate (on file confidentially with the ICTA) for a one-year term by Cable & Wireless for DS-3 capacity between the Maya One landing station and George Town. This quoted DS-3 cost represented a material *premium* to the cost of buying the equivalent (28) number of T-1

circuits individually. Normally, there exists a significant volume *discount* when purchasing telecommunications capacity and bulk capacity DS-3 purchases are priced at a 55%-70% discount to the equivalent price of a T-1 priced individually.

### **Anti-Competitive Behavior**

The incumbent carrier is permitted to offer VOIP (see paragraph 12 (d)) yet the incumbent's ISP Direct Connect contract with other carriers specifically prohibits the ability of a reseller of this service to utilize Voice Over Internet Protocol telephony. This inconsistency should be addressed by the ICTA forthwith.

### **Misleading and Predatory Activity by Incumbent**

TeleCayman's ability to make valid comparisons in the area of data and private line offerings is hindered by the fact that Cable & Wireless has not posted updated or complete data tariffs on its website and such filings are not yet noted on the ICTA website. Most filings on the C&W website have not been updated since early October and there is no reference on the website to International Private Line Circuit pricing whatsoever.

This results in considerable confusion and makes it difficult for TeleCayman to develop appropriate market entry strategies.

For example, TeleCayman was provided with documentation by Cable & Wireless on December 22, 2003 which indicates an \$8,890 monthly rate for an E1/T1 Direct ISP connection. However, TeleCayman has come into possession of another document dated December 12, 2003 (attached) which indicates Cable & Wireless Direct ISP Connect pricing of \$5,450 for an E-1 and \$4,840 for T1.

TeleCayman is concerned that Cable & Wireless:

1. Is providing TeleCayman with outdated and misleading information;
2. Has not filed for tariff revisions with the ICTA in the realm of High-Speed Internet and International Circuit pricing; and
3. May be engaging in predatory activities by providing selective price discounts to specific customers.

We note that Cable and Wireless on December 12, 2003 effectively halved its High Speed Internet Access rates by doubling the download speed while leaving existing price structures intact. TeleCayman considers this activity predatory due to the failure to provide an equivalent 50% reduction in wholesale ISP Direct Connect rates.

TeleCayman is uncertain as to whether or not such reductions in C&W's effective ADSL Internet pricing were subject to regulatory scrutiny or whether or not such amendments were unilaterally put into effect.

### **Regulatory Equitability**

TeleCayman is fully aware that the ICTA has the authority to grant C&W price reductions, provided that such rate decrease complies with the ex ante Imputation Tests. Such rate applications may be filed in confidence and new market entrants have no ability to comment. This lack of transparency is disconcerting since TeleCayman and other carriers have not had the opportunity to review Cable & Wireless evidence to ascertain its accuracy. This regulatory approach contrasts with the full disclosure procedures effected by the Barbados Fair Trading Commission in its rate rebalancing proceeding with Cable & Wireless (Barbados).

Paragraph 13 within Schedule 4 of the Section 75 (4) Notice required C&W to file tariffs to file and publish tariffs for all Category 2 Services complete with all terms and conditions. Due to the lack of disclosure we are uncertain whether C&W's amendments to its High Speed Internet Offering were filed within the requisite time frame or whether such filing complied with paragraph 18, Changes to Terms and Conditions..

It is TeleCayman's expectation that any future amendments to Cable & Wireless domestic and international private line and data tariffs will be subject to stringent regulatory scrutiny and public consultation.

### **Responses to Specific Questions Contained in Consultation Document (CD (2003-08))**

#### **Question 1**

To accelerate competition in retail services Cable and Wireless should be required to:

- (a) provide billing and collection services to third party carriers, notably for the 10-10-335 discount program;
- (b) modify its Category Five toll switches forthwith to provide alternative carriers with long-distance carrier pre-select services and call by call options;
- (c) provide technical interconnection on a least-avoided cost basis;
- (d) provide tower space to third parties on a non-discriminatory, cost-oriented basis where sufficient structural capacity exists;
- (e) provide collocation space to third parties on a non-discriminatory, cost-oriented basis within its switching centres where sufficient floor space exists;
- (f) issue a tariff for resale of payphone services; and
- (g) install local number portability within its local exchange network switch and file an appropriate tariff forthwith;

## **Question 2**

As noted previously, Cable and Wireless has discriminated against new market entrants by effecting major price reductions on international long distance calling while putting into effect far lesser wholesale price reductions. The ICTA should prohibit any further reductions in DDD rates until commensurate wholesale price reductions are implemented both in domestic local loop and international circuits.

As importantly, the ICTA should review the technical and interconnection obstacles erected by the incumbent carrier which impede competition.

## **Question 3**

TeleCayman is in concurrence with the principles enunciated in Question 3. We might suggest that the scope of the review be widened to ensure that existing and potential ICTA licencees be obligated to provide services to at least 80% of the population to ensure that the procurement of an ICTA licence is not undertaken with the primary purpose to secure a 20% carrier wholesale discount for ancillary business activities outside the telecommunications realm.

For the record, TeleCayman is in the process of developing non-discriminatory pricing tables where prices are determined on the basis of the bandwidth provided and the volume of traffic whether measured in minutes or megabits.

## **Question 4**

TeleCayman believes that Category 3 services provided by the new market entrants should not be regulated under the Carrier Services category inasmuch as such services are in many instances provided by non-regulated entities or can be provided by non-regulated entities whether situated in Cayman or located elsewhere (notably the Value-Added Services described in paragraph 20 b). TeleCayman strongly believes the dominant carrier's offerings in categories one through four should be regulated as long as the dominant carrier has more than 40% market share in any service subcategory.

It has been TeleCayman's early experience that many of its early customer negotiations require client specific network topology and that many client specific tariffs will be required. Inevitably, most of the pricing is determined by the amount of incremental capital and operating expense required to satisfy a particular client's requirements. Accordingly, we believe that the cost of regulation of carrier services for the new market participants will far outweigh the benefits of such regulation. Let the market prevail for non-dominant carriers, at least until the ICTA has proof that price deflation has abated.

## **Question 5**

As noted previously, the absence of number portability (which TeleCayman will have on its switch from the outset) creates a major impediment to market share transfer as does

the absence of long distance carrier calling (pre-select or individual call) options. All carriers should be required to provide such features within their networks by July 1, 2004 at the latest.

### **Question 6**

TeleCayman believes that non-dominant carrier service prices and terms and conditions should not be regulated by the ICTA. The cost structures will vary tremendously from carrier to carrier and what is appropriate pricing for one carrier may not be appropriate for another. Given the multiplicity of licences granted by the ICTA, there should exist significant price competition and regulation may only impede price deflation.

Most sophisticated subscribers will insist upon defined Service Level Agreements and the ICTA's previously-enunciated service quality benchmarks should be sufficient.

To impose carrier service price levels at long-run incremental cost plus mark-up penalizes efficient carriers who might be forced to subsidize undercapitalized and inefficient resale licencees. Such policies might also discourage the construction of additional facilities-based networks.

TeleCayman does not have sufficient understanding of C&W's fully-allocated cost model to ascertain whether it would be appropriate to utilize such costing as a pricing benchmark for other carriers. It might be more appropriate to utilize industry benchmarks which encompass a number of other carriers and adjust the benchmark to reflect PPI in the Cayman Islands.

### **Conclusion**

We reiterate that it is of the utmost importance that the ICTA initiate a specific proceeding to deal with the crucial matters of:

1. Number portability which will have a material negative impact upon the viability of TeleCayman's local exchange services if not implemented in the near term; and
2. Long Distance carrier preselection on an equal access basis which will have a material negative impact upon the viability of TeleCayman's long distance offerings, especially given the integrated nature of the incumbent carrier's call management services and long distance calling plans.

TeleCayman has addressed many issues in response to the ICTA's requests for comments on the regulation of wholesale and carrier services and would be happy to clarify any of these points at your convenience.

Yours very truly,  
TELECAYMAN LIMITED

Douglas G. Cunningham  
President

Attachment: Direct Connect Pricing Table