

# Public Utilities Commission of Anguilla

## Telecom Decision PUC 2005-101

The Valley, Anguilla – 12 October 2005

In the matter of an agreement, filed by Cable and Wireless (West Indies) Limited (C&W) with Wireless Ventures Anguilla Limited (WVA Ltd.) for the interconnection of their respective networks in Anguilla

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## Summary

Cable & Wireless (West Indies) Limited (C&W) and Wireless Ventures (Anguilla) Limited (WVA Ltd.) are licensed telecommunications network operators in Anguilla. C&W is the incumbent operator and their new license was granted by the Public Utilities Commission of Anguilla (PUC) on 14 December 2004 whereas WVA Ltd. is a new mobile operator and their license was granted by the PUC on 5 November 2004.

C&W filed for approval a proposed interconnection agreement between C&W and WVA Ltd. with the Commission on 19 May 2005. The Commission has considered the agreement against the criteria set out in the governing legislation and has determined that it cannot approve the agreement.

### Reasons for not approving the proposed Interconnection Agreement:

- a) The 'side' or 'other' agreement which forms part of the overall agreement contravenes the **Telecommunications Act** and **IAF Regulations 2004** (see paragraphs 45 to 54);
- b) The proposed agreement, Section 23 and 42.3 (Legal Framework -Termination of agreement), contravene Section 12(4) of the **IAF Regulations 2004** and do not comply with PUC Decision 2004-101, paragraph 76 dated 15 December 2004 (see paragraphs 55 to 62);
- c) The proposed agreement is incomplete as it does not provide a description of the costs and methodology for the recovery of those costs associated with the joining the networks pursuant to Section 4(d) of the **Code 2004** (see paragraphs 63 to 75);
- d) The prices proposed for transit services are excessive to the extent they include an allowance for access cost recovery. As transit services do not make use of the access network, they are not required to contribute to access costs as a result, the Commission does not authorized the inclusion of such a component in the price for transit services pursuant to **the Act** s7(1) and the **IAF Regulations 2004**, s17 (see paragraphs 76 to 87).

### Other Matters

- a) Costing Methodologies, Network elements and related Prices – The **IAF Regulations 2004** set out certain cost definitions (Section 13) and require that costs be provided according to specific network elements (Section 15 and 16) and that interconnection prices be developed accordingly. Some of the prices presented in the proposed agreement are not in the required format of the specified network elements;

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- b) The amount of the access costs included in the fixed termination prices is excessive having regard to the substantial rate rebalancing already undertaken by C&W in 2003;
- c) The description and the details of the costing process presented by C&W to support the interconnection prices lacks sufficient transparency contrary to Section 13(1) of the **IAF Regulations 2004** as the outputs of the costing models are not auditable.
- d) The Commission recommends the following interconnection prices pursuant to Section 20 of **the Act** and Section 1.3.3 of C&W's license. The recommended prices are the maximum prices for each interconnection service:
- a. Part 1 of Tariff Schedule - **Joining Services** costs are to be based on standard unit costs for each element with each party compensating the other party for 50% of their cost. An early termination charge is to be included as part of the Joining Service pricing.
  - b. Part 2. Termination Services – **PSTN Terminating Service**: A composite price not to exceed **5.4 EC cents** per minute. The parties may elect to adopt peak and off peak pricing structures with the maximum peak price not to exceed 5.4 EC cents.
  - c. Part 2. Termination Services – **Mobile Terminating Service**: A composite price not to exceed **40 EC cents** per minute.
  - d. Part 2. Termination Services – Mobile Terminating Service – **Transit portion**: A composite price per minute not **2.2 EC cents** per minute.
  - e. Part 2. Termination Services - **Incoming International to PSTN Service** - A composite price not to exceed **5.4 EC cents** per minute. The parties may elect to adopt peak and off peak pricing structures with the maximum peak price not to exceed 5.4 EC cents.
  - f. Part 2. Termination Services - **Incoming International to Mobile Terminating Service**: A composite price not to exceed **36.9 EC cents** per minute.
  - g. Part 2. Termination Services - Incoming International to Mobile Terminating Service – **Transit portion**: A composite price per minute not **2.2 EC cents** per minute.
  - h. Part 3. Special Access Services – Provision of access to 999 and 911 emergency services. A composite price not to exceed **3.5 EC cents** per minute.
  - i. Part 4. PSTN Transit Services – **PSTN Transit service** – A composite price not to exceed **2.2 EC cents** per minute.

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## I Background

### Scope of Proceeding

1. The national regulatory framework provides for an ‘integrated’ public telecommunications service which requires that all public networks be interconnected. Section 5(1) of the Interconnection and Access to Facilities Regulations 2004 (IAF Regulations 2004) stipulates that every operator or service provider has a duty to interconnect with other service providers.
2. Furthermore section 17(1)(a) of the **Telecommunications Act (2003) (the Act)** establishes that every operator or service provider 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. Obligations of every operator or service provider pursuant to section 17(1) are set out in section 17(2) of the Act 2003 which reads, in part, as follows:  

*‘(c) provide the elements of interconnection, to other operators and service providers, in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated or to any other party to which the operator or service provider provides interconnection and without regard to the types of users to be served, or the types of services to be provided, by such other operator or service provider;*

*(d) promptly negotiate, upon the request of another operator or service provider, and endeavour to conclude, subject to paragraph (g), an agreement with regard to the prices and the technical and other terms and conditions for the elements of interconnection;*

*(g) submit to the Commission for prompt resolution, in accordance with such procedures as the Commission may adopt, any disputes that may arise between itself and any other licensees relating to any aspect of interconnection, including its or any other operator's or service provider's denial of interconnection or the failure to conclude promptly an agreement pursuant to paragraph (d), or disputes as to price and any technical, commercial or other term and condition for any element of interconnection; and*

(h) submit to any decision rendered by the Commission pursuant to paragraph (g)’.

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4. C&W's **Licence** granted by the Commission under the **Telecommunications Act** also asserts in section 15.1 that the Licensee shall, with respect to interconnection, comply with the provisions of section 17(1), (2) and (3) of the **Act**.
5. Annex 2, Section 1.3, states that for purposes of this **Licence**, the Licensee is dominant with respect to a number of telecommunications services in Anguilla including those described in section 1.3.3 as follows:

*'Services of terminating mobile telephone calls on Licensee's own mobile or fixed network'.*

6. Section 11 (1) of the **IAF Regulations 2004** stipulates the timeframe within which a copy of the interconnection agreement is to be submitted to the Commission. It reads:

*'Within twenty-eight (28) days after the parties to a negotiation regarding interconnection have concluded an interconnection agreement, the operator or service provider that responded to the initial request for interconnection shall submit a copy of such agreement to the Commission for its approval'<sup>1</sup>.*

7. Pursuant to section 17(2)(e) of the Act 2003, licensees must make an application to the Commission for an interconnection agreement to be approved under the Telecommunications Act and the Regulations therein. The Telecommunications Administrative Procedure Regulation 2004 (Procedure 2004) s28(1) establishes the documentation required to be filed with the Commission—

*'(a) a letter requesting approval and setting out fully—*  
*(i) the circumstances leading up to the execution of the agreement;*  
*(ii) the purpose and effect of the agreement;*  
*(iii) the proposed effective date of the agreement;*  
*(iv) the reasons why approval would be in the public interest; and*  
*(v) any other comments that may be of assistance in reviewing the application;*  
*(b) a copy of the proposed agreement, as executed by the parties; and*  
*(c) any supporting documentation required by the practice of the Commission.'*

8. The Commission may require that an operator or service provider, in fulfilling its duty to interconnect, undertake specific obligations to

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<sup>1</sup> See also section 17(2)(e) of the Telecommunications Act 2003

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ensure that the interconnection provided by such operator or service provider is 'fair, reasonable and timely'.<sup>2</sup>

9. The Telecommunications Code 2004 (Code 2004) sets out the minimum interconnection duties placed on each operator or service provider in section 8 (a)–(f) which are in addition to the legal requirements applicable to interconnection specified by the Act 2003, the IAF Regulations 2004, its Licence and the remainder of the Code 2004.
10. Every operator or service provider requested to provide a Reference Interconnection Offer (RIO) shall provide such an offer within thirty days of its receipt of such request pursuant to section 8(1) of the IAF Regulations 2004. Subsection (3) of section (8) requires that the RIO be consistent with the Act, the Regulations, the Code 2004 and the offeror's licence.
11. The Contents of a Reference Interconnection Offer are set out in section 3 of the Code 2004. Section 3(a) requires that the following information be included:

*'1) The technically feasible points at which interconnection is permitted at no additional charge and the means by which interconnection will be achieved. Every operator will have to permit interconnection at the host switch as part of its basic interconnection service offering.*

*2) The additional charges to the requesting party for interconnection at points other than those set out in (1).*

*3) The elements of the interconnection service and its constituent elements, including signalling, transport, the transfer of calling line identification information and switching between the point of interconnection and end users.*

*4) Rates or pricing formulae for each feature, function or facility that the offeror is required to offer pursuant to the Act, the Interconnection and Access to Facilities Regulations, its licence or the Telecommunications Code.*

*5) Other commercial terms and conditions applicable to the offering of the elements of the interconnection service.'*

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<sup>2</sup> Section 5(8) IAF Regulations 2004

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12. Interconnection is to be provided at charges that are arrived at in a transparent manner subject to the provisions of any interconnection agreement or the **Act** regarding the confidentiality of costs or other commercial information.<sup>3</sup> Section 13(3),(4) and (5) of the **IAF Regulations 2004** state:

*'(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.*

*(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.*

*(5) No dominant operator or service provider shall charge, for any combination of interconnection services, a price that exceeds the stand-alone costs of providing the combination of interconnection services or that falls below the sum of the individual interconnection services' long-run average incremental costs.'*

13. Section 13(6) goes on to state:

*'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.'*

14. Sections 4(1) and 4(2) of the IAF Regulations 2004 set out the role of the Commission in relation to interconnection. These sections provide the following:

*4. (1) The Commission shall, consistent with the Act and these Regulations, encourage and, where appropriate, ensure, the adequacy of interconnection between public telecommunications networks and public telecommunications services in such a way as to –*

*(a) promote efficiency;*

*(b) promote sustainable competition;*

*(c) give maximum benefit to end users; and*

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<sup>3</sup> Interconnection Access Facilities Regulations 2004, Section 13(1)



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*(d) provide that operators and service providers are compensated for providing interconnection services.*

*(2) The Commission may, to the extent necessary to ensure end-to-end connectivity –*

*(a) impose the obligations on operators and service providers as set forth in these Regulations including, in justified cases, the obligation to interconnect their networks;*

*(b) establish technical or operational conditions to be met by operators or service providers;*

*(c) resolve disputes with respect to the establishment of interconnection agreements and disputes regarding the interpretation and implementation of such agreements; and*

*(d) act on its own initiative or at the request of either of the parties involved in order to carry out the objectives of the Act and ensure compliance with the Act and these Regulations.*

15. The **Procedure 2004**, section 29(3)(c) states that the ‘*proposed effective date of the agreement may be less than 60 days after the filing date where-(c) the agreement is an interconnection agreement.*’

### **The Proceeding**

16. C&W submitted to the Public Utilities Commission (PUC/Commission) a letter of request dated 19 May 2005 for the approval of an interconnection agreement between C&W and Wireless Ventures Anguilla Ltd (WVA Ltd.) pursuant to section 17(2)(e) of the Act 2003 and section 11(1) of the IAF Regulations 2004.

17. Paragraph 2 of the 19 May 2005 letter states, in part:

‘the proposed effective date for the Agreement is within thirty (30) days of this application, or such earlier date as the Commission may specify.’

However, the Legal Framework, paragraph 2.1, states that the agreement takes effect on the date approved by the Commission and has been executed. Having regard to the legal Framework, the agreement is not in effect at the present time. The term of the agreement is proposed to be five years unless terminated in accordance to Clause 23 or otherwise varied pursuant to Clause 22.

18. Attached to C&W’s 15 page covering letter of 19 May 2005 were an abridged (public) and confidential versions of a 35 page document entitled ‘Cost Submission’ as well as a confidential 4–page document

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dated 4 April 2005 entitled 'Agreement Regarding Interconnection Rates for Anguilla (side-agreement) between C&W and WVA Ltd. and also a copy of the Interconnection Agreement dated 4 April 2005.

19. On 19 May 2005 C&W sent a 1 page letter to Weblinks and CCC regarding the Interconnection Agreement that was recently concluded by C&W. The letter offered the terms of the Interconnection Agreement which was concluded with WVA Ltd. pursuant to section 6 (4)(a) of the IAF Regulation 2004 which states

*'(4) Once an operator or service provider concludes an interconnection agreement, or is subject to an interconnection agreement required or determined by the Commission pursuant to section 10, it must*

*(a) offer the terms and conditions of such an agreement to any other operator or service provider requesting interconnection;'*

The Agreement had not yet been approved by the PUC and C&W noted that the 13 October 2004 C&W 'RIO' would be modified to reflect the terms of the 'current' agreement concluded with WVA Ltd. In addition, C&W advised that they would be forwarding a copy of their revised RIO (May 2005 RIO) to the companies along with a description of the differences between October 2004 RIO and the current one.

20. C&W followed up with a further letter to CCC and Weblinks dated 24 May in which they advised the companies of the publishing of the May 2005 RIO. In addition, they advised the companies that the RIO was available on C&W's website at 'www.anguillanet.com'. C&W also provided an explanation of the changes between the October 2004 RIO and the May 2005 RIO.

21. The Interconnection Agreement is divided into sections covering different aspects of the agreement. The first section (27 pages) sets out the legal framework of the agreement. Schedules constitute the remainder of the document. They are as follows:

- a) Definition Schedule-10 pages (numbered 1 of 10 but only has 7 pages)
- b) Service Description Schedule-29 pages
- c) Joint Working Manual Schedule-54 pages
- d) Service Schedule-5 pages (numbered 1 of 6 etc but only has 5 pages)
- e) Parameter Schedule -4 pages
- f) Tariff Schedule-6 pages

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The schedules are labeled as they are listed in the 19 May 2005 letter<sup>4</sup> except that two of the actual schedules provided, Service Schedule and the Joint Working Manual, are both labeled Schedule 3.

22. C&W explains in their letter of 19 May that the terms of the October 2004 Reference Interconnection Offer (RIO) were altered consequent to discussions with WVA Ltd. and that these alterations were then included in C&W's Interconnection Agreement with WVA Ltd. C&W in their 19 May 2005 letter indicated that the Agreement with the exception of the Legal Framework, Service Schedule and Tariff Schedule had not been modified from the equivalent documents in the October 2004 RIO<sup>5</sup>. C&W amended its October 2004 RIO so that it was identical to the Agreement signed with WVA Ltd.<sup>6</sup> The May 2005 RIO was distributed to all licensed operators (Weblinks, Caribbean Cable Communications (Anguilla) Ltd. (CCC) and WVA Ltd.<sup>7</sup>
23. A confidential version of the agreement regarding interconnection rates for Anguilla (Side Agreement) dated 4 April 2005 was also attached to the letter dated 19 May 2005 to the PUC .This document comprised of 4 pages.
24. On 23 May 2005, C&W sent a letter to the PUC regarding the publication of C&W's RIO pursuant to section 8(2) of the IAF Regulation 2004 which states:

*(2) Notwithstanding subsection (1), any dominant operator or dominant service provider shall prepare and publish its reference interconnection offer within thirty (30) days of its grant of licence.*

C&W advised the PUC that the 'current' (May 2005) RIO was posted to C&W's website at [www.anguillanet.com](http://www.anguillanet.com). C&W advised that the May 2005 RIO had replaced the October 2004 RIO.

25. As noted above, C&W by way of a letter dated 24 May 2005 advised CCC and Weblinks of the revised C&W Reference Interconnection Offer. Both parties were instructed on how to access the revised RIO on the

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<sup>4</sup> 19 May 2005, paragraphs 10-17

<sup>5</sup>19 May 2005 letter, paragraph 58

<sup>6</sup>19 May 2005 letter, paragraph 63

<sup>7</sup> ibid

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C&W website at [www.anguillanet.com](http://www.anguillanet.com). The letter also briefed both parties on the changes made to the now superceded 13 October 2004 RIO:

- i. The only change made to the Service Schedule was the inclusion of the details of the C&W Interconnect Switch Location.
- ii. A number of clauses of the Legal Framework were changed. These were
  1. Clause 2
  2. Clauses 7.2, 7.3 and 7.5
  3. Clause 10
  4. Clauses 22 and 22.1(f)
  5. Clause 37
  6. Clause 42

26. Reference to clause 22.1(f) in C&W's letter of 23 May 2005 to the Commission appears to be erroneous<sup>8</sup>. This clause does not appear in the October or the May RIO. Presuming that the intention was to cite clause 23.1(f), the amendment to the section was the inclusion of the term 'knowingly' to the May RIO so that it now reads:

'Either Party may suspend where the other Party knowingly engages in conduct which is harmful to the Party, and which is unlawful or interferes with the obligations of the Party under its licence, the Act or Regulations, and may terminate if the conduct does not cease within two (2) days of notice being given.'

The October RIO read the same with the exception of the word 'knowingly'.

27. C&W also states on page 2 of their letter of 23 May 2005:

*'Finally, clause 42 was modified to reflect the fact that liberalisation of all sectors of the telecommunications market has already occurred, and to provide an opportunity to cure any breach of clause 42.'*

28. C&W also submits that a number of rates in the tariff Schedule were modified consequent to C&W's discussions with 'OLOs'. The 'OLOs' referred to are presumably one or more of Weblinks, WVA Ltd. and CCC.

29. Pursuant to section 6(4) of the IAF Regulation 2004, C&W by way of their letter (one page) of 19 May to CCC and Weblinks, offered the May 2005 RIO concluded

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<sup>8</sup> 24 May 2004, page 2, paragraph 2

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with WVA Ltd. to both CCC and Weblinks. As also noted in s(6)(1) of IAF Regulation 2004 every operator is obligated to:

*'offer to provide and provide interconnection, and the elements thereof, to other operators and service providers on a non-discriminatory basis, including with respect to charges and quality of service'*<sup>9</sup>,

### Confidentiality

30. The Procedure 2004, section 18, sets out the procedures regarding matters of confidentiality.

31. Letters were exchanged on the matter of confidentiality between C&W and PUC. C&W's letter of 19 May 2005 to PUC included requests for confidentiality in paragraphs 64 and 65. On 2 June 2005 the PUC responded to C&W. C&W replied to the PUC's letter of 2 June 2005 on 14 June 2005. A decision was given on the proposal for confidentiality in the PUC's letter dated 12 July 2005.

32. Section 18(3) of the Procedure 2004 requires that:

*'Any claim for confidentiality made in accordance with subsection (2) shall be accompanied by the reasons thereof, and, where it is asserted that specific direct harm would be caused to the party claiming confidentiality, sufficient details shall be provided as to the nature and extent of such harm.'*

Pursuant to section 18 of the Procedure 2004 and section 41 of **Public Utilities Act (2003)**, C&W made a number of requests for confidentiality.

33. C&W requested that the specific charges for the Joining Services in the Tariff Schedule be kept confidential. C&W asserted that the disclosure of this confidential financial and technical information could be expected to result in material financial loss to the parties or gain to other parties.<sup>10</sup>

34. C&W also requested that some of the information included in the Cost Submission attachment which contained detailed confidential costing information would, if made public, have an adverse effect on C&W. The Cost Submission contained information which is *'customarily guarded from competitors.'*<sup>11</sup>

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<sup>9</sup> Interconnection and Access to Facilities Regulation (2004), Section 6(1)

<sup>10</sup> 19 May 2005 letter, paragraph 64

<sup>11</sup> 19 May 2005 letter, paragraph 65

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35. Lastly, C&W requested that the Commission ‘*designate as confidential*’<sup>12</sup> the Separate Agreement which comprises of 15 clauses (4 pages) as this agreement ‘*includes provisions on how the parties would re-engage negotiations, should the PUC not approve the Agreement.*’<sup>13</sup>

36. The PUC replied to C&W by way of a letter dated **2 June 2005** on the matters highlighted above. The Commission’s response to C&W’s requests was as follows:

- a. The claim of ‘material financial loss to the parties or gain to other parties’ to result from disclosure of the specific charges for the ‘Joining Services’ in the Tariff Schedule was not sufficiently supported with evidence;
- b. The claim that the disclosure of the separate Agreement Regarding Interconnection Rates for Anguilla between C&W and WVA Ltd. would prejudice any future confidential negotiations was also not sufficiently supported by the evidence filed;

37. In reply, C&W’s letter of **14 June 2005** proposed that:

- a. the information on Joining Services in the Tariff Schedule is treated as confidential. Disclosure of costs would lead to anti-competitive pricing to the detriment of consumers;<sup>14</sup>
- b. paragraphs 3, 4 and 5 of the ‘Separate Agreement’ of 4 April 2005 rather than the entire document are kept confidential. Disclosure of the separate Agreement would ‘*prejudice future negotiations between C&W and WVA Ltd.*’;<sup>15</sup> and
- c. the amount specified in paragraph 7 of the aforementioned ‘Separate Agreement’ remains confidential, as it relates directly to the Joining Services charges. If disclosed confidential information contained in the Joining Services section of the Tariff Schedule would be revealed.<sup>16</sup>

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38. Section 18(9) and (10) of the **Procedure 2004** state:

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<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

<sup>14</sup> 14 June 2005 letter, paragraph 4

<sup>15</sup> 14 June 2005 letter, paragraph 6

<sup>16</sup> 14 June 2005 letter, paragraph 7

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*'(9) Where the Commission has determined that no specific direct harm would be likely to result from disclosure, or where any such specific direct harm is shown the document shall be placed on the public record.*

*(10) Where the Commission is of the opinion that, based on all the material before it, the specific direct harm likely to result from public disclosure justifies a claim for confidentiality, the Commission may—*

*(a) order that the document not be placed on the public record;*

*(b) order disclosure of an abridged version of the document; or*

*(c) order that the document be disclosed to parties at a hearing to be conducted in camera.'*

39. The PUC acceded to the confidentiality of the particulars on the 'Joining Service'<sup>17</sup> and to the matter related to the 'Separate Agreement', paragraph 7, that the amount specified remains confidential<sup>18</sup>. C&W's request for confidentiality in relation to paragraphs 3, 4 and 5 of the separate agreement was denied by the PUC. The Commission required the information in

'these paragraphs to be placed on the public record as they contain important information in the context of the overall administration of the interconnection agreement and relate directly to the transparent administration of the Telecommunications Act (2003) and the Interconnection and Access to Facilities Regulation.'<sup>19</sup>

### Notice and Responses

40. On 8 August 2005 a Public Notice was published in the Gazette informing the public that C&W had filed an interconnection agreement with WVA Ltd. in accordance with section 17(4)(b) of the Act 2004 and section 8(2) of the IAF Regulations 2004. The public notice also lists the documents available for public scrutiny at the PUC Office:

- The RIO of May 2005;

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<sup>17</sup> 12 July 2005 letter, paragraph 1

<sup>18</sup> 12 July 2005 letter, paragraph 3

<sup>19</sup> 12 July 2005 letter, paragraph 2

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- Abridged version of the separate agreement;<sup>20</sup>
- Abridged version of the Cost Submission–May 2005<sup>21</sup>, and
- C&W’s letter of 19 May 2005 to the Commission.

41. Responses to the Notice were to be submitted in writing to the Commission at its office on or before 3:30pm, 29 August 2005. Replies to the Public Notice were received from Weblinks and CCC by way of letters dated 29 August 2005. C&W filed reply comments in their letter dated 9 September 2005.

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<sup>20</sup> Telecommunications Administrative Procedure Regulation 2004, section 18(4) *A party claiming confidentiality in connection with a document shall file with the Commission an abridged version of the document to be placed on the public record or his reasons for objecting to the filing of an abridged version thereof.*

<sup>21</sup> *ibid*



## II Commission Analysis and Findings

### Agreement not approved

42. The Commission received an interconnection agreement from C&W on 19 May 2005 for approval. The proposed agreement was between C&W and WVA Ltd. and was for the interconnection of their respective networks in Anguilla. The Commission has considered the agreement against the criteria set out in the governing legislation and has decided that it cannot approve the agreement. The decision of the Commission is set out below.

### Reasons for not approving the agreement

43. The reasons for the Commission not approving the agreement are as follows:

- a) The 'side' or 'other' agreement which forms part of the overall agreement contravenes **the Act** and the **IAF Regulation 2004** (see paragraphs 44 to 54);
- b) The proposed agreement, Sections 23 and 42 of the Legal Framework (suspension and termination of agreement), contravene **the Act**, Section 17 (2), the **IAF Regulation 2004**, Section 12(4) and also **PUC Decision 2004-101**, paragraph 76 (see paragraphs 55 to 62);
- c) The proposed agreement is incomplete as a description of the costs and the methodology for the recovery of those costs that are associated with joining the networks is not provided pursuant to Section 4(d) of the **Code 2004** (see paragraphs 63 to 75);
- d) The prices proposed for transit services are excessive to the extent they include an allowance for access deficit charges. As transit services do not make use of the access network, they should not be required to contribute to access costs. Therefore, the Commission does not authorize the inclusion of such a component in the price for transit services pursuant to **the Act** s7 (1) and the **IAF Regulations 2004**, s16(f) (see paragraphs 76 to 87).

### (a) The 'side' (other) agreement contravenes the Act and the IAF Regulations 2004

44. As the 'side agreement' is part of the overall interconnection agreement, it must also comply with the requirements of **the Act**, **the PUC Act**, **IAF Regulations 2004** and **the Code 2004**.

45. Section 13(3) of the **IAF Regulations 2004** 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*

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*Commission, that may permit the recovery of the costs of providing access.'* (Emphasis added)

46. Paragraph 4 of the 'side agreement' sets out a condition of the 'interconnection agreement' that contravenes s13(3). The condition described in paragraph 4 is that should the Commission find that an ADC should not be charged, or charged at a reduced rate from that proposed in the agreement, the Parties "*intend that such a determination shall not have any material effect on the total-service rates set forth in the Interconnection Agreement between the Parties.*". In the case of the Commission not approving 'the recovery of access costs' pursuant to 13(3), the proposal to automatically increase the other charges to offset the Commission's decision would contravene the decision as to the approved level and components of the interconnection charges.
47. Given that the 'side agreement' forms part of the overall interconnection agreement dated 4 April 2005, C&W's letters of 19 May to Weblinks and CCC offering the '*terms of an Interconnection Agreement that it recently concluded with one licensee, to other interconnection requesters/seekers in Anguilla.*'(paragraph 1), is contrary to s17(2)(f) of **the Act**.
48. Since the 'side agreement' was not offered to the other operators, C&W's application for approval is contrary to s17(2)(f), that reads as follows:
- '(f) offer, on a non-discriminatory basis, the terms and conditions of an agreement concluded pursuant to paragraph (d) or required by a decision rendered pursuant to paragraph (g) to any other operators or service providers seeking interconnection;'
49. Comments from both CCC and Weblinks in their letters of 29 August 2005 contain objections to paragraph 1 of the 'side agreement'. They submit that the condition that prohibits either C&W or WVA Ltd. '*to re-originate via a network of a third party in Anguilla any traffic destined for termination on the other's network in Anguilla.*' Weblinks submits that such a condition in the agreement contravenes section 17(1)(a) of **the Act**. Section 17(1)(a) reads as follows and requires that operators shall:
- '(a) 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;'
50. In reply comments from C&W, letter dated 9 September 2005, paragraph 12, they submit that the condition in paragraph 1 of the 'side agreement' only prohibits the parties from '*interconnecting indirectly*'. However, in paragraph 15 C&W states:
- '*Finally, it should be emphasized that the relevant provision in the "Side Agreement" does not refer to indirect interconnection. It refers to re-origination, which is the fraudulent disguising of traffic in order to bypass legitimate payments*'
51. C&W's reply comments in paragraphs 12 and 15 on the matter of 'indirect interconnection' appear to be, at the least, inconsistent, if not, in contradiction.

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52. The PUC concurs with the views expressed by CCC and Weblinks that the condition in paragraph 1 of the ‘side agreement’ is in contravention of section 17(1)(a) of **the Act**.
53. Further evidence of such a condition contravening section 17(1)(a) of **the Act** is evident when one considers the requirement that pursuant section 17(2)(f), that any ‘agreement’ offered to one party must also be offered to another party. Therefore, all parties must agree to only route traffic to a third party via C&W’s network in Anguilla notwithstanding the fact that from a technical standpoint any one of the operators in Anguilla could perform ‘transit’ services and that the demand for such a function should be based on price and service as opposed to the granting of an exclusive privilege to any one party.
54. The ‘side agreement’, paragraph 3, is inconsistent with paragraph 9.2 of the legal Framework.

### **(b) Legal framework contravenes the Act, IAF Regulations 2004, and the Code**

55. Sections 23 and 42 of the Legal Framework in the proposed agreement contravene **the Act**, Section 17(2)(a), the IAF Regulations 2004, Section 12(4) and the Code 2004, Section 5(c) with respect to the suspension and termination of an interconnection agreement.
56. Section 17(2)(a) of the Act reads as follows:
- ‘(2) In respect of the obligations pursuant to subsection (1), every operator or service provider shall—
- (a) comply with guidelines and standards established by the Commission in the Telecommunications Code to facilitate interconnection;’
57. Section 12(4) of the **IAF Regulations 2004** specifies the conditions for the suspension or termination of an agreement and reads as follows:
- ‘(4) If the interconnection agreement includes provisions pursuant to which its unilateral suspension or termination by one party would be permitted –*
- (a) the party seeking to suspend or terminate the agreement in accordance with such provisions shall so notify both the Commission and the other party no less than twenty (20) days prior to the effective date of such suspension or termination; and*
- (b) such suspension or termination will become effective in accordance with such notice unless the other party applies to the Commission for relief prior thereto and the Commission issues a Preliminary Order preventing such suspension or termination.*
58. As noted above, operators are required to comply with **the Code 2004** pursuant to Section 17(2)(a) of **the Act**. Section 5(c) of **the Code** reads as follows:

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*'(c) The Commission shall issue a Preliminary Order within twenty (20) days of submission to it of a notice with respect to one party's unilateral suspension or termination of an interconnection agreement, pursuant to section 12 of the Interconnection and Access to Facilities Regulations, authorising or declining to authorise such suspension or termination, which period may be extended for good cause.'*

59. The Commission raised the matter of paragraph 42.3 of the Legal Framework in the October 2004 RIO not being in compliance with the **IAF Regulations 2004**, Section 12(4) in the decision related to the Weblinks petition. Telecom Decision PUC 2004-101, 15 December 2004, paragraph 76:

*'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'*

60. The Commission also notes the reference made to clause 9.2 of the Legal Framework raised in Weblinks submission of 29 August at paragraph 42 that reads as follows:

*'Clause 9.2 in the Legal Framework schedule of the Proposed Agreement commits the new entrant to paying an Access Deficit Contribution to C&W regardless of the findings of the PUC as to whether an Access Deficit exists. The clause simply states that the Telco shall pay the Access Deficit Contribution at the rates set out in the Tariff Schedule for the duration of the (Interconnection) Agreement. Parties interconnecting with C&W are therefore contractually obligated to pay the Access Deficit Contribution set by C&W whether or not such an Access Deficit exists.'*

61. However, clause 9.2 only specifies such charges are to be paid if they are 'specified in the Tariff Schedule'. Therefore, once such charges are deleted from the tariff schedule, clause 9.2 becomes irrelevant.

62. Given the Commission's findings with respect to the recovery of access costs (see Transit Charges - paragraphs 76 to 87 and 184 to 185 and also Access costs - paragraphs 128 to 166) clause 9.2 is no longer relevant and be deleted from the legal framework.

### **(c) Agreement incomplete - joining facilities cost not included**

63. The Commission requested the provision of the joining facility costs in letters to C&W of 2 June and 12 July 2005.

64. In the Tariff Schedule, Part 1 (Joining Services) of the proposed C&W/WVA Ltd. agreement it is stated that *'The following table provides unit costs of the elements of the investment undertaken by the Service Provider.'* However, for two of the three 'elements' included in part 1 - Optical In-span Joining Service and the Early Termination charges – the following statement is included:

*'To be determined and inserted following site survey'* (Optical In-span Joining Service) and for the 'Early Termination Charges' a similar statement – *'To be determined and inserted following derivation of joining Service Charges'*

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65. In C&W's letter of application of 19 May 2005, paragraph 18, a similar statement on the absence of information on the joining facilities states:

*'The first type of Service is the Joining Service which is the physical link (very generally, the fibre optic cable plus optical line terminating equipment) between the networks of the two companies. The details of this service are to be agreed once a site survey is completed.'* (Emphasis added)

66. Pursuant to **the Code 2004**, s3(a)(1) C&W is required to provide the following information:

*'a) Each reference interconnection offer published or otherwise made available by the offeror shall contain the following information:*

*1) The technically feasible points at which interconnection is permitted at no additional charge and the means by which interconnection will be achieved. Every operator will have to permit interconnection at the host switch as part of its basic interconnection service offering.'*

67. Section 4(d) of **the Code 2004** specifies that 'the offeror' (in this case C&W) ... *'shall provide a complete response to the request for interconnection within thirty (30) days of the receipt of the later of the date of the initial request or such additional information as the offeror may have requested.'* (Emphasis added). While s.4(d) allows for an extension of the time period for a 'complete response', the offeror is to notify the Commission and if a complete response is not provided by the end of the sixty(60) day period, the offeror is to provide to the Commission and the party requesting interconnection a written statement as to the reasons why a complete response has not been provided.

68. The omission of any 'details' on the cost and the means of recovering the joining facility costs in a reference interconnection offer is contrary to s3(a)(1) of **the Code 2004**.

69. C&W has, as yet, not filed the details of either the joining costs or the manner in which they will be recovered. Given that the 'joining service' portion of an interconnection agreement is one of the significant components, the absence of any such information in the proposed agreement leads to the conclusion that the proposed agreement is incomplete given the requirements of the **IAF Regulations 2004**, S. 4 (d), that requires a *'complete response...within thirty (30) days'* to a request for interconnection.

70. The Telecommunications Code (2004), S.3(a)(1), sets out the requirement that each reference interconnection offer must identify the *'technically feasible points at which interconnection is permitted at no additional charge and the means by which interconnection will be achieved.'* The treatment of 'joining facility costs' is further clarified in S.3(a)(2) that states, in part, *'... additional charges to the requesting party for interconnection at points other than those set out in (1).'* and requires that such information be included in the interconnection offer.

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71. The Commission concludes based on the information filed by C&W that the ‘point’ of interconnection being proposed is one that complies with s3(a)(1) of **the Code 2004** and therefore no ‘additional charges’ should apply.

72. C&W made a further submission on confidentiality matters in their letter of 14 June, 2005 and made the following comments in paragraph 2:

*‘The construction of the Joining Service is underway, as you note in your letter. However, the finalized Tariff Schedule reflecting the charges for that Joining Service has not yet been finalized. Once it has been agreed with Cingular (WVA Ltd.), the revised Tariff Schedule will be submitted to the PUC for approval, pursuant to section 12 of the Interconnection and Access to Facilities Regulations and to section 5(b) of the Telecommunications Code, 2004.’ (Emphasis added)*

73. C&W’s comments in their letter of 14 June confirm that the proposed interconnection agreement between C&W and WVA Ltd. is incomplete and that the parties have yet to agree upon the terms and conditions for the provision of the ‘joining service’.

74. The Commission made a further request for the information on the joining facility in their letter of 12 July 2005 to C&W

*‘The matter of maintaining confidentiality of the prices to be employed in the ‘Joining Service’ and your further submission in paragraphs 2, 3 and 4 of your letter of 14 June, have been reviewed and considered. The Commission approves your request to treat these particulars as confidential. Please file the related prices and costs with the Commission when they are available so that the information may be considered by the Commission in the process of reviewing the proposed agreement.’ (Emphasis added)*

75. As of the date of this decision, 12 October 2005, the Commission has not received the particulars on the cost and prices of the joining facility and therefore concludes that the proposed agreement is incomplete and for this reason is hereby not approved.

### **(d) Transit service prices are excessive - allowance for access costs**

76. An ‘access deficit contribution’ (ADC) is described in C&W’s letter of 19 May 2005, paragraph 31, page 6, as follows:

*‘Access Deficit Contribution. The fixed-line access network or “local loop” is a common cost to all call services provided on the PSTN. A service provider would not be able to terminate traffic without this fixed-line access network.’*

77. The expression ‘terminate traffic’ correctly describes the function of the access network. The reciprocal function is the origination of traffic which also requires the access network. However, if a traffic-minute is not being originated or terminated on

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the PSTN but instead being ‘transited’ to a different network for ‘termination’ it does not employ the access network during the ‘transiting’ of the PSTN.

78. C&W submits a further description of the proposed ‘access deficit’ (AD) in paragraph 38 that reads as follows:

*‘The access deficit (AD) refers to the difference between the amount of money C&W earns from providing its fixed access line services (its access revenues) and the amount of money it spends to provide those services (its access expenses) including a reasonable return on its investment for the capital employed. Access revenues, in the case of Anguilla, refer to the charges for installation, reconnection, and monthly rental.’*

79. There are several terms in C&W’s paragraph 38 description of an ‘access deficit’ that require clarification. The expression ‘fixed access line services’ and ‘access revenues’ may not be synonymous or congruent in terms of relating costs and revenues. For example, C&W’s provides an internet service employing fixed access lines, however, in the last sentence of paragraph 38, C&W describes ‘access revenues’ as referring to ‘charges for installation, reconnection, and monthly revenue’, presumably related to ‘monthly fixed access line services’ but not all or a portion of ISP-related access services.

80. As noted above, a service that ‘transits’ the fixed network may be provided without the employing the ‘local loop’ and therefore should not be required to ‘contribute’ to the access network. In addition, the C&W statement above that *‘the fixed-line access network or ‘local loop’ is a common cost to all services provided on the PSTN’* is flawed as a service providing a ‘transit’ path from one network to another network by way of the ‘PSTN’ does not normally employ local customer access loops. Based on the description of the transit services being offered in the proposed agreement such services will not employ the local access network.

81. Section 16(1) of the **IAF Regulations 2004** describes the requirements of the ‘services to be offered’ as follows:

### ***‘Network elements***

*16. (1) Every dominant operator or service provider is required to supply at least the following individual network elements, as well as other essential elements, as determined by the Commission, in markets in which the operator or service provider is dominant –’ (Emphasis added)*

82. Network elements are described in s16(1) of the **IAF Regulations 2004** as follows: (a) access lines; (b) domestic switching of calls; (c) domestic transmission of calls; (d) international switching of calls; (e) international transmission of calls; and (f) transiting between domestic operators and service providers. ‘Access lines’ and

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‘transit’ are identified as distinct and separate network elements and in the case of transit services should be offered on an unbundled basis.

83. Section 13(3) of the **IAF Regulations 2004** 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.’ (Emphasis added)*

84. As the network function and related costs associated with transiting the PSTN are not directly related to the ‘access line’ component of the network, ‘transit’ services should not make a contribution to the recovery of access costs as to do otherwise would be to provide for an explicit cross-subsidy between the two services (transit to access service) and thereby be inconsistent with the principle of cost causation.

85. In addition, s16(1) of the **IAF Regulations 2004** requires that ‘individual network elements’ be supplied and identifies one of those elements to be *‘transiting between domestic operators and service providers.’*

86. Section 7(1) of **the Act** reads as follows:

‘Obligations of licensees

7. (1) Every operator or service provider shall—

(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission;’ (Emphasis added)

87. Consequently, in the case of ‘transit service’ prices, the Commission pursuant to **the Act**, s7(1)(d), and **IAF Regulations 2004**, s13(3) and 16(1) does not hereby approve of including a component related to the recovery of ‘access costs’ in the price for transit services.



### III Other Matters

#### Costing Methodologies, Network Elements and Related prices

88. Section 17(4) of the **Act** specifies that a dominant operator must establish prices on a 'cost-oriented' basis. In addition, the operator must 'disaggregate' its network and/or service and establish prices for their 'individual' elements and to 'offer' the network or service elements at the 'established' prices to other operators.

89. The costing requirements of the Act are further defined in section 13(4) of the **IAF Regulations 2004** and reads, in part, '*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*'.

90. C&W makes reference to the above-mentioned definition of 'cost-oriented' and cites section 13(4) of the **IAF Regulations 2004** in their 19 May submission at paragraphs 22 and 23. In addition, they submit that the rates '*provided to Cingular (WVA Ltd.) by C&W are cost-oriented in accordance with the above regulations.*' (paragraph 24 of C&W's 19 May submission). In summary, at paragraph 66, C&W states, '*...C&W submits that the rates in the Agreement are "cost-oriented" as required by the Act and Regulations,...*'

91. The submissions of CCC and Weblinks both raise issues related to the relationship between C&W's proposed interconnection prices and their costs. CCC makes the following submission in the section entitled 'Mobile Termination Charges', paragraph 1, on the matter of the mobile termination price in the agreement and the selection of a costing methodology:

*'We note that the mobile termination charges in this proposed agreement are considerably higher than those in the initial RIO. Again, C&W seem quite prepared to change their costing methodology depending on the market and the party with whom they are negotiating. This inconsistency makes it difficult to believe that their rates are as inflexible as they have led CCC to believe in its own negotiations.'*

92. Weblinks submits that the prices proposed by C&W are not cost-based as it states in paragraph 40 of their submission that:

*'In addition, based on paragraphs 14 - 18 and 35 - 37 above, there is sufficient reason for the PUC to consider that in particular the costing calculation in the PLMN Terminating Access Service section on page 12 of C&W's Cost Submission has been manipulated, and that the rates derived therefrom are not genuinely cost-oriented rates.'*

93. C&W's cost submission, page 12, presents the results of a stand-alone methodology and a long run incremental cost methodology and concludes that the proposed mobile termination price of 55 EC cents falls within the range of the two results. While the stand-alone result is some 50 times greater than the LRIC result, C&W's 'negotiated' price of 55 EC cents per minute is much closer to the LRIC result than it is to the

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stand-alone result.

94. As the Commission has not, as yet, adopted a specific costing methodology, section 13(6) of the **IAF Regulations 2004** grants dominant operators the right to employ a cost methodology of their choosing until such time as the Commission develops and adopts a methodology. However, whatever methodology employed by the dominant operator must comply with s13(7) of the **IAF Regulations 2004**, that is, being cost-oriented which, in turn, is defined as being between stand-alone costs and long run incremental pursuant to s13(4) of the regulation.

95. C&W also submitted a description of their 'Mobile FAC Model (Appendix 2 of their Cost Submission). However, in terms of the proposed price for mobile termination of 55 cents, C&W provided the following explanation in their submission of 19 May at paragraph 25:

*'The mobile termination rate was the subject of particular discussion, as it is both a rate provided by Cingular to C&W and a rate provided by C&W to Cingular. As part of the interconnection negotiation process, C&W and Cingular reviewed their respective costs for mobile termination within the context of the Regulations specifying rates falling between "stand-alone" and "long run incremental" costs. The reciprocal rate that was agreed is cost-oriented in this context and thus fully compliant with the Regulations.'*

96. In reply comments, C&W provides further insight into the process that resulted in the selection of 55 EC cents as the proposed mobile termination fee. The following explanation is provided at paragraph 10 of C&W's submission of 9 September 2005:

*'10. C&W notes that the MTR that was negotiated between C&W and Wireless Venture is "cost-oriented" as defined in the Regulations, and therefore legal. With respect to the interest in a high MTR attributed to Cingular, it would be stating the obvious to say that C&W's initial position on the MTR was the rate originally proposed in October 2004.'* (proposed rate was 26.9 EC cents)

*Therefore, the compromise rate (proposed rate is 55 EC cents) that was eventually agreed must reflect to some degree the opening position of Wireless Ventures on this issue. C&W is pleased that Weblinks has acknowledged C&W's submission on 6 December 2004 that it is other mobile operators, not C&W, that have sought high mobile termination rates. However, consistent with the process of give and take that characterizes true negotiations, C&W was prepared to make some concessions on this issue, in the interests of advancing the negotiations, but as long as the final agreed rate remained within the range of "cost-orientation" allowed by the Regulations.'* (Added - the proposed prices for October 2004 and May 2005 were added to the above quote for clarification)

97. The Commission appreciates C&W's forthright explanation of the negotiation process related to the selection of 55 EC cents per minute as the proposed mobile termination fee.

98. As discussed at paragraphs 124 to 127 of this decision, the Commission has determined that it is not possible to adequately audit the application of C&W's different cost methodologies, including the stand-alone and LRIC applications employed to derive the range of mobile costs mentioned above. From a conceptual framework, a result, where the range between a stand-alone and a long run

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incremental cost methodology could be such that 55 EC cents per minute falls within such a range, is possible. However, the Commission must be mindful of not only the cost criteria set out in the **IAF Regulations 2004** but also other price-setting criteria set out in **the Act** and the regulations.

99. For example, the CCC submission of (page 2, paragraph 1- Mobile Termination Charges) and the Weblinks' submission (paragraph 16, page 5) 29 August 2005 raise the relevance of the relationship between the proposed interconnection prices and other C&W retail prices. **The Act** contains a number of references to 'pricing', for example, Section 7 reads, in part, as follows:

### ***'Obligations of licensees***

7. (1) Every operator or service provider shall— .....

.....(b) provide users, under conditions which are published or are otherwise filed with the Commission, with access to and the opportunity to use such network or service on a fair and reasonable basis;

(c) not discriminate unduly among similarly situated users and shall transmit all communications without discrimination, subject to section 53;

(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission;' (Emphasis added)

100. Therefore, all network 'users' should be provided access on a 'fair and reasonable basis' and not be 'unduly discriminated against'. In addition, operators are not to engage in 'anti-competitive pricing', and, in particular, are not to 'cross-subsidize unfairly' without approval of the Commission. The question of cross-subsidizes may arise if for a similar service or network function (mobile termination) the price is in the order of 30 EC cents for one group of customers and 55 EC cents for another group of customers.

101. The question of setting prices (rates) is also addressed in section 20(3) of **the Act** which reads as follows:

'(3) A service provider shall provide rates that are fair and reasonable and shall not discriminate unduly among similarly situated persons, including the service provider and any body corporate with which it is affiliated'. (Emphasis added)

102. In terms of interconnection prices (rates) and the 'prices' charged by a service providers own business units, section 17(2)(c) of **the Act** set out the requirement that elements of interconnection are to be provided at the same prices (rates).

'(c) provide the elements of interconnection, to other operators and service providers, in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated or to any other party to which the operator or service provider provides interconnection and without regard to the types of users to be

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*served, or the types of services to be provided, by such other operator or service provider; (emphasis added)*

103. Consequently, in approving or setting interconnection prices, the Commission must consider both the cost evidence as well as related retail prices for similar network elements being charged by C&W's own business units. For example, given a retail price of 60 EC for a mobile to mobile call on C&W's network, and assuming a 50/50 ratio between the cost/revenue for originating and terminating a mobile call, the terminating revenue would be 30 EC cents per minute. Is it fair, reasonable and non-discriminatory to require the customers on new mobile networks to pay 55 EC cents per minute to terminate a call on C&W's network and at the same time permit C&W customers to pay 30 EC cents or as little as 7 to 8 cents to receive the same service?
104. A similar comparison may be made for fixed to fixed calls on C&W's local network where the maximum per minute price is 9 EC cents per minute. Consequently, 4.5 EC cents per minute could be attributed to terminating compared to the proposed PSTN terminating price in the agreement of 7.3 cents per minute.
105. In either approving or setting interconnection prices, the Commission is required to consider C&W's related prices and the underlying interconnection fees that may be attributed to such prices, to do otherwise would be unreasonable, unfair and have the potential to discriminate between different sets of public telecommunications customers.
106. The Commission responsibilities in such matters as pricing are broadly described in section 7(1) and (2)(a) of the **Public Utilities Act (2003)**

### ***'Functions of the Commission***

*7. (1) The primary function of the Commission is to exercise the powers and functions assigned to it under this Act, the designated enactments and any other enactment.*

*(2) In discharging its functions, the Commission may take into account any matter which it considers to be appropriate but shall, in particular, have regard to—*

*(a) the protection of the interests of customers of public utilities and of users of telecommunications networks or telecommunications services;*

107. The reference to the 'interests of users' of telecommunications networks and services does not distinguish between those on C&W's networks and those on WVA Ltd. or Weblinks or on CCC's network. The Commission must consider all users of telecommunications networks and services in Anguilla both current and potential.
108. As noted above in paragraph 103, the matter of the relationship between interconnection (wholesale) and retail prices currently charged by C&W is one that must be considered in the context of approving interconnection prices. The following views are expressed in CCC's submission of 29 August 2005:

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*'1. The mobile termination charges agreed upon by "C& W" and Cingular would mean that the interconnecting parties would pay more per minute than some of local businesses on the island who benefit from quantity discounts. It also means that the interconnecting parties would pay more than international carriers bringing traffic into the island. Given that "C& W" have stated that the tariffs they are proposing are based on cost this would indicate that they are willing to lose money on this traffic or they are using one market to support another. We would contend that this is contrary to the legislation and their license. It also means that they are discriminating against local carriers and that local customers are still paying higher charges than they should.'*

109. Weblinks in their submission of 29 August 2005 also raises the matter of the relationship between retail and wholesale mobile prices and submits that:

*'16. Intuitively, C&W's mobile termination costs cannot be anywhere near EC\$0.55 per minute. C&W's average retail rate for its mobile service, which includes the entire switch and both the calling and called subscriber terminations, is not as high as EC\$0.55 per minute. As a mobile network operator Weblinks contends that C& W' s standalone costs of providing its mobile service in Anguilla is not as high as EC\$0.55 per minute.'*

110. C&W provides a wide variety of mobile plans and as a result there is a broad range of prices. A cursory survey of 'new Mobile Plans' on C&W's website (<http://www.cwwionline.com/buhome.asp?bu=Anguilla>) shows a general range of from 15.5 EC cents ((bBiz10,000) to 75 EC cents per minute. The average for such a range is about 45 EC cents per minute. Employing the notion of an even split of the call origination and termination cost/revenue, the average 'termination' cost/revenue would be in the order of 22.5 EC cents per minute given this range of retail prices offered by C&W.

111. New mobile entrants competing with C&W and being required to pay a 'starting' termination fee of some 55 EC cents per minute would be required to set their retail price in excess of most of C&W's current offerings in order to recover their costs and realize a reasonable return on the capital they have invested.

112. In the general case, **the Act** requires the Commission to ensure there is 'fair competition as stated in s3(d): 'Functions of the Commission

3. Subject to the provisions of this Act, the Commission shall—

(d) be responsible, where required, for the economic regulation of licensees and authorisation holders and for ensuring fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services;' (Emphasis added)

113. In the specific case of interconnection, the **IAF Regulations 2004** require the Commission to consider the promotion of 'sustainable competition' as set forth in s4 (1)(b):

### ***'Functions of the Commission***

*4. (1) The Commission shall, consistent with the Act and these Regulations, encourage and, where appropriate, ensure, the adequacy of interconnection between public*

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*telecommunications networks and public telecommunications services in such a way as to*

(a) *promote efficiency;*

(b) *promote sustainable competition;* (Emphasis added)

114. In reply comments, C&W provides an explanation for the range of prices between the October 2004 RIO and the May 2005 RIO that is the basis for the agreement with WVA Ltd. At paragraph 5 of their 9 September 2005 reply comments, C&W makes the following statement:

*'However, even that "cost-orientation" rule is designed to facilitate negotiation, as "cost-oriented" is not defined as one single immutable number, but as a range of acceptable numbers among which the parties seek a mutually acceptable compromise. To rebut a point made by CCC, this range is in fact established by applying different costing methodologies, namely "stand-alone costs" and "long-run incremental costs.'*

115. **IAF Regulations 2004** and **the Code 2004** set out certain principles on which the Commission is to base the development of their costing methodology for interconnection prices. As previously noted, the Commission has not, as yet, adopted a specific cost methodology. As a result, s13(6) of the **IAF Regulations 2004** grants dominant operators the right to employ a cost methodology of their choosing until such time as the Commission develops and adopts a methodology.

116. Notwithstanding this right to employ a cost accounting method of their choosing, a dominant operator is required to comply with s13(7) of the **IAF Regulations 2004** which reads, in part, as follows:

*'.....shall supply its costs with respect to the network elements specified in and pursuant to section 16 for purposes of verifying that its charges for interconnection, and other contributions or charges levied or allowed by the Commission, comply with this section 13.'*

117. In response to the requirement in s13(7), C&W has made such a cost submission in support of the proposed prices for interconnection. This document, attached to the letter of application of 19 May 2005 is entitled 'Cable & Wireless (West Indies) Limited – Cost Submission – Cingular/C&W Interconnection Agreement dated 19 May 2005'. Both a confidential and an abridged version of the Cost Submission was filed with the Commission.

118. On page 3 of C&W's Cost Submission, reference is made to the 'Relevant Cost Standard'; namely, that set out in s13(4) of the **IAF Regulations 2004**. However, s13, in particular, s13(7), also makes reference to 'network elements' specified in pursuant to section 16 of the **IAF Regulations 2004** and reads, in part, as follows:

*...service provider shall supply its costs with respect to the network elements specified in and pursuant to section 16 for purposes of verifying that its charges*

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*for interconnection, and other contributions or charges levied or allowed by the Commission, comply with this section 13.*(Emphasis added)

119. The ‘network elements’ specified in s16(1) are as follows: (a) access lines; (b) domestic switching of calls; (c) domestic transmission of calls; (d) international switching of calls; (e) international transmission of calls; and (f) transiting between domestic operators and service providers.
120. C&W identifies the ‘services covered’ by the proposed agreement, on page 3 of the Cost Submission, as follows: (1) PSTN Terminating Access Service (Part 2); (2) PLMN Terminating Access Service – including both a Transit part and a Mobile Termination part (Part 2); (3) Incoming International Call Termination to PSTN (Part 2); (4) Incoming International Call Termination to PLMN (Part 2); (5) Emergency Services Access Service (Part 3); and (6) PSTN Transit Service (Part 4).
121. In their Cost Submission and in the Tariff Schedule of the Agreement, C&W provides a breakdown of the above-mentioned ‘service’ price for PSTN terminating into four ‘components’ as described on page 9 of the Cost Submission document under the heading ‘PSTN Terminating Access Service’. These four components are identified as (1) Call set-up; (2) Call Duration; (3) Interconnection; and (4) ADC (access deficit contribution).
122. The Commission notes that C&W’s costing outputs and ‘service components’ described in the Cost Submission and the ‘charging’ components set out in the Tariff schedule of the Agreement are not congruent with the requirement for costing by ‘network elements’ set out in s16(1). A partial explanation is provided on page 9 of the Cost Submission and suggests at least the starting point of the process appears to be, in part, consistent with the requirement for producing costs by network elements. The explanation referred to reads, in part, as follows:
- ‘We can derive the stand-alone costs for the PSTN terminating access service on the following basis. The costs of this service provided on a stand-alone basis would be the opex (operating costs) and capital related associated with:*
- *The access network;*
  - *National switching and transmission facilities to carry the other license operators’ (OLO) interconnect minutes; and*
  - *Network and business-wide common costs’*
123. While the explanations provided by C&W of their different costing models appear to, at least from a theoretical standpoint, meet the cost-oriented criteria set out in the **IAF Regulation 2004**, s13(7), the actual application of the models fails to produce either cost results by the network elements specified in s16 or auditable outputs that meet the minimum test for transparency required pursuant to s13(1) of the **IAF Regulations 2004**.

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### Lack of Transparency - Outputs of Cost Models are not Auditable

124.C&W provides considerable descriptive detail of their cost model methodology in Appendix 1 of the Cost Submission, pages A1-1 to A1-9. However, there is a scarcity of empirical evidence. One basis for assessing a cost methodology is to identify the foundation or starting point for the process; namely, the source of the input data. The following description of the model inputs is provided in C&W's Cost Submission:

*“The model is based on an Excel workbook originally produced as part of an internal C&W exercise undertaken in order to analyse the profitability of its Caribbean business’ services. The focus of the model is to analyse services (e.g. international and national PSTN retail services) and costs associated with network usage.”* (Page A1-1, first paragraph)

And further at page A1-2, second paragraph,

*“The management accounts of the business provide the basis of the P&L by Service. Consequently, revenue figures for the services used in the model are obtained from either the management accounts directly or the financial accounts, ensuring that the outputs of the two reports can be reconciled.”*

125.The description provided is unclear as to the whether the source of the costing data is the management accounts or the financial accounts or both as reference is first made to the ‘P&L by service’ and then to ‘revenue figures’. However, Figure 3 on page A1-8 identifies the source of the cost data to be the management accounts and a fixed asset register. As a result, it is unclear as to whether the inputs to the cost model may be directly reconciled with C&W Anguilla audited financial statements.

126.The outputs of the costing models are not auditable for the following reasons:

- i.the source of the financial and operational data employed in the models is not identified according to relevant time periods or dates;
- ii.the absence of a rationale to explain the basis for the costing allocators employed in the costing methodologies;
- iii.an inadequate explanation of the methodology for applying the cost allocators;
- iv.the absence of audited financial statements or other supporting documentation to identify the original source of the cost, revenues and minutes employed as inputs to the cost models;

127.Consequently, on the evidence filed by C&W, the Commission concludes that the outputs of the models are not auditable as a result of the flaws identified in points (i), (ii), (iii) and (iv) listed above and as a result the overall methodology for developing the proposed interconnection prices lacks transparency and therefore does not comply with s13(1) of the **IAF Regulations 2004**.

### Access Costs



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128. There is no reference in **the Act** or any of the regulations to an ‘access deficit’ as described by C&W in their evidence. However, as noted below, there is a reference to the term ‘access deficit’ in an agreement between the Government of Anguilla and C&W and also in Section 11.3 of C&W’s license.

129. Access costs and interconnection charges are described in s13(3) of the **IAF Regulations 2004** 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.” (Emphasis added)*

130. A further description of ‘access’ is provided in s16(1)(a):

‘16. (1) Every dominant operator or service provider is required to supply at least the following individual network elements, as well as other essential elements, as determined by the Commission, in markets in which the operator or service provider is dominant –  
(a) access lines;’

131. The interconnection charges for the PSTN terminating service recommended in this decision (see paragraphs 172 to 176) include an element, 1.9 EC cents, for the recovery of the costs of providing access pursuant to s13(3) of the **IAF Regulations 2004**.

132. The subject of ‘access deficit contribution’ was raised in a previous interconnection proceeding before the Commission; namely, the case of a petition filed by Weblinks in November 2004. The Commission’s Decision, 2004-101 included the following two paragraphs on the subject:

‘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 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*

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*providers or operators). Any such means of recovery will not be unduly discriminatory.* (Emphasis added)

133. Section 19(3) of **the Act** provides the authority for the Commission to ‘periodically’ make determinations on universal services and their funding. As noted in PUC Decision 2004-101, no such proceeding has been undertaken by the Commission. Section 10(3) reads as follows:

‘(3) In accordance with the policy established by the Minister, the Commission shall periodically determine the manner in which a public telecommunications service shall be provided and funded in order to meet the requirements of universal service for that service, including the obligations, if any, of the providers and users of the service’.

134. The Commission has not received an application from C&W pursuant to s10(1) of the Universal Service and Public Telecommunications Regulations (2004) (**USAPT Regulations 2004**). As a result, the Commission is not in a position to make a determination on whether there is sufficient evidence to determine whether C&W is not charging ‘normal commercial rates’ with respect to the provision of a universal service or whether ‘funding’ is required for the net costs to meet such an obligation. Section 10(1) of the **USAPT Regulations 2004** reads as follows:

*‘Costing of universal service obligations*

*10. (1) Where a specified provider is unable to charge normal commercial rates with respect to a universal service for which it has been designated pursuant to section 8, it may seek to receive funding for the net costs of meeting the obligation concerned by submitting to the Commission a written request for such funding.’*

135. As noted above, pursuant to Schedule 3 of the Agreement of April 2003 between C&W and the Government of Anguilla, the Commission must ‘take into account’ rate rebalancing when considering whether any ‘access deficit’ contributions should be made to C&W. In addition, the Commission is not aware of any prohibitions that would prevent C&W from charging ‘normal commercial rates’ for a universal service. In fact, the current monthly access prices in Anguilla are considerably higher than those in most other regional jurisdictions and could lead one to conclude that the prices for such services in Anguilla may be above ‘normal commercial rates’.

136. Notwithstanding the requirements of **the Act**, s19(3), the **USAPT Regulations 2004**, s10(1), and the **IAF Regulations 2004**, s13(3), cited above, the Commission has reviewed the evidence on ‘access deficit charges’ filed by C&W in the present proceeding in order to provide further guidance for any subsequent submission from C&W pursuant to s10(1) of the **USAPT Regulations 2004**.

137. C&W’s statement in paragraph 31 of their submission of 19 May that *‘The fixed-line access network or “local loop” is a common cost to all services provided on the PSTN.’* (Emphasis added) is incorrect to the extent that certain ‘transit’ services may be provided on the ‘PSTN’ that do not require the use of the ‘local loop’. On the other hand, services such as those provided by an Internet Service Provider, like C&W,

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using either dial-up or DSL access may use the local loop of the PSTN to provide customer access to the Internet (see also **USAPT Regulations 2004**, s4(b)). Consequently, a portion of the revenues from such services should also be considered when determining the overall ‘contributions’ currently made to recover local access costs.

138. C&W’s approach to the recovery of such costs does not appear to take into account contributions from ‘non-regulated’ services such as the provision of Internet access as they state the following later in paragraph 31:

*“However, this charge is determined on the basis of fair sharing of C&W’s access deficit (the difference between the costs of providing PSTN access services and the regulated revenues collected from retail customers of those services).”*

139. The Commission agrees with C&W’s notion of a ‘fair sharing’ of not only the access deficit, if any, but more importantly of the overall access costs. All services that employ the local loop should contribute to the recovery of the cost of access. However, as noted above, the Commission must also take into account the impact of any rate rebalancing on the recovery of access costs as well as any other services, regulated or otherwise, that employ local loop assets to generate revenues. To do otherwise, would not achieve the ‘fair sharing’ that both C&W and the Commission wish to achieve.

140. No evidence was filed by C&W that either provides any explanation or accounting for the minutes employed in the calculation or identifies the specific time-period during which such minutes occurred or are to occur. Given such omissions, the Commission views the resulting proposal to be unacceptable as a process for either developing a pricing proposal or a request for Universal Service funding pursuant to s10(1) of the **USAPT Regulations 2004**. Such an approach fails to meet even the minimum test of transparency required pursuant to the **IAF Regulations 2004**, Section 13(1).

### *“Interconnection charges*

*13. (1) Every operator and service provider shall provide interconnection at charges that are arrived at in a transparent manner subject to the provisions of any interconnection agreement or the Act regarding the confidentiality of costs or other commercial information.”*

141. Turning to the actual calculation of the cost of access, C&W setouts the calculation in their ‘Cost Submission’, Appendix 3, pages A3-1 to A3-6. C&W identifies the access deficit on page A3-1 of their 19 May Cost Submission and provides a Table showing the total access costs less certain revenues. The revenues are describe as follows in paragraph one of page A3-1 of Appendix 3 in the Cost Submission:

*“The revenues associated the service of providing access to the PSTN are monthly rental rentals and installation and reconnection fees.”*

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A two-line Table is provided below the text quoted above on page A3-1 and the data in the first line is described as *'Telephone Equipment Rentals'*. As in the case of the number of minutes and the share of the total minutes, evidence presented in such a vague, imprecise and inaccurate manner causes the Commission concern about the reliability of the results and undermines the position being advocated by C&W.

142. The output costs for the calculation of the access deficit are presented on pages A3-1 to A3-6 of the Cost Submission (Confidential Version) dated May 2005. The source of the data in terms of the relevant financial period(s) is not identified nor is there an explanation for the allocation ratios. Consequently, the source(s) and allocation of the costs for the overall process remains unidentified and vague and as a result the lack of transparency does not meet the minimum test required to validate the reasonableness of the results.
143. C&W states on page 7 of their 19 May letter that ..... *'C&W's preference remains to increase retail rates for line rental services until there is no access deficit.'* As noted above, there are a number of services that employ the local loop and therefore could also make a contribution to the recovery of such costs. Having regard to the already high level of local access prices in Anguilla compared to other regional jurisdictions, the Commission does not consider the only solution to be the increasing of monthly line rental prices. For example, the application of a fully allocated costing methodology could include the allocation of access costs to more than one service as to do otherwise may unduly burden monthly access prices and permit other services that rely on the local loop to make little or no contribution to the recovery of such costs. Alternatively, the use of a 'stand-alone' cost methodology for determining the prices of domestic calls would require the allocation of local access costs to such calls as calls could be neither originated nor terminated without such customer connections.
144. The Commission also notes that in the October 2004 RIO submitted by C&W in the case of the Weblinks petition proceeding the 'Access Deficit Contribution' (ADC) was 8.8 EC cents per minute whereas the May 2005 RIO in the WVA Ltd. proceeding the ADC is 3.8 cents per minute.
145. The submissions of 29 August from both CCC and Weblinks commented on the difference between the ADC in the October 2004 RIO (8.8 EC cents) compared to that in the May 2005 RIO (3.8 EC cents).
146. CCC's submission of 29 August 2005 contains the following statement at paragraph 2 on the difference in the ADC amount between the two RIO's:

*'... the actual ADC rate being put forth by "C& W" has changed dramatically from the initial RIO to the present form. "C& W" states that this is because a different costing methodology was used. However, this raises the question of consistency. Surely the legislation was not drafted to allow the incumbent to pick and choose its costing methodology to suit its own purposes. There should be one methodology that is used to support all rates.'*

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147. Weblinks also raises the issue of the change in the ADC amount between the October 2004 RIO and the May 2005 one. They comment at paragraph 7 as follows:

*' 7. In the Tariff Schedule of C&W's 14 October 2004 Reference Interconnection Offer (RIO) submission to Weblinks, C&W included an Access Deficit Contribution of 8.8 EC cents per minute which it claimed was cost-based, and defended this tariff in its 6 December 2004 counter petition to the PUC. Yet the Tariff Schedule in the Proposed Agreement now specifies an Access Deficit Contribution of 3.8 EC cents per minute, **fully 5 EC cents a minute or 57% lower**. Clearly it is not possible that C&W's costs changed so dramatically in the space of six months.'*

148. C&W states in paragraph 61 of their letter of 19 May that .... *'a number of the rates in the Tariff Schedule were modified as a result of C&W's discussion with Cingular. C&W emphasizes that both the rates included in the Tariff Schedule of the October 2004 RIO and those included in the Tariff Schedule of the Agreement (May 2005) are cost-oriented rates, as that term is defined by the Regulations.'*

149. C&W also provides an explanation of the FAC results in terms of the range which reads, in part, as follows:

*"In particular, costs determined using a fully allocated cost model by definition fall between long-run incremental and stand-alone costs."* (Cost Submission, page 5)

150. In reply comments of 9 September, C&W submits a further explanation for the differences between the October 2004 RIO and the May 2005 RIO. Under the sub-heading of 'Cost-basis for Call Termination and Other Rates in the Agreement', paragraphs 3 to 6, C&W reviews the IAF regulations and the scope for 'cost oriented' rates as follows:

*"However, even that "cost-orientation" rule is designed to facilitate negotiation, as "cost-oriented" is not defined as one single immutable number, but as a range of acceptable numbers among which the parties seek a mutually acceptable compromise. To rebuke a point made by CCC, this range is in fact established by applying different costing methodologies, namely "stand-alone costs" and "long-run incremental costs".* (Paragraph 5)

And further at paragraph 7,

*"The negotiations between C&W and Wireless Ventures were consistent with the above. Each party presented its initial position (in the case of C&W, that was represented by the October 2004 RIO, with a set of cost-oriented rates), made certain concessions following extensive discussions, and reached a mutually acceptable agreement on another set of equally cost-oriented rates."*

151. C&W provided no evidence to reconcile the basis for determining the October 2004 'cost-based' rate for ADC of 8.8 cents and the basis employed to determine the 'cost-based' rate of May 2005 for ADC of 3.8 cents other than to note they were both 'cost-based'. However, other elements included in the ADC calculation are not 'cost-based'

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such as the minutes and the portion of the ADC allocated to ‘competitors’. It is unclear whether these elements were varied when deriving the different rates.

152. Weblinks commented as follows on the difference in the ADC results between October 2004 and May 2005:

*‘In other words, C&W agreed that an Access Deficit Charge should be cost-based, reiterated that the EC\$0.088 Access Deficit Contribution it was demanding was fully justified based on C & W’s calculations of the costs and revenues associated with domestic calling, stipulated categorically that its cost-basis was in accordance with the Regulations, and vigorously defended its specified Access Deficit Charge as being based on C&W’s costs and therefore constituted a suitable method of recovery of the Access Deficit amongst all carriers.  
Six months later, C&W is equally vigorously justifying an Access Deficit Contribution that is 5 EC cents, or 57%, lower than in October 2004.’*

153. In paragraph 53 of their letter of 19 May, C&W makes reference to the ADC and retail rates in the OECS (Organisation of Eastern Caribbean States) and states, in part, as follows:

*“ADC of a similar order of magnitude have been applied in the OECS, and it has not proven to have had a detrimental impact to (on) the retail rates and consumer impact or the emergence of competition in services.”*

154. A recent study by the World Bank entitled ‘Telecommunications Reform in the OECS – Impacts on Prices and Services’<sup>22</sup> (a joint report of the Eastern Caribbean Telecommunications Authority and the World Bank Group) provides some further insight on retail prices in the OECS. The following Table presents a summary of the prices for local access from the study with the addition of Anguilla prices:

<b>Table 1: Basic Monthly Access Prices (EC\$)</b>		
<b>OECS State</b>	<b>Business</b>	<b>Residence</b>
1. Anguilla	87.00	42.00
2. Dominica	48.00	24.00
3. Grenada	48.00	24.00
4. St. Kitts & Nevis	48.00	26.40
5. St. Lucia	48.00	26.40

<sup>22</sup> Website address - <http://lnweb18.worldbank.org/ict/resources.nsf/InfoResources/97B1AB475D36D3288525702E0058301B>

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6. St. Vincent & the Grenadines	48.00	20.40
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155.C&W also submits the following on the subject of ADC in paragraph 53 of their 19 May letter which states, in part, as follows:

*“ADC of a similar order of magnitude (EC 3.8 cents) have been applied in the OECS...”*

156.Given the relative level of prices for basic access in Anguilla compared to the other OECS states, the proposal by C&W to charge a ‘similar’ level of ADC charge in Anguilla as it does in the other OECS states, leaves one to conclude that C&W’s access costs are in the order of 100% higher in Anguilla than they are in other OECS states. However, in the Cost Submission, page 10, paragraph 2, C&W submits that that the ‘cost-oriented’ charges in the OECS for interconnection (interconnect specific costs) *‘would not likely materially differ from the OECS charges.’* If the network costs between Anguilla and the OECS are similar, as submitted by C&W, one may conclude that the basic monthly prices in Anguilla are currently above cost and perhaps have been ‘over-balanced’.

157.In addition, the price cap plan describe in the ECTA/WB report mentioned above, provides for residence rates to remain the same and business rates to increase at the rate of inflation.

158.In addition, fixed to fixed per minute rates are scheduled to decrease in the other OECS states according to the ‘rebalancing’ program described as follows in the above mentioned report:

*“Under the terms of this agreement, Cable & Wireless fixed line customers in the ECTEL Member States should pay as much as 22 percent less for their fixed-to-fixed local calls from 1 January 2005, with a further 20 percent reduction for fixed-to-fixed calls coming in December 2005. Local calls on the fixed network will decrease from EC9 cents (peak period), EC8 cents (off-peak) and EC6 cents (weekends) to EC7 cents, EC5 cents, and EC5 cents respectively on 1 January 2005. Off-peak and Weekend rates will further decrease to EC4 cents and EC4 cents respectively on 1 December 2005.”(page 2)*

159.Fixed-to-fixed prices in Anguilla are currently EC9 cents (peak period), EC7 cents (off-peak) and EC6 cents (weekend) per minute and C&W is permitted to increase these prices under the interim ‘rebalancing’ plan agreed to by the Government of Anguilla and C&W by no more than the greater of five (5) percent or CPI plus two and one-half (2 ½) percent.

160.Given the level of current retail monthly access prices in Anguilla compared to the other OECS states as reflected in Table 1, customers to the fixed network in Anguilla are already making a substantial contribution to ‘access’ costs compared to those in

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other OECS states in both fixed monthly access prices as well as in fixed to fixed per minute prices for domestic calls.

161. The following comments were submitted by CCC at paragraph 1, page 1, of their submission of 29 August 2005, on the matter of comparative prices and interconnection agreements:

*'In Jamaica and The Cayman Islands no Access Deficit Charge (ADC) was deemed appropriate by the regulatory authorities in the interconnection agreements negotiated there. Yet the local access charges are actually lower than they are in Anguilla. Although traffic volumes are different in the different markets it does indicate that Cable & Wireless (C& W) are capable of operating efficiently when necessary and that an ADC would be supporting their inefficiencies here.'*

162. In their submission of 19 May 2005, paragraph 53, C&W makes a number of references to the 'rebalancing' of rates. For example, the following reference is made to retail rates and rebalancing:

*'Further, this apportionment of the access deficit is based on the total number of minutes in the market, meaning C&W would still be absorbing the vast majority of the deficit. Ideally, C&W would like to adjust its retail rates so that no access deficit exists and so that there is no need to charge an ADC. However, in the absence of this 'rebalancing' and in a situation where a policy decision continues to be applied so that C&W has to continue to bear this access deficit burden, it is not unreasonable that there be a concomitant policy decision that the burden be shared in a competitively neutral manner amongst all operators. Failure to do this would put C&W at a competitive disadvantage to other service providers who are not be (being) forced to sell their services below cost''(.) (Paragraph 53, page12) (Emphasis added)*

163. As noted in paragraph 135, the Commission is unaware of any 'policy decision' that either requires C&W 'to bear an access deficit burden' or prevents them from charging 'normal commercial rates'.

164. In their submission of 9 September 2005 (reply comments), paragraph 8, C&W makes the following reference to rebalancing and retail prices:

*" In response to CCC's (Caribbean Cable Communications) submission, C&W agrees that the rebalancing exercise undertaken in 2003 would have been the opportune time to ensure C&W could make a reasonable profit on all its services and, therefore, to remove the need for an Access Deficit Charge. However, C&W was not able to convince the Government of that fact, and the current set of retail rates that emerged from that negotiation did not fully "rebalance" C&W rates."*

165. The Commission notes for the record that the price re-structuring permitted by the Government of Anguilla in June 2003 resulted in substantial increases in prices for monthly access for residence, business and government customers as well as a major change in the pricing of fixed-to-fixed per minute domestic calling from a per call price of EC15 cents to a per minute price of EC9 cents for the peak period. The increases in monthly access prices are reflected in Table 2:



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<b>Table 2: Increases in C&amp;W' Monthly Access prices – June 2003 (EC\$)</b>			
Monthly 'Access Service'	Previous Price	Price as of June 2003	Percentage Change
Business/Government Lines	36.00	87.00	142 %
Residential Lines	26.00	42.00	62 %

166. As the revenues from monthly 'access' prices contribute directly to 'access' costs, any access deficit that existed prior to June 2003 was substantially reduced or perhaps eliminated as a result of the increases granted to C&W in June 2003. A cursory review of other regional monthly access prices show that Anguilla prices are in the order of 50 to 100% higher than most other similar service prices, including jurisdictions that permit no access deficit contribution allowance in their interconnection prices. As C&W did not provide any verification as to the source and timing of the revenues included in the AD calculation, the Commission is unable to determine whether any of the impact from the substantial rate rebalancing done by C&W in June of 2003 is included in their calculation.

### **Recommended Interconnection prices – fixed, mobile and transit services**

167. The Commission finding that the proposed C&W-WVA Ltd. interconnection agreement does not comply, in part, with either **the Act** or the **IAF Regulations 2004**, and in the interests of achieving a timely and equitable agreement on the matter of interconnection rates, makes the following recommendations for price ceilings for each of the termination services specified in the proposed Tariff Schedule of the agreement.

168. As previously noted, the 'unbundling' of rates referred to in sections 15 and 17 of the **IAF Regulations 2004** relates to the 'network elements' described in s16 of the regulation. The 'components' included in the interconnection rates proposed by C&W, other than, in part, the call duration and access components are not congruent with the network elements specified in s16 of the regulation.

169. The Commission recommends the following interconnection prices pursuant to Section 20 of **the Act** and Section 1.3.3 of C&W's license.

170. In addition, these recommendations are made pursuant to s10(3) of the **IAF Regulations 2004** and relate to the November 2004 interconnection petition filed with the Commission by Weblinks (see also 'Directions on Procedure' paragraphs 192 to 195).

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171. The Commission has employed the same approach as C&W (C&W Cost Submission, page 9, paragraph 2) in terms of the merging of the ‘call set-up’ charge into a composite (aggregate) per minute rate using the same average call length as employed in C&W’s approach. In addition, other rate components are also consolidated in the rates recommended by the Commission in order to provide a composite rate per minute for each of the services. The Commission recommends maximum rates and will also accept any reasonable composite off-peak or weekend rates below the recommended peak level.

### **PSTN Terminating Charge**

172. Interconnection prices must not only be ‘cost-based’ as defined in the Section 13 of the **IAF Regulations 2004**, but also meet the requirements set out in section 17 of the **Act**, in particular, sub-section 2c. This requirement is that the interconnection elements be provided at ‘rates’ (prices) at least equal to that provided by the service provider to its own business units.

173. Similar to the criteria in section 17 of the Act, further criteria (non-discrimination) for setting interconnection prices is set out in Section 6 of the **IAF Regulations 2004** and reads, in part as follows:

#### ***“Non-discrimination obligation***

*6. (1) Every operator and service provider must offer to provide and provide interconnection, and the elements thereof, to other operators and service providers on a non-discriminatory basis, including with respect to charges and quality of service.*

*(2) At a minimum, the obligation set forth in subsection (1) requires that interconnection and the elements thereof be provided in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any affiliate or to any other party to which interconnection is offered or provided.”*

174. The requirements in 17(2c) of the **Act** and 6(2) of the **IAF Regulations 2004** provide another criteria besides the ‘cost’ criteria for determining the prices for interconnection services, that is, the prices offered internally by the service provider. For example, given a price of EC 9 cents for a one minute call over the domestic network, it is not unreasonable to conclude that one-half of the ‘price’ is for the recovery of call origination costs and the other half is for call termination. While one may argue that there may be additional marketing and sales costs in originating a call, in conducting a comparative analysis the allocation of 50% of the price for origination and termination provides a reasonable guide.

175. As a result, the fixed call termination ‘price’ being offered by C&W to their ‘internal’ business units based on a retail price of 9 EC cents per minute is in the order of EC 4.5 cents per minute. This termination ‘price’ compares to a proposed composite price

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of approximately 7.3 EC cents per minute (with an ADC component of 3.8 cents) proposed by C&W in the interconnection agreement with WVA Ltd.

176. The Commission's recommended rate for the PSTN terminating access service is 5.4 EC cents. The recommended rate includes the same allowance for each of the components proposed by C&W except that the recommended rate includes an allowance of 1.9 EC cents for the recovery of access costs.

### Mobile Termination Charge

177. With respect to mobile termination prices, the criteria considered above in the case of fixed termination is also applied. Therefore, as set out in s6(1) and (2) of the **IAF Regulations 2004** the internal 'price' offered by C&W to their own business units should be comparable with the price offered external interconnection companies for terminating calls on C&W's mobile network.

178. As noted in paragraph 110, most retail prices for C&W's mobile service appear to range from EC 15.5 to 75 cents per minute for 'on-net' calls. The average for such a range is in the order of 45 EC cents per minute and employing the assumption of an equal share going to origination and termination, the resulting termination portion is in the order of 22.5 EC cents per minute. This compares with the proposed mobile termination fee of 55 EC cents per minute.

179. A similar comparison with other prices, in this case the proposed 'Incoming International to Mobile Termination Charge' of 36.9 EC cents per minute (Tariff Schedule, page 5 of 6) with the proposed 'Mobile Termination part' of the 'PLMN Terminating Access Service (Tariff Schedule, page 4 of 6) of 55 EC cents, suggests that under the proposed prices in the agreement it would be substantially cheaper to terminate international traffic to mobile networks (39.6 cents) in Anguilla than to terminate domestic traffic (55 cents).

180. A comparison of the mobile termination rates in the October 2004 RIO, at 26.9 EC cents and that in the May 2005 RIO, at 55 EC cents, raised the following comment from Weblinks:

*'The PLMN Terminating Access Mobile Termination part Call Duration Charge which was previously set at EC\$0.0269 per minute is now EC\$0.55 per minute, more than double at 104.5% higher.'*

181. Weblinks also commented on the overall level of the proposed mobile termination charge:

*'Intuitively, C&W's mobile termination costs cannot be anywhere near EC\$0.55 per minute. C&W's average retail rate for its mobile service, which includes the entire switch and both the calling and called subscriber terminations, is not as high as EC\$0.55 per*

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*minute. As a mobile network operator Weblinks contends that C& W's standalone costs of providing its mobile service in Anguilla is not as high as EC\$0.55 per minute.'*

182. The Commission notes the explanation provided by C&W as to the setting of the 'agreed' upon mobile termination rate proposed in the agreement. Paragraph 10 of their submission of 9 September 2005 reads, in part, as follows:

*'... it would be stating the obvious to say that C& W's initial position on the MTR was the rate originally proposed in October 2004. Therefore, the compromise rate that was eventually agreed must reflect to some degree the opening position of Wireless Ventures on this issue.'*

183. Considering C&W's current retail rates for mobile calling as well as the recommended rates in the October 2004 and the May 2005 RIO's, the Commission recommends a maximum mobile termination charge of 40 EC cents per minute. A rate that is approximately at the mid-point between C&W's October 2004 RIO rate of 26.9 EC cents and the rate of 55 EC cents in the April 2005 RIO. The recommended rate also falls within the range of C&W's costing results cited at page 12 of the May 2005 Cost Submission.

### **Transit Charges**

184. The proposed peak-period transit charge for all services, mobile, international and PSTN is 6.0 EC cents including an access charge component of 3.8 EC cents per minute. As determined in Part II, section (d) (Proposed prices for transit services), of this decision, the Commission does not approve of the inclusion of an access component in the transit charges.

185. As a result, the Commission recommends a maximum total transit charge of 2.2 EC cents per minute.

### **Costing and cost recovery of 'joining' facilities**

186. In the 'side' agreement dated 6 April 2005, paragraph 7, the parties agree that WVA Ltd. will pay a 'financial deposit' to C&W to 'purchase this equipment from Nortel' (specific interconnection equipment). In addition, the paragraph states that *'such deposit to be applied by C&W (upon approval of the Interconnection Agreement) to the Once-off charges by 'WVA' for the equipment. Any surplus difference between the above figure and the Once-off charges will be refunded to WVA.'*

187. The joining facilities between two networks are for the 'mutual' benefit of the customers on both C&W's and WVA Ltd's networks. As noted in Commission Decision 2004-101, 15 December 2004, paragraphs 62 to 68, the joining of the

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networks provides benefits to customers on both networks. Therefore the costs, both capital and operating, should be shared by both parties.

188. In Anguilla, all licensed operators are obliged to interconnect their networks pursuant to **the Act**, the **IAF Regulations 2004** and **the Code 2004**. It is a matter of public policy.

189. With respect to the sharing of capital costs, the Commission refers to a RIO by C&W Jamaica, in particular, the provision for the 'joining' costs to be shared as stated in paragraph 1.5.4 of the published RIO offered by C&W's affiliated company in Jamaica. (see - [www.cwjcarrierservices.com](http://www.cwjcarrierservices.com) and select 'Service Description' and refer to 'Part I, paragraph 1.5.4'.) The terms set out in paragraph 1.5.4 are that the two parties are to 'share' the cost of the joining facility and read as follows:

*'1.5.4 Charges for the Footway Box Joining Service (other than One-off Charges for installation and testing) will be split equally between Service Supplier and Service Taker with the exception of the Early Termination Charge which is payable by the Party who terminates the service prematurely.'*

190. The approach of equally sharing in the cost recovery of the joining facility is also endorsed by the Commission and is not inconsistent with the requirements of **the Act**, the **IAF Regulations 2004** and **the Code 2004**.

### III Directions on Procedure

191. The following directions on procedure are issued pursuant to s17(2)(h) of **the Act**, s4 (2)(d) and s10(1) and (3) of the **IAF Regulations 2004**, and s31 of the **Telecommunications Administrative Procedures Regulations**.

192. As noted in paragraphs 19 and 20, C&W also offered their May 2005 RIO to CCC and Weblinks. In the case of Weblinks, the company submitted an interconnect petition to the PUC dated 19 November 2004. PUC Decision 2004-101 of 15 December 2004 was issued in response to the Weblinks' petition.

193. In Decision PUC 2004-101, at paragraph 56, C&W and Weblinks were directed to interconnect on or before 31 January 2005 (approximately 6 weeks after the date of the decision) or at a date agreed upon by the parties and the Commission. In addition, in paragraph 57, the parties were directed to finalise an interconnection agreement on or before 28 February 2005 (approximately 10 weeks from the date of the decision) and on any matters that they failed to agree upon by that date, the PUC would make a final determination on such matters.

194. In December 2004, C&W filed for and was granted a stay of Decision PUC 2004-101 by the Court. On 31 May 2005, the Eastern Caribbean Supreme Court, High Court of Justice, Anguilla Circuit (Civil), ordered that the stay be set aside except for paragraph 47 (granting Weblinks the right to co-locate in C&W's central office).

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195. Given that more than ten weeks have expired since the Court ordered the stay removed, and having regard to the undertaking by the Commission in paragraph 57 of PUC Decision 2004-101 to make a final determination on matters that the parties have not reached agreement, the Commission has put forward in this decision directions on a process for finalising the interconnection agreement with Weblinks pursuant to s(10)(3) of the **IAF Regulations 2004**. Each of the other parties, CCC and WVA Ltd. are also to be offered the same RIO as Weblinks pursuant s6(4)(a) and (b) of the **IAF Regulations 2004**.
196. In the case of CCC, it should be noted for the record that CCC has filed an interconnection petition with the PUC dated 29 September 2005.
197. Parties to the proposed interconnection agreements, C&W, Weblinks, WVA Ltd. and CCC have until 27 October 2005 (15 days from the date of this decision -12 October 2005) to comment on the recommended prices for fixed termination, mobile termination and transit services included in this decision. Within 15 days from the closing date for submissions, on or before 11 November 2005, the Commission will issue a final decision setting the prices to be included in an interconnection agreement.
198. C&W is directed to proceed with the completion, if not already completed, of the physical interconnection based on the current arrangements for joining the networks between the respective parties (WVA Ltd., Weblinks and CCC) for physical interconnection and proceed to exchange traffic. Interconnections prices for the traffic exchanged will be established as indicated in paragraph 97 and apply to any traffic exchanged between the parties prior to the date of finalising the agreement and thereafter.
199. With respect to joining service facilities, each party will be responsible for 50% of

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- the total direct cost of the joining facility. The parties are directed to exchange information on the direct costs incurred to provide the 'joining facility' and reach agreement on any required net payment on or before 27 October 2005. Should the parties be unable to reach agreement by that date on the costs submitted and any payments due, either party may refer the matter to the Commission for resolution.
200. C&W is hereby directed to file with the Commission an amended May 2005 RIO pursuant to this decision and the related interconnection agreements with CCC, Weblinks and WVA Ltd. for approval on or before 30 November 2005.

Issued by the Commission at the Valley, Anguilla on this 12 day of October 2005



Executive Chairman, Public Utilities Commission