

AGREEMENT

THIS AGREEMENT is made this 7th day of April, Two Thousand and One

BETWEEN: (1) The Government of the Commonwealth of Dominica, (2) The Government of Grenada, (3) The Government of St Kitts and Nevis, (4) The Government of Saint Lucia, and (5) The Government of St. Vincent and the Grenadines (collectively referred to as “**the OECS Contracting States**”) of the one part:

AND: (1) **CABLE & WIRELESS (WEST INDIES) LIMITED** a company duly incorporated in England and having its registered office situate at 124 Theobalds Road, London, WC1X 8RX, England, (2) **CABLE & WIRELESS ST. KITTS & NEVIS LIMITED**, a company duly incorporated in St Kitts & Nevis and having its principal place of business at Cayon Street, Basseterre, St. Kitts & Nevis, (3) **CABLE & WIRELESS GRENADA LIMITED**, a company duly incorporated in Grenada and having its principal place of business at the Carenage, St. George’s, Grenada, (4) **CABLE & WIRELESS CARIBBEAN CELLULAR (ST. LUCIA) LIMITED**, a company duly incorporated in Saint Lucia and having its registered office situate at first floor, Old NIS Building, Waterfront, Castries, Saint Lucia, (5) **CABLE & WIRELESS DOMINICA LIMITED**, a company duly incorporated in Dominica and having its registered office situate at 30 Hanover Street, Roseau, Dominica, (6) **CABLE AND WIRELESS CARIBBEAN CELLULAR (MARKETING) LIMITED**, a company duly incorporated in the British Virgin Islands and having its registered office situate at Craigmuire Chambers, Road Town, Tortola, British Virgin Islands, (7) **CABLE AND WIRELESS CARIBBEAN CELLULAR ST. VINCENT AND THE GRENADINES LIMITED**, a company duly incorporated in St. Vincent & the Grenadines and having its registered office situate at Halifax Street, Kingstown, St. Vincent and the Grenadines and, (8) **CABLE AND WIRELESS PLC**, a company duly incorporated in England and having its registered office situate at 124 Theobalds Road, London WC1X 8RX (collectively, referred to as “**Cable & Wireless**”) of the other part.

WHEREAS the OECS Contracting States are reforming the telecommunications sector in their respective States and have agreed to pursue a harmonised approach to these reforms.

AND WHEREAS the OECS Contracting States have agreed that a liberalised and competitive telecommunications environment is desirable for the future economic and social development of the sub-region.

AND WHEREAS IN PURSUANCE of the aforementioned objectives the OECS Contracting States have by Treaty signed at St. Georges, Grenada on the 4th day of May, 2000 set up the Eastern Caribbean Telecommunications Authority (ECTEL) to enable the fair, efficient and transparent regulation of the telecommunications industry in these States.

AND WHEREAS the OECS Contracting States have enacted harmonised Telecommunications Acts and shall be promulgating harmonised Telecommunications Regulations to enable the new liberalised and competitive telecommunications environment.

AND WHEREAS prior to the introduction of the Telecommunications Acts in each of the OECS Contracting States, Cable & Wireless had exclusive licence rights to own and operate various telecommunications facilities and to provide various telecommunications services in each of the OECS Contracting States.

AND WHEREAS the introduction of the harmonised Telecommunications Acts has resulted inter alia in the termination of those licences in each of the OECS Contracting States, save in the case of St Lucia, where Cable & Wireless' domestic, international and cellular operating licences expire on the 31st of March 2001.

AND WHEREAS the introduction of the Telecommunications Acts requires that all Telecommunications providers obtain new non-exclusive licences to operate in the OECS Contracting States.

AND WHEREAS the OECS Contracting States and Cable & Wireless are committed to ensuring a smooth transition to a fully liberalised and competitive telecommunications sector and have agreed to collaborate in good faith during the period of transition to full competition.

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein exchanged the adequacy of which is hereby acknowledged the parties hereto agree that:-

LIBERALISATION OF THE TELECOMMUNICATIONS SECTOR

1. Liberalisation of the telecommunications sector in the OECS Contracting States shall be on a phased basis, commencing on the 1st of April 2001 (Phase 1). During Phase 1 new licences shall only be issued to operators other than Cable & Wireless for the provision of the networks and services specified in Schedule 1.
2. The transition period to full competition and liberalisation of the telecommunications sector shall be a minimum period of 12 months commencing on the 1st of April 2001, up to a maximum period of 18 months therefrom (Phase 2) as set out in Schedule 1.
3. During Phase 1 the OECS Contracting States and Cable & Wireless shall meet within the framework of three joint-working groups, namely; The Legal and Regulatory Working Group, the Tariff and Rebalancing Working Group and the Communications Working Group to expeditiously conclude their work in accordance with the terms of reference detailed in Schedule 2.
4. The Legal and Regulatory Working Group shall conclude the matters detailed in Schedule 3 in accordance with the timeframe specified therein, and the Tariff and Rebalancing Working Group shall conclude the matters detailed in Schedule 4 in accordance with the timeframe specified therein. Notwithstanding the provisions of clauses 13, 14, 15 and 16 below, in the event that either the Legal and Regulatory Working Group or the Tariff and Rebalancing Working Group, or both, are unable to complete the matters as aforesaid, then the respective Working Group shall immediately refer the issues and circumstances causing the delay to a Joint Committee. The Joint Committee shall comprise three representatives of the OECS Contracting States and three

representatives of Cable & Wireless respectively for resolution, such matters to be determined within 30 days of the referral. Where the Joint Committee is unable to reach an unanimous decision within the timeframe specified, then this Agreement shall terminate.

5. The OECS Contracting States and Cable & Wireless shall use their best endeavours to give effect to the Regulatory Principles set out in Schedule 5, and to the recommendations of the respective Working Groups.
6. During Phase 1 the OECS Contracting States and Cable & Wireless shall use their best endeavours to prevent and stop bypass of Cable & Wireless' network, through regulatory or other action permitted by law and through public education.
7. The OECS Contracting States and Cable & Wireless agree in principle to rebalancing, based upon full disclosure of agreed supporting cost data and its derivation. The parties shall ensure that any necessary rebalancing is substantially achieved as soon as possible during Phase 1 in accordance with the principles set out in Schedule 4.
8. Notwithstanding the restrictions on licensing during Phase 1 referred to in clause 1 above and more particularly set out in Schedule 1 hereto, Marpin Telecoms and Broadcasting Company Limited in Dominica ("Marpin") shall be licensed to provide international voice services in the Commonwealth of Dominica during Phase 1. Cable & Wireless, shall in accordance with the Telecommunications Act of Dominica, be obliged to provide domestic interconnection to Marpin so that its customers in Dominica can communicate with Cable & Wireless customers in Dominica. For the avoidance of doubt, Marpin's customers will not have access to Cable & Wireless international circuits whether for incoming or outgoing calls and Marpin shall not be permitted to deliver international traffic to or from Cable & Wireless' customers.
9. Cable & Wireless shall make itself available to meet with Global Network Providers Grenada Inc. to discuss possible commercial arrangements to accommodate the provision of telecommunications services in Grenada.

NEW CABLE AND WIRELESS OPERATING LICENCES

10. Each of the OECS Contracting States agree to grant to the appropriate Cable & Wireless operating company in the State concerned upon application, a new non-exclusive operating licence or licences to provide at least the same networks and services as are currently provided by that operating company or companies before the expiry of any deemed authority under the Telecommunications Acts. The parties agree that the new Cable & Wireless non-exclusive licences shall be concluded by them within four months of the date of execution of this Agreement, and in accordance with the principles set out in Schedule 5 in relation to licensing.
11. Each of the OECS Contracting States shall use their best endeavours to amend the Telecommunications Act so that any deemed authorisation period under the said Acts, shall not expire before the 30th of September, 2001.

SETTLEMENT OF CLAIMS

12. Cable & Wireless shall relinquish and waive all claims against each of the OECS Contracting States arising as a result of the introduction of the Telecommunications Acts in the OECS Contracting States and the consequent termination of their exclusive licence rights and in relation to Saint Lucia all claims arising from the expiry of Cable & Wireless' operating licences, and the OECS Contracting States shall relinquish and waive all claims against Cable & Wireless for any or all breaches of its exclusive operating licences in all cases with effect from the commencement of Phase 2 subject to the provisions of clauses 13,14,15, and 16 below. For the avoidance of doubt all claims and rights of the OECS Contracting States under any applicable Income Tax Acts shall continue and shall not be extinguished by this provision, save that this shall not be interpreted as an admission by Cable & Wireless of any such claims.

DISPUTE RESOLUTION

13. All disputes, differences or questions between the parties with respect to any matter arising out of or in relation to this Agreement including but not limited to any claim or claims for damages or other relief arising from termination of this Agreement in accordance with clauses 14, 15 and 16 shall be referred in the first instance to a Joint Committee comprising of three representatives of the OECS Contracting States and three representatives of Cable & Wireless for resolution, such matter to be determined within fifteen days of the dispute, difference or question having arisen. Where the Committee is unable to reach an unanimous decision within the timeframe specified, the matter shall be referred to arbitration in accordance with the laws of the respective OECS Contracting State where the dispute, difference or question arose.

TERMINATION

14. If the parties or any of them fail to observe the terms of this Agreement or take any action which is inconsistent with this Agreement then this Agreement may be terminated as between Cable & Wireless and the OECS Contracting State or States with respect to which the failure has occurred, as hereinunder stated. An affected party shall give notice of any breach to the other party concerned. In the event that the breach is incapable of remedy, termination shall take place forthwith. Where the breach is capable of remedy the notice shall require that the breach be remedied within fifteen days from the date of the notice failing which the matter shall be resolved in accordance with the dispute resolution procedures set out in clause 13 above.
15. For the avoidance of doubt, in the event of termination nothing in this Agreement and no act carried out in performance of this Agreement will be deemed to have affected or otherwise prejudiced any claim or other rights and obligations that Cable & Wireless or the OECS Contracting States may have against each other prior to the date of this Agreement.
16. Termination of this Agreement as between Cable & Wireless and one or more of the OECS Contracting States shall not affect the operation of this Agreement as between

Cable & Wireless and the remaining OECS Contracting States where this Agreement will remain in full force and effect.

NOTICES

17. Notices may be given hereunder by any party by facsimile, hand delivery or courier and addressed, in the case of Cable & Wireless to the addresses of the respective Cable & Wireless companies set out in the parties clause and in the case of the OECS Contracting States at the respective addresses stipulated in Schedule 6 and shall be deemed to have been received in the case of facsimile at the time of dispatch (or if the day of dispatch is not a business day, on the next following business day) in the case of courier on the business day after dispatch and in the case of hand delivery when delivered (or if the day of delivery is not a business day, on the next following business day).

GOVERNING LAW

18. This Agreement shall be governed by and construed, performed and enforced in accordance with the laws of Saint Lucia

ENTIRE AGREEMENT AND TERM

19. This Agreement represents the entire agreement between the parties and replaces all previous agreements, writings and understandings between the parties with respect to the subject matter hereof.
20. Subject to sub-clause (d) below, this Agreement shall terminate by the effluxion of time;
 - (a) 2 years after the date of this Agreement, or
 - (b) the date that both of the following criteria are met:
 - (i) A price cap regime has been established governing Cable & Wireless' pricing in markets where it remains dominant, in accordance with the relevant principles set out in Schedule 5 and international practice in relation to the setting of such price caps; and
 - (ii) Guidelines have been issued specifying how any access deficit contribution of international facilities-based providers interconnecting to Cable & Wireless' facilities are to be calculated.
 - (c) Cable & Wireless shall supply to ECTEL the agreed necessary information to enable ECTEL to achieve the requirements detailed in sub-clause (b) hereof.
 - (d) The provisions of this clause shall not affect the time frame agreed for Phase 1 as stated in clause 2 hereof.

GENERAL

21. Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

22. The Parties hereby confirm that they have the capacity and are duly authorised to enter into this Agreement which shall enure to the benefit of the parties and their respective successors and assigns and shall continue in full force and effect.
23. The failure of any of the Parties to enforce any of their rights or to require the performance of any obligation, responsibility or liability under this Agreement shall not itself be taken as a waiver of that party's rights, obligations, responsibilities or liabilities under this Agreement.
24. The Schedules to this Agreement are deemed to be incorporated into and form part of this Agreement.

IN WITNESS WHEREOF this Agreement has been signed by the parties of the First Part who have hereunto set their hands and the companies of the Second Part by their duly appointed attorney or authorised officer on the day and year first above written.

SIGNED BY)
)
For and on behalf of the Government of Grenada)

HON. DR. KEITH MITCHELL
PRIME MINISTER OF GRENADA

SIGNED BY)
)
For and on behalf of the Government of St. Kitts)
& Nevis)

HON. DR. DENZIL DOUGLAS
PRIME MINISTER OF ST. KITTS
& NEVIS

SIGNED BY)
)
For and on behalf of the Government of Saint Lucia)

HON. DR. KENNY ANTHONY
PRIME MINISTER OF SAINT
LUCIA

SIGNED BY)
)
For and on behalf of the Government of the)
Commonwealth of Dominica)

HON. REGINALD AUSTRIE
MINISTER OF
COMMUNICATIONS, WORKS
AND HOUSING OF THE
COMMONWEALTH OF
DOMINICA.

SIGNED BY)
)
For and on behalf of the Government of)
St. Vincent & the Grenadines)

HON. DR. RALPH GONSALVES
PRIME MINISTER OF ST.
VINCENT & THE GRENADINES

SIGNED BY)
)
for and on behalf of Cable & Wireless)
(West Indies) Limited)

ERRALD MILLER
DIRECTOR

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless St. Kitts & Nevis Limited)

ERRALD MILLER

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless Grenada Limited)

ERRALD MILLER

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless Caribbean Cellular)
(St. Lucia) Limited)

ERRALD MILLER

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless Dominica Limited)

ERRALD MILLER

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless Caribbean Cellular)
(Marketing) Limited)

ERRALD MILLER

SIGNED BY)
)
duly authorised by and for and on behalf of)
Cable & Wireless Caribbean Cellular)
St. Vincent & the Grenadines Limited)

ERRALD MILLER

SIGNED BY

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duly authorised by and for and on behalf of
Cable and Wireless plc

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ERRALD MILLER

SCHEDULE 1

TRANSITION PLAN

Liberalisation of the telecommunications sector shall be on a phased basis, commencing on 1st April 2001 (Phase 1) During Phase 1:

- licences shall be issued strictly in accordance with this Transition Plan; and
- rebalancing of tariffs shall be substantially achieved.

Phase 2 of the Transition Plan shall commence at the conclusion of Phase 1. At that time, all restrictions that apply to the issuance of licences during Phase 1 shall no longer apply.

Licences to be issued during Phase 1 of the Transition Period

The following conditions shall apply to the licences to be issued during Phase 1:

Licences to C&W – in accordance with Schedule 5 and the provisions of the Agreement.

Licence to Marpin Telecommunications in Dominica – to be issued to allow that licensee to continue to offer the services, and to establish and operate the telecommunications network, that they offered and operated in Dominica as at the date of the Act coming into effect consistent with clause 8 of this Agreement.

Domestic mobile cellular network operator – a licence to establish and operate a network that offers domestic telecommunications to end-users by means of radio communications, and provides for intercell handover during telecommunications. During the transition period, international traffic shall be passed over a point of interconnection to the international gateway switch of Cable & Wireless. Thereafter, traffic may be passed to any licensed international network provider (or the mobile licensee may construct its own gateway switch, if it is so licensed).

Resale of international switched minutes – a licence to provide international telecommunications services to the public provided using licensed international telecommunications operator's. The licensee is permitted to purchase switched minutes from another licensed provider, for example, for use in a calling card service. This type of licence is also suitable to a call-back service, where the licensee offers international telecommunications services to the public in the relevant OECS Contracting State that is switched through the international gateway switch of an international telecommunications provider in that OECS Contracting State.

VSATs for call centres/data entry businesses – a licence to establish and provide an international VSAT facility, solely for use by a call centre, data entry business or other

informatics business. It is a condition of the licence that the facility is not connected to any part of the domestic PSTN – the facility is solely to incoming and outbound traffic between the premises of the business and places outside the relevant OECS Contracting State.

Internet service provider – a licence to provide to the public access to the Internet, using the telecommunications network of a licensed network operator (eg, dial-up over the PSTN; continuous connections provided over a cable TV network, etc). This licence does not, of itself, grant the right to establish and operate any telecommunications facility. It is a condition of the licence that the service not be used, directly or indirectly, to provide any voice service (or any bypass service) to the public.

No other licences other than those listed here shall be issued during Phase 1.

These conditions are intended to be read in conjunction with the relevant provisions of the Act and Regulations.

SCHEDULE 2

TERMS OF REFERENCE FOR THE WORKING GROUPS

OECS/CABLE AND WIRELESS TARIFF AND REBALANCING WORKING GROUP

BACKGROUND

Selected OECS Member States and Cable & Wireless are engaged in negotiations with a view to arriving at an amicable termination of existing Cable and Wireless licenses, in respective Member States. Consistent with the same, the parties by agreement of the 21st of February, 2001 committed to the establishment of joint Working Groups to examine a number of outstanding issues, relative to matters under negotiation. It is envisaged that the Working Groups would seek to draw consensus on particular issues and make appropriate recommendations. This is in keeping with the policy framework already enacted by the participating Member States and the terms and conditions of the MOU's. It is recognised however that relevant recommendations shall not be binding on the Member States.

COMPOSITION

The Tariff and Rebalancing Working Group shall be chaired by the Dr. Linus Thomas and shall comprise representatives of the OECS and Cable and Wireless (Appendix A). The Chairman shall assume the responsibility for calling meetings of the Working Group and for advising the Team Leader.

TERMS OF REFERENCE

The Tariff and Rebalancing Working Group shall undertake the following;

1. Prepare a list of required data to enable determination of appropriate tariffs.
2. Review cost data and make recommendations on initial tariffs.
3. Determine appropriate cost for interconnection in a disaggregated manner.
4. Advise on the cost of provision of telecommunications service.
5. Analyze proposals for the allocation of costs in the provision of service.
6. Establish procedures for the review of existing rates and proposals for rebalancing.
7. Make recommendations on the verification of cost data.

The teams will also discuss and agree on any additional data that may be required and will agree to standard non-disclosure agreement with respect to commercially sensitive information.

METHODOLOGY

The Working Group shall endeavour to reach a consensus, taking into consideration the policy framework of the participating OECS Member States. The teams will review the existing data with a view to determine whether additional information would be required and the nature of the same. The group will having carried out its analysis then make recommendations with respect to the setting of initial tariffs, rate rebalancing and, if required, additional studies.

This approach does not preclude consultation by the OECS with other operators, the public or any other person. A report containing agreed recommendations shall be prepared by the Chairman for submission to Member States for consideration. Areas of disagreement shall also be reflected in the report.

These recommendations would all have to be taken in the context of existing legislation and regulations and would still be subject to any regime applied by ECTEL.

DELIVERABLES

The Tariff and Rebalancing Working Group shall prepare a summary report for submission to the negotiation Teams on the 16th March 2001. It is envisaged that the Working Group may require subsequent sittings to complete its work. A final report shall be prepared for submission to the negotiating parties at a date to be agreed by the Working Group at its first meeting.

APPENDIX A

COMPOSITION OF TARIFF AND REBALANCING WORKING GROUP

OECS

Dr. Linus Thomas (Chairman)
Dr. John Prince
Dr. Fritz Ringling
Mr. Lambert Lewis
Mr. Martin Taschdjain

CABLE AND WIRELESS

Rudy Gurley (Team Leader)
Usman Saadat
Howard Ramsbottom

OECS/CABLE AND WIRELESS LEGAL WORKING GROUP

BACKGROUND

Selected OECS Member States and Cable and Wireless are engaged in negotiations with a view to arriving at an amicable termination of existing Cable and Wireless licenses, in respective Member States. Consistent with the same, the parties by agreement on the 21st February 2001 committed to the establishment of joint Working Groups to examine a number of outstanding issues, relative to matters under negotiation. It is envisaged that the Working Groups would seek to draw consensus on particular issues and make appropriate recommendations. This is in keeping with the policy framework already enacted by the participating Member States and the terms and conditions of the MOU's. It is recognised however that relevant recommendations shall not be binding on the Member States.

COMPOSITION

The Legal Working Group shall be chaired by the Legal Counsel to the OECS and shall comprise representatives of the OECS and Cable and Wireless (Appendix A). The Chairman shall assume the responsibility for calling meetings of the Working Group and for advising the Team Leader.

TERMS OF REFERENCE

The Legal Working Group shall undertake the following;

1. Review the Draft Regulations (Appendix B).
2. Review the Draft Licenses (Appendix B).
3. Examine relevant proposals by Grenada and St. Kitts and Nevis, relating to the expiration of their licenses.
4. Prepare the terms and conditions of the final OECS/Cable and Wireless MOU.

METHODOLOGY

The Working Group shall endeavour to reach a consensus, taking into consideration the policy framework of the participating OECS Member States. In this regard, consideration shall be given to the respective Telecommunications Acts and relevant policy documents in the context of the agreed MOU's. A priority list of regulations shall be adopted.

This approach does not preclude consultation by the OECS with other operators, the public or any other person. A report containing agreed recommendations shall be prepared by the Chairman for submission to Member States for consideration. Areas of disagreement shall also be reflected in the report.

DELIVERABLES

The Legal Working Group shall prepare a summary report for submission to the negotiating Teams on the 16th March 2001. It is envisaged that the Working Group may require subsequent sittings to complete its work. A final report shall be prepared for submission to the negotiating parties at a date to be agreed by the Work Group at its first meeting.

APPENDIX A

COMPOSITION OF LEGAL WORKING GROUP

OECS

Mr. Victor Philip La Corbiniere (Chairman)
Hon. Petrus Compton
Mrs. Jennifer Astaphan
Dr. Ken Ballantyne
Mr. Anthony Astaphan

CABLE AND WIRELESS

Miss Lisa Agard (Team Leader)
Mr. David Stewart
Miss Lisle Alden

APPENDIX B

DRAFT LICENSES AND REGULATIONS

DRAFT REGULATIONS

Review of the draft regulations shall take into consideration:

1. Consistency with the draft Telecommunications Act.
2. The efficacy of the Administrative and Appeals procedures.
3. Consideration of the key legal issues pertaining to interconnection, universal services, private networks, tariff approval processes and licensing processes.
4. Other relevant Policy Issues.
5. Transition Issues.

DRAFT LICENSES

Review of the draft licenses shall take into consideration:

1. Consistency with the draft Telecommunications Act and Regulations.
2. The contractual obligations of the parties.
3. Policy issues.

OECS/CABLE AND WIRELESS COMMUNICATIONS WORKING GROUP

BACKGROUND

Selected OECS Member States and Cable & Wireless are engaged in negotiations with a view to arriving at an amicable termination of existing Cable and Wireless licenses, in respective Member States. Consistent with the same, the parties by agreement of the 21st of February, 2001 committed to the establishment of joint Working Groups to examine a number of outstanding issues, relative to matters under negotiation. It is envisaged that the Working Groups would seek to draw consensus on particular issues and make appropriate recommendations. This is in keeping with the policy framework already enacted by the participating Member States and the terms and conditions of the MOU's. It is recognised however that relevant recommendations shall not be binding on the Member States.

COMPOSITION

The Communications Working Group shall be chaired by Mr. Richard Andrews and shall comprise representatives of the OECS and Cable and Wireless (Appendix A). The Chairman shall assume the responsibility for calling meetings of the Working Group and for advising the Team Leader.

TERMS OF REFERENCE

The Communications Working Group shall undertake the following:

1. Coordinate communications with other parties, including the public, concerning the engagement process between the OECS and Cable and Wireless.
2. Provide the forum for both parties to ensure good communications and avoid misunderstandings.
3. Preparation of joint communiqués where appropriate.

METHODOLOGY

The Working Group shall endeavour to reach a consensus, taking into consideration the policy framework of the participating OECS Member States. The working group would provide a synthesis of decisions of meetings of the negotiation committee and then prepare draft joint statements for approval by the negotiation team.

Once approval is obtained then the committee would be responsible for the distribution of the approved information in the media.

DELIVERABLES

The deliverables of this Working Group would depend directly on the outputs from the negotiation sessions. Consideration can also be given to the promotion of any final agreement reached.

APPENDIX A

COMPOSITION OF THE COMMUNICATIONS WORKING GROUP

OECS

Mr. Richard Andrews (Chairman)

CABLE AND WIRELESS

Ms. Pat Bynoe-Clarke (Team Leader)

SCHEDULE 3

LEGAL AND REGULATORY WORKING GROUP

PLAN OF WORK FOR FOUR-WEEK PERIOD BEGINNING APRIL 9TH 2001.

- Week 1** Review the following four draft regulations and prepare recommendations on the same
- licensing
 - interconnection
 - universal service
 - private networks
- Week 2** Continue and complete process commenced in week 1.
- Week 3** Commence discussions on elements of the following three new Cable & Wireless licences
- fixed networks/services
 - mobile networks/services
 - private networks/services
- Week 4** Continue review of regulations and commence discussions on
- tariffs regulations
 - spectrum regulations

Conclude on recommendations concerning the above to ECTEL. During this period the Working Group shall agree a timeframe for the review of remaining Regulations.

SCHEDULE 4

INTERIM REGIME FOR TARIFFS

The principles and procedures to be applied to Tariffs and Rebalancing are that:

1. A long-term solution to cost-oriented tariffs should be addressed as part of a hybrid model (historical/current) developed by ECTEL, in accordance with international standards and practices, and in consultation with the industry. It is estimated that the process may take at least 6 months and that such a model would inform both rebalancing and interconnection charges.
2. An interim regime for submitting proposals for tariffs, rebalancing and interconnection charges will be required until the ECTEL hybrid model is finalised. In the interim the procedures for submitting proposals for tariffs, rebalancing and interconnection charges are as follows:
 - Proposals will be based on C&W's historic cost model appropriately adjusted, in accordance with international standards and practices, as follows:
 - The cost of capital consistent with prevailing industry standards/local market conditions.
 - A reasonable proxy to reflect current cost of assets.
 - A reasonable proxy for efficiency factors in respect of: (a) Assets (b) Operating costs
3. The OECS team of the Tariff and Rebalancing Working Group will advise on parameters by the 10th April 2001, subject to Cable & Wireless presenting to the OECS team the agreed appropriate data necessary to conclude that task.
4. The Tariff and Rebalancing Group shall also consider, and implement where appropriate into the model, the direct costs required to be paid as a result of regulation as and when information about those costs becomes available.
5. Prior to the application of the adjustments, the Tariff and Rebalancing Group would agree to the parameters within one week, from the 10th April 2001
6. The Tariff and Rebalancing Group will finalise the output and submit the same to the Joint Negotiating team.
7. The Joint Negotiating team shall review, amend, finalise and recommend the revised proposals to ECTEL and the NTRC.

8. Once the hybrid model developed by ECTEL is ready, and prior to the implementation of a price cap regime, further proposals for rebalancing shall be informed by the outputs of the ECTEL hybrid model.
9. For the avoidance of doubt, over the longer-term the issue of rebalancing shall be addressed by the price cap regime.

SCHEDULE 5

AGREED REGULATORY PRINCIPLES

GENERAL

- That regulation should promote competition, with regulation being required to protect the long-term interests of consumers, where competition does not operate effectively.
- Regulations to be consistent with the Act, and discussions should take the current Act as a “given” in formulating recommendations on the Regulations.
- Regulations should be drafted in a way that is as clear and concise as possible, and ensures maximum transparency and accessibility to the public.
- Decision made by regulators (ECTEL and NTRC) should be fairly and reasonably made and determined in accordance with the rules of natural justice, with a reasonable opportunity for affected parties to make submissions and be heard (including, where appropriate, the general public). Written reasons for decisions should be available.
- Persons empowered under the Act shall not disclose confidential information received in the course of their duties.
- A fair appeals process should be provided for in the regulations.
- One relevant factor that shall be considered in setting fees is whether the fees are set at a level that covers the cost of regulation. For example, the setting of annual licence fees should involve considering what level of fees covers the reasonable costs of the Commissions and ECTEL. (This should not apply to, for example, auction fees designed to produce efficient use of scarce resources such as spectrum).
- Any regulation of access to submarine cables should be based on the need for, and designed to achieve, the protection of competition and prevention of anti-competitive practices in downstream markets. The issue of when and in what form this could take should be considered by the regulator
- In determining the Numbering and Spectrum Plan, one of ECTEL’s considerations shall be that, where it is reasonable to do so, existing numbering, spectrum and domain-name allocations to be preserved.

- The regulations should provide for a dealer authorization regime for the importing and shipping of telecommunications equipment which should not impair in any way a competitive market in CPE
- Major decisions concerning network capabilities (such as local number portability, mobile number portability and indirect access) should be based on careful review and consideration of relevant factors by the regulator including a cost-benefit analysis as part of a public consultation process.
- In determining certification type-approvals and technical standards, consideration should be given to:
 - Existing approvals (e.g. US/EU approved devices); or
 - Technical standards already in use in the existing networks.
- To the extent that the Act permits, the regulator should be empowered to make determinations regarding facilities-sharing arrangements and similar issues. (For example, the regulator may choose not to require access to ‘non-essential’ facilities, if it makes a determination that it is not in the long-term interest of consumers to require access).

INTERCONNECTION

- Contribution to access deficit to be fairly funded by all interconnecting operators.
- “Reasonable technical grounds” for refusing interconnection shall be explained in more detail in the Regulations.
- The grounds for termination of an interconnection arrangement shall be further discussed in the Working Group.
- The regulations should set out some basic rules regarding the conduct of dispute resolution by the regulator.
- Cost-orientation, required by the Act, shall be determined using a method adopted by the Regulator. The regulator shall have the flexibility to use any calculation method that meets the standard in the Act of “cost –orientation” (Examples include LRIC and FDC). In applying a cost-oriented standard, the Tariffing Work Group should be asked to consider whether the following or any other principles shall apply:
 - Costs shall be borne by the telecommunications provider whose activity causes those costs to be incurred
 - Non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges
 - Costs that do not vary with usage should be recovered through flat charges and costs that vary with usage shall be recovered through usage-sensitive charges

- Costs should include the attributable operating expenditure, depreciation and a reasonable rate of return on investment and an appropriate contribution to fixed, joint and common costs.
 - Interconnection prices should lie between the total service long-run incremental cost and the stand-alone cost of providing the service.
- Operators may provide a Reference Interconnection Offer (RIO) that sets out proposed standard offer of terms and conditions for interconnection which, if approved, can reduce the need for lengthy approval processes for individual interconnection agreements on the same terms as the RIO. The terms of the RIO are determined by the operator – if the terms of the RIO are inappropriate or not acceptable to the regulator, then the RIO shall be rejected (I.e. not approved) in whole or in part following a public consultation process. A RIO that has not been approved by the regulator shall have no legal effect.
 - If a RIO is approved, then the fact that an interconnection agreement is on the same terms as the RIO, with respect to the same services, could be sufficient grounds for approval of that interconnection agreement by the Commission

UNIVERSAL SERVICE

- Clear mechanism for cost recovery under USO mechanism.
- Contributions to be allocated amongst all licensed operators on the basis of overall share of gross telecoms revenue (or similar fair measure).
- Cost of complying with universal service obligation to be funded through a competitively neutral funding mechanism – no unfair burden to fall on any single provider.
- The Regulations shall set out the detail of how the following are calculated or shall proceed (with appropriate supervision by the regulator):
 - the cost of complying with the USO;
 - process for lodging and having reviewed by the regulator, cost data in relation to the USO; and
 - each operator's contribution to that cost.

TARIFFS (Rebalancing and Incentive Regulation)

- Rebalancing agreed in principle to be based on full disclosure of supporting cost data, and its derivation. The Tariff Working Group shall assist in this process.
- A Price Cap regime is to be applied to Cable & Wireless to the extent that it remains dominant in the provision of fixed line services. The key features of that price cap may include:

- a single basket covering all PSTN services, with a sub-cap for residential services if ECTEL so recommends;
 - the price cap shall apply for a period of at least 3 years, determined by the regulator;
 - the X (and, if applicable, Y) factors shall be set by the regulator.
- The following principles should guide the determination of whether a tariff should be approved:
 - Basic principle of tariff policy should be that, where competition operates effectively, tariffs shall be determined in accordance with the principles of supply and demand, and operators shall be free to set their own tariffs.
 - Where competition does not operate effectively (whether because that sector is not yet liberalized, or one provider remains dominant in that sector) then the imposition of an incentive regulation scheme, such as a price cap, shall apply. Each regulated service may be subject to a single pricing regime or process (i.e., no “double jeopardy” for tariffs).
 - When a price cap is imposed, prices that comply with that price cap shall not be subject to additional price adjustments.
 - Tariffs for switched minutes provided for resale during the Transition Period to be calculated on a Retail less Avoided Cost method, subject to supervision by the regulator, in accordance with international standards and practice for the resale of retail services.
 - The tariff process and price cap regime should recognize the principle of rebalancing (consistent with the Act’s objective of cost-oriented pricing).
 - Tariff approvals should be sufficiently timely so as to avoid or minimize the delay in introducing new services or packages.

PRIVATE NETWORKS

- Strong action against bypass, in accordance with the Act and Agreement.
- The following working definition of bypass has been proposed: “Bypass” means either of:
 - The passing of an international voice service (including the carriage of a reconstructable voice channel within a data or mixed voice/data service) without passing through the international gateway switch of a licensed international voice network operator; or
 - Termination of voice traffic over the domestic network by a person who does not originate the call or possess valid interconnection agreement with that domestic network provider.

- The Working Group shall consider whether this working definition needs to be further refined.
- Call-back services shall be separately licensed. Call-back services that are licensed and use the international facilities of existing licensed providers shall be permitted. Call-back operators, like all other operators, shall not engage in bypass.
- Unlawful use of a telecommunications service, including using that service for bypass, shall be reasonable grounds to terminate that service.

LICENSING

- Strong regulatory support for phasing.
- The parties shall consider the extent to which the Act and the Regulations need to provide for the Transition Period as in the Agreement. Licences to be issued in terms consistent with that transition plan. Once the Transition Period has ended, any restrictions in licences relating to the Transition Period could fall away.
- Failure to comply with a requirement of a licence derived from the Transition Plan should be grounds for suspension or revocation of licence, subject to the processes set out in the Act.
- Licences to be issued on transparent and non-discriminatory terms:
 - Providers of the same types of networks or services will be treated the same (or distinguished on grounds that do not affect competitive neutrality). For example, all ISPs should pay the same licence fee (if any) or a fee calculated in the same way. This does not exclude any non-discriminatory conditions expressed to apply where the licensee is dominant.
 - ECTEL's decision whether or not to recommend that a licence be issued shall be transparently made (including, if appropriate, consultation with the public)
- If a licensee has not violated the terms of their licence, then renewal of that licence could occur without having to reapply for a full licence process or an agreed period could be used.
- The following policy principles should apply to the proposed terms of a new licence to be issued under the Telecommunications Act to a person who held a licence ("old licence") as at the date that the Act came into effect (Cable & Wireless or Marpin Telecommunications) in order to provide for a fair transition and ensure continuity of services and networks during the creation of the new licences:
 - that the licensee be allowed to provide at least those services, and establish and operate at least those networks, as in the old licence;

- all fees imposed will be non-discriminatory, transparent, not distort competition and apply fairly across all providers;
- that the licensee be allowed to use at least that spectrum currently in use under the old licence following the submission of a spectrum use and inventory and subject to the ECTEL Spectrum Management Plan. The licensee will not be required to pay a one-off fee (ie to bid at auction) for spectrum which is already being used to provide services to customers and in respect of which network investment has already been made. Any other fees will be imposed in a non-discriminatory fashion. In the case of new or unallocated spectrum, old licensees will have no special treatment and will be required to bid for that spectrum (or participate in the allocation process) like any other operator.
- If the old licence contains a non-exclusive right (for example, to access public land for the purpose of installing a facility) then that right shall be preserved in the new licence, unless it would be unreasonable to do so. If it is necessary to modify these rights, that modification shall apply in a non-discriminatory manner. The general principle shall be to ensure that all similarly situated providers enjoy similar rights, thereby removing any special status attaching to those rights. For the avoidance of doubt, none of these rights shall be exclusive in any way.
- With respect to markets where the old licensee is determined by the Commission or ECTEL (as the regulations may provide) to be dominant then there will be specific provisions relating that licensee's conduct in that market; and
- the process for inquiring into whether to grant the licence may be streamlined, if services are already being provided to the public, or a telecommunications network already being operated, by that provider.

SCHEDULE 6

ADDRESSES FOR NOTICES

For the Government of Grenada

Prime Minister's Office
Ministerial Complex
Botanical Gardens
St. George's
Grenada

For the Government of St. Kitts & Nevis

Prime Minister's Office
Government Headquarters
Church Street
Basseterre
St. Kitts & Nevis

For the Government of Saint Lucia

Prime Minister's Office
Graham Louisy Administrative Building
Waterfront
Castries
Saint Lucia

For the Government of St. Vincent and the Grenadines

Prime Minister's Office
Administrative Centre
Kingstown
St. Vincent & the Grenadines

For the Government of the Commonwealth of Dominica

Prime Minister's Office
Government Headquarters
Kennedy Avenue.
Roseau
Dominica