

Public Utilities Commission of Anguilla

15 December 2004

Telecom Decision PUC 2004-101

The Valley, Anguilla – 15 December 2004

In the matter of a petition filed by Weblinks and network interconnection with Cable & Wireless

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Summary

Weblinks (the Company) and Cable & Wireless (West Indies) Limited (C&W) are licensed telecommunications network operators in Anguilla. The Weblinks' license, entitled 'Weblinks Fixed and Mobile Networks and Services License and Authorisations 2004', was granted by the PUC on 10 September 2004 whereas C&W is the licensed incumbent service provider in Anguilla.

The filing by the Weblinks' petition dated 19 November 2004 with the Public Utilities Commission (PUC) raised a number of matters that Weblinks (the Company) submitted to the PUC for resolution as a result of being unable to negotiate an agreement on such matters with Cable & Wireless. C&W filed a response dated 6 December 2004 to the Company's petition.

The Company identified the following five areas as being the basis for their dispute: (1) the Reference Interconnect Offer (RIO) does not comply with the Telecommunications Code; (2) C&W is not negotiating in good faith; (3) C&W refuses to interconnect employing a radio link; (4) the parties have failed to promptly conclude an agreement; and (5) the Company disagrees with major components of the C&W's RIO. In order to address the matters identified by the Company as being in dispute in the direct context of achieving network interconnection in an orderly fashion, the PUC considers that four primary matters should be addressed: (1) where the networks are to be interconnected; (2) how will they be interconnected; (3) interconnection prices; and (4) will interconnection be achieved in a timely manner.

The matter of where the networks are to be connected does not appear to be in dispute, as C&W has provided the required information in their letter of 11 November and more specifically in their reply of 6 December at paragraphs 5 and 6. However, the Company needs to provide such notification to C&W, if it has not already done so, pursuant to section 4(b) of the Telecommunications Code.

On the second matter, of how to facilitate interconnection, the parties are in dispute over this matter with the Company proposing to employ a radio link and C&W initially proposing to use a fiber cable link and subsequently copper pairs as an option. An overview of each party's position and the PUC findings are presented in paragraphs 41 to 51 of this decision.

The third matter, the prices for interconnection services, is also a matter in dispute. C&W presented proposed prices in their RIO and the Company raised a number of objections as to the underlying basis for setting the prices and also the structure of the proposed prices. C&W in response to the petition has provided further clarification of the basis for setting

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the prices in their Reference Interconnection Offer (RIO) and the PUC has also included some clarification on this matter in this decision.

The fourth primary matter, whether interconnection will be achieved in a timely matter, arises as a result of the inability of the parties to resolve the previously mentioned matters, in particular, what means to employ in connecting their networks. The use of a high capacity fiber link and a period of some five months from the date of an agreement is approved is less attractive to a new entrant than the more rapid installation of a modest size radio link or the use of readily available copper pairs.

The PUC is obliged under the Telecommunications Act (2003), the Interconnection and Access to Facilities Regulations (2004) (Interconnection Regulations) the Telecommunications Code (the Code) to assist in resolving disputes that may arise in the process of negotiating interconnection arrangements.

I Background

Scope of the Proceeding

1. General principles for an ‘integrated’ public telecommunications services are contained in the national regulatory framework as it is in the public interest to have all public networks interconnected. In this regard, section 3 of the Interconnection and Access to Facilities Regulations (2004) (Interconnection Regulations) reads as follows:

“General principles

- 3. (1) Operators and service providers are required to co-operate with each other in accordance with these Regulations in order to enable them to provide integrated public telecommunications services throughout Anguilla and to allow each end user of a public telecommunications network and public telecommunications service to communicate with any other end user of another public telecommunications network or public telecommunications service.”*
2. In particular, S.17(1)(a) of the Telecommunications Act (2003) (the Act), sets out the obligation of every operator or service provider to provide interconnection and reads as follows:
(operators or service providers shall-) “not, with respect to its network or services, refuse, obstruct or in any way impede, other than for reasonable technical grounds stated in writing, another operator or service provider from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other licensees;
3. A procedure for processing an interconnection dispute petition is set out in the Telecommunications Code (2004) (the Code) and the Interconnection and Access to Facilities Regulations (2004). In Section 6 of the Code, the submissions and

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responses required and the associated timeframes are set out for the filing of a notice to file a petition as well as the petition filing and reply dates relative to the notice.

4. The Interconnection and Access to Facilities Regulation (IAF Regulations), Section 10(2) identifies certain types of disputes such as a party not negotiating in good faith or a party refusing to provide interconnection or the failure of the parties to promptly conclude an interconnection agreement.
5. As noted above, the Act, the Interconnection Regulations and the Code provide a framework and procedures within which parties may negotiate and enter into interconnection agreements or in the case where they are unable to reach agreement, the procedures to be followed in submitting the matter to the PUC for resolution.
6. In particular, Section 10 of the Interconnection Regulations and reads as follows:

“Disputes regarding interconnection and interconnection agreements

10. (1) Where one or both of the two parties to the negotiation conclude that a dispute has arisen between themselves with respect to any aspect of interconnection, then either party may submit such dispute to the Commission for resolution in accordance with such procedures as the Commission may adopt.

(2) A dispute, for purposes of subsection (1), may include, but is not limited to –

- (a) a party’s failure to respond to a request for interconnection or to negotiate in good faith;*
- (b) any express or implied refusal to provide interconnection (including as specified in section 5(3) and section 6);*
- (c) a failure by the parties to conclude promptly an interconnection agreement; and*
- (d) a disagreement with respect to the price or any other technical, commercial or other term and condition for any element of interconnection that the parties have not been able to resolve within a commercially reasonable time.*

(3) Any decision rendered pursuant to subsection (1) shall be binding on the parties.”

The Proceeding

7. The company’s petition dated 19 November was preceded with the required fifteen days notice to C&W by way of the Company’s letter dated 4 November.
8. Weblinks (the company) filed a petition with the Commission (PUC) dated 19 November 2004 pursuant to Section 6 of the Code seeking the PUC’s assistance in resolving a dispute with Cable & Wireless (WI) Limited (C&W) in the matter of network interconnection.
9. Pursuant to the Code, Section 6(d), the PUC must determine whether and to what extent it is appropriate to resolve the dispute.
10. The Company’s petition (pages 1 & 2) identifies five areas as the ‘basis’ for their dispute with C&W and these may be summarised as follows:
 - a. The RIO is not compliant with the code;

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- b. C&W is not negotiating in good faith;
 - c. C&W has refused to provide interconnection employing a radio link;
 - d. The parties have failed to promptly conclude an agreement; and
 - e. The Company disagrees with the major components of C&W's offer; namely, the pricing, technical and commercial terms in the RIO.
11. The Company requests that the PUC issue an order requiring C&W to interconnect no later than 18 December and, if necessary, set interim interconnection terms and conditions.
12. C&W's response of 6 December to the Company's petition addresses the five 'grounds' for the dispute identified by the Company. C&W submits that the petition is groundless and premature and should be dismissed.

II Commission Analysis and Findings

The Existence of a Dispute

13. On the matter of where the interconnection points are to be located, C&W indicated in their letter of 11 November to the Company that the point of interconnection would be at their switching centre located on Carter Rey Boulevard in the Valley. The Company raised the matter in their petition of 19 November and identified the absence of this information in the 'Reference Interconnection offer' (RIO) filed by C&W as being one of the matters in dispute as such information was required to be provided in a RIO pursuant to the Code, Section 3(b)(3). Given the statement in their letter of 11 November by C&W as to their 'Interconnection Switch Location', and also the statement in paragraphs 5 and 6 in their reply of 6 December, the PUC concludes that the matter of where network interconnection is to occur from a geographic and physical sense has been established and is not in dispute subject to the Company clarifying their point(s) of connection.
14. Interconnection point(s) for the Company should also be identified as required under section 4(b) of the Code and this information provided to C&W within seven days of this decision.
15. Presumably, the point at which each company intends to connect their respective networks is not in dispute.
16. The Interconnection and Access to Facilities Regulations (2004), Section 10, sets out some examples of the criteria that may be employed to determine whether a dispute exists. In the case of the Company's petition, all four criteria listed in Section 10 are cited in the petition.

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17. The first ‘reason/basis/ground’ given for the alleged dispute is identified in the petition as being due to the fact that the RIO does not comply with the Code. In this matter, the PUC notes the following comments in C&W’s letter of 3 November:

“The purpose of the RIO under the Telecommunications Act, the Regulations, and the Telecommunications Code, is to stand as an initial offer and launch the negotiation process leading to an executed interconnection agreement to be filed for approval by the Commission.”

18. While the Company’s petition identifies (pages 2 to 5) a list of some nine areas where the RIO does not comply with the Code, C&W’s counter petition of 6 December submits that their reference RIO ‘has complied with the Code in all material respects.’ C&W further submits that their RIO is ‘based on the RIOs and Interconnection Agreements applied, and successfully implemented, more than twenty times throughout the region.’

19. The second reason identified in the petition for the dispute is that C&W is not negotiating in good faith (point (2) on Page 2 of the petition). Weblinks cites a number of examples of ‘bad faith’ negotiations on the part of C&W such as on page 27 which reads, in part, as follows:

“C&W is not negotiating in good faith, and in fact is not attempting to negotiate at all. Apart from the one item of partial information provided in the last paragraph of C&W’s November 11, 2004 letter, C&W has provided no response whatsoever to the issues Weblinks has raised.”

20. C&W submits that Weblinks’ charge of not negotiating in good faith is false and that ‘Weblinks’ approach has been anything but one of negotiation and discussion.’ (Paragraph 13 of their submission of 6 December). C&W further submitted that their letter of 4 November (the PUC presumes C&W is referring to their letter dated 3 November that was received at the PUC office by fax on 4 November) indicated a ‘willingness’ to negotiate (paragraph 18) of C&W’s 6 December submission.

21. Section 9(5) of the Interconnection Regulations set the minimum requirement for ‘good faith’ negotiations are ‘that the parties adhere to the timetables set out in the Code’.

22. The third basis for the filing of the petition, the means of interconnection, is described in the petition on page 2(and more extensively addressed on pages 17 to 20) as follows:

“(3) C&W has consistently implied a refusal to provide interconnection using standard, globally deployed microwave radio links despite there clearly being no reasonable technical grounds for doing so.” (Page 2)

23. In their letter of 11 November, C&W noted, in part, on the matter of employing a radio link as follows:

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“A microwave network simply cannot provide the levels of quality and resilience that an underground fibre network can.”

24. As noted above, the Company comments extensively in their petition on pages 17 to 20 on the merits of using a radio link and refers to a meeting with C&W in June 2004 during which they advised C&W that - ‘Weblinks would be interconnecting with C&W by way of a microwave link...’ and also noted during the same meeting that they (Weblinks) ‘could install the link between the C&W and Weblinks ISLs (Interconnect Switch Location) in as little as one day but no more than three days.’ (Page 17 of the petition).
25. Based on each party’s initial exchanges, it is evident that a dispute exists with respect to the manner in which the networks are to be interconnected. The Company prefers the use of a radio link whereas C&W prefers the use of a fiber cable link. However, C&W’s submission of 6 December, paragraph 26, offers to discuss an alternative means for interconnection; namely, the use of ‘copper-based transmission technology to facilitate interconnection’. C&W qualifies their offer for the ‘copper’ alternative with a capacity requirement of ‘fewer than 3 E1 circuits’ within the initial two-year forecast.
26. The Company’s petition comments on the likely capacity required on a network interconnection in Anguilla as follows:
- “The interconnection between any two networks in Anguilla will typically involve less than 8 E1s.”*
27. The fourth ‘basis’ for the filing of the petition is described, in part, as follows:
- “(4) There has been a complete failure of the parties to conclude promptly an interconnection agreement, due to C&W’s failure to respond meaningfully to Weblinks’ correspondence and requests for responses. (Page 2)”*
28. The Company submits related evidence to support this reason for the filing of their petition in Section (3) entitled ‘Time Frame for Provision of Interconnection’ (page 16) and also in Section 3 on page 20 (‘The Negotiating Process’). The parties have expressed different views of the ‘negotiation process’ with the Company describing the process as starting in January 2004 with the granting of the mobile tender to the Company by the Government, whereas C&W views the process as beginning with the granting of the company’s license on 10 September 2004 (paragraph 14). The issue is not so much when ‘negotiations’ started but when will they end and more importantly when will the respective networks be interconnected.
29. On the matter of ‘timing’, C&W refers to their letter of 27 September in paragraph 20 of their submission and the ‘time required to interconnect is due to third-party ordering and shipping timeframes,’ ... ‘or due to the public interest in a reliable and robust interconnect.’ In C&W’s letter of 27 September an estimate of 20 weeks to establish physical interconnection was presented with the 20 weeks being measured from the date an interconnection agreement was ‘worked out and approved’. Based

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on these timeframes if an interconnection agreement was ‘approved’ (presumably by the respective parties and the PUC) as of 1 January 2005, actual interconnection would occur on or about 5 months later, or in April 2005.

30. Previously, the PUC, in their letter of 15 July to C&W expressed concern as to the estimated 20 weeks to provide interconnection. Following receipt of C&W’s reply of 27 September, the PUC sought the views of Weblinks and AT&T on the estimated timeframe. AT&T’s reply dated 21 October reads, in part, as follows:

“As we have learned from C&W based on our experience in a number of other Caribbean jurisdictions, it would normally take C&W 6-8 weeks to order and obtain the optic multiplex equipment from Nortel, then 2 weeks for installation and internal testing, and after that 2 weeks testing with AT&T Wireless. In total, the entire process should last about 10-12 weeks”

31. On the ‘fourth’ reason for filing the petition, the question of whether the parties can ‘promptly conclude an interconnection agreement’, C&W makes the following submission in paragraph 28:

“Fourth, Weblinks claims there has been a complete failure of the parties to conclude promptly an interconnection agreement due to C&W’s alleged unresponsiveness. However, as C&W has detailed above, Weblinks is not interested in a prompt agreement, but instead in a prompt dispute.”

32. On the matter of whether a dispute exists due to the Company’s disagreement with C&W on the pricing, technical and commercial terms in the RIO, as noted above in paragraph 14, C&W submits that the initial RIO is an ‘initial offer’ to initiate the negotiation process. During such a process there will be numerous matters on which the parties disagree, however, the purpose of the negotiations is to arrive at a mutual settlement. C&W’s reply letter of 3 November does little to further the negotiation process. However, their letter of 11 November does address two key issues – (1) how to interconnect and (2) where to interconnect. As noted in paragraph 20, the matter of ‘how’ to interconnect the networks is considered to be in dispute.
33. On the matter of ‘where’ to interconnection, it is with some relief that the PUC finds the parties appear to be in agreement on this point. The Company, on page 14 of their petition, acknowledges that C&W provided ‘partial provision of an interconnection location’ in their letter of 11 November.
34. As to the matter the interconnection prices, C&W listed proposed prices in their RIO and the Company has questioned the validity of some of the price components and the price levels of some components as well as the basis for arriving at the proposed prices. It is evident from each of the party’s respective positions that some guidance on the matter of price levels and structures is required from the PUC in order to move towards a resolution.
35. In summary, in the above paragraphs 13 to 34, the matters identified in the Company’s petition as being the basis of a dispute between them and C&W are

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reviewed. The PUC has concluded that the following three key underlying matters are in dispute; (a) the means of interconnecting the two networks – either radio, fiber cable or copper cable; (b) the level and structure of prices for interconnection; and (c) whether an agreement may be reached in a timely manner

36. With respect to whether interconnection may be achieved in a timely matter, C&W has submitted that they require a period of some 20 weeks after an interconnection agreement is approved by the regulator whereas the company has indicated that by using a radio link network interconnection could be achieved in a matter of a few weeks. In addition, as noted in paragraph 30, AT&T's estimate was a period of 10-12 weeks. However, the resolution of the timing issue rests largely with the resolution of the issue of the means of interconnecting the network.
37. As a result, the PUC finds that the key matters in the dispute are: (1) the means of interconnecting the two networks – radio or fiber cable or copper cable and (2) the prices for interconnection.
38. While there exists a number of secondary matters raised in the Company's petition as being the cause of the dispute, the PUC considers the two matters identified in paragraph 37 as the primary reasons for the dispute. These matters need to be addressed in order to enable the parties to promptly enter into further and final negotiations and thereby reach a final agreement.

The Extent it is Appropriate for the PUC to Resolve the Dispute

39. As noted above (paragraph 37), one of the primary reasons for the dispute is the method or means to interconnect the networks. Without this matter being resolved, progress on resolving the remaining details of a final interconnection agreement will be most difficult if not impossible to achieve. Given that the parties are unable to resolve even this most fundamental point, the PUC is therefore obliged to prescribe a resolution.
40. The parties have identified three possible means for interconnecting their networks – (1) a fiber cable; (2) a radio link; and (3) copper cable. In selecting the means, consideration must be given to the cost, the reliability and the time required for implementation. The PUC notes that the offer to employ copper was only identified by C&W in their response of 6 December to the petition some three months after the initial request for interconnection from the Company and some six months after meeting with the Company to discuss interconnection in early June 2004 (see the Company's petition, page 21).
41. C&W submits, in paragraph 25, that '*it has limited ability to install and maintain microwave transmission systems*' and that '*substantial costs would be involved in training staff to the competency levels (necessary) required for an interconnection*

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link. However, C&W's 'Joint Working Manual', provided as part of their RIO, makes reference to the use of radio equipment in Section 1.3.4.3 which reads as follows:

"If radio equipment is used, it will comply with the International standard ITU-T K.37 to protect employees from electromagnetic radiation with a power in excess of 1milliwatt per centimetre."

Given the position of C&W and the proposal by the Company to provide the radio link, the logical solution from both a technical and timely standpoint is for the Company to provide a radio link on a co-location basis.

42. The Company submits that it is prepared to install a radio link; in fact, it submits that such a link could be installed in one day (page 25 of petition). The Company provides further details on the installation of such systems and submits as follows:

"We also pointed out (during meeting in early June 2004 with C&W) that our microwave link to St. Maarten was installed and in service within one week, including the entire process of negotiating terms and conditions, obtaining a microwave system from overseas, bringing in installers from overseas, and aligning microwave antennas in two different countries and across the sea. There was no reason why a microwave link that we already had on site should take more than three days to install. In the meantime we could be working on agreeing the terms and conditions for the interconnection to save time.

We heard nothing further from C&W." (Page 21 of the Company's petition)

Directions for Resolving the Key Matters in Dispute

The Means of Interconnecting

43. While fiber cable may be a common means for facilitating network interconnection, the issue of efficiency and timeliness must also be taken into consideration. Given the limited quantity of circuits initially required and the lengthy period required to implement the fiber facility compared to that required for a radio or copper-pair link, the PUC directs the parties to pursue either the radio link or copper-pair solutions as the initial means for interconnecting their networks.

44. The PUC notes that the Company has undertaken to employ a fibre link at a later date, as noted in the following submission:

"Weblinks intends to implement redundancy to its microwave link by way of a fibre link at a later date.This approach of implementing interconnection now by way of microwave link, followed by an independent fibre link, would offer a much higher level of resiliency than the single fibre link or even the "protected" fibre link proposed by C&W in its Joint Working Manual, and would at the same time achieve the objectives of the Government of Anguilla and the serve the

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interests of the people of Anguilla by delivering interconnection and a truly competitive telecommunications market in a much shorter time frame.(Company petition, page 20)

45. The PUC directs that the parties should negotiate both a short term solution based on copper cables and a solution based on a microwave link. The PUC notes that C&W, in paragraph 26, indicated that a copper solution would only be suitable for 2xE1 circuits during the initial two-year period. However, the PUC considers that multiple E1s can readily be provided over multiple copper circuits¹ and directs the parties to investigate and determine within seven (7) days of this decision, whether a copper cable solution could be achieved at an acceptable cost and in a shorter timeframe than that of a microwave radio link. The parties should then decide whether to proceed with a copper cable solution, the microwave link solution or both.
46. The PUC considers that a ‘copper solution’ represents an unbundled copper access line, without conditioning, suitable for the attachment of customer owned DSL modems. Such access lines fall within section 16 (1) a of the Interconnection and Access Facilities Regulations 2004 and in accordance with section 16(2) the PUC requires C&W to demonstrate that its costs for supply of such circuits are cost-oriented and comparable with benchmark prices in similar jurisdictions.
47. Given C&W’s stated limitations (see paragraph 41 above) with respect to installing and maintaining microwave links, the PUC directs C&W to permit the co-location of the Company’s radio and multiplex equipment at the C&W offices, ‘Telecoms House’ on Carter Rey Boulevard in the Valley where the Interconnect Switch of C&W is located.
48. Pursuant to The Telecommunications Act (2003), Section 18(1) and Section 18 of the Interconnection Regulations, the PUC directs C&W that from the date of this decision employees and/or contractors retained by the Company be granted reasonable access to the above-mentioned C&W premises for the purpose of planning and implementing the installation of the microwave link equipment and any other co-located equipment.
49. Without prejudice to the negotiations between the parties, the PUC considers that the microwave link solution could be provided by:
 - a. Installation by the Company or its contractor of a microwave antenna on an appropriate part of the exterior of Telecom House as agreed with C&W;

¹ Global experience with short copper cables shows that 2xE1 capacity is feasible using Synchronous Digital Subscriber Line (SDSL) technology and that multiple copper circuits can support SDSL in the same copper bundle.

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- b. Installation by C&W of an in-building connecting cable from the antenna to the co-location space, using cable provided by, or specified by, the Company;
 - c. Provision by C&W of an appropriate co-location space, in an existing operational area of Telecom House, in order for the Company or its contractor to install the microwave terminal and related multiplex equipment. This space to be provided by C&W with a Digital Distribution Frame (DDF) where the parties will establish their Point of Interconnection for exchange of traffic via suitable E1 circuits between the Company's equipment and C&W's Interconnection Switch.
50. The Company shall provide to C&W within seven (7) days of this decision details of the required size of the co-location area, power requirements for the co-location area and the antenna (including any standby requirements), and the in-building connecting cable.
51. The Company is also directed to provide the following information within seven (7) days of this decision to C&W pursuant to Section 4(b) of the Code: (1) information as to the number of SS7 signaling links required to be provided on the interconnection facility; (2) the numbering of 'joining links' to be provided between the networks; (3) a forecast of the initial network links required for the first year and any other information C&W may reasonably request from the Company for implementing the interconnection facilities.
52. C&W shall provide to the Company any reasonable requested information on the equipment and plant located in their 'Telecom House' offices, together with any relevant information on the building's structure and layout, to facilitate the installation and operation of the co-located radio equipment and the cross-connection of the derived circuits to C&W's 'Interconnection Switch' at this location.
53. Given the Company's estimate of three days to install such equipment and their offer that '*Weblinks is prepared to purchase and install a microwave radio and associated multiplex terminal equipment to provide the interconnection facility between C&W and Weblinks. Therefore, no installation and testing charges by C&W will apply.*' (petition-page 8), the Company is directed to proceed with developing the details of the plan for installing the equipment and the final testing as indicated in paragraph 54 and submit these to C&W and the PUC within ten (10) days of this decision.
54. Given the above-mentioned reasonable access to both the plant and the plant records, the Company is directed to prepare an installation plan for their radio equipment and provide a copy of such a plan within ten (10) days of the date of this decision to both C&W and the Commission. The details of the plan should provide a brief list of the

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installation procedures including the time required, proposed dates, and equipment required for each phase of the installation i.e. antenna, feeder cable from antenna to radio equipment, mounting radio equipment, provision of required power to the equipment and the testing of the equipment – indicate what is required from C&W for each phase of the installation and testing and what will be provided by the Company.

55. C&W is directed to develop a similar plan for the provisioning of fully functioning interconnection facilities between the Company's equipment and C&W's 'Interconnection Switch' via the DDF installed in the co-location area. The details of such a plan are to be provided to the Company with a copy to the PUC within fifteen (15) days of this decision. The plan should include specific calendar dates and time periods for each major component of the installation and testing activities.
56. The parties are directed to mutually work together to achieve the objective of having the networks interconnected for the provision of calls between the respective networks not later than 31 January 2005 or on a date agreed upon by the Company, C&W and the Commission.
57. The final details of the Interconnection and the Access Agreements are to be worked out by the parties on or before 28 February 2005, however, on matters that they may fail to agree upon by that date, a final determination will be made by the PUC after that date.
58. The PUC expects the Access Agreement to include, amongst other items, details of information required of the two parties from each other, initially, and on an ongoing basis; details relating to the provision of the co-location space and of installation of equipment within it (e.g. floor loading, structural support, power supply and metering, cable runs and trays, security, delivery of equipment, unpacking and storage of material on site); arrangements for access to the co-located equipment and antenna for ongoing operation and maintenance by the Company or its contractors; terms, conditions and charges to be levied for occupation of space, use of electricity and other services; arrangements for ventilation and cooling; service levels & compensation; and mutual insurance & indemnities. However, final agreement on these points should not delay the provision of the installation plans referred to in paragraphs 54 and 55 above.

Pricing of Interconnection Services

59. On the matter of pricing interconnection services, the parties have been unable to come to agreement on either the underlying pricing principles or the application of them. Given the positions set out in the petition by the Company and in reply by C&W, the PUC is obliged to provide some direction on the structure and level of

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prices related to network interconnection in order to resolve the impasse on this matter.

60. Part 5, Access to Facilities, Sections 13, to 17 of the Interconnection Regulations, provides a framework for the provisioning and pricing of one operator's facilities being utilized by another party. The basic principle is set out in S.13(3) which reads as follows:

“(3) Every dominant operator and service provider shall provide interconnection at charges that are cost-oriented and, where expressly authorized by the Commission, that may permit the recovery of the costs of providing access.”

61. A further qualification of the definition of costs and the establishment of a 'floor' and 'ceiling' for such costs is contained in S13(4) and reads as follows:

“(4) For purposes of these Regulations, charges are “cost-oriented” if the operator's or service provider's charges for interconnection do not exceed the stand-alone cost of providing the service and are not lower than the long-run average incremental costs of providing the service, where –

(a) “stand-alone cost” means the cost of providing a service independently of providing any other service or services; and

(b) “long-run average incremental costs” means the costs incurred by providing a service in addition to other service or services already provided.”

62. The parties' respective submissions and positions on the matter of compensation for the provision of the interconnection or 'joining' facilities, and their apparent differences of opinion on what basis should prices for such services be levied and who should be compensated, may be considered a dispute due to a difference in the interpretation of the costing principles as well as the interpretation of other party's position.

63. The Company cites the 'half-circuit' principle as the basis for proposing that each party to an interconnection agreement should pay 'half' the costs and that there are *'no installation and testing charges to each other.'* Whereas, in paragraph 46 of their submission, C&W cites section 14(1) (a) of the Regulations that states – *'costs shall be borne by the operator or service provider whose activity caused such costs to be incurred;'* The flow of traffic from C&W's network to the Company's network arises from the actions of C&W's customers and the costs of conveying these calls from one network to the other arise as a result of such actions.

64. The principle of cost causation cited in section 14(1) (a) is a basic economic costing principle. Agreement on how to 'apply' the principle is where parties tend to differ. However in the present case, the 'half-circuit' principle cited by the Company is consistent with the 'cost causation' principle cited by C&W as both parties in such an arrangement agree that the cause of the 'costs' was due equally to both parties. If one party undertakes to install and test a complete fiber or radio link to facilitate

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interconnection, that party should be compensated to some degree by the other party to the interconnection so that the facility costs may be equally shared by both parties as both parties will benefit to some degree from such a network interconnection as traffic will flow from and to each of their networks. The fact that the facility is identified as a 'joining' facility conveys the notion of 'mutual' benefit and 'shared' costs. The 'causation' principle and the need to 'attribute' such costs to determine how to allocate a 'fair' share of them could be based on the amount of traffic originated or terminated by each of the parties or such other means as the parties may agree upon.

65. In the case of the Company providing the proposed radio link, the parties may either agree to share the cost of purchasing, installing and operating the 'joining' facilities or the Company could undertake to acquire and install the equipment and come to an agreement with C&W as to the pricing of the facility employing the principles set out in S13 (4). Section 1.1.4 of C&W's RIO (Service Descriptions) allows for the 'joining' facility to be provided by either party. However, in the case where the parties share the 'capital' costs, the recovery of the on-going operating costs would be a matter for the parties to determine once these cost have been identified. One basis for determining such costs would be the volume of traffic each party transmits over the facility.
66. Similarly, in the case of C&W building a fiber link for interconnection, they would be entitled to recover their costs and compensation from the Company for the use of such a facility. However, the facility would be one of 'shared' use as traffic from and to each party would flow through the facility and to the extent each party uses such a facility, they should contribute to the recover of the costs.
67. C&W's submission (paragraph 42) states that 'Weblinks will benefit 'the most' (from the networks being interconnected) and further at paragraph 50 their submission states:

'In the case of domestic interconnection, though, as we have seen above, this is clearly to the benefit of the new operator and not the incumbent, who loses market share.'
68. Such statements appear to denigrate or diminish the notion that C&W and their customers will also benefit from the interconnection. However, in paragraph 27 of C&W's reply, recognition of the importance of interconnection is reflected in the statement – *'C&W notes that the successful achievement of interconnection is a priority objective under the Telecommunications Act, the Regulations and the Code, and is a matter of vital public interest.'* Most importantly, C&W recognizes that the main benefactors to such interconnection arrangements are the customers on both networks. It is for this reason that interconnection between networks is mandated in most jurisdictions to satisfy the public interest that is represented by both sets of current and potential customers, C&W's as well as the Company's.

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69. The matter of an underlying costing methodology for determining interconnection prices, and the Company's submission on page 7 referring to the RIO and paragraph 42.4, is addressed by C&W in paragraph 37 which makes reference to section 13(6) of the Interconnection Regulations that reads as follows:

“(6) Without regard to section 14, until such date as the Commission shall announce, an operator or service provider that is dominant in the market for interconnection services as of the effective date of these Regulations may use a cost accounting method of its choosing for ensuring that its charges for interconnection are cost-oriented.”

70. C&W submits in the RIO (Legal Framework) paragraph 42.4 that *‘interconnection charges will be based on C&W's fully allocated cost model.’* Pursuant to section 13(6) of the Interconnection Regulations, C&W is at liberty to propose such a methodology. As submitted by C&W, the time required for the PUC to develop a costing methodology would unduly delay the interconnection process. At this time, the PUC is not in a position to either accept or reject the basis employed by C&W in setting the individual prices proposed in the ‘Tariff’ schedule of the RIO as no evidence has been filed to support the proposed methodology.

71. In paragraph 67 of C&W's reply, reference is made to their cost model and further that the prices (rates) in the RIO are derived from this model and the model is ‘compliant’ with the section 13(4)(a) and (b) of the Interconnection Regulations. The criteria in section 13 are two-fold. In section 13(4), ‘cost-oriented’ is defined as prices (charges) that are between an upper limit of ‘stand-alone’ cost’ and a lower limit of ‘long-run average incremental costs. In paragraph 37 of their reply, C&W submits that paragraph 42.4 of the ‘Legal Framework’ provides for the use of C&W's ‘Fully Allocated Cost Model. Based on these submissions, it is presumed that C&W is of the view that the results from their ‘Fully Allocated Cost Model’ produce prices that are between ‘stand-alone cost’ and ‘long-run incremental costs’. The PUC awaits C&W's evidence on these measurements and results.

72. C&W has indicated that it will file the methodology and results in support of the proposed prices when it files the RIO for approval with the PUC.

73. With respect to the setting of termination fees for fixed and mobile networks, the PUC will establish uniform termination fees for each type of network. Currently the proposals from C&W in the RIO are the only prices proposed.

Access Deficit Contribution

74. An ‘access deficit or surplus’, if there is one, has yet to be determined by the PUC for C&W's operations in Anguilla. As noted in C&W's submission, *‘...the practical effect of Weblinks' position would be to introduce unacceptable delay into the interconnection process, as parties would have to wait until a new costing model were developed ...’*. A thoroughly conducted costing procedure is required to make a determination in the matter of whether an access surplus or deficit exists as well as to

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determine how such a 'surplus should be distributed or a 'deficit' be recovered. At this time, the conducting and completion of such a proceeding would unduly and unacceptably delay the interconnection process and thereby not be in the public interest.

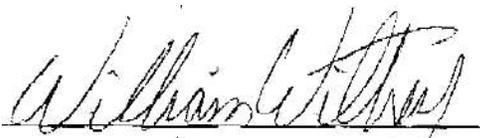
75. The PUC notes the wording in Schedule 3 of the Agreement of April 2003 between C&W and the Government of Anguilla at page 4, paragraph 13:

“Taking into account rate rebalancing, the Commission will determine whether there should be contributions to Cable and Wireless’ “access deficit”, if any, and, if there is such an access deficit, by what means and to what extent it should be recovered (whether by levy imposed on Cable & Wireless and any other service providers or operators). Any such means of recovery will not be unduly discriminatory.”

Other Matters

76. C&W’ reply, paragraph 36, makes reference to the RIO’s ‘Legal Framework’, in particular, paragraph 42.3, and the termination of an interconnection agreement. Such a provision does not comply with the Interconnection Regulations, section 12(4), and therefore needs to be either deleted or amended in order to comply.
77. With respect to paragraph 42 of the Legal Framework and the matter of ‘Transitional Provisions’, and referring to the PUC letter to C&W dated 3 June 2004, the commencement of Phase 2 of the liberalization process was 19 July 2004, as a result, Phase 3 of the liberalization process will commence on 19 January 2005.
78. A number of other matters related to the wording of the RIO in matters such as testing, forecasting and service descriptions were raised in the Company’s petition. The PUC has not attempted to address these matters at this time and expects the parties to continue to negotiate on such matters with the objective of having their networks connected on or before 31 January 2005 and reaching a final agreement on or before 28 February 2005.

Issued by the Commission at the Valley, Anguilla on this 15th day of December 2004



Executive Chairman, Public Utilities Commission