

DECISION ON PRICE CAP PLAN
FOR CABLE & WIRELESS ST. KITTS AND NEVIS
In the Federation of Saint Kitts and Nevis

Background

By Treaty signed on the 4th May 2000 certain OECS Heads of Government established a regional telecommunications recommendatory body known as The Eastern Caribbean Telecommunications Authority (ECTEL).

One of the major purposes of ECTEL is to promote national consultations in its Member States. And one of its functions is to recommend regional policy for the conduct of telecommunications in relation to, among other things, pricing and to monitor its implementation in its Member States: ECTEL Treaty Articles 4.1.j, and 5.1.c respectively.

The Telecommunications Act No. 2 of 2002 (“Act”) Section 15 (1) established a Commission, known as the National Telecommunications Regulatory Commission (“Commission”). The Commission is authorized by Section 17 (c) of the said Act to regulate prices for telecommunications services in St. Kitts and Nevis.

Consistent with the above, on the 4th August 2004 the Commission received from ECTEL a recommended Price Cap Plan (PCP). As part of that recommendation the Commission had to either approve or disapprove the PCP by October 19, 2004.

The recommended procedure for the consultation, as stated in the Price Cap Implementation Agreement is as follows:-

	Regulatory Activities	Dates	No. of Days
1.	NTRC publishes consultation document With copy posted to NTRC and ECTEL websites requesting comments from the public	5 th August, 2004	
2.	Members of the public file initial submissions, with copies sent to ECTEL and Cable & Wireless	10 th September	(36 days)
3.	ECTEL and Cable & Wireless file reply submissions	24 th September	(14 days)
4.	NTRC issues decision approving or disapproving the Price Cap Plan	19 th October	(24 days)
	Duration of Consultation Process		(74 days)

Further, upon the request of ECTEL, the Commission approved an extension of time for ECTEL's and Cable & Wireless' reply submissions on the views received. This extended the process for receipt of the said comments from 22nd September to 12th October, 2004.

Consequently, the deadline date for the Commission to approve or disapprove the Price Cap Plan was rescheduled to 16th November 2004.

Source Material

In arriving at its decision as to whether to approve or disapprove the proposed Price Cap Plan for Cable & Wireless in St. Kitts and Nevis, the NTRC reviewed the following documents.

1. The Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) to approve or disapprove a Price Cap Plan for Cable & Wireless St. Kitts and Nevis Limited for which comments were invited within the Consultation Document.
2. One submission was received on the Consultation document. The respondent was the St. Kitts and Nevis Cable Communications Company Limited
3. The Reply Submissions of Cable & Wireless and ECTEL.

Methodology

The Commission is of the view that the purpose of the consultation was to allow public participation and to identify any compelling reasons why ECTEL's recommendation on the Price cap Plan ought not to be implemented as proposed. It also served to give experts an opportunity to comment thereby improving the Commission's decision-making process by taking into account their views and experience. This is an important element of the process ensuring openness, accountability and transparency.

In its deliberations, the NTRC focused on the ECTEL Recommendation, the merits of the comments made by the interveners and the reply submissions of ECTEL and Cable & Wireless. In particular, the Commission paid special attention to any significant issues raised by the respondent that might not have been addressed by ECTEL and Cable & Wireless, and also had to decide, whether there had been inadequate treatment of critical issues that might persuade the Commission not to approve the recommendations.

SUMMARY OF ECTEL'S RECOMMENDATIONS

Introduction

The purpose of ECTEL's recommendation to the Commission was to set out the principles, commitments, parameters and formulae for the implementation of the Price Cap Plan that would be applied to Cable & Wireless St. Kitts and Nevis Limited. The

proposed Price Cap Plan had been agreed by Cable & Wireless and ECTEL, and unless otherwise stated, it would work in conjunction with the then proposed Telecommunications (Retail Tariff) Regulations.

ISSUES, ANALYSIS AND CONCLUSION

GENERAL REPLY COMMENTS

Based on a detailed and comprehensive review of the comments received in St. Kitts and Nevis and the other ECTEL Member-States, ECTEL suspects that there may be some general concerns amongst some of the interveners with respect to the objectives and scope of the price caps implementation agreement (“PCIA”) signed on July 30, 2004 and its principal components, the proposed price caps plan (the “proposed PCP”) and the proposed Telecommunications (Retail Tariff) Regulations (the “proposed TRs”) as well as the process to date. In order to address these general concerns, this section includes ECTEL’s general reply comments.

It is important to understand the history of the PCIA and its components. On April 7, 2001 the OECS Contracting States and Cable & Wireless (“C&W”) entered into an agreement (the “April 2001 Agreement”) to enable the liberalization of the telecommunications sector in ECTEL Member-States. The April 2001 Agreement ended the C&W monopoly in these Member-States, and anticipated the opening up of the telecommunications markets to competition.

As a follow-up to the April 2001 Agreement, on May 20, 2002 the OECS Contracting States and C&W entered into an agreement (the “May 20th Agreement”) that, inter alia, set out a form of price cap regulation for certain of C&W’s services. The May 20th Agreement specified a new Annex F to C&W’s fixed licence. Annex F contemplated a process to develop price cap regulation, but provided virtually no guidance on how this was to be accomplished. This uncertainty was not helped by the existing Telecommunications (Tariff) Regulations (the “existing TRs”), which are silent on the implementation of a price cap form of regulation.

Annex F also set out a fall-back provision that permitted, within an overall basket of regulated and unregulated, price adjustments in the event that the process of developing a price cap plan was delayed. The fall-back permitted annual price increases of up to 20% for certain services, including regulated services, notably line rentals, local call charges, fixed to mobile call charges and connection/reconnection charges.

The development of price cap regulation did not take place in the months following the signing of the May 20 Agreement. As a result, starting in early 2003, C&W invoked the fallback mechanism and C&W increased prices for regulated services by a substantial amount, as it believes that it is permitted to do by the fallback mechanism. Although court challenges followed in Grenada, Saint. Kitts and Nevis, Saint. Lucia and Saint Vincent and the Grenadines, these were not successful at first instance, and an appeal is

pending in Saint Lucia. The price increases, however, were not suspended by the courts and thus went into effect.

In order to advance the development of price cap regulation, ECTEL initiated two proceedings in mid-2003. It commenced a dominance proceeding before the NTRCs in all five ECTEL Member-States in an effort to determine those services in which C&W was the dominant service provider, and thus susceptible to regulation under the existing TRs. (the “Dominance Proceeding”). ECTEL also commenced a jurisdiction proceeding in Dominica to establish the jurisdiction of the NTRCs to regulate all of C&W’s dominantly-supplied services, an issue that was under somewhat of a legal cloud after the court decisions that allowed C&W’s 2003 price increases to go forward of (the “Jurisdiction Proceeding”).

Shortly after the initiation of these proceedings, ECTEL and C&W began discussions to try to settle these matters outside regulatory litigation. A settlement has the virtue of reducing the risk of loss by the litigants, including, C&W and the NTRCs. This risk was particularly significant in the Dominance Proceeding and the Jurisdiction Proceeding, given the novelty and complexity of the issues, and the lack of clarity of the regulatory framework for C&W encompassed by the Telecommunications Act, the existing TRs and C&W’s fixed licence.

Although the negotiations initially addressed the price cap issues, it soon became apparent that the existing TRs were inadequate to properly regulate C&W under a price cap regime. Accordingly, new regulations were developed that seemed more appropriate to deal with price cap regulation of a dominant operator (that is, the proposed TRs). At the same time, the regulations were clarified and expanded to address certain anti-competitive practices, notably pricing practices, by a dominant operator.

ECTEL was very conscious of the need for public consultation before the proposed PCP was implemented. ECTEL insisted that each element of the PCIA be exposed to public review and comment before acceptance. The proposed PCP for each ECTEL Member-State was to be reviewed by the respective NTRCs in a fully public process. A public process was also to be initiated under which interested parties could provide input to the Ministers of Telecommunications in respect of the proposed TRs. Each of these public processes has been completed in an open and transparent manner.

In the PCIA, ECTEL has expressed its support for both the proposed PCP and the proposed TRs. This is not surprising given ECTEL’s role in the development of these documents. As part of the negotiation process, certain compromises have been reached in particular elements. However, ECTEL was very conscious of its responsibility to protect the public interest, including the interests of consumers and competitors, and ECTEL is firmly of the view that it discharged this responsibility in the negotiation and settlement of the PCIA and its components.

Of course, it is for the NTRCs to decide if ECTEL’s views on the PCP are correct or not. That was the purpose of the public consultation process – a public process in which interested parties are invited to make submissions.

It is important to recognize that it was not ECTEL’s objective that the PCIA address every outstanding regulatory concern in the ECTEL Member-States. Rather, ECTEL’s

objective was to successfully complete the process that had been initiated by the May 20th Agreement. As a result of this, the scope of the proposed PCP is limited to C&W's national fixed line services it provides to consumers. Therefore, for example, the proposed PCP does not cover Access Deficit Charges ("ADCs") or wholesale offerings by C&W to other operators. ADCs and wholesale services are more properly addressed as interconnection matters. ECTEL is aware that certain parties have concerns about interconnection and other matters, and ECTEL is prepared to meet with operators to better understand these concerns and to formulate an approach to dealing with them.

However, even though the PCIA is but one important element of the sector liberalization process in the ECTEL Member-States, the fact remains that the PCIA does deal with important matters, and the proposed PCP represents an important step forward for telecommunications regulation in the ECTEL Member-States. The PCIA should be recognized for what it does achieve, while understanding that it does not attempt to address and resolve every conceivable matter of concern to stakeholders.

As to its achievements, the PCIA accomplishes a great deal that is beneficial.

First, it clarifies and modernizes the regulatory framework for retail tariff regulation. The proposed PCP and the proposed TRs provide a comprehensive and much clearer regulatory approach than currently exists, and one that recognizes the respective roles and responsibilities of ECTEL and the NTRCs while taking into account the limited resources that are available to these organizations.

Second, the Proposed PCP provides significant price reductions to C&W fixed line consumers. In the first two years of the proposed PCP it is proposed that local calls on the fixed network will decrease from 9 cents (peak period), 8 (off-peak period) and 6 cents (weekends) to 7 cents, 5 cents, and 5 cents respectively on 1 January 2005. It is also proposed that off-peak and weekend rates will further decrease to 4 cents and 4 cents respectively on 1 January 2006. As well, if the proposed PCP is approved, residential fixed customers will get 60 free minutes of local fixed-to-fixed calls in the evenings and on weekends with effect from 1 January 2005. Hence, if the proposed PCP is approved, as much as 25 percent of existing C&W users will have no payments to make for their evening and weekend locals calls and this percentage could increase as the volume of free local calling goes up from 60 to 80 minutes effective 1 January 2006. ECTEL negotiated the proposed PCP based on its analysis of current cost data and other information, rather than on past pricing data. In this regard, ECTEL took primarily a forward-looking perspective. However, ECTEL was not blind to the 2003 price increases to regulated services by C&W and within this context ECTEL believes that the proposed PCP provides substantial benefits to C&W's consumers.

Third, the proposed PCP provides a rational basis for future retail price developments by C&W. The PCP includes a price caps regime that will govern all of C&W's national fixed line services for its consumers. A price cap regime is a method of regulating some or all of the rates charged by a regulated company to

its customers. Under the proposed PCP, maximum rates, or “caps”, are placed on regulated telecommunications services, and C&W is not permitted to raise its rates above those levels. C&W is also expected to make efficiency gains in each year, which are then passed on, to customers in the form of rate reductions in addition to those stipulated in the paragraph above.

Fourth, the proposed TRs include provisions to address anti-competitive conduct by a dominant operator such as C&W. The workings of these regulations allow for regulatory supervision over key activities of dominant operators that could lead to anti-competitive consequences. Some of the more important regulations in this regard are as follows:

- Regulation 5 establishes as a guiding policy objective that market forces should apply in telecommunications wherever practical and that tariffs should not be anti-competitive.
- Regulation 6 defines a process where the NTRCs can determine that an unregulated service should be regulated if competition is not sufficient to regulate the offering of that service.
- Regulation 10 defines a process for the appropriate categorization of a new service as regulated or unregulated, while in no way restricting resort to the process under regulation 6.
- Reinforcing the policy objective in Regulation 5, Regulation 14 informs the NTRCs and operators that the tariffs of a dominant operator must not be anti-competitive.
- Regulation 25 establishes a process for approving market trials and short-term promotions in some circumstances.
- Regulation 26 addresses a floor pricing mechanism for regulated services.
- Regulation 32 permits any person to initiate a NTRC investigation into rates, terms and conditions for regulated services.

To conclude, ECTEL firmly believes that the PCIA and its main components (the proposed PCP and the proposed TRs) are in the public’s interest. The process leading to the PCIA was practical and efficient. The results will see modernization and improvement to the regulatory framework in the ECTEL Member-States, including increased protection against anti-competitive activity, and significant multi-year price reductions for C&W’s telecommunications users. Moreover, the key regulatory elements of the PCIA, namely the proposed PCP and the proposed TRs, are being considered in fair public processes in which interested parties have a full opportunity to express their views before any decisions are made. And finally, the approval of the proposed PCP and the proposed TRs does not signify that other important and potentially contentious issues,

such as the ADC, will not be addressed. Indeed, with the achievements in improving the regulatory framework as it applies to retail pricing issues for C&W, ECTEL will be able to devote its attention to the other important regulatory issues.

Accordingly, ECTEL strongly recommends that the NTRC approve the proposed PCP.

SPECIFIC REPLY COMMENTS

In as much they have not already been addressed in the general comments above, the remainder of this document provides ECTEL's reply comments to specific submissions from an intervener as submitted in St. Kitts and Nevis. For each of these specific reply comments, ECTEL provides a summary of the intervener's comment by using a direct quotation from the intervener's submission. ECTEL then provides its reply response to the specific comment. ECTEL is aware that C&W submitted on September 22, 2004 its reply comments in each of the ECTEL Member-States for this public consultation. However, in order to respect the process, ECTEL does not respond to C&W's reply comments.

Reply to the Comments of "The Cable"

1. The St. Kitts-Nevis Cable Communications Company d/b/a The Cable criticizes the proposed PCP (and the proposed TRs) due to concerns of objectivity and transparency in the preparation of it. It notes that ECTEL and C&W developed the proposed PCP without input from other operators. It further suggests that the IA contemplates that the proposed PCP will be approved without significant change. In the Cable's view, this suggests a forgone conclusion to the process – a process that therefore gives insufficient regard to the views of interested parties.

ECTEL believes that the process to develop and approve the PCP, as summarized in General Reply Comments section above, is fair and in the public interest. Although the Cable criticizes the PCP for the exclusion of other operators in the deliberations process that led to them, ECTEL believes that participation by other operators would have been unrealistic and counter-productive. A multi-operator negotiation would have been acrimonious and unlikely to reach a final conclusion acceptable to all. Moreover, the logistics of a multi-operator deliberation would have been very daunting, leading to delays in reaching finality. A realistic expectation is that the conclusion of deliberations would see the parties with very little if any progress in finalizing a PCP, and the prospect therefore of more automatic increases in C&W's regulated rates as contemplated in the May 20th Agreement. ECTEL further notes that the opportunity provided by this public consultation process and the Cable's participation in it rebuts the Cable's position in this regard.

ECTEL therefore recommends to the NTRC that it approve the proposed PCP and dismiss The Cable's submission that the proposed PCP should be rejected in its entirety.

2. *“Alternatively, should the Commission decide to accept the Price Cap Plan, The Cable hereby urges the Commission to immediately commence a proceeding, pursuant to proposed Tariff Regulation 26 and its general authority under applicable law, as to whether C&W’s proposed rates are less than the long run incremental cost of providing the relevant services.”*

“The Cable further requests the Commission to direct C&W to provide all documentation and calculations supporting its proposed rates (with appropriate protective orders), to ensure a transparent process to enable The Cable to assess whether the proposed rates are predatory, and to suspend the proposed rates during the pendency of this proceeding.”

ECTEL notes that the proposed TRs are not in force and hence it is not feasible to give effect to the Cable’s proposal that the NTRC commence a proceeding under proposed Retail Tariff Regulation 26. ECTEL would like to point out that proposed Retail Tariff Regulation 26 also provides for other parties, including the Cable, to make an application with respect to minimum rates for regulated services.

Independent of the date of the proposed TRs coming into force, ECTEL is of the view that the prices included in the proposed PCP would be consistent with the proposed Retail Tariff Regulation 26.

In the process of reviewing end user national fixed line services and recommending the proposed PCP as it relates to the said C&W services, ECTEL based its analysis of, detailed cost data and other information. Based on such an analysis, ECTEL is satisfied that the proposed PCP is in the public interest, benefits C&W’s fixed line consumers and constitutes a fair and reasonable pricing framework for C&W’s national fixed-line services. As such, ECTEL does not consider it necessary to include the information requested by the Cable. Further, there is no statutory requirement to provide such data in this form of consultation.

ECTEL notes that a suspension of the proposed rates would in effect mean a disapproval of the proposed PCP. ECTEL recommends to the NTRC that it approve the proposed PCP.

Reply to the Comments of the St. Kitts and Nevis Cable Communications Company Limited (“The Cable”) by Cable & Wireless St. Kitts and Nevis Ltd.

The Cable raises issues concerning the process through which the PCP under consideration was generated, the absence of the concept of dominance and the alleged anti-competitive nature of the calling rates proposed under the PCP. For ease of presentation, we reproduce relevant sections of the Cable’s submission and reply to the statements made in each.

1. The Process

Although The Cable applauds the Commission for seeking public comment on the Draft Tariff Regulations and Price Cap Plan, the exclusion of carriers other than C&W from the deliberative process thus far raises serious concerns of objectivity

and transparency. More importantly, events leading up to these public consultations strongly suggest that their outcome may be a foregone conclusion.

C&W disagrees with this comment as well as others throughout the document which suggests that the process is somehow flawed, or that the results of the consultation are predetermined. The proposed Telecommunications (Retail Tariff) Regulations, 2004, outline a procedure for developing a price cap plan which involves either the major supplier or ECTEL developing such a plan and then consulting with the other. The Regulations require, very sensibly, that both parties attempt to reach agreement on the plan before it is submitted to the Commission for its consideration. However, such consensus is not required. ECTEL and C&W have followed this process in this case. However, the mere fact that they have been able to agree on a proposed price cap plan does not mean that the NTRC must or will accept it, or that the result has been predetermined.

Further, interested parties are not "excluded" from this process as suggested by The Cable. Indeed, the Commission's invitation, and The Cable's submission of comments in this proceeding, demonstrates that the views of interested parties have been sought and will be considered by the Commission in its deliberations. It must be noted that while ECTEL and C&W negotiated aspects of the price cap, the NTRC was not involved in those discussions in any way.

Given the origin of the proposed Price Cap Plan and Draft Tariff Regulations, their unqualified support by ECTEL, the parties' agreement to ensure that the NTRCs adopt the proposals on a 'fast-track " basis, on terms that are "substantially identical " to those co-drafted by C& W and "recommended " by ECTEL, and ECTEL's decision to abandon its recommendation on C&W's market dominance, one must reasonably wonder whether the outcome of the public consultation process - itself a by-product of the Price Caps Agreement - is not a foregone conclusion.

The Cable's accusations in this statement are also incorrect and misleading. The agreement between ECTEL, C&W and the ECTEL Member States (the Agreement) does not, and indeed could not, bind the NTRC in its determination of the issues in this consultation. This is evident both on the face of the document and in the fact that the NTRC is not a party to the Agreement. The Agreement notes that the proposed price cap plan is a "draft" document, and states that ECTEL will "recommend that the plan be approved. The Agreement clearly recognizes that while the parties can reach agreement on an acceptable form of price cap plan for C&W, such a plan would still require approval by the NTRC.

2. Dominance and Regulatory Burden,

In their negotiations, the parties have also resolved to ignore the competitive implications of C& Ws market dominance and to sharply reduce the company's regulatory burdens.

In substance, ECTEL has also abandoned its original recommendations by proposing a new regulatory framework in which C& Ws market dominance will be ignored. Under the proposed draft rules, all telecommunications providers providing a "regulated service shall be designated as a major supplier, " regardless of market power, and the tentative listing of "regulated services " is far less comprehensive than

the listing of telecommunications services for which ECTEL had concluded, less than one year ago, C&W should be classified as a dominant provider. Compare Proposed Price Cap Plan, Appendix A, to ECTEL 2003 Recommendation, Appendix B. In short, under the new regulations, C&W will be subject to a far more relaxed regulatory regime, governing far fewer services, with virtually no constraints on its monopoly power.

These comments are incorrect and misleading. At several points in the document, The Cable states that the proposed Regulations eliminate the concept of market dominance. However, this is not correct. Under the proposed Regulations, the term "dominance" is no longer used. However, this is because it has been replaced with the very similar test in regulation 6. Lack of reference to "dominance" does not mean that the Commission or ECTEL have abdicated their responsibility to regulate those services offered by C&W which require regulation. It is an accepted principle that regulation should be seen as a proxy for competition, and that regulation should be applied only where there is insufficient competition to ensure that services are offered on appropriate rates, terms and conditions. The test in Regulation 6 is a codification of this principle. As "dominance" is merely another way of stating that there is insufficient competition in a market, the tests will be necessarily very similar. C&W notes that the test in regulation 6 is also used in Canada by the Canadian Radio-television and Telecommunications Commission, and has been interpreted to include reference to traditional concepts associated with the analysis of dominance.

The price cap plan designates all of C&W's retail fixed services as regulated. It cannot be said in these circumstances that the Commission or ECTEL has "ignored" the degree of competition to C&W's services as suggested by The Cable. Further, C&W's regulatory burdens have not been reduced in the price cap plan. The price cap plan and proposed Regulations impose a much more detailed form of regulation on C&W. Among other things, C&W will now have to file tariffs, will have to request approval for any changes to any "regulated" service, and its rates will be capped. Further, many additional services will become regulated if the proposed price cap plan is adopted. For example, under the May 20", 2002 Agreement signed by C&W and the ECTEL Member States, the only services categorized as regulated were monthly line rental, local and fixed to mobile telephone calls wholly on the Licensee's own network, network connection and network re-connection. If the price cap plan is approved, many additional services, including all of C&W's fixed services, will be subject to Commission regulation. The Cable's comments are clearly incorrect when viewed against all of the facts.

Compared with the specific, comprehensive listing of services for which ECTEL has previously determined that C&W was dominant, the definition of "regulated services" is unreasonably vague and uncertain, and the regulatory consequences of this designation are no clearer.

As noted above, the test in regulation 6 is not without precedent. The same test is used in Canada to determine whether the Canadian Radio-television and Telecommunications Commission should forbear from regulating services, and there is a substantial body of jurisprudence in the Commission's decisions which could provide direction as to how the test should be applied. However, even if that were not the case, the essence of the test - whether competition is sufficient to render regulation unnecessary - is a well-established concept that the Commission can elaborate on in its own decision-making,

Under the proposed rules, all "regulated services" must be tariffed, but only "major suppliers" are required to ensure that rates and charges are "Just and reasonable" and that no provisions of their tariffs are anti-competitive.

This is appropriate. A major supplier is one who provides a regulated service. If a telecommunications provider does not provide any regulated service, it is by definition not regulated, and it is not necessary to require that its rates be just and reasonable and not anti-competitive. As C&W will offer regulated services for the foreseeable future, C&W will be a major supplier and its rates will have to be just and reasonable and not anti-competitive.

Even with respect to those carriers, however, the 'Just and reasonable requirement does not apply to rate changes that otherwise comply with an approved price cap plan. The price cap provisions of the proposed rules themselves apply only to "major suppliers." Id. at Section 2 7. Thus, as a practical matter, "major suppliers " may impose rates which are not 'Just and reasonable " in many instances.

This is incorrect. To begin with, the wording of regulation 13 does not bear this out. However, price cap service rate changes that comply with the price cap plan, will, by definition be just and reasonable. The caps in the plan are set at levels designed to ensure that users are protected. Provided that rates comply with the plan, they must, therefore, be just and reasonable.

3. Alleged anti-competitive aspects

While the effort to address the problem of predatory pricing is laudable, the mechanism developed by ECTEL and C&W is fundamentally flawed. As drafted, the procedure for evaluating and ruling on such proposals is time-consuming and fraught with uncertainty, all of which can have a substantially adverse impact on emerging new competitors such as The Cable. Under the proposed new rules, the process for determining whether a provider has engaged in predatory pricing begins only after ECTEL or a third party applies for review of an alleged predatory rate, and even then the decision on whether to investigate such a complaint lies solely at the Commission's discretion. If the Commission decides to require a provider to demonstrate that its rate (which is by now already in effect) is not predatory, the subject carrier has 30 days in which to file supporting documentation, and then the Commission has another 30 days in which to approve or disapprove the rates charged.

C&W understands The Cable's concern. However, C&W believes that there are sufficient protections built into the Regulations to ensure that the possibility outlined by The Cable does not arise. First, the Commission and/or interested parties will assess C&W's applications for new or revised services and rates, and accordingly will have an opportunity to raise concerns in relation to predatory pricing in advance of approval. If C&W is not able to allay these fears, the application could be denied by the Commission.

Second, if it is clear that the timeframe to respond to an allegation of anti-competitive pricing is excessive in the circumstances of a particular case, the Commission could exercise its discretion to shorten the timeframe provided always that it ensures that C&W is given sufficient time in which to make its case. Shortening the timeframe in the regulation is not

the best approach as, in many cases, 30 days will be required in order to respond to any allegations made.¹

Nevertheless, based on an understanding of its own cost constraints (including the cost of interconnection with C& W), The Cable has come to the tentative conclusion that the price caps which C& W has set do not comply with the provisions of proposed Tariff Regulation 26 and are predatory in nature. The Cable further submits that the rates in the Plan proposed by C& W will have a substantial adverse impact on The Cable since the interconnection rates which The Cable must pay to C& W are based on the higher local service rates which prevailed at the time of our negotiations earlier this year. These interconnection rates also include an Access Deficit Charge ("ADC") which the parties agreed would decline over the course of time as C& Ws local service rates increased.

Under the proposed price caps, C&W enjoys the dual benefit of pricing its local service charges below cost while simultaneously collecting from The Cable an anti-competitive ADC. Squeezed between these two forces, The Cable's ability to compete effectively against C& W is substantially harmed.

Contrary to The Cable's submission, the interconnection rates agreed to by C&W and The Cable are not based on retail rates, but rather on C&W's costs of providing interconnection services. Accordingly, the interconnection rates would not change simply due to a change in retail rates.

More significantly, the Cable alleges that the rates in the proposed price cap plan are predatory, but unfortunately provides no support for its allegations. In fact, an objective examination of the cost-based interconnection rates demonstrates that peak, evening and weekend rates are above the imputed costs of fixed-to-fixed calling.

The General Comments of ECTEL, the Specific Reply Comments to The Cable's Comments/Suggestions as submitted by both ECTEL and C&W, were carefully reviewed and analyzed by the Commission.

After deliberating on the Comments/Suggestions of The Cable and paying due regards to the above mentioned submissions, the following decision was arrived at:

DECISION

The Commission is of the view that the Consultation process was open and transparent and allowed all key stakeholders and members of the Public to respond to the issues raised in the Proposed Price Cap Plan. The Commission in its deliberations carefully considered all the issues raised and is satisfied that the matters raised by the respondents were adequately addressed by ECTEL and Cable & Wireless. More importantly, the Commission is of the view that the Proposed Price Cap Plan represents a most effective

method of regulating the services of [Cable & Wireless] which are not subject to a sufficient degree of competition to protect the interests of the consumers in [St. Kitts and Nevis]. Finally, the Commission notes that although other issues were raised consideration had to be given to these matters in relation to their relevance to the consultation.

Accordingly, the NTRC approves the attached Price Cap Plan for Cable & Wireless St Kitts and Nevis Limited in the Federation of Saint Kitts and Nevis.

Chairman

NTRC St. Christopher and Nevis

13th November 2004