

Public Utilities Commission of Anguilla

30 November 2005

Telecom Decision PUC 2005-103

The Valley, Anguilla – 30 November 2005

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

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I Background

Scope of the Proceeding

1. The obligation of every operator or service provider to provide interconnection is set out in S.17(1)(a) of the **Telecommunications Act (2003) (the Act 2003)**, reads as follows:

(Operators or service providers shall-) “not, with respect to its network or services, refuse, obstruct or in any way impede, other than for reasonable technical grounds stated in writing, another operator or service provider from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other licensees;”

2. The Telecommunications Code 2004 (Code 2004) sets out the minimum interconnection duties placed on each operator or service provider in section 8 (a) to (f). These duties are in addition to the legal requirements applicable to interconnection specified by the Act 2003, the **Interconnection and Access to Facilities Regulations (2004) (IAF Regulations 2004)**, its Licence and the remainder of the Code 2004.
3. In order to ensure that interconnection is provided in a ‘fair, reasonable and timely manner’¹, the Commission may require that an operator or service provider, in fulfilling its duty to interconnect, undertake specific obligations.
4. In cases where two operators are unable to reach a timely agreement on interconnection, a procedure for processing an interconnection dispute petition is setout in the **Code (2004)** and the **IAF Regulations 2004**. In Section 6 of **the Code**, the submissions and responses required and the associated timeframes are setout for the filing of a notice to file a petition as well as the petition filing and reply dates relative to the notice.
5. Section 10(2) of the **IAF Regulations 2004** identifies certain types of disputes such as a party not negotiating in good faith or a party refusing to provide interconnection or the failure of the parties to promptly conclude an interconnection agreement.

¹ Section 5(8) IAF Regulations 2004

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6. In particular, Section 6(h) of the Code reads as follows:

“h) Notwithstanding paragraph (g), where appropriate, the Commission may issue a Preliminary Order setting out its preliminary determination and its decision on how matters in dispute shall be resolved. Either party to the dispute may, within fifteen (15) days, request that the Commission reconsider one or more elements of the Preliminary Order. Such party shall set forth its reasons as to why the Commission should modify its Preliminary Order. The Commission shall give the other party ten (10) days to respond to such reasons and provide reasons as to why modification of the Preliminary Order is not required. The Commission will only modify the Preliminary Order if there are compelling reasons to do so.”

The Proceeding

7. Caribbean Cable Communications (the Company) was granted a license by the Commission on 14 December 2004 to operate a domestic fixed public telecommunications network and to provide fixed public telecommunications services in Anguilla. The company sought interconnection with Cable & Wireless (West Indies) Limited (C&W) on 21 December 2004.
8. The company filed a petition with the Commission (PUC) dated 29 September 2005 pursuant to Section 6 of the Code seeking the PUC’s assistance in resolving a dispute with C&W in the matter of network interconnection.
9. The Company’s petition dated 29 September 2005 was preceded with the required fifteen days notice to C&W by way of the Company’s letter dated 25 August 2005.
10. Pursuant to the Code, Section 6(d), the PUC must determine whether and to what extent it is appropriate to resolve the dispute.
11. The Company’s petition identifies three areas as the ‘basis’ for their dispute with C&W and these were summarised as follows:

‘To summarise, this petition we believe that we will not be able to come to a timely negotiated decision given the stand of the parties on the following areas of contention.

- *The need to proceed with the “process” of interconnection despite the lack of a finalized agreement*
- *The allocation of costs of interconnection¹ (emphasis added)*

12. C&W’s letter of 14 October 2005 filed with the Commission and copied to the Company responded to the petition.
13. C&W’s submission of 14 October 2005 refers to Commission Decision PUC 2005-101 of 12 October 2005 regarding a proposed interconnection agreement

¹ CCC letter to the Commission and C&W dated 29 September 2005, page 3.

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between C&W and Wireless Ventures Anguilla Limited. C&W submits that the issues raised in CCC's petition may have been addressed to some extent by the Commission Decision of 12 October and therefore it may not be necessary for the Commission to intervene in the negotiations as requested by the Company.

14. In addition, C&W proposes as an alternative that if the Commission intends to intervene that an extension of time be granted for the filing of their counter-petition pursuant to s. 6(c) of the Code. C&W further submits that Commission's determinations and the processes set out in Decision PUC 2005-101 will have an impact on how C&W responds to the CCC petition and therefore requests an extension until 30 November 2005.
15. The Company filed a further letter dated 17 October 2005 and referred to PUC Decision 2005-101, in particular, paragraph 198. The Company noted that paragraph 198 directed C&W to proceed with completing the physical interconnection of the networks and to exchange traffic with CCC.
16. The Company's letter of 17 October also made reference to a service ordered previously filed with C&W for 30 telephone lines to be installed at their offices in George Hill and requested that the lines be installed as soon as possible.
17. C&W responded to the Company's letter of 17 October by way of a letter (not dated) received at the Commission's office by facsimile on 21 October 2005. C&W advised the Company that they were prepared to sign an interconnection agreement with CCC that conformed to PUC Decision 2005-101.
18. C&W also noted in their letter of 17 October that they did not currently possess equipment to support interconnection with CCC and that they had requested a quotation from their vendor for additional equipment to facilitate interconnection with CCC. C&W further advised that they would have 'a response' (presumably on the delivery of the additional equipment required and the timing for completing interconnection) prior to the deadline set in paragraph 199 of Decision 2005-101.
19. The Commission's letter of 29 October 2005 requested C&W to provide a brief status report on interconnection with each of the operators – CCC, Weblinks and Wireless Ventures Anguilla Ltd. C&W's response, dated 7 November, provided a five-page letter with an attachment. The attachment provided a summary table of the status for the various activities related to completing interconnection with each of the operators, including CCC. However, C&W requested that the information in the attachment be kept confidential.

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20. The Commission, in response to C&W's request for confidentiality, advised C&W in a letter dated 11 November 2005 that the specific interconnection status information related to each of the operators should be provided to them.
21. The Company in a letter dated 10 November 2005 made a further confirmation of their request of 11 October to C&W for '30 analog VX lines'. They further requested confirmation of the price, terms of service and date of delivery of the lines by 11 November 2005.
22. C&W responded to the Company's letter of 10 November by way of a letter dated 11 November 2005. In their letter of 11 November, C&W makes reference to a service they offered to the Company. The service was identified as '*Service Provider Voice Dailup Access Lines Service*'. However, C&W noted that the 'product' was not ready for implementation in the Anguilla market.
23. The Company filed a letter with the Commission dated 22 November and indicated that the letter was further to their petition of 29 September. The Company noted that the Commission had not 'dealt with the matter' of their petition although it was referred to in Commission Decision 2005-101 at paragraph 196.
24. In their letter of 22 November, the Company described the key issue of their petition as being due to the fact that interconnection was not provided by C&W in a timely manner and repeated the following statement from their original letter of petition:

"As you are aware the crux of the petition centered on concluding inter-connection in a timely manner. We stated that "We have examined Section 10 of the Interconnection Regulations and have determined that there is reason for dispute as per section 10.2. (c) and (d). The parties have not been able to conclude promptly an interconnection agreement and we have been unable to resolve our disagreements within a commercially reasonable time."

25. Section 10(2)(c and d) of the IAF Regulations 2004 read as follows:

(c) a failure by the parties to conclude promptly an interconnection agreement; and

(d) a disagreement with respect to the price or any other technical, commercial or other term and condition for any element of interconnection that the parties have not been able to resolve within a commercially reasonable time.' (Emphasis added)

26. In their letter dated 22 November 2005, the Company requested that the Commission take action on two matters. The first action was a temporary measure to ensure the provision of interconnection with an initial E1 circuit and require that additional E1's also be provided if required.

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27. Secondly, the Company requested that an external consultant be retained to conduct a review of the overall interconnection process and that the costs of such an undertaking either be divided equally between the Company, C&W and the Commission or that following a review of the consultant's report that the Commission make a decision as to whether C&W should cover the full cost of the consultant.
28. The Commission's letter to C&W dated 25 November 2005 referred to C&W's letter of 14 October requesting an extension to the date for filing a response to the Company's petition of 29 September and followup letter dated 22 November. The Commission informed C&W that their extension was granted and their reply may be filed on or before 30 November 2005.
29. C&W offered an interconnection agreement to the Company under a covering letter dated 25 November 2005. This agreement is the same one C&W concluded with Wireless Ventures (Anguilla) Limited on 23 November 2005. C&W explains that the current interconnection offer is the same as the Reference Interconnection Offer they provided to the Company on 10 November 2005 and that it reflects the interconnection rates set by the Commission in **Telecom Decision PUC 2005-102** dated 22 November 2005.
30. As a result of further discussions between the Company and C&W, a draft 'Supplemental Agreement' was provide to the Company and a copy to the Commission on 29 November 2005. This 'Supplemental' Agreement provides for the provision of an interim interconnection arrangement between the Company and C&W.
31. The interim arrangement would be the provision of an 'ISDN PRI Service' to the Company that would permit the exchange of traffic between C&W and the Company at the rates specified in the 'Supplemental Agreement'. Such an arrangement would be provided until such time as the final interconnection arrangement is in place.

II Commission Analysis and Findings

The Existence of a Dispute

32. Based on the Company's submission dated 22 November 2005, the centre of the dispute is whether interconnection will be provided in a timely manner. A secondary matter is the provision of an interim interconnection arrangement as requested by the Company.

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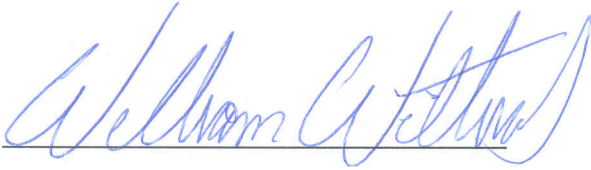
33. The Company's initial petition of 29 September identified three areas of contention: (1) need to proceed with interconnection despite the lack of agreement; and (2) the allocation of the costs of interconnection; and (3) the timeliness of reaching an agreement and achieving interconnection within a 'commercially reasonable period of time'.
34. The first two areas of contention are addressed in **Telecom Decision PUC 2005-101**. While the Company submitted in their letter dated 22 November that their petition had not been dealt with although reference to the petition was made in paragraph 196 of Decision 2005-101. The Commission notes in paragraph 198 of the said Decision that C&W is directed to proceed with physical interconnection for all parties including the Company. This direction relates to the Company's first area of contention as noted above in paragraph 33.
35. With respect to the second area of contention in the initial petition, allocation of the costs of interconnection, this matter is addressed in paragraph 199 and reads as follows:
- 'With respect to joining service facilities, each party will be responsible for 50% of 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.'*
36. As noted above in paragraph 29, C&W made an interconnection offer to the Company under a covering letter dated 25 November 2005.
37. However, the timing of the permanent provision of physical interconnection between the networks and whether it will be provided within a reasonable time period remains undetermined. C&W's current estimate, as submitted in their letter of 22 November 2005, for achieving the permanent interconnection arrangements with the Company is early to mid-March 2006. An interim arrangement is expected to be provided on or about mid-December 2005.

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

38. Based on the assumption that the 'Supplemental Agreement' proposed by C&W is implemented and the interim arrangement put in place on or about mid-December 2005, the issue in the dispute regarding the provision of an interim arrangement identified in the Company's letter dated 22 November will have been resolved.

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39. The Commission notes that in order to implement the interim arrangement a direction must be given by the Commission to C&W to provide the Company with the 'ISDN PRI Service' described in the 'Supplemental Agreement'. Such a direction is given in paragraph 41 of this decision.
40. In terms of the longer term and the other outstanding matter in the petition, that is, whether permanent interconnection is provided in a timely manner, the Commission is not in a position to make a finding on this matter at this time. In order to make such a finding further evidence is required from C&W and the Company. As this decision



is a preliminary determination in the matter of the Company's petition, further determinations on the matter of timing and the provision of permanent interconnection may be given future consideration.

Directions for Resolving the Matters in Dispute

41. Pursuant to Section 5(8) of the **IAF Regulations 2004**, the Commission hereby directs C&W to provide forthwith the "ISDN PRI Service" described in the 'Supplemental Agreement' as a means of interconnection until such time as a permanent arrangement for interconnection is in place.
42. The Commission grants a further extension to C&W for responding to the Company's petition. The revised date for filing a response is 31 January 2006.

Issued by the Commission at the Valley, Anguilla on this 30th day of November 2005

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Executive Chairman, Public Utilities Commission