



CABLE & WIRELESS

Our ref: GR/CR/GR 15.15
17 June 2003

Mr. David Archbold,
Managing Director,
Information and Communications Technology Authority,
P.O. Box 2502GT,
C/O ITSU Office,
3rd Floor Allista Towers,
George Town,
Grand Cayman.

Dear Sir:

Please find attached Cable & Wireless (Cayman Islands) Ltd. response to the Consultation document and the Confidentiality Rules.

Sincerely yours,
Cable & Wireless (Cayman Islands) Ltd.

Mr. Rudy B. Ebanks
Head of Government Regulatory and Carrier Relations

cc: Timothy Adam – General Manager
Frans Vandendries – Senior Regulatory Manager
Jonathan Daniels – Vice President Regulatory

Enclosures

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Confidentiality Rules

Response by Cable & Wireless to ICTA Consultative Document R(2003)2a

June 16, 2003

1. Cable & Wireless (Cayman Islands) Limited (“Cable & Wireless”) is pleased to submit the following response to the Information and Communications Technology Authority’s (“ICTA”) Consultative Document R(2003)2a on the proposed “Confidentiality Rules”. In the view of Cable & Wireless, while most submissions to the ICTA should be public, it is appropriate to exclude from the public record some material submitted to the ICTA. It is clear that the ICTA may need certain confidential information from licensees in order to properly carry out its statutory mandate. Conversely, it is clear that disclosure of this information could compromise that licensee’s position in a market or in negotiations with others.
2. With a few exceptions (to be discussed below), the proposed Confidentiality Rules strike an appropriate balance between those two competing interests.

Treatment of Confidential Information

3. The types of information that the ICTA should consider to be of a confidential nature are appropriate, and Cable & Wireless generally agrees that the proposed process for considering claims of confidentiality and for the treatment of confidential information are reasonable. However, Cable & Wireless proposes a few amendments to the process.
4. First, Rule 5(1)(a) would appear to give the ICTA the discretion to decide whether or not to place a submission on the public record, even in circumstances where the submitting party has not made a claim at the time of filing that the document or part of it is confidential. Cable & Wireless cannot support this approach. A party making a submission in a proceeding must be considered to expect that a submission would be placed on the public record, absent a claim for confidentiality. The public interest in a transparent and fair regulatory process would also demand that all submissions in a proceeding be placed on the public record, absent a claim for confidentiality. Finally, the ICTA would likely be in breach of the rules of natural justice, if it were to base a determination in a proceeding in part upon a submission that had never been made public. Cable & Wireless recommends, therefore, that the verb “may” in Rule 5(1)(a) be replaced with the word “shall”.

5. The above Rule applies to documents filed “in relation to any proceeding”, in other words, a proceeding has already been established. Cable & Wireless recognizes that different rules might apply to other documents filed outside of a proceeding, such as tariff applications or requests for a proceeding, until the ICTA had determined all the relevant issues to be canvassed and the appropriate procedures to follow. However, the fundamental principle that should guide the ICTA is that all documents and all information filed with it in relation to active proceedings should be placed on the public record of that proceeding, unless there is a good reason not to do so, such as confidentiality or prematurity.
6. Second, Rules 5(1)(g) and (h) propose to allow a party claiming confidentiality seven (7) days to reply to requests for public disclosure or to ICTA determinations to disclose. Cable & Wireless considers that this time frame is too short. The ICTA’s deliberative process would clearly benefit from well-reasoned and complete replies, which might take more than seven days to prepare. Cable & Wireless submits that the appropriate time frames should be ten (10) days instead.
7. Finally, the ICTA appears to ask in item 5 in the Consultative Document accompanying the proposed Confidentiality Rules whether it should place information on the public record, even where it has determined that it is appropriately confidential. Cable & Wireless submits that this would be inappropriate. The process proposed by the ICTA for making a claim for confidentiality includes a consideration of whether the claim is justified and/or outweighed by the public interest in disclosure. Once that consideration is concluded and a determination made that the information is appropriately confidential, the information should not be placed on the public record. It would be procedurally suspect, if not unfair, to conclude following a proper process that the harm from disclosure would outweigh the benefits from disclosure and then to disclose in any event.

Use of Redacted Versions of Documents

8. Cable & Wireless submits that it is common and reasonable practice to submit a redacted version of a document where a claim for confidentiality is made in respect of information in that document. This ensures the public is aware of the existence of the document and of the public information in it, without compromising the interests of the party submitting the document. Further, it would likely be a breach of the rules of natural justice if the ICTA were to base a determination upon the information or argument contained in a document submitted by one interested party, if other interested parties were not even aware of the existence of that document, let alone afforded an opportunity to respond to the positions taken.

9. However, the proposed Confidentiality Rules, at Rule 5(1)(c), would require the production of a redacted version in each an every case. It is conceivable that some documents might contain no information at all or be otherwise meaningless if they were to be redacted. Cable & Wireless submits that, in these rare circumstances, a party submitting the confidential document, should be required to disclose the existence and general nature of the document, but should also be permitted to request from the ICTA the right not to submit a redacted version. This request for an exemption from filing would be submitted at the same time as the claim for confidentiality, and subject to review by the ICTA at the same time.

10. Accordingly, Cable & Wireless proposes that Rule 5(1)(c) be amended to read as follows:

“A party claiming confidentiality in connection with a document, or a part thereof, shall file with the Authority both a complete version of the document and either a proposed redacted version of the document or reasons for not filing a proposed redacted version, the latter version or reasons to be placed, subject to the Authority’s determination, on the public record.”

All of which is respectfully submitted this 17th day of June, 2003