Public Consultation on Wholesale and Carrier Services

Response of WestTel, Limited to ICTA Consultative Document CD(2003)08

23 January 2004

Public Consultation on
Wholesale and Carrier Services

Response of WestTel Limited
to ICTA Consultative Document CD(2003)08

23 January 2004

Introduction

1. West Tel Limited ("WestTel") appreciates the opportunity to submit the following response to the Information and Communications Technology Authority's ("Authority") Consultative Document CD(2003)08 Public Consultation on Wholesale and Carrier Services launched 19 December 2003. WestTel anticipates becoming a licensee as an assignee of some licenses currently held by WestStar TV, Limited. Therefore WestTel currently constitutes a "potential licensee" to provide Type B and Type S ICT networks and Type 5 and Type 9 ICT services currently licensed to WestStar TV, Ltd. The Authority's Document CD (2003)1, entitled The Public Consultation Process, invites comments from interested parties including potential licensees.

2. The Authority has appropriately recognized the importance of wholesale and carrier services to the development of robust, full and fair competition in the Cayman Islands. The transition to a liberalized telecommunications marketplace requires the incumbent carrier Cable & Wireless (Cayman Islands) ("C&W") to provide access to its facilities, services and networks at cost based rates and on reasonable terms and conditions. Because market entrants start with a limited installed infrastructure and with zero market shares, the incumbent must do more than agree to interconnect its network with competitors at one or more meet points. C&W must provide services to competitors that make it possible for competition to evolve well before competitors complete the installation of their networks.

3. Nations, which have made the decision to foster a competitive telecommunications marketplace, have to ensure that competitors can effectively and efficiently serve consumers. To achieve such access, national regulatory authorities have developed rules that require incumbent carrier to lease facilities and services to competitors and not just to agree to hand off and receive traffic to and from competitors. The nature of access to competitive carriers substantially exceeds the requirements of end users. As well the cost of such access does not typically fall within a flat-rated discount below a retail charge.

4. As a threshold manner, WestTel believes that carrier competitors of C&W need the flexibility to secure elements of the C&W network and its component and services, which singularly would not constitute a retail service, or something for which a reseller could structure as a retail service. Even the most sophisticated end user will not have the diverse and complicated requirements that some carrier competitors might have.

5. Similarly WestTel believes that C&W cannot avoid having to accommodate the requirements of carrier competitors simply by stating that it has never disaggregated its network or services with such granularity, or that it should not have to provide any service, facility or

functionality not otherwise available through interconnection. WestTel can envision scenarios where a carrier competitor seeks to engineer a network or configure a service that cannot operate without the integration of its facilities and that of C&W. Refusal by C&W to disaggregate its network, or to provision network elements in new ways would materially impair the ability of competitors to provide services, including innovative offerings that the incumbent might not otherwise provide to consumers. [1]

6. WestTel also believes that C&W cannot avoid having to provision a carrier service simply because C&W currently has no such requirement. Providing such an opportunity to avoid an accommodation would reward C&W for its failure to innovate, rather than protect it from some harmful disaggregation of its network. Similarly, WestTel urges the Authority to reject claims by C&W that it cannot disaggregate its network, or that it can provide access to a service or facility, but only a cost-plus, "individual case basis." [2] The Authority has prudently asserted that the incumbent carrier provide services to competitors on a Forward Looking Long Run Incremental Cost basis, [3] with a higher Fully Allocated Cost model

---

1 "It often takes significant capital investment and time for new entrants to build a local access network to connect with end-users and provide services in competition with the incumbent. This capital investment may be prohibitively expensive and may, therefore, constrain the development of competition to the possible detriment of consumers.

In order to increase competition, therefore, a number of regulators have sought to unbundled the legacy copper local fixed voice networks of the incumbents. This is known as local loop unbundling ('LLU')." Spectrum Strategy Consultants, *Report on the Effectiveness of Competition in Hong Kong's Telecommunications Market: An International Comparison*, at p. 6 (June 2003); available at http://www.ofta.gov.hk/report-paper-guide/report/rp20030620.pdf.

2 Individual Case Basis pricing should not a substitute for tariffed service. "[Only] in certain limited circumstances incumbent LECs may rely on individual case basis pricing when establishing rates for [service such as] cross-connects." Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, 17 FCC Rcd. 16,960, 16,962 (2002). The United States Federal Communications Commission has ruled that an ICB service offering is not unreasonably discriminatory only if it conforms to the following standards:

"1. The service in question is one with which the carrier is not experienced, i.e., it must be one that the carrier has not previously offered and that is not 'like' any other current offering; 2. The ICB rate is to be used only as an interim transitional measure; 3. The carrier develops averaged rates for the service within a reasonable period of time and makes the service generally available at such averaged rates as soon they are developed, and 4. The carrier provides cost support information in accordance with the standards set forth in Section 61.38 of the Commission's rules." Federal Communications Commission, Public Notice, Common Carrier Bureau Restates Commission Policy on Individual Case Basis Tariff Offerings, DA 95-2053, 11 FCC Rcd. 4001, 4001-4002 (1995).

3 Most national regulatory authorities use a form of long run incremental cost modeling. *See, e.g.*, Office of the Telecommunications Authority, Statement of the Telecommunications Authority of Hong Kong, Interconnection and Related Competition Issues, Statement No. 7

applying in the near term. Individual case basis provisioning would allow C&W to quote a one-time price based on whatever pricing model it chose to apply, an option likely to result in prohibitively expensive service quotes.

7. WestTel also urges the Authority to specify that C&W cannot charge for network functions, such as carrier code, numbering, and signaling as well as information systems and databases necessary for ordering, provisioning, maintaining, repairing, and billing services, that carriers traditionally pass through unimpeded to other carriers when interconnecting and provisioning services. Competitive carriers should not have to pay for information needed for switching, routing, provisioning, maintaining and billing traffic which they or their carrier correspondents generate. [4] The Authority should ensure that C&W cannot charge for Operational Support Systems for which it had no part in providing. [5] As well the Authority

---

(Revised), Carrier-to-Carrier Charging Principles, at p.5 (1997); available at http://www.ofta.gov.hk/tas/interconnect/ta971118.pdf. "Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd. 15,499, 15846 (1996). *See also* Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18945 (2003) (considering refinements, but not abandoning the principle of forward looking cost modeling where competition has not developed).

[4] National regulatory authorities have routinely required carriers to share traffic routing information at no cost: "All parties that commented on this issue agreed that CCS7 signaling should be employed for local interconnection. CCS7 signaling is required for various essential call processing functions such as setting up and taking down calls and communicating with databases to determine call routing and other functions. In order to ensure the continued effective and efficient operation of the network and the continued provision of the range of services to which subscribers have become accustomed, the Commission is of the view that interconnection of LEC CCS7 signaling networks is necessary." Canadian Radio-television and Telecommunications Commission, Telecom Decision CRTC 97-8, Local Competition, ¶35 (1997); available at: http://www.crtc.gc.ca/archive/ENG/Decisions/1997/DT97-8.HTM.

[5] The United States Federal Communications Commission requires incumbent local exchange carriers to "offer unbundled access to their operations support systems (OSS) for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records." Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16,978, 16990 (2003).

should ensure that C&W not strip away network functions, such as carrier code, numbering and signaling information, generated by another carrier.

8. The remainder of WestTel's response will address the Authority's six questions in turn.

Question One: 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?

9. Both the Authority and WestTel recognize that resale competition can expedite competition, by allowing market entrants to start providing services even before, or in lieu of facilities installation. Resellers exert downward pressure on retail rates even though resellers may not have the financial wherewithal to install underlying facilities. Accordingly, access to discounted C&W rates, provides some public benefits by increasing the number of competitors in the market and by providing opportunities for carriers, which have construction plans, to advance the start date of operations via resale.

10. WestTel suggests that the Authority require C&W to provide resellers with retail rate discounts for every service C&W now or in the future will provide to end users. Resellers should have the opportunity to acquired discounted Wide Area Telephone Service, private line, virtual private line and digital optical carrier rates.

Question Two: What are the wholesale ratemaking principles rates that the Authority should apply?

11. WestTel is of the view that wholesale prices should promote the early onset of competition and adequately compensate C&W without creating competitive distortions. Such distortions include the failure to calculate fully the costs C&W avoids when leasing bulk capacity to a reseller who handles sales, marketing, promotion, advertising, customer care, billing and other burdens. [6]

12. The Authority must remain vigilant that the wholesale rates set by C&W do not tilt the competitive playing field to its advantage. Holding C&W to forward looking costs should

---

[6] The United States Telecommunications Act of 1996 expects that state regulatory commissions "shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252 (3).

preclude it from erecting a price squeeze, i.e., an overly expensive, but unavoidable charge that all competitors of C&W must pay to provision a complete service. [7]

Question Three: Suggestions for other wholesale provisioning principles.

13. As WestTel intends on serving as a facilities-based operator, we expect to have limited if any wholesale service access requirements. However, we believe it essential that C&W recognize the difference between what constitutes a wholesale service and what additional obligations C&W has independent of its wholesale service provisioning responsibilities. Put another way, we do not want C&W to think that having satisfied its wholesale provisioning obligations it has no additional responsibilities in the context of carrier-to-carrier interconnection, or in the provisioning of carrier services.

14. WestTel asserts that C&W never have the option of provisioning wholesale services on an individualized case basis, or that it have the option of simply applying a flat-rate discount for wholesale services after the Authority has constructed a Forward Looking Long Run Incremental Cost ("FLLRIC") pricing model. As in provisioning services to end users, C&W should offer progressively greater discounts off the retail rate for larger volume leases, prior to the formulation of lower rates based on legitimate FLLRIC model.

Question Four: Appropriateness of the Carrier Services definition set out in the Consultative Document.

15. WestTel believes that carrier services as defined by the Authority might have been incorporated in a more extensive interconnection regulatory regime. Nations such as Canada and the United States consider carrier services in the context of tariffed or carrier negotiated interconnection or access, e.g, "switched access" and "special access" [8] and the rate elements

---

[7] "The 'price squeeze' caused by high interconnection charges and low call charges in the local market requires special regulatory attention to ensure effective competition. In order to promote effective competition in the local market, the following points need to be reflected in local competition policy in relation with interconnection. Interconnection charges should be calculated on the basis of forward-looking incremental costs that are incurred for interconnection services." Organisation for Economic Co-Operation and Development, Directorate for Science, Technology and Industry, Committee for Information, Computer and Communications Policy, Working Party on Telecommunication and Information Services Policies, *Interconnection and Local Competition*, DSTI/ICCP/TISP(2000)3/Final at 27 (07 Fe. 2001); available at: http://www.oecd.org/dataoecd/43/56/1894706.pdf [hereinafter cited as OECD Local Competition Report].

[8] "Special access services are typically used to provide a dedicated circuit between an IXC [interexchange carrier] and one or more IXC customer ('end user') locations. Either the IXC or an end user customer may order the service. Special access may be preferred to switched access

that collectively constitute "access charges." In these nations interconnection and access has become unbundled and disaggregated into small rate elements reflecting the various types of facilities and services needs of significantly different carriers. While incumbent and competitive local exchange carriers may dispute how much the incumbent must disaggregate or package rate elements, no one disputes the essentialness of providing market entrants with the option of accessing only those switching, transport, interfacing and other rate elements that the competitive carrier needs. The Authority has endorsed this flexible access opportunity in the Interconnection Regulations where the Requestor of interconnection bears the obligation to pay "only for the network elements that it requires and nothing more." [9]

16. Regardless of whether carrier services fit within a separate category or constitute an integral part of an interconnection regime, the same governing principles should apply, viz., that the incumbent carrier must, upon reasonable request, provide access, interconnection and carrier services to competitors in a manner that delivers only the particular access requirements of the competitive carrier. Because different carriers will have different requirements, the incumbent cannot simply provide a "one size fits all," "plain vanilla" access option and claim to have satisfied all legitimate carrier services requirements. Such a "take it or leave it" single option would force competitive carriers to pay for service elements that they might self-provision and accordingly would not need from the incumbent.

17. Some carriers may opt for a preexisting package of network element containing two or more rate elements corresponding to two or more network services. An example of a preexisting package of access, interconnection and carrier service elements corresponds to what a local exchange carrier might offer a local or interexchange carrier under the rubric of "Feature Group," [10] switched, or special access as specified in a tariff. Other competitive carriers might

---

arrangements provided over the public switched telephone network ('PSTN') for a variety of reasons. Switched access services are priced substantially above cost and are charged on a minute of use basis, while a fixed charge applies to interstate high capacity services. An end user with a high volume of demand can save money by paying for the fixed recurring cost of a special access circuit. Special access may also provide more reliable data service and redundancy not available through the PSTN." Daniel Kelley, HAI Consulting, Inc., *Deregulation of Special Access Services: Timing is Everything* (July, 1999); available at: http://www.hainc.com/ALTS.pdf.

[9] The Information and Communications Technology Authority Law, 200, Interconnection Regulations, R(2003)5b, at 8(1)(d).

[10] An example of this option would be Feature Group A-D access provided by local exchange carriers in many nations. "FG-D (Feature Group D) is a type of telecommunication trunk used to provide "equal access" capability from telecommunication carriers and central offices (where the switching equipment is located and customer lines are connected and terminated) to the access tandem. Feature Groups (FGs) categorize telco products according to services and features. The most commonly mentioned feature groups are FG-A, FG-B, and FG-D (FG-C is used almost exclusively by AT&T). FG-D provides higher quality services than the

seek to "pick and choose" on an "ala carte" basis the various network elements that constitute access. Still other competitive carriers might seek to use a prepackaged platform of network elements. In the United States, for example, incumbent local exchange carriers offer such an access platform under the general name "Unbundled Network Element-P." [11]

18. In opting to create a specific category of "carrier services," the Authority should emphasize that competitive carriers and not the incumbent should have the maximum feasible discretion to select network elements. In the context of the restaurant ordering analogy used above, competitive carriers should have the option of ordering network elements on a packaged, prix-fixe "soups to nuts" basis, on a partially bundled basis, e.g., salad included with entrée, or on a completely ala carte basis.

Question Five: Types of carrier services needed and the implications if such services did not exist.

19. The Authority has suggested the creation of a carrier services category to support maximum flexibility in competitive carrier access to C&W facilities and services. Additionally the Authority has recognized that C&W's existing services, as well as those access facilities and service available via interconnection and resale, may not fully accommodate the needs of competitive carriers and their customers. On page four of its Wholesale and Carrier Services Consultative Document, the Authority has identified examples of carrier services that might not otherwise fall within its definition and C&W's implementation of the Authority's interconnection and wholesale requirements.

20. WestTel agrees with the Authority as to the need for carrier services, such as those identified on page four of the Wholesale and Carrier Services Consultative Document. The absence of such services, and the ones identified below, would materially and adversely impair

---

other Feature Groups. It is sometimes known as *equal access* because it guarantees that all carriers are processed equally.

The FG-D protocol defines interconnection rules between a local exchange carrier (LEC) and an inter-exchange carrier (IEC) such as MCI or Sprint. FG-D services route inter-LATA calls to the IEC point of termination (POT), route calls with a carrier access code (CAC) to the user's carrier, and pass information to the carrier. Information passed includes the caller's number, through automatic number identification (ANI). Because of its ability to pass on caller information, FG-D is proposed for use with the 911 service." searchNetworking.com, FG-D, available at: http://searchnetworking.techtarget.com/sDefinition/0,,sid7_gci830964,00.html.

[11] "'UNE-P' stands for 'UNE-platform,' the minimum elements necessary to provide local service to a retail customer. . . . [T]he basic UNE-P used in this survey includes lonely loop, port and switching." Billy Jack Gregg, *A Survey of Unbundled Network Element Prices in the United States (Updated July 1, 2003)*, p. 1, n.1, National Regulatory Research Institute (2003); available at: http://www.nrri.ohio-state.edu/documents/intro0703_000.pdf.

the ability of newly licensed market entrants, such as WestTel, to compete fully and fairly with C&W. These services demonstrate that there exist many different and productive ways for C&W to provision access to its network, but which do not yet exist. The absence of such access options now may simply demonstrate that C&W heretofore did not have to disaggregate network access as it did not have to provide access to competitors. But with the onset of market liberalization and competition C&W cannot refuse to disaggregate network access and to provide competitive carriers with flexible access options simply on grounds that it has not done so in the past for itself or for its customers.

21. Telecommunications networking increasingly offers modular and scalable characteristics. Equipment standardization and the widespread development of competition have ensured full compatibility between networks operated by different carriers. Accordingly, the Authority should view with deep skepticism any C&W allegation that it cannot provide a certain type of access arrangement sought by a carrier competitor. In all but the rarest instances, such inability stems from anticompetitive motives, or from a lack of appreciation for the flexibility even C&W's existing, embedded network can offer.

22. For example, WestTel can anticipate an interest in leasing high capacity, digital transmission facilities between the MAYA-1 international cablehead or a satellite earth station and a switch in the George Town central business district. Under such a scenario, WestTel would want to use "dark" (installed, but unactivated) fiber, existing optical carrier links, or some other type of dedicated high capacity link completely independent of any C&W provided switching. Indeed WestTel would object to a C&W suggestion that traffic must route via a C&W switch before it can be delivered to a WestTel switch. Because this routing arrangement appears to exceed the parameters for facilities interconnection articulated in the Interconnection Regulations and does not appear to constitute an available wholesale service, the carrier services classification is essential to ensure the availability of this reasonable service request.

23. In addition to the four carrier services identified on page four of the Wholesale and Carrier Services Consultative Document, WestTel suggests that the carrier services definition include competitive carrier access to dark fiber, software-defined, "virtual" private lines, and a variety of unbundled network element access arrangements. Additionally WestTel suggests that the Authority expressly recognize that a competitive carrier's right to select individual and packaged network elements include the option of securing C&W transport functions without switching, an arrangement that would accommodate WestTel's requirements between an international transmission facility and WestTel's George Town switch.

Question Six: Carrier Services regulatory environment

24. In an ideal, fully cooperative environment competitive carriers and C&W could negotiate mutually satisfactory interconnection and carrier services agreements subject to ratification by the Authority. Indeed WestTel wishes to proceed on this track, an arrangement that will

conserve Authority resources and promote a productive working relationship between the incumbent and market entrants.

25. However, in light of likely disagreements over what C&W should have to provide as well as the terms, conditions and rates for service WestTel sees the need for the Authority to establish regulatory safeguards, and a foundation for negotiations between carriers. As conditioned by its comments below, WestTel endorses the four regulatory principles identified by the Authority at pages seven and eight of the Wholesale and Carrier Services Consultative Document. Additionally WestTel suggests that the Authority expressly state that C&W cannot resort to provisioning and pricing access to carrier services on a one-time individual case basis. C&W should have to use best practices and long run incremental cost allocation principles when responding to a carrier services request. C&W should file any carrier services agreement with the Authority which should make such agreements public to ensure transparency in the process.

26. WestTel does have some concerns with the Authority's suggestion that carrier services maximize the use of public ICT networks and infrastructure. We believe this objective should not be construed as foreclosing competitive carriers from constructing and operating their own facilities. Likewise, it should not be interpreted by C&W as mandating competitive carrier use of existing facilities only, on a partitioned or shared basis. WestTel anticipates that demand and other factors will support C&W's construction of new, dedicated facilities that might be used by one carrier or shared among competitive carriers. Likewise, we suggest that the Authority specify that its policy of seeking maximum use of public ICT networks and infrastructure not be construed by C&W as justifying a pricing scheme that requires competitors to fully compensate it for what economists call "opportunity costs." The controversial Efficient Components Pricing ("ECP") theory suggests that when a competitor uses the network of an incumbent, the competitor must pay a rate that makes the incumbent identically compensated if it were to provide service to an end user, or if it provides a competitor access to its networks for the competitor's provision of service to an end user. [12]

[12] The Efficient Component Pricing Rules "is favoured by many incumbents since it proposed to charge at least as much for interconnection to earn profits that could be earned if the facilities were used by the provider itself." OECD Local Competition Report at 30. n.21.

27. The Efficient Components Pricing theory is inappropriate for pricing carrier services, because competitive carriers seek a non-retail network facility or service element for the provision of end user service by the competitive carrier. More generally the ECP theory should not apply where the national regulatory authority has required actual cost-based pricing as opposed to pricing on the basis of theoretical opportunity costs.

Respectfully submitted,

WestTel Limited