

Cable and Wireless (Cayman Islands) Limited
Interrogatory Responses
Indirect Access Public Consultation (Ref: CD (2003) 7)
30 August 2004

3. C&W's draft retail tariffs contain a number of restrictions on use which prevent a subscriber from accessing "international ICT services provided by another Licensee, through the ICT network and ICT services of the Licensee with whom the Subscriber is directly and physically connected." For example, in C&W's Draft General Tariff, Item 600 (General), at page 6.2, it is indicated that:

The Customer shall not allow the Internet Service to be used, modified or adapted to transmit voice Services on the PSTN. The Customer shall not connect to the PSTN at either the local or distant end.

In Item 603 (Asymmetric Digital Subscriber Line), at page 6.16, it is indicated that "transmission of Voice over IP is not permitted from any ADSL Internet Access connection."

Similarly, in Item 502 (Domestic Private Leased Circuits), at pages 5.8 and 5.9, the customer is required to undertake not to, among other things, use or "allow the DPLCs to connect voice conversations to the fixed public telecommunications system, mobile public telecommunications system or the Internet."

See also Items 503 (Integrated Services Digital Network), page 5.11; Item 601 (Dialup Internet Access), page 6.8; and Item 602 (ISDN Internet Access), page 6.11. There are similar restrictions in a new service filing that C&W has filed with the Authority on a confidential basis.

Such restraints are also present in certain wholesale arrangements. In the Service Schedule applying to provision of DPLCs for resale, the licensee-customer and the end-customer are not permitted to use or allow anyone else to use the service:

- to resell part or all of any portion of the capacity provided by the service (paragraph 2.3.3); or
- to connect to the Public Switched Telephone Network at either the local or distant end (paragraph 2.3.7).

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The service schedule pertaining to ADSL resale service requires, at paragraph 5.5, the customer to undertake that "it shall not use or cause the ADSL Resale Service to be used for the conveyance of any form of Voice Service."¹

- A) Provide a list of all countries of which C&W is aware which prevent the use of incumbent-provided Internet accesses for purposes of voice communications on the PSTN.

Response

VoIP is illegal in several developing countries, particularly those where the telecom market has a monopoly structure.² However, C&W does not believe it is particularly relevant for the Authority to consider these cases. C&W believes it is more important for the Authority to consider what is happening in jurisdictions with fully liberalised markets. In many of these jurisdictions, regulators have considered that VOIP raises policy concerns that must be specifically addressed.

For example, under the European Union's Regulatory Framework, where a system of "general authorisations" rather than specific licences now applies, there are certain restrictions and obligations that will apply specific to VoIP providers. For example, only providers of publicly available VoIP services are entitled to request access to carrier selection and carrier pre-selection. Once a VoIP supplier is classified as a PATS supplier (and so able to ask for access to the network) then it will be subject to the same conditions that apply to any other (non-VoIP) supplier of PATS. These include, for example, an obligation to ensure that all end-users are able to call emergency services free of charge and also a

¹ C&W's draft retail tariffs can be found at: <http://www.cwinternet.ky/internet/products/retail-tariffs/index.php>. C&W's carrier services can be found at: <http://www.cwinternet.ky/internet/products/carrier-services/>.

² These include South Africa, most countries in the Middle East (except Oman), Zimbabwe, Uganda, China, Cambodia, Laos, Thailand, Vietnam, India, Turkey, Pakistan and Bangladesh. C&W understands that some other countries, e.g., Cyprus, Malta, Lithuania, Poland, Slovakia and Bulgaria, have required VoIP service providers meet a certain minimum voice quality.

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requirement to publish up to date information on the quality of their service.³

In North America⁴, regulatory agencies are also now considering which aspects of public service regulation should apply to VOIP services and how.

³ See the European Commission, “Commission Staff Working Document on the Treatment of Voice over Internet Protocol (IP) under the EU Regulatory Framework – An Information and Consultation Document,” 14 June 2004, available at http://europa.eu.int/information_society/topics/ecomm/useful_information/library/public_consult/text_en.htm#voip

⁴ In Canada, see the CRTC proceeding at <http://www.crtc.gc.ca/archive/ENG/Notices/2004/pt2004-2.htm>. In the United States, see http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243868A1.pdf

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- B) Provide the rationale for the restrictions on use noted above and any other restrictions, set out in C&W's retail tariffs and wholesale tariffs/agreements and arrangements.

Response

Before addressing this question, C&W wants to make it clear that it believes VOIP services inevitably will be made available to the mass market in the Cayman Islands in the near future. VOIP will have an important role to play in the development of telecommunications services in Cayman. Our view is that, as suggested in our response to interrogatory 3A above, many regulators across the world have identified various important policy issues that the advent of VOIP raises, and, like those regulators, the Authority in the Cayman Islands should consider these issues before mandating the removal of any restrictions on VOIP.

For C&W, therefore, the question of what rationale there is for having restrictions on VOIP provision amounts to the question of what policy or public interest concerns does VOIP raise for the Authority. Those questions include what is the impact of removing the restriction on both license requirements and universal service obligations for VOIP providers.

Regarding licensing, as we have noted elsewhere in correspondence to the Authority, removing the VOIP restriction without requiring VOIP providers to be licensed carriers in the Cayman Islands may have several negative effects. For example, it will likely reduce the government's revenues from license fees. As more usage, particularly international traffic, migrates to foreign-based VOIP providers who do not have license fee obligations, the government will observe declining license fee revenues and other indirect impacts of telecommunications revenue moving off island. It is therefore in the Authority's interests as a government agency, at minimum, to require all VOIP providers providing services in the Cayman Islands to be licensed in the Cayman Islands. Furthermore, to allow foreign-based competitors who are not licensed--and therefore do not have to pay license fees--puts Cayman-based licensees at a competitive disadvantage.

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Regarding universal service, as we have noted elsewhere, the introduction of VOIP services and VOIP-based products may significantly impact the ability of the C&W to maintain the historical cross-subsidies that have existed between low-volume and high-volume users. VOIP-based services will be most attractive to high-volume customers, and the migration of usage off of the Company's circuit-switched voice network will significantly impact the ability of the Company to maintain access services to low-volume customers at existing rate levels. In particular, we believe that access to the telephone network is currently subsidized by local calling services. The ability of the Company to carry on this cross-subsidy may be seriously undermined if VOIP services provided by competitors are allowed to substitute for switched local voice calling. This raises issues for access deficit recovery and contributions to universal service funding.

There are also other public interest requirements that the Authority may consider appropriate for VOIP providers. For example, the Authority would need to consider whether VOIP providers should be required to provide access to E911, and whether they should be required to offer Cayman Islands directory assistance.

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- C) Describe in detail all methods used by C&W to investigate potential violations of and enforce these restrictions.

Response

There are a variety of methods which could be used to investigate and enforce restrictions on VOIP. These generally depend upon C&W being advised or becoming aware of a potential violation that warrants further investigation. Some sources of information include the following:

- Customers coming to our offices to report what a neighbor or friend is doing,
- Employees of companies involved in the practice
- Public officials making statements in open forums
- Billing analysis of sudden declines in international traffic
- Solicitations or advertisements for restricted services

If an investigation were to show a violation of the VoIP restriction, C&W would contact the customer and enter into discussions, including reminding them of their contractual obligations.

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- D) Provide your company's views, with justification, as to whether restrictions of this nature are:
- i) inconsistent with the requirement, under ICTA Law (2004 Revision), that the Authority "promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so" (subsection 9(3)(a)) and "promote and maintain an efficient, economic and harmonised utilization of ICT infrastructure" (subsection 9(3)(h));
 - ii) represent either an abuse of dominant position or an anti-competitive practice, contrary to the provisions of the ICTA Law (2004 Revision) and C&W's Licence, by, for example, "limiting production, markets or technical development to the prejudice of consumers" or "imposing ... unfair trading conditions." (Condition 15.2 of C&W's Licence).

Response

This interrogatory contains two parts. The first asks whether C&W's current terms and conditions of service are somehow inconsistent with the discharge of the Authority's obligations under the Law. The second asks whether they are somehow anti-competitive.

First, C&W would repeat its position that, as a general principle, the Authority should not be intervening in the market and, for example, mandating Indirect Access or forcing changes to C&W's consumer contracts, unless it is shown that there has been a failure of the market of some kind. C&W had understood the Authority to accept this general principle in ICT Decision 2004-5 (Interim), and C&W presumes that this entire set of interrogatories is part of the Authority's efforts to determine as a question of fact whether the market is functioning properly.

Second, it is also worth repeating that, as discussed in the response to interrogatory 3B, there are good reasons for the terms and conditions

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of use being discussed in this interrogatory. The restrictions on the use of C&W's data and Internet services are therefore not unreasonable, and their removal should not be mandated without a proper examination of all relevant issues by the Authority.

In response to the first part of the interrogatory 3D, C&W notes that the Authority's obligation under the Law to promote competition is qualified by reasonableness or necessity. It is apparent that the Authority is fully capable of discharging its obligations pursuant to subsection 9(3)(a), and has been very successful in doing so, even under the current terms and conditions of use of C&W's data and Internet services. Competing service providers have entered or are about to enter virtually all segments of the market currently served by C&W, including those for data and Internet services. There is no need to modify the terms and conditions of use of C&W's data and Internet services in order to promote competition. In other words, "promoting competition" by mandating the removal of the otherwise reasonable restrictions on the use of C&W's data and internet services is neither reasonable nor necessary, and C&W's terms and conditions are not inconsistent with the discharge of the Authority's obligations under subsection 9(3)(a).

Similarly, there is no evidence that the ICT infrastructure in the Cayman Islands is not economic or efficient, even under the current terms and conditions of use of C&W's data and Internet services. New entrants are providing or are on the point of providing data, Internet and voice services. C&W's terms and conditions are not inconsistent with the Authority's obligations under subsection 9(3)(h) of the Law, as the Authority has clearly been able to discharge them successfully.

A response to the second part of interrogatory 3D is more difficult to provide, as the Authority has provided a question that is difficult to answer properly.

The language cited by the Authority is found in both section 34F of the Law and Condition 15.2 of C&W's Licence. In both cases, a necessary

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pre-condition to the application of the provisions is a proper finding of a dominant position. This requires a determination of the market to be considered in the analysis, as a dominant position is necessarily in relation to a certain market.

As the Authority has not done this in this instance, nor provided any guidance regarding the specific markets to be examined, C&W cannot provide anything better than the similarly general and vague answer below. Further, C&W reserves its rights to fully comment on market definition matters, and to revise this response, in the future.

C&W asserts that its current terms and conditions restricting the use of its data and Internet services for voice do not limit "production, markets or technical development to the prejudice of consumers" or impose "unfair trading conditions". As noted above, the current restrictions have not limited the entry of competitors into various ICT markets in the Cayman Islands. It cannot be argued that C&W's terms and conditions have in any way limited production, markets or technical development to the prejudice of consumers, if competitors are entering virtually all ICT markets in the Cayman Islands. Nor can the "trading conditions" be considered unfair – customers who purchased C&W's voice, data or Internet services are receiving what they contracted for.