

# Public Utilities Commission of Anguilla

## Telecom Decision PUC 2006-102

The Valley, Anguilla – 26 May 2006

In the matter of the prices for a new public voice service proposed by Cable and Wireless (West Indies) Limited (C&W) with the brand name of 'NetSpeak' to be offered in Anguilla

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## I Background

### Scope of Proceeding

1. Section 4(1) of the **Telecommunications Act R.S.A. c. T6 (the Act)** requires that every person operating a public telecommunication network or providing a public telecommunication service in Anguilla must have a license granted by the Public Utilities Commission (the Commission or PUC).

2. Cable & Wireless (West Indies) Limited (C&W or the Company) is a licensed telecommunications network operator in Anguilla. C&W is the incumbent operator and was granted a new license by the Commission on 14 December 2004.

3. C&W submitted to the Commission a letter of 'notice' dated 6 September 2005 informing the Commission they intended to introduce a new public voice service. The new service is to be provided, in part, using the Internet Protocol (IP) and such voice services are generally referred to as Voice over Internet Protocol (VoIP). C&W filed a confidential version (four-page letter and two-page attachment) and an abridged version of their letter of 6 September 2005.

4. The Company filed a further submission dated 21 September 2005 with the Commission and advised that they had amended the initial submission. By way of a letter dated 27 September 2005, the Commission advised C&W that there were insufficient details on the new service in their abridged filing of 21 September and requested that an amended filing of the 'abridged' version be filed. The Company made an amended filing dated 29 September 2005.

5. C&W's in their submission of 29 September submitted that the prices for their new 'NetSpeak' service should be unregulated, paragraph 13 of their submission of 29 September 2005 reads as follows:

*'These rates were established using the principles set out by subsection 20(1) of the Telecommunications Act. C&W does not believe that clause 12.9 and Annex 1 to Part I of Annex E of its Licence apply to these rates, in particular to the rates listed in the first table above, as the service is fundamentally different from any of the services listed in that Annex 1. Nevertheless, C&W notes that none of the rates above exceed the equivalent rate set out in Annex 1, where one exists'.*

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6. Prior to making a determination in the matter of dominance, the Commission is obligated to issue a public notice in the Gazette pursuant to S17(8) of the Act. S17(8) reads as follows:

‘(8) Before determining that an operator or service provider is dominant, or has lost its dominance, with respect to a telecommunications network or a telecommunications service, the Commission shall publish the matter for decision in the Gazette.’ (Emphasis added)

7. As a result of C&W’s submission that the new ‘NetSpeak’ prices should be unregulated, and having regard to S17(8) of **the Act**, the Commission published a public notice in the Gazette dated 31 October 2006 pursuant to section 17(8) of the Act. Submissions were invited on the matter of whether C&W should be considered dominant with respect to the provision of the proposed new NetSpeak services.

8. Following receipt and consideration of the initial application, comments in response to the public notice, reply comments and C&W responses to Commission interrogatories, the Commission issued **Telecom Decision PUC 2006-101** dated 31 March 2006.

9. In **Decision 2006-101**, the Commission found that the C&W’s new ‘NetSpeak’ service should be categorized as a public telephone service, paragraph 96 of the decision reads as follows:

*“96. The Commission having considered C&W’s submission of 29 September 2005 and their subsequent filings as well as the submissions of CCC has determined that C&W’s proposed new voice service under the brand name of Netspeak be categorized as a public voice service and that C&W is presently dominant in both the IDD and domestic public voice market segments. As a result, the Commission finds that the prices associated with the new public voice service are subject to price regulation pursuant to Section 12.9 of C&W’s license. (see **Directions on Procedure**, paragraph 162)’*

10. In the ‘Directions on Procedure’, paragraph 162 of **Decision 2006-101**, C&W was directed to file the proposed prices for the NetSpeak service with the Commission for approval.

### **The Proceeding**

11. Under a covering letter dated 11 April 2006, C&W filed the proposed ‘NetSpeak’ prices for approval and requested that the prices remain confidential until such time as the launch the new service.

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12.A description of the proposed service included in C&W's letter of 29 September 2005 (Abridged version) reads, in part, as follows:

*'NetSpeak Service provides the ability to place voice calls from Anguilla to any domestic or international destination using a Terminal Adapter and any high-speed Internet Access service. The only restrictions on the High-Speed Internet Access service are that the customer's Internet Service Provider not block access to Voice over Internet Protocol ("VOIP") services, and that the customer have a minimum speed of 128 kbps (recommended to ensure sufficient bandwidth to run simultaneously NetSpeak and Internet Access services without impacting the quality of the NetSpeak Service).... (Paragraph 3)..... (And further at paragraph 5) .....*

*.....The Basic Service includes # # calls to telephone numbers in Canada and the United States, including toll free numbers<sup>1</sup>, as well as several features free of charge, including Call Waiting, Caller ID, Call Return, Redial, Three-Way Calling, Call Blocking, Do Not Disturb, Speed Dial, Language selection, and Call Forwarding. The NetSpeak Service customer will also receive Voicemail services free of charge, including the option to receive voicemail messages either by dialing into the platform, accessing their account on the Internet, or as links on an e-mail message(s).' (Emphasis added)*

13. Some secondary matters that arose as a result of the proposed new 'NetSpeak' service required the company to take certain followup actions as described in the 'Directions on Procedure' section of **Decision 2006-101**. The status of these matters is set out in Part III of this decision.

14. Pursuant to the **Decision 2006-101**, paragraph 162, the Company filed the proposed prices under a covering letter dated 11 April 2006. The proposed prices are set out in a two-page document entitled 'NetSpeak Rate Sheet' and contains a section on 'Plan and Service Description' and another section entitled 'Other Charges' that covers the activation, replacement of terminal adapter and early termination fees and a third section entitled 'Rates for Out-of-Plan Calls'. In their letter of 11 April, the Company requested that the prices remain confidential until such time as the service is launched.

15. The Company also filed a copy of the 'NetSpeak Application' form with their letter of 11 April 2006 and subsequently filed a revised application form under a covering letter dated 26 April 2006 to correct the rates for Overseas and Toll-Free Numbers listed in the initial filing.

### Confidentiality

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<sup>1</sup> *The Basic Service will also include an Anguillan telephone number and the ability to make and receive domestic calls, including calls to 911 Emergency Services. These domestic services will be available in a second phase of the rollout of the service. (Emphasis added)*

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16. The Telecommunications Administrative Procedure Regulation 2004 (Procedure 2004), section 18, sets out the procedures regarding matters of confidentiality.

17. C&W filed a request for confidentiality pursuant to section 18 of the Procedure 2004 and section 41 of **Public Utilities Act (2003)**. In the case of the original application dated 6 September 2005 and the amended application dated 21 September 2005, C&W filed an abridged and confidential version of their application. In addition, in filing the proposed prices for approval under their covering letter of 11 April 2006, the Company requested that 'the attachment to this letter be designated as confidential until C&W launches the new rates and plan ...'.

18. There were several attachments to C&W's letter of 11 April, including a 'NetSpeak Rate Sheet' that was designated 'Confidential'. Two additional attachments were not designated 'Confidential', a copy of the 'Application for NetSpeak' (two pages) and also a document entitled 'Basic Telecommunications Services – Terms and Conditions' (six pages).

19. Subsequently the Commission contacted C&W and requested that the proposed NetSpeak Rate Sheet be de-classified as being confidential so that the Commission could issue the decision on the prices and include the schedule of NetSpeak prices in the decision. The Company advised the Commission by email dated 11 May that they had de-classified the NetSpeak Rate Sheet and provided a revised copy of the document with the 'Confidential Version' designation deleted.

## II Commission Analysis and Findings

### Prices for NetSpeak Service

20. Pursuant to Section 20(2)(b) of the Act, and Section 12.9 and Schedule 1, Paragraph 1.1 and Part 1 of Annex E of C&W's License, the Commission hereby approves the following prices for C&W's 'NetSpeak' service:

#### 1. Plan and Service Descriptions

Basic Plan \$99.95 for Unlimited calling to US and Canada

Unlimited Calling to US and Canada plan is to any fixed line number and mobile number in those countries. Calls to special numbers (for example, 1-900 numbers) are not included in this plan.

Features included free of charge include Call Waiting, Caller ID, Call Return, Redial, Three-Way Calling, Call Blocking, Do Not Disturb, Speed Dial, Language Selection and Call Forwarding. Voicemail is also provided free of charge, and voicemail messages can be accessed via the NetSpeak phone, the Internet, or as email messages.

Optional Plan: \$39.95 for Unlimited calling to W. Europe and UK fixed numbers

Unlimited Calling to Western Europe and UK plan is to any fixed line number in Austria, Azores, Belgium, Canary Islands, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Greenland, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the Vatican. Calls to mobile and special numbers are not included in this plan and are charged as an out-of-plan call.

Optional Plan: \$39.95 for 100 Minutes C&W Caribbean Islands

C&W Caribbean 100 minute plan covers Caribbean Island where Cable & Wireless operates: Antigua & Barbuda, Barbados, Bermuda, BVI, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Trinidad & Tobago, and Turks & Caicos. Per-minute charges apply after the first 100-minutes. Calls to mobile phones are not included in this plan and are charged as an out-of-plan call.

Optional Plan: \$39.95 for 100 Minutes Nearby Caribbean Islands

C&W Nearby Caribbean 100 minute plan covers the following Caribbean Islands: Saba, St. Eustace, St. Martin, St. Maarten, St. Kitts & Nevis, Antigua, BVI, Montserrat, and Guadeloupe. Per-minute charges apply after the first 100-minute. Calls to mobile phones are not included in this plan and are charged as an out-of-plan call.

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Optional Service Number: \$39.95 for Incoming Toll Free Number with 100 Minutes

NetSpeak also offers the option of adding a toll free number from USA, Canada, and UK as a secondary number to your service. Toll-free numbers are randomly assigned. With a toll-free number, everyone in those countries can call you for free! Per-minute charges apply after the first 100 minutes.

Optional Service Number: \$15.95 for Overseas Telephone Numbers

NetSpeak also offers the option of adding local **fixed telephone** numbers from the USA, Canada, UK, and Netherlands as a secondary number to your service. Local numbers are randomly assigned.

### 2. Other Charges

Activation Fee (includes a Terminal Adapter)	EC\$ 99.95
Replacement Terminal Adapter Fee ‘■’ ■ .., “■” EC\$	EC\$ 300.00
Early Termination Fee	EC\$ 350.00

### 3. Rates for Out-of-Plan Calls

Local Calls		EC\$ PER minute
Calls to NetSpeak Numbers	Day	\$0.09
	Evening	\$0.07
	Weekend	\$0.06
Calls to Fixed Networks (e.g. C&W, CCC)	Day	\$0.09
	Evening	\$0.07
	Weekend	\$0.06
Calls to Mobile Networks (e.g. C&W, Digicel)	Day	\$0.60
	Evening	\$0.60
	Weekend	\$0.60
<b>Billing Increments</b>		
<b>Billing Increments</b>	<b>Initial</b>	<b>Increment</b>
Per Minute for Local	60 seconds	60 secs.

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<b>International Calls</b>	<b>EC\$ per Minute</b>
Saba, St. Eustace, St. Martin, St. Maarten	\$0.35
St. Kitts & Nevis	\$0.35
Antigua, BVI, Montserrat, Guadeloupe	\$0.35
Rest of C&W Caribbean Islands	\$0.55
Rest of Caribbean (excludes Cuba)	\$0.55
UK & Ireland	\$0.55
Italy	\$1.00
France	\$1.00
Central America	\$1.00
South America	\$1.00
Europe	\$1.00
Rest of World	\$1.00
Guyana	\$1.00
US Incoming Toll-Free	\$0.55
Canada Incoming-Toll Free	\$0.55
UK Incoming Toll-Free	\$0.55
<b>Billing Increments</b>	<b>Increment</b>
Per Second for IDD and Toll-Free	1
1	

<b>Other Calls</b>	
Directory Assistance (411) - per call (2 free calls per month, 2 requests per call)	\$0.50
Emergency Services (911)	Free

21. For regulation purposes and based on the findings in **Decision PUC 2006-101**, the Commission considers the NetSpeak service a ‘rate regulated service’ within the meaning of the term as defined in Part 1 of Annex E of C&W’s license.

22. Therefore, the same price-setting rules (Interim Rate Rebalancing Rules) that apply to the prices of other rate regulated services also apply to NetSpeak prices on a going forward basis. In addition, any revised NetSpeak prices must also comply with the ‘stand-

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alone' condition for 'packaged services' setout in Part 2 of Annex 1, in Part 1 of Annex E of C&W's license. The concluding paragraph of Part 2 reads as follows:

*'Subject to the requirements of the Act and this Licence, the **Licensee may market modified or additional bundled offerings of telecommunications services** to a user based on the Licensee's revenues from, or the Licensee's traffic volumes generated by, such user; provided that the Licensee shall provide any such services on a stand-alone basis.'* (Emphasis added)

### III Other Matters

#### Directions on Procedure in Decision 2006-101

##### 1. NetSpeak Customer Service Contract

23. A number of 'Directions on Procedure' (paragraphs 162 to 167) were set out in **Decision 2006-101**. The following paragraphs present a status report on these matters.

24. In response to paragraph 162 of **Decision 2006-101**, a copy of the NetSpeak Application Form was filed with the Commission under a covering letter from C&W dated 11 April 2006. Subsequently, under a covering letter dated 26 April 2006, C&W filed an updated NetSpeak Application Form which reflects the revised Overseas and Toll-Free Number services as well as the recently assigned Anguilla NXX code (297). (Refer to paragraphs 95 to 99, 145 to 157 and 162 in **Decision 2006-101**)

25. C&W also filed under their covering letter of 11 April 2006 a copy of their 'Basic Telecommunications Services – Terms and Conditions'. This document sets out the general terms and conditions of C&W's service offerings. The Commission is requesting clarification as to whether the deposit conditions set out in section 7 (Credit Referencing and Deposits) of the above-mentioned document are consistent with the requirements for deposits as set out in paragraph 12.11 of C&W's license. The company is requested to clarify this matter – see Direction on Procedure, paragraph 36, of this decision. (refer to paragraphs 127-133 and 165 in **Decision 2006-101**)

##### 2. Contractual Arrangements

26. In response to paragraph 163 of **Decision 2006-101**, C&W filed with the Commission, under a covering letter dated 13 April 2006, a copy of a contract between C&W and Net2Phone entitled 'Masters Services Agreement' related to the operation and provisioning of C&W's NetSpeak service. The effective date of the contract is 23 August 2005.

27. In paragraphs 112 to 115 of **Decision 2006-101**, the Commission raised the matter of subcontracting in the provisioning and operation of the NetSpeak service. The matter relates to the requirement in s.8 of C&W's license which reads as follows:

*'8.0 SUBCONTRACTING*

*The Licensee may employ one or more subcontractors to install and maintain, but not to operate or provide, some or all of the Licensed Networks or the Licensed Services.*

*Any subcontract shall provide that the subcontractor agree to comply with the terms and conditions of this Licence, the Telecommunications Code, the Regulations and the Act.*

*Use of a subcontractor shall not relieve the Licensee or the Authorisation Holder of any of its obligations under this Licence or these Authorisations'. (Emphasis added)*

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28. In their covering letter of 13 April 2006, C&W submit that the contractual arrangements between C&W and Net2phone do not conflict with the requirements of s. 8.0 of C&W's license.

29. In particular, C&W submits the following in support of their position:

*'Given the terms of the Agreement (with Net2Phone) and the nature of the relationship between the parties to the Agreement, C&W is "operating or providing some or all of the Licensed Networks or the Licensed Services" related to NetSpeak Service, as required by C&W's license.*

*C&W encourages the Commission to take a practical and purposeful approach to interpreting clause 8 of the License.'*<sup>2</sup>

30. C&W cites the examples of international calling services and mobile roaming services where foreign carriers and operators provide some of the network and the service, while operators in Anguilla offer the retail service to the public of Anguilla. Without prejudice, the Commission accepts C&W's arguments on this matter in this instance. (refer to paragraphs 112 - 115 and 163 in **Decision 2006-101**)

### **3. Assignment of a National Central Office Code for NetSpeak Service**

31. In response to C&W's letter of application dated 11 April 2006 for a national central office code to be assigned to their NetSpeak service, the Commission assigned central office code 297 to C&W for the provision of NetSpeak services and advised C&W accordingly by way of a letter dated 12 April 2006. (refer to **Decision 2006-101**, paragraphs 116 - 121 and 164)

### **4. IP Interconnection**

32. A reply from C&W on the matter of IP interconnection is due on or before 30 June 2006. (refer to **Decision 2006-101**, paragraphs 127-133 and 165)

### **5. Interconnection Fees**

33. In their letter of 11 April 2006, C&W confirmed that the interconnection fees applied for calls from other licensed operators in Anguilla with interconnection agreements with C&W to C&W's NetSpeak customers will be the same as the current prices for fixed network termination, that is, EC\$ 0.054 per minute. (refer to **Decision 2006-101**, paragraphs 139 to 144 and 166)

### **6. Service Quality Measurements**

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<sup>2</sup> Cable & Wireless letter to the Commission dated 13 April 2006, page 3. (Abridged Version)

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34. The NetSpeak service quality test results to be arranged by C&W are to be provided to the Commission within 60 days of the commencement of the service being offered to the public. Subsequent to **Decision 2006-101**, the Commission provided certain technical information to C&W as a guideline for formulating these tests. The results of the tests are to be shared with each of the ISPs. (refer to **Decision 2006-101**, paragraphs 134 to 138 and 167)

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### III Directions on Procedure

35. The following direction on procedure is issued pursuant to section 31 of the **Telecommunications Administrative Procedures Regulations**.

36. The Commission directs C&W to review their policy on deposits as set out in the 'Basic Telecommunications Services – Terms and Conditions', filed under their covering letter of 11 April 2006, and the terms and conditions for deposits set out in paragraph 12.11 of their license with the objective of ensuring that the deposit requirements in section 7 of the 'Basic Telecommunications Services – Terms and Conditions' are consistent with those in their license. Following this review, the Commission requests that the company advise the Commission whether any amendments are required to ensure their deposit policy is consistent with that specified in their license.

Issued by the Commission at the Valley, Anguilla on this 26 day of May 2006

William Withers  
Executive Chairman, Public Utilities Commission