



THE FAIR TRADING COMMISSION

IN THE MATTER OF
THE APPLICATION FOR A RATE ADJUSTMENT AND THE
INTRODUCTION OF USAGE BASED/FLAT RATE PLANS

filed by

CABLE & WIRELESS (BARBADOS) LIMITED

DECISION AND ORDER

BEFORE:

Mrs. Vivian-Anne Gittens
Chairman

Professor Andrew Downes
Commissioner

Mr. Gregory Hazzard
Commissioner

IN THE MATTER OF

the Fair Trading Commission Act CAP. 326B

AND IN THE MATTER OF

the Utilities Regulation Act CAP. 282

AND IN THE MATTER OF

the Utilities Regulation (Procedural) Rules S.I. 2003 No. 104

BEFORE:

Mrs. Vivian-Anne Gittens
Chairman

Professor Andrew Downes
Commissioner

Mr. Gregory Hazzard
Commissioner

DATE: July 20, 2004

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electronic copy of the decision. Please note that this is provided for guidance purposes only and must be checked against the official version for accuracy.

PART ONE - EXECUTIVE SUMMARY

The Commission is of the view that consideration of this Application required the Commission to (a) determine the cost of service for the provision of regulated domestic service (b) identify the relevant sources of revenue and (c) analyse the proposed rate structure.

The following summary sets out the decisions made in respect of these and outlines the basis of each decision.

Determining the Cost of Service

The Commission accepts the Applicant's submission of the use of the fiscal year 2001 - 2002 as the test year for determining the cost of service. The Applicant submitted that the operating expenses incurred in the test year were \$102.282M¹ included in this figure and highlighted by the Applicant were management fees, advertising, public relations, marketing expenses, contributions, donations and dues. The Applicant submitted that the cost of providing the domestic service is \$199.640M. The Applicant arrived at this figure by taking the cost of providing the domestic service in the test year and adjusting it for identified 'known and measurable changes'.

The Commission examined the expenses as presented and finds the expenses to have been reasonably incurred in the provision of the domestic service save and except for the items set out below.

The Applicant claimed the amount of \$10.492M as advertising, public relations and marketing expenses legitimately incurred in the provision of domestic telephone service. The Commission finds that \$415K of these expenses was directly incurred by Business Units outside of Barbados and therefore was not incurred in providing the domestic service. The Commission deducts \$2,669K for expenses relating to the Regional Incentive Scheme as it finds that these expenses were not incurred in provision of the regulated domestic services.

The Commission finds that the amount claimed for sponsorship should be reduced by \$300K as any benefits from this expenditure would inure to the Applicant as a corporation and its other services. Hence this expenditure should not all be borne by domestic residential and business customers, "the rate payers".

¹ M means millions and K means thousands

Based on the evidence the Commission does not consider that the increase in the management fee from \$500K to \$1.0M was cost based. The Commission finds that the amount claimed for management fees should therefore be reduced to \$500K.

The Commission finds the amount of \$3,769K claimed as restructuring and severance costs to be a non-recurring expense. This cost will be deducted from the operating expenses as these expenditures are not representative of future expenses that the Applicant will incur in providing the domestic service. They are unique and peculiar to the Applicant's amalgamation and restructuring process which it is anticipated will be for a finite period.

The Commission finds that in calculating the depreciation expense the Applicant failed to take into account the effect that deregulation of the Customer Premises Equipment, "CPE" would have on this category of expense and others. The Applicant did not provide information on CPE which the Commission could rely on, as the information submitted to the Commission was incomplete and the Applicant informed the Commission that it should not rely on this information in determining the matter before it. In the absence of full information the Commission is not in a position to make any adjustments to cost of service and rates. In any subsequent separate application vis-a-vis CPE the Commission would have to make a commensurate adjustment to any rates and to the cost of service.

The Commission accepts that there are known and measurable changes to cost of service components as changes will occur subsequent to the test year can be included in the computation of the revenue requirement.

The Commission accepts the Applicant's submission that recorded costs of \$2,336K attributable to other Cable & Wireless companies served by the Caribbean Contact Centre should be deducted from the operating expenses.

The Commission accepts the known and measurable change applicable to the Applicant's future salary costs which represents an increase of \$2.333M from that incurred in the test year.

The amount of insurance expense of \$2,308K is accepted by the Commission as a known and measurable change however the Commission will require the Applicant to report on any variance in this expense on an annual basis to allow the Commission to monitor changes in this expense.

The Commission finds that the Applicant has not submitted adequate documentation to support the expenditure incurred or budgeted for although such was requested by the Commission. The Commission had difficulty in assessing whether the estimated \$4.5M for rate case expenses were prudent and reasonable. The Commission therefore could not assess whether the costs are a legitimate expense to the domestic service. The Applicant requested that the \$4.5M be amortised over 3 years so that \$1.5 M could be recovered each year. The Commission will not allow this amount to be included as a known and measurable

change in the Applicant's operating expenses for the test year as there was an absence of adequate supporting information.

The Commission rejects the inclusion of \$12.901M deferred tax as a known and measurable change. The Commission finds that there is an absence of adequate support for items in the deferred tax computation. The Commission further finds that there are unexplained differences between the figures presented during the rate hearing and those that are in the regulatory accounts. The Commission rejects the inclusion of deferred tax as a known and measurable change. The Commission finds that there is an absence of adequate support for its inclusion.

The Commission accepts the other elements of cost of service as submitted by the Company, namely Depreciation Expenses, Taxes, Gross Valuation of Assets, Accumulated Depreciation and Rate of Return.

The Commission therefore finds that the cost of providing the domestic service is \$177.586M.

Sources of Revenue

The Applicant invited the Commission to find that there was a deficit between the revenues earned and the costs incurred in providing the domestic service. The Commission accepts that \$127.6 M was the revenue received by domestic service in the test year.

The Commission finds the full cost of maintenance and expansion of the domestic network have been attributed to and included in the cost of providing the domestic service. The Commission finds that the domestic network is operated and maintained for the use of rate payers as well as mobile, international and internet service providers. The Commission must consider all relevant sources of revenue that should be collected by the domestic network before it can determine the level of rate adjustment needed, if any, to meet the cost of service. The Commission finds that if it fails to consider these legitimate revenue streams inequity could result with rate payers bearing the full costs of the domestic network and other users getting a free-ride.

The Commission finds that even though other carriers use the domestic network no revenue from these users which properly belongs to the domestic service have been included in the domestic revenue presented to the Commission.

The Commission finds that the international service is a prime user of the domestic network service and its facilities and should pay the domestic service for its use of the domestic network facilities. The Applicant's evidence showed that in 1996 Price Waterhouse recommended that a per-minute cost-based charge of 11 cents should be paid by the international service provider for use of the domestic service. This charge was based on 1996 data and updated data was not put before the Commission. The Commission considers that it is not in a position to ascertain the

level of revenues that the international services should now pay for its use of the domestic network due to the lack of information before it.

Mobile – The Commission is of the view that mobile providers utilise the domestic network and all users including the Applicant’s Mobile Division should be providing some revenue to the domestic service for its use of the network facilities.

Internet – The Commission is of the view that internet providers utilise the domestic network and all users including the Applicant’s Internet Division should be providing some revenue to the domestic service for its use of the network facilities.

The Commission finds that without information on the revenues due to the domestic service from international and other sources it is not in a position to determine the level of rate adjustment, if any, that should be borne by the residential and business customer.

The Commission finds that there is statutory provision for the Applicant to receive financial contribution to the provisioning of domestic service from the universal service contributions and access deficit charges.

The Commission finds that on a balance of probabilities the Applicant has not shown that the proposed adjustment to the domestic line rate for business and residential customers is merited.

The Applicant presented the Enhanced Allocation Model (EAM) as a tool which could be utilised by the Commission to assist it. The Commission accepts that the EAM was developed primarily for the derivation of interconnection charges and for the amalgamated Applicant to measure its service profitability.

The Commission finds that it was not particularly useful to the Commission in determining the subject matter of this Application. The Commission finds that the EAM co-mingles regulated and unregulated costs and revenues. The Commission finds that the EAM comprises an allocation of costs and revenues in the statutory financial statements of the Cable and Wireless group of companies which were amalgamated.

Rate Structure & Design

The Commission finds that the rate structure as proposed by the Applicant is specifically designed to provide additional revenue of at least \$24.7M to the domestic service. Even though at this stage the Commission finds that the Applicant has not proven on a balance of probabilities that a rate adjustment is justified the Commission proceeded to consider the introduction of flat rate and usage based charging plans as proposed by the Applicant. The Applicant proposed only one means by which the Commission should make the adjustment to rates i.e. by means of the proposed rate structure. The Commission was not given any

alternative rate structure or latitude to amend it should the Commission find that there were insurmountable difficulties in the plans as proposed.

The Commission is not satisfied that the rate structure would achieve the objectives of customer equity, choice, or avoid rate shock. The Commission finds that the rate structure failed to provide significant incentive to reduce peak usage, which was an engineering provision of network capital expenditure.

The Application with respect to the introduction of flat rate charging plans and usage based rates as proposed by the Applicant is denied. The Applicant is at liberty to reapply.

Quality of Service

In accordance with the Utilities Regulation Act, CAP. 282 the Commission in setting rates sought to take into account the standards of service being offered by the service provider. The Commission requested that the Applicant submit its current standards of service and those proposed for this Application. The Applicant also submitted information on whether these standards have been met over the last 3 years. The Commission is of the view that the establishment of quality and service standards could not be achieved by this hearing on the information provided and is best achieved through a consultative process with the participation of all of the stakeholders.

By this Decision the Commission is in no way limiting its Order dated July 04, 2003 which gave Cable & Wireless the freedom to lower international rates below the existing rates.

PART TWO

BACKGROUND

THE APPLICATION

Filing

1. Cable & Wireless (Barbados) Ltd. "the Applicant" submitted an application to the Fair Trading Commission "Commission" on August 5, 2003 seeking:
 - a. *an adjustment to the domestic line rate for business and residential customers;*
 - b. *the introduction of flat rate charging plans and usage based rates for domestic calls made from fixed lines;*
 - c. *such further or other relief not inconsistent with the above as the Commission sees fit. Furthermore, Cable & Wireless will be seeking an abridgement of time pursuant to rule 7.1 of the Utilities Regulation Act Procedural Rules, 2003.*

2. The Commission on August 12, 2003 wrote the Applicant indicating that the application as submitted was incomplete as it failed to provide the requisite information stipulated by the Utilities Regulation (Procedural) Rules, 2003 and the Commission in its decision 'Interim Mechanism Rate Setting Principles' dated November 8, 2002. The Applicant submitted the information in stages ending on September 15, 2003.

3. The Application was further amended by the Applicant in relation to the revenue requirement schedule on 12, August 2003 and Comnet business rates on September 22, 2003.

Application Proposal

4. The Applicant in its application proposed revised rates for residential and business users of the domestic service hereinafter jointly referred to as domestic rate payers. The Applicant's proposal included a new rate structure which introduced two (2) plans based on usage profiles and a flat rate plan for unlimited domestic calling made form fixed lines. The Applicant proposed that the rate adjustments be made over two phases. Phase 1 commencing on October 1, 2003 and Phase 2

commencing six months thereafter. Rate increases for SmartChoice and Comnet services were also proposed.

5. *Residential Rates* - The proposed rate structure in Phase 1 offers customers a choice of these plans:

| | Monthly Residential Line Access | Monthly Call Usage | Total Monthly Usage |
|--|---------------------------------|--------------------|---------------------|
| Plan 1: 2000 minutes or less | \$28.00 | \$0.00 | \$28.00 |
| Plan 2: 2001 - 4000 | \$28.00 | \$10.00 | \$38.00 |
| Plan 3: over 4000 minutes | \$28.00 | \$20.00 | \$48.00 |

6. In addition, there is an additional per minute rate of \$0.017 applied to minutes used in excess of the maximum minutes for Plan 1 or Plan 2. There is no additional per minute charge for Plan 3 (unlimited usage).

7. In Phase 2 line rental will be increased to \$32.00 per month so the new rates would be as follows:-

| | Monthly Residential Line Access | Monthly Call Usage | Total Monthly Usage |
|----------------|---------------------------------|--------------------|---------------------|
| Plan 1: | \$32.00 | \$0.00 | \$32.00 |
| Plan 2: | \$32.00 | \$10.00 | \$42.00 |
| Plan 3: | \$32.00 | \$20.00 | \$52.00 |

8. As in Phase 1, there is an additional per minute rate of \$0.017 applied to minutes used in excess of the maximum minutes for Plan 1 or Plan 2 with no additional per minute charge for Plan 3.

Business Rates – The table below shows the existing and proposed domestic business rates.

| Existing and proposed Domestic Business Rates | | | |
|--|-----------------------|---|-------------------------------|
| Line rental | Existing Rates | Proposed Rates Phase 1 | Proposed Rates Phase 2 |
| Business single line | \$81.75 | \$120.00 | \$120.00 |
| PABX/Key System line | \$101.25 | \$150.00 | \$150.00 |
| Comnet 1 Band 1 | \$90.00 | \$135.00 | \$135.00 |
| Comnet 1 Band 2 | \$84.25 | \$125.00 | \$125.00 |
| Comnet Band 1 | \$73.25 | \$110.00 | \$110.00 |
| Comnet Band 2 | \$61.75 | \$95.00 | \$95.00 |
| Comnet Band 3 | \$50.50 | \$80.00 | \$80.00 |
| Comnet Band 4 | \$45.00 | \$70.00 | \$70.00 |
| Comnet Band 1 (Stepping) | \$92.75 | \$140.00 | \$140.00 |
| Comnet Band 2 (Stepping) | \$81.25 | \$125.00 | \$125.00 |
| Comnet Band 3 (Stepping) | \$70.00 | \$105.00 | \$105.00 |
| Comnet Band 4 (Stepping) | \$64.50 | \$95.00 | \$95.00 |
| Monthly Bundled FTF Minutes | Unlimited | 2000 Minutes | 2000 Minutes |
| Monthly Upgrade of FTF Minutes to 4,000 | NA | \$10.00 | \$10.00 |
| Excess Minute Charge Outside of Bundle | NA | \$0.017 per minute for minutes in excess of bundled FTF minutes used in a month | |

9. The Applicant stated that the new rate structure as proposed is intended to provide additional \$24.7million to meet the revenue requirement of the domestic service.

10. The Applicant stated that should the proposed domestic rates be approved the Applicant intends to adjust international direct dialed (IDD) rates below the maximum rates pursuant to the Utilities Regulation Act.

Notice and Procedural Conferences

11. Public Notice of the application was given in the Nation and Barbados Advocate newspapers on August 10th, 20th, 22nd and 24th 2003. The Public Notice was also posted on the Commission's website.

12. The Public Notice of the Application invited members of the public who wished to participate in the public hearing to file a letter of intervention by August 27th, 2003.

13. The Commission received letters of intervention and granted intervenor status to the following persons:

Office of Public Counsel on behalf of the Barbados Council for the Disabled, Mr. Olson Robertson, Sunbeach Communications Inc., Mr. Noel Smith, Mr. Alvin Cummins, Mr. Grenville Phillips, Mr. Alvin Thorpe, Mr. Barry Thorpe, Mr. Leroy McClean, BANGO (Barbados Association of Non-Governmental Organisations), BARCRO (Barbados Consumer Research Organisation Inc.), Mr. John Boyce, All Caribe Inc., Ms. Audrey McKenzie, Cariaccess, CARITEL.

14. Throughout the pre-hearing process parties were issued with procedural directions from the Commission. Thereafter, the Commission convened two procedural conferences on September 12, 2003 and October 15, 2003 for the purpose of establishing the hearing procedure and to decide any other matter that would aid in the simplification or the just and expeditious disposition of the proceeding. Public Notice of these procedural conferences was given in the Nation and the Barbados Advocate newspapers on September 4, and 5, 2003.

15. Four (4) procedural orders were issued by the Commission on September 12, 2003, October 15, 2003 November 24, 2003 and November 26, 2003. The Procedural Orders identified *inter alia* the file number assigned to the matter, the schedule for the filing and service of

documents, the order of appearance for the parties to the hearing, how the evidence should be presented to the Commission and the commencement date of the hearing. These orders amended the schedule of dates for filing and service of documents at the request of various parties and extended the time that was initially granted.

16. The Applicant was represented throughout the hearing by Mr. Patterson K. H. Cheltenham Q.C. and Mr. Barry L. V. Gale Q. C.

17. The Commission was assisted at the hearing by Mrs. Cyralene Benskin-Murray, General Legal Counsel/Commission Secretary, Mr. Roger Forde, who acted as Commission Counsel, Mr. Glenfield Lynch, Director of Utility Regulation, Mrs. Sandra Sealy, Telecommunications Analyst, Ms. Kim Griffith, Legal Officer and Ms. Heather Waithe, Documentalist and other key Commission staff and consultants.

Related Orders

18. By its Decision dated November 8, 2002 the Commission established Interim Mechanism – Rate Setting Principles. This mechanism focused on establishing rate setting guidelines for movements towards cost-oriented pricing, reviewing the existence, if any, of cross subsidies and permitting a degree of pricing flexibility. The Applicant filed an application in the Courts to challenge this decision by way of judicial review. This application was not pursued and on June 23, 2003 it was adjourned sine die.

19. During the course of the hearing the Applicant requested that certain information be treated confidentially. The Commission ruled that the Applicant must adhere to rule 13 of the Utilities Regulation (Procedural) Rules which set out the criteria to be used when seeking to have documents treated confidentially. Rule 13 required the Commission to convene a hearing to determine whether the documents should be treated confidentially or whether they should be placed on the public record.

20. The Commission convened a confidentiality hearing on October 23, 2003 to hear the request for confidentiality made by Cable & Wireless

in respect of various documents. By Guidance Note 3 the Commission informed the parties that claims for confidentiality would be governed by the Utilities Regulation Procedural Rules.

21. On October 23, 2003 Commissioner Floyd Phillips presided as sole Commissioner, and confirmed the proceeding relating to claims for confidentiality was to be governed by the Utilities Regulation Procedural Rules.

22. On October 29, 2003 the Applicant filed an application in the High Court of Barbados, seeking judicial review of:
 - a. the decision of the Commission to designate Mr. Phillips as sole Commissioner to preside over the Confidentiality Hearing of the Commission; and
 - b. the ruling by Commissioner Phillips at the Confidentiality Hearing, that the Utilities Regulation (Procedural) Rules 2003 will govern the confidentiality hearing and not the Telecommunications (Confidentiality) Regulations.

23. On December 19, 2003, Madam Justice Elneth Kentish, the decided that:
 - a. The Utilities Regulation (Procedural) Rules 2003 should govern the Confidentiality Hearing;
 - b. the Confidentiality Hearing held on October 23, 2003 is null and void on the ground of illegality as Commissioner Floyd Phillips acting ultra vires by sitting as a sole Commissioner at the confidentiality hearing; and
 - c. an order for certiorari is made in favour of the Applicant quashing the proceedings of the Commission on October 23, 2003.

24. The Applicant appealed Madam Justice Kentish's decision to the Court of Appeal in suit No. 25 of 2003 and placed a single issue for determination of the court. Whether the Telecommunications (Confidentiality) Regulations, S.I. 95 or the Utilities Regulation (Procedural) Rules 2003, S.I. 104 should govern the confidentiality hearing. The Court of Appeal upheld the High Court's decision and held that the rate hearing and the application for confidentiality were to be governed by the Utilities Regulation (Procedural) Rules 2003, S.I. 2003 No. 104.

Confidentiality Hearing

25. On February 24, 2004, the Commission convened an in camera hearing to determine the Applicant's thirty-seven (37) claims for confidentiality which were filed by the Applicant in relation to the application for rate adjustment.
26. The confidentiality claims were filed over the period September 12, 2003 to January 14, 2004. Objections to the Applicant's thirty-seven (37) claims for confidentiality were filed by seven (7) intervenors, the Barbados Association of Non-Governmental Organisation (BANGO), Mr. Alvin Cummins, the Office of Public Counsel on behalf of Barbados Council for the Disabled, CARITEL, Mrs. Audrey McKenzie, the Barbados Consumer Research Organisation Inc. (BARCRO) and Mr. Alvin Thorpe.
27. At the hearing the Commission received oral evidence from the Applicant's witnesses Mr. David Vrancken and Mr. Gordon Cochrane. Intervenors cross-examined the Applicant's witnesses and parties made oral submissions to the Commission.
28. The Commission issued a decision dated March 22, 2004, which ordered the following:-
29. Documents as they appear on the Official Record numbered 113, 114, 115, 117, 118, 119, 123, 122, 124, 126, 128, 129, 129-1, 130, 135, 136, 137, 138, 139, 141, 142, 180, 181 would be held in confidence by the Commission as these documents generally contained information that would *inter alia* cause the Applicant financial harm or put it at a competitive disadvantage and thereby prejudice the Applicant's competitive position.
30. Documents as they appear on the Official Record numbered 112, 116, 129, 121, 125, 131, 132, 133, 134, should be abridged and placed on the public record as the information in these documents (as abridged) was not likely to cause the Applicant any financial harm.

31. Document as it appears on the Official Record numbered 127 would be held in confidence by the Commission save and except for that information specifically identified as being in the public domain and the Commission determined that documents number 111 and 182 would be placed on the public record as no harm could be caused to the Applicant by their release.

32. On application by the Applicant the Commission granted the Applicant an extension of time from March 29, 2004 to April 7, 2004 for it to place Document No. 182 on the public record.

The Substantive Hearing

33. The substantive hearing commenced on November 24, 2003 and lasted 41 days. Written closing submissions were filed on May 20, 2004 and the Commission heard related Oral arguments on May 24, 2004. The following witnesses were called by the parties:

34. Witnesses called by Cable & Wireless (Barbados) Limited:

| | |
|-------------------------|---|
| Mr. David Shorey | Chartered Accountant and Management Consultant |
| Mr. Gordon Cochrane | Financial Controller, East Operations |
| Mr. David Vrancken | V.P. Regulatory Finance, Cable & Wireless (West Indies) Limited |
| Mr. Edwin Layne | V.P. Regional Network Planning |
| Mr. Paul Taylor | V.P. Sales & Marketing, Northern Caribbean Cable & Wireless (West Indies) Limited |
| Mr. Alistair MacPherson | Partner, PriceWaterhouseCoopers |
| Mr. Donald Austin | President |

35. Witness called by Office of Public Counsel:

Mr. Douglas Skeete Chartered Accountant

36. Witness called by BARCRO:

Mr. Erskine Durant Retired Engineer

37. The following persons filed Affidavits but were not presented for cross-examination:

Ms. Susan Marcus Sales Engineer, Nortel Networks

Mr. Ian Worrell Vice President, Sunbeach

Ms. Bonita Phillips President - Barbados Council for the Disabled Inc.

Mr. Barry Carrington Public Counsel on behalf of the Barbados Council for the Disabled

38. The Commission appreciates the time and effort of those who appeared before the Commission to present their views on the Application.

39. In addition to the sworn evidence given at the hearing, which included evidence provided under confidential cover, additional evidence was entered by way of information requests and information filings. The Commission has considered all the evidence before it making its decision on the Application.

STATUTORY POWERS AND RESPONSIBILITIES

Commission Authority

40. In accordance with section 4 (1) of the Fair Trading Commission Act, the Commission's authority is derived from its statutory powers and responsibilities as set out in the Utilities Regulation Act CAP 282 and the laws relating to Consumer Protection and Fair Competition which the Commission has jurisdiction to administer.
41. Under the Utilities Regulation Act the Commission is charged with the responsibility of ensuring that the rates that are set are fair and reasonable.
42. The Commission recognises that it has an obligation to enforce government policy within an expressed framework and within statutory established limits. This framework is set out at section 17 of the Fair Trading Commission Act and section 8 (1) of the Telecommunications Act. Certain pre-requisites must be fulfilled prior to the Commission acting on the policy directives of the relevant Minister. Section 17 of the Fair Trading Commission Acts states:

"The Minister may after consultation with the Chairman give the Commission directions of a general nature in respect of the policy to be followed by the Commission in exercising its functions in respect to utility regulation, consumer protection matters and fair competition matters, and the Commission shall comply with those directions."

43. Section 8 (1) of the Telecommunication Act states:

"The Commission shall exercise its power and perform its functions consistently with the purposes and objects of this Act and any law implementing the telecommunications policy objectives of Barbados"

Commission Procedures

44. The Commission's procedures applicable to its conduct of this rate hearing are set out in the Utilities Regulation (Procedural) Rules 2003, S.I. 2003 No.104. The Commission is given the authority under the Rules to issue procedural guidelines which govern the overall conduct of its proceedings.

Importance of Decision

45. The Commission recognises the importance of this Decision in the context of the present regulatory environment within the telecommunications sector. The Public Utilities Board operated under a monopoly environment whereas the Commission powers fall to be exercised under the evolving liberalisation of the market. This market anticipates the entrance of competitors to the Applicant, as the sector transforms from a monopoly environment with a single provider of telecommunications services to a competitive one with multiple providers. These changes underscore the need for the regulator to adopt a change of approach. The Commission must ensure that its decision does not unfairly impact on the Applicant's ability to compete in the market or create disincentives to potential new market entrants or create undue hardship on consumers.
46. To facilitate full liberalisation of the sector the Government of Barbados has established a transition timetable. The Commission is sensitive to the fact that time is of the essence and appreciates the inter relatedness of this decision to that process.

THE COMPANY

Corporate Structure

47. The amalgamation of the companies is a known and significant change in corporate structure of the group of Cable & Wireless companies from the test year. The Commission now finds itself regulating the domestic service and the international service of the company instead of a company called BARTEL which was regulated by its predecessor the Public Utilities Board. The significance of this amalgamation to the regulator is the possibility of an increased existence of non-arms length transactions which must be given due scrutiny and supervision.
48. On April 1, 2002, Cable & Wireless (Bartel) Limited "CWBARTEL", Cable & Wireless (BET) "CWBET", Cable & Wireless Cellular (Barbados) Limited "CWCC" and Cable & Wireless Information Systems Limited "CWIS" amalgamated to form Cable & Wireless (Barbados) Limited.
49. Prior to the amalgamation, these companies existed as four (4) separate and distinct legal corporate entities. CWBARTEL supplied domestic telecommunications services, whereas CWBET supplied

international telecom services, both of which were regulated by the Fair Trading Commission. CWBARTEL was considered the “national telecommunications carrier” and CWBET was considered the “external telecommunications carrier” in accordance with the Telecommunications Act 282A.

50. Each company kept and produced its own financial statements and records which would have indicated that company’s operating expenses and likewise the amount of revenue being generated by that company. In addition to the statutory financial statements CWBARTEL was required to produce and file with the Commission regulatory financial statements which were separate and distinct from the statutory financial statements.
51. The Cable & Wireless structure prior to amalgamation consisted of a number of companies with separate physical and corporate identities trading and transferring products, services and benefits between each other.
52. After the amalgamation, the separate entities of CWBET, CWBARTEL, CWIS and CWCC became a single company Cable & Wireless (Barbados) Limited which supplied both domestic and international telecommunications services. This meant that the activities of the former CWBARTEL and CWBET were now subsumed within the same company and the assets which were previously separately held are now the assets of the amalgamated company, Cable & Wireless (Barbados) Ltd.

Managerial Discretion

53. The Commission accepts the principles set out in text “The Regulation of Public Utilities” third edition at page 257, published in 1993 by Public Utilities Reports Inc. Arlington Virginia by Charles F. Phillips in relation to non-arm’s length transactions where he states:

“In upholding the commissions’ right of supervision over operating expenses, however, the courts have distinguished between expenditures resulting from “arm’s length bargaining” and have recognized the functions of management. With respect to the first, when expenditures are controlled by competitive forces, they are seldom challenged. For example, public utilities engage in

collective bargaining with their employees as do non regulatory enterprises. Except in rare circumstances, the resulting contracts are not questioned by the commissions. But in the absence of arm's length bargaining, particularly when transactions occur between affiliated companies, commission supervision is required"

54. The Applicant has proposed that good faith is presumed in any transactions relating to the operating expenses of the Applicant "the managerial good faith rule".

55. However Irston R. Barnes in the text entitled "The Economics of Public Utility Regulations", Appleton-Century-Crofton Inc. New York 1942 at page 604 in discussing the West Ohio Gas Co. v. Public Utilities Commission of Ohio (No.1) 294 U.S. 63; 55 S. Ct. 316 states that:

"The proposition that the expenditures of utility companies fall within the field of managerial discretion beyond the reach of regulatory authority is replete with danger for consumers and investors alike, and has fortunately been superseded."

56. The Commission accepts this modification to the managerial good faith rule as set forth by Mr. Justice Roberts in Acker et al v. United States et al in 1936. 298 U.S. 426 cited in Phillips text at page 258. In this case, involving regulation of stockyard charges by the Secretary of Agriculture, the Supreme Court approved the rejection of certain marketing costs on the grounds they were unwise. Justice Roberts stated:

"The contention is that the amount to be expended for these purposes is purely a question of managerial judgment. But this overlooks the consideration that the charge is for a public service, and regulation cannot be frustrated by a requirement that the rate be made to compensate extravagant or unnecessary costs for these as any other purposes."

57. Therefore, the earlier remarks of the courts with respect to the propriety of operating expenses claimed by utility companies which suggested that the burden of establishing the impropriety of Applicant claims rested with the regulatory agency is out dated and no longer apply."

58. This view was also supported by Mr. Charles F Phillips Jr. in his text "The Regulation of Public Utilities" page 258, 1993 Public Utilities Reports Inc. Arlington, Virginia where he states that:

"Public utilities in other words, cannot spend freely and expect all expenditures to be included as allowable operating expenses. In effect this means the Commissions are permitted to question both the judgment and integrity of management. And if rates must be high enough to yield sufficient revenue to cover all operating expenses, the consumer has the right to expect that such expenditure will be necessary and reasonable"

59. Charles Phillips Jr. at page 258 further contends that the Commission may disallow an expenditure if it can prove "an abuse of discretion" on the part of management. An abuse of discretion results from "a showing of inefficiency or improvidence" or from "extravagant or unnecessary costs".

60. The Commission is therefore of the view that the management of the Applicant is required to establish the reasonableness and propriety of all expenditures, operating as well as capital expenses.

61. The Commission thus, finds that in order to justify any expenditure, the Applicant must establish three facts:

- (i) the expenditure is necessary to provide the service;
- (ii) the expense was actually incurred or will be incurred; and
- (iii) the amount of the expenditure is reasonable.

Burden and Standard of Proof

62. The burden of proof in this matter is on the Applicant and the standard of proof is that applicable to civil matters i.e. on a balance of probabilities.

63. Section 14 of the Utilities Regulation Act explicitly states that:

“In any proceeding before the Commission involving an existing or proposed rate of a service provider, the burden of proof to show that the rate is fair and reasonable and in accordance with the principles established by the Commission shall be upon the service provider.”

64. A regulator must always be conscious of the well-being of both the consumer and the service provider, to ensure that the consumer receives a service at a reasonable rate, and that the service provider is afforded an adequate income or profit on which to sustain its business. These principles are enshrined in section 3 subsections (2) and (3) of the Utilities Regulation Act which states:

“(2) In establishing the principles referred to in subsection 1 (a) the Commission shall have regard to:

- (a) the promotion of efficiency on the part of service providers;*
- (b) ensuring that an efficient service provider will be able to finance its functions by earning a reasonable return on capital; and*
- (c) such other matters as the Commission may consider appropriate.*

(2) The Commission shall:

- (a) protect the interest of consumers by ensuring that service providers supply to the public, service that is safe, adequate, efficient and reasonable;...*

PART TWO

REASONS FOR DECISION

65. The Commission was of the view that consideration of this Application required (a) determination of the cost of service for the provision of regulated domestic service, (b) identification of the relevant sources of revenue and (c) analysis of the proposed rate structure.
66. The Commission had no difficulty on the evidence presented in arriving at the cost of service. Much of this evidence was accepted by the commission and where the Commission has not accepted the evidence its reasons are set forth. The Commission however, had an insuperable problem in relation to the quantum of revenue properly earned by and attributable to the domestic network facilities. The Commission found itself in the unenviable position of having to make a decision while hampered by a scarcity of relevant information.

DETERMINATION OF THE COST OF SERVICE

Test Year

67. In seeking to determine the cost of service a test year is selected which represents the expenses incurred by the utility company in providing the regulated service(s) over a 12 month period and which are representative of future costs.
68. The Applicant selected the financial year ending March 31, 2002 as the test year. The Applicant's choice of the test year was based on the fact that it was the most recent financial year for which regulatory financial statements had been prepared.
69. Public Counsel took issue with the choice of 2001-2002 as the test year as he considered that it was over two years old and would not be representative of current conditions.
70. The Commission in assessing the appropriateness of the Applicant's choice of test year took into consideration the fact that on April 1, 2002, the day after the end of the test year, the Applicant amalgamated the following four entities:
- Cable & Wireless (BARTEL) Limited (CWBARTEL)
 - Cable & Wireless (BET) Limited (CWBET)
 - Cable & Wireless Caribbean Cellular Limited (CWCC)
 - Cable & Wireless Information Systems (CWIS)
71. The domestic service was provided by CWBARTEL and the international service by CWBET. The Commission finds that the use of the test year 2001-2002 provides a representative view of the cost of service relating to the domestic service for which separate financial records were available.
72. The Commission accepts the Applicant's use of the fiscal year 2001-2002 as the test year for determining the cost of service.

73. The criteria which the Commission utilised in determining cost of service is summarised in the following simple equations.

1. **Cost of Service = OE + D + T + (V - AD)R**
2. **Cost of Service = Revenue Requirement**

Where:

| | | |
|----------------|---|---|
| OE | = | Operating & Maintenance Expense |
| D | = | Depreciation Expenses |
| T | = | Taxes |
| V | = | Gross Valuation of assets used and useful in provided regulated utility service to the public |
| AD | = | Accumulated depreciation |
| R | = | Rate of Return (percentage) |
| (V-AD) | = | Rate Base (Net Valuation) |
| (V-AD)R | = | Return Allowed on Rate Base |

Operating and Maintenance Expenses

74. The Applicant submitted that its operating and maintenance expenses in providing the domestic service in the test year 2001-2002 was \$102,282K. The Commission examined the expenses to ascertain whether they were incurred in the provision of the domestic services and were reasonable.

75. The Commission examined the expenses as presented and finds the expenses to have been reasonably incurred in the provision of the domestic service save and except for the items set out below.

76. The Commission finds that the following items of expense merit adjustment:

- a. Advertising Marketing and Promotion Expense
- b. Management Fees
- c. Deferred Tax
- d. Restructuring /severance costs

Advertising and Marketing Expenses

77. Under this head the Commission examined particular invoices, the Regional Sales Incentive Scheme and sponsorship.

78. The Applicant claims the full amount of \$10.492 million of advertising, public relations and marketing expenses incurred in the test year as expenses legitimately incurred by the management in the provision of the domestic telephone service.

79. Particular invoices - In response to Commission's interrogatories the Applicant provided invoices which on examination revealed that the following amounts set out in the table below were not expended in the provision of domestic service.

| INVOICE NO. | DESCRIPTION | AMOUNT |
|-------------|------------------------------------|-----------|
| 40562 | Television Ad - St. Vincent | 17,507.61 |
| 40975 | Job 1945 -7898 Grenada Conference | 12,560.00 |
| 40664 | Television Ad - 3A's CTV Antigua | 11,239.39 |
| 40253 | Newspaper Ad - The Grenadian Voice | 14,694.41 |
| 40975 | Grenada Conference | 14,444.35 |
| 41201 | OECS Campaign | 44,620.44 |

| | | |
|-----------|--|-------------------|
| 41202 | O ECS Campaign - Union Island - SVG | 28,318.00 |
| 40932 | Cellular Grenada | 23,232.86 |
| 40933 | Responsive Service - St. Kitts - Pilgrimage | 21,784.58 |
| 40918 | Call Centre - Grenada | 20,953.10 |
| 40562 | PR Campaign - Grenada, St. Vincent | 4,330.23 |
| 40254 | PR Campaign - Dominica | 4,077.78 |
| 40771 | PR Campaign - Dominica - St. Vincent | 10,477.78 |
| 40916 | Partnership/School Internet | 19,167.72 |
| 40916 | Investment Customer - Dominica | 25,866.81 |
| 40664 | PR Campaign - Antigua | 12,925.30 |
| 40088 | GBN TV PR Campaign | 1,435.67 |
| 40253 | PR Campaign - Barbados/ St. Vincent/Dominica | 5,062.25 |
| JBM020001 | Advertising Campaign - Dominica | 14,000.00 |
| JBM020002 | Smart Choice Ad Campaign | 16,000.00 |
| JBM020003 | Internet roaming Research | 25,000.00 |
| JBM0080 | C & W Online Research | 23,000.00 |
| JBM020004 | E-billing Research for the Region | 28,000.00 |
| | TOTAL | 414,198.28 |

80. The Commission has determined that the amount of \$415,000 will be deducted from the operating and maintenance expenses of the Applicant as the Commission finds that these expenses were not incurred in the provision of the domestic service.

Regional Sales Incentive Scheme

81. The Applicant in response to an interrogatory submitted a detail listing of advertising, public relations and marketing costs. This amount of \$13.161 million includes the amount of \$2.669M which is described as the introduction of the regional sales incentive scheme. This amount conflicts with the figure of \$10.492M which was presented by the Applicant's expert witness and its financial controller and submitted as the advertising, marketing expenses incurred in the provision of domestic service.

82. Based on the evidence it is unclear whether or not the \$2.699M is included in the \$10.492M. If the \$2.699M has been included in the claimed amount of \$10.492M the Commission will not permit its inclusion as no evidence was presented to show that the \$2.669M described as the introduction of the regional sales incentive scheme bears particular relation to Barbados and the provision of the local domestic service.

Sponsorship

83. Under the head advertising, marketing and promotion the Applicant claimed \$739K on cricket and other sponsorship in the test year. The Applicant stated that "cricket tours in the region are a boost to the economy in the region and there are benefits to the region as a whole".

84. Intervenors took issue with this expense being included in the cost of service and paid by the rate payers.

85. This expense benefits the Company as a whole and separate and apart from the domestic service, benefits three other significant aspects of the Applicant's business. The Commission finds that the full amount claimed for sponsorship should not be allowed and will be reduced by \$300K.

Management Fees

86. In the test year the Applicant paid a management fee of \$1.0 million to Cable and Wireless PLC. Prior to 1999 the Applicant acknowledged that the management fee was \$500K. The Commission sought to ascertain the basis on which the management fee was arrived.

87. The Applicant stated that the fee was not based on percentage revenue or operating expenses but reflected an estimate of the benefits received by the domestic service from Cable & Wireless PLC. The Applicant stated these benefits included obtaining competitive prices for equipment and services, obtaining competitively priced insurance cover and the overhead and senior management cost associated with providing

the management services. The Applicant noted this amount reflected an increase of the amount \$0.5 million which took effect from the year ending 2000 and was in recognition of the “rapidly evolving telecommunications environment”.

88. The Applicant submitted that it was in accordance with generally accepted principles to allow a reasonable amount for management fees in operating and maintenance expenses.

89. The Applicant invited the Commission to accept the figure based on the value of the services it received. In response to the Commission’s queries on whether the amount was based on the cost of the management services provided the Applicant stated that it had difficulties relating the management fee to the cost of the services obtained.

90. Intervenor CARITEL questioned whether the services provided for the management fee of \$1.0 Million were the same services provided prior to 1999 when the management fee was \$0.5 Million. The Applicant’s witness Mr. Cochrane said that he was not familiar with the services provided for the lesser amount but noted that while the services provided are similar that there have been cost increases over the ten-year period which could easily justify such an increase in the fee. The Commission finds the evidence confusing and inconsistent. There was no supporting documentation to support an increase in cost.

91. The Commission finds that the Applicant witness Mr. Cochrane was unable to provide any evidence of a commensurate incremental increase in costs that would justify a 100% increase of the management fee. In his evidence he stated that “It is very clear that I can’t say that the costs related to the services provided were exactly \$1.0 million every year. I don’t think that I can possibly sit here and say that under oath”

92. Public Counsel contends that the Commission should not allow the recovery of the \$1,000,000.00 as these types of affiliate transactions “are easy ways for the manipulation of regulated and unregulated profits.

93. Public Counsel took the position that the management fee should be reduced or eliminated as the large increase in insurance fees indicated that Cable & Wireless PLC was unable to provide competitively priced insurance cover and so the domestic service did not benefit in this regard.

94. The Commission finds the amount claimed for management fees should be reduced to \$500K. The Commission finds that the Applicant has not satisfied the Commission that the proposed increase in the management fee was cost based.

Restructuring and Severance Costs

95. The Company reported in its audited regulatory accounts and in its published accounts that "restructuring costs" amounted to \$3.769million in the test year and \$17.009million in the financial year 2000-2001. The amount of \$3.769million did not relate to a recurrent cost and therefore should not be included in operating and maintenance costs in the test year. It equates to a known and measurable change that should be deducted in arriving at cost of service.

96. The Commission finds that the amount claimed as restructuring and severance costs to be non-recurring and will deduct these costs from the operating and maintenance expenses.

Known and Measurable Changes

97. It is an accepted regulatory principle that regulators must take into consideration "Known and measurable changes" - occurring after the test year in order to make the test year data as representative as possible of the cost situation that is apt to prevail in the future. The Applicant proposed that the Commission adjust the cost of service derived from the test year to allow for the following known and measurable changes:

| | \$m |
|--|--------------|
| Caribbean Contact Centre Expenses | (2.336) |
| Salaries and Wages | 2.333 |
| Insurance Expenses | 2.308 |
| Rate Case Expenses | <u>1.500</u> |
| Total Operating & Maintenance Expenses | <u>3.805</u> |

The Commission will now discuss each of these proposed changes in turn.

Caribbean Contact Centre

98. The Applicant submitted that during the test year 2001-2002 Cable & Wireless Bartel recorded costs of \$2.336 million which were attributed to other Cable & Wireless business units served by the Contact Centre. The Applicant submitted that it has deducted this amount as a known and measurable change for the costs was recharged to the relevant business units during 2002-2003.

99. The Commission accepts the evidence and finds that the amount of \$2.336M should be deducted as a known and measurable change.

Salaries & Wages

100. The Applicant claimed as a known and measurable change in the level of salaries included in the operating costs an additional \$2.333M to reflect negotiated wage and salary increases.

101. In his evidence Mr. Douglas Skeete appearing on behalf of Intervenor Barbados Council for the Disabled and BARCRO challenged the accuracy of the figure tendered by the Applicant. Mr. Skeete asserted that this adjustment "instead of a positive number should in fact be a negative number of \$1,377, 815".

102. In deliberating on this item the Commission chose to use the figure of \$47.268 M which represented the Applicant's actual salary bill during the test year as reported in the audited regulatory statements. The Commission found this to be more reliable as it was the actual expense incurred. The figure of \$47,142.25M which was used by the Applicant and was derived from a process of estimation and differed from that in the financial reports. Utilising this figure the Commission found no significant adjustment needed to be made to the figure submitted by the Company. The Commission accepts the amount of \$2.333M as a known and measurable change.

Insurance

103. The Applicant claimed a known and measurable change of \$2.308 million. This represented an increase in cost from \$232K reported in the test year to \$2.540 million.

104. In the 'Memorandum on Revenue Requirements - Exhibit DCS 2 to the Affidavit of the Applicant's expert on Accounting Matters, Mr. David Shorey submitted that there have been significant increases in the cost of insurance of the outside plant network, switch network and other property since the September 11, 2001 disaster.

105. Public Counsel took issue with the increase in insurance cost. He submitted there was no evidence that the insurance costs represented an increased risk. He further submitted that the Applicant's shareholders should bear a substantial portion of this cost. He also proposed self insurance as an alternative.

106. Intervenor All Caribe Inc. was concerned that the Applicant did not provide comparative global insurance costs as it was of the view that such would have been useful in ascertaining whether the insurance expense as presented by the Applicant was reasonable in light of the fact that it had increased by 500%.

107. The Applicant on request from the Commission provided a receipt to confirm that the amount quoted in the invoice of April 8, 2002 had been paid by the Applicant on May 15, 2002. The Commission was disappointed that the Applicant could not provide any comparable market figures for insurance costs but accepts that the September 11th disaster could have caused increases in insurance coverage. The

Commission therefore accepts the amount of the insurance expense of 2.308M as a known and measurable change however the Commission will require the Applicant to report on the variance in this expense on an annual basis to allow the Commission to monitor changes in this expense.

Rate Case Expenses

- 108.** The amount claimed represented one-third of the Applicant's estimated cost of the present hearing, the depreciation hearing and the RIO hearing i.e. \$4.5 million. The Applicant based its claim on the presumption that the Commission would allow it to amortise the total \$4.5 million charges over a period of three (3) years.
- 109.** During cross examination by Public Counsel, the Applicant's expert witness in accounting matters, Mr. David Shorey conceded that an amount of \$1.25 million should be removed from the estimate of rate case expenses as it related to the Reference Interconnection Offer (RIO) and was not incurred in the provision of the domestic service.
- 110.** The Applicant submitted that the expense properly comprised of \$0.9259 million for the Re-prescription of Asset Lives Case and \$2.3M as the expenses related to this Application. The Commission requested from the Applicant supporting documentation *inter alia* copies of invoices of professional and other costs, showing the amount for each consultant and attorney, but the Applicant failed to provide the requested information to support the expenditure. The Commission finds that, although requested, the Applicant has not submitted any documentation to support the expenditure incurred or budgeted in the Applicant's estimate of \$4.5 million. The Commission therefore has difficulty in assessing whether the costs or estimates were prudent and reasonable.
- 111.** The Commission will not allow any rate case expenses to be included as a known and measurable change in the Applicant's operating expense for the test year without the supporting information.

Other Adjustments

Deferred Tax

112. In its Information Request dated August 15, 2003 the Commission sought additional information from the Applicant including the amount of deferred taxes. The Applicant submitted an amount of \$12.901 million relating to Deferred tax as a proper adjustment to the cost of service.

113. The Applicant submitted that the adjustment for deferred taxes can be summarised into the two main grounds (1) it was allowed by the PUB as an adjustment to cost of service for the local electricity service provider and (2) regulators in the US jurisdiction allow it as an appropriate adjustment.

114. The burden of proof remains on the Applicant to show that in the provision of the domestic service deferred taxes is a permissible adjustment to the cost of service. The Commission finds that the Applicant showed no parallel between the cost, revenue or financing behaviour of the electricity service provider and itself, a telecommunications provider. The Applicant also failed to indicate the rationale for deferred taxes being allowed in other jurisdictions it referred to. In the later case the Commission is of the view that wholesale importation of decisions and practices from a foreign jurisdiction without evidence before it of that jurisdiction's regulatory and financial environment and tax provisions would be irresponsible. The Commission notes the calculation of deferred taxes but does not accept the justification presented by the Applicant for its introduction.

115. The Commission rejects the inclusion of deferred tax as a known and measurable change. The Commission finds that there is an absence of adequate support for its inclusion.

Customer Premises Equipment

116. Customer Premises Equipment (CPE) was deregulated on November 10, 2003.

- 117.** Its deregulation will have an impact on the cost of service and the rates charged to customers. This is because deregulation removes certain CPE assets from the plant that is used and useful in providing the domestic service.
- 118.** The Applicant did not provide information on CPE on which the Commission could rely. The information submitted to the Commission was incomplete and the Applicant informed the Commission that it should not rely on this information in determining the matter before it. In the absence of full information the Commission is not in a position to make any adjustments to cost of service and rates. In any subsequent separate application vis a vis CPE the Commission would have to make a commensurate adjustment to any rates and to the costs of service.
- 119.** The Commission accepts the other elements of cost of service as submitted by the Company, namely Depreciation Expenses, Taxes, Gross Valuation of Assets, Accumulated Depreciation and Rate of Return.
- 120.** Having taken all if the findings into consideration, the Commission finds that the cost of domestic service is \$177.586M.

SOURCES OF REVENUE

121. Having determined the cost of service, the Commission then examined the revenue earned which should properly be attributable to the domestic service. The Commission notes that a significant element of a cost of service are the expenses related to the operation and maintenance of the domestic network.

122. The Applicant identified two sources of revenue (a) rate payers and (b) the revenue sharing scheme as established by the Revenue Apportionment Order.

Rate Payers

123. The Commission finds that the Applicant received \$127.6M from domestic ratepayers and notes that the Applicant has stated that the domestic service received funds from the international service by way of a subsidy. The latter will be dealt with by the Commission when it discusses the revenue transfer scheme under the Revenue Apportionment Order. The Commission does not accept that the revenue for the domestic service should come solely from the rate payers and an arbitrary revenue transfer scheme between the international service and domestic service considering the present and anticipated use of the domestic network facilities.

Users of Domestic Network Facilities

124. The Commission must consider all relevant sources of revenue that should be collected by the domestic network if it is to properly determine the level of adjustment needed to the domestic rates.

125. The Commission finds that a direct source of revenue is domestic rates but notes that revenue should be earned by the domestic service when its network facilities are used by others including the mobile service, Internet service and international service. The Commission examines below each of the other purposes for which the domestic network facilities is used.

126. International - During the hearing the Applicant conceded that the international side of the business should pay for its use of the domestic network which is used to facilitate the making of international calls. The international service utilizes not only the domestic equipment but its billing facilities as well. The Commission finds that some level of revenue should be obtained from the international side of the business for its use of the domestic network. The cost of maintaining the domestic network facilities is fully borne by the domestic rate payers and they should accordingly receive the revenue. The Applicant submitted evidence in the form of PriceWaterhouse 1997 study on Cost of Service Analysis & Realignment Recommendations which recommended that the revenue sharing arrangement should be replaced with a per minute access charge. It was recommended that this access charge should be set at \$0.11 per minute and should be paid by BET i.e. international service to BARTEL i.e. domestic service for BET's use of the domestic network facilities.

127. The Commission finds that the international service is a prime user of the domestic network facilities and should pay the domestic service for its use of the domestic network facilities. The Commission is unable to determine the amount that should be paid at this time and is reluctant to rely on the \$0.11 per minute which was presented in 1996. The Commission is cognizant that the market structure and other intervening matters may dictate a higher or lower per minute charge.

128. Mobile - The Commission is of the view that mobile providers utilise the domestic network and all users including the Applicant's Mobile Division should be providing some revenue to the domestic service for its use of the network facilities.

129. Internet - The Commission is of the view that internet providers utilise the domestic network and all users including the Applicant's Internet Division should be providing some revenue to the domestic service for its use of the network facilities.

130. Therefore while the Commission finds that the amount of \$127.6 M was received as revenue from domestic rates, the Commission is of the view that the full pool of applicable revenues has not been put before it. The Commission is therefore unable to ascertain the level of deficit sustained by the domestic service. The Commission finds that there is no evidence before it from which it can ascertain the level of revenues that

should accrue from the international services, mobile providers and Internet providers which include C&W (Barbados) Limited's mobile and Internet divisions as well as other users of domestic access network. The Commission finds that if it fails to consider these legitimate revenue streams, inequity would result with rate payers bearing the full costs of the domestic network and other users getting a free-ride.

Statutory Contributions

- 131.** The Applicant by virtue of its designation as Universal Service Carrier will be the sole recipient of the funds collected through the Access Deficit Charge and the Universal Service Fund which by statute is paid by all telecommunications carriers and telecommunications service providers. The Telecommunications Act speaks to the inter relatedness of the Universal Service Obligation and any adjustment to the rate structure which seeks to facilitate cost oriented pricing. The Commission therefore recognises that the Telecommunications Act CAP 282B establishes a Universal Service policy which is aimed at ensuring that every resident has access to reliable and affordable telecommunication service. The Applicant confirmed that it has been designated as the Universal Service carrier who has the obligation of providing universal service. The Company, as the provider of universal service is entitled to access the fund vis - a vis the provision of domestic service.
- 132.** Before the Commission can determine if any additional increase in revenues should be obtained from the residential and business customers for domestic services, the Commission would need to have before it:
1. The revenues from international service for its use of the domestic network facilities.
 2. The apportionment of interconnection charges in order to recognise mobile providers use of the domestic network facilities.
 3. The availability of financial contribution from the Universal Service Fund and Access Deficit Charge
- 133.** The Commission is of the view that is not in a position in light of the evidence to stipulate the amount rate payers should pay as an increase in rates.

134. Against this backdrop, the Commission examined the Revenue Transfer Arrangement and the Applicant's submission that the Commission should modify the Barbados Telephone (Revenue Apportionment) Order 1989 ("the Order") and allocate \$47.3million of revenue from the international service to the domestic service.

135. The Commission finds for the reasons set out below, that the subject matter of the Order no longer exists as contemplated by the legislation and the Commission cannot direct an intra-company transferal of funds on the basis of the Order. Moreover the Commission finds that the Order is inconsistent with the spirit and intent of the new Telecommunications Act CAP 282 and its survivability would contradict the obligation imposed on the Commission by that Act to foster competition in the telecommunications sector.

136. The Barbados Telephone Act CAP. 274 as amended by the Barbados Telephone Company (Amendment) Act 1988 - 4, on March 28th 1988 in particular Section 8 by Section 3 of the Barbados Telephone Company (Amendment) Act stated:

"the principal Act is amended by inserting therein immediately after section 8 the following new section 8A:

"8A (1) The gross revenue accruing to the Barbados Telephone Company Limited or to any approved external telecommunications carrier in respect of overseas telephone calls and other transmissions, less amounts paid to overseas organizations for those services, shall be apportioned between the Barbados Telephone Company that approved carrier in such amounts as the Minister by order prescribes."

137. The Minister responsible for telecommunications in exercise of the powers conferred on him made the Barbados Telephone (Revenue Apportionment) Order, 1989. This order established a revenue transfer scheme from Barbados External Telecommunications Company "BET" to the Cable & Wireless Bartel "BARTEL".

138. The Barbados Telephone (Revenue Apportionment) Order 1989.

“The Minister in exercise of the powers conferred on him by section 8A of the Barbados Telephone Company Act makes the following order:

1. This order may be cited as the Barbados Telephone (Revenue Apportionment) Order, 1989.

2. For the Purpose of section 8A(1) of the Act the gross revenue accruing to the Barbados Telephone Company Limited or the Barbados External Telecommunications Limited in respect of overseas telephone calls and other transmissions, less amounts paid to overseas organizations for their services shall be apportioned annually as follows:

(a) in the case of overseas telephone calls, fifty-five per cent to the Barbados Telephone Company and forty-five per cent to Barbados External Telecommunications Limited; and

(b) in the case of Telex Transmissions, fifteen per cent to the Barbados Telephone Company Limited and eighty-five per cent to the Barbados External Telecommunications Limited. “

139. The Telecommunications Act CAP 282A which was enacted on October 1, 1991 repealed and replaced the Barbados Telephone Company Act and the Barbados Telephone Company (Amendment) Act.

140. Section 11 of the Telecommunications Act CAP 282 stated that:

“The gross revenue accruing to an external telecommunications carrier in respect of overseas telephone calls and other transmissions, less amounts paid to overseas organizations for those services, shall be apportioned between the national telecommunications carrier in such amounts as the Minister by order prescribes.”

141. The Telecommunications Act CAP 282A defined the terms external telecommunications carrier and national telecommunications carrier as follows:

“External telecommunications carrier”, “a person or body corporate licensed to provide

telecommunications services from a fixed point inside Barbados to any place outside Barbados."

"National telecommunications carrier", "a person or body corporate which has been granted a license under this Act to establish and operate a national telecommunications service".

142. At the time BARTEL was the national telecommunications carrier and was thus permitted to recover revenue from BET, which at that time was the external telecommunications carrier.

143. The Telecommunications Act CAP 282 A also contained a savings clause at Section 71 (1) which retained all the statutory instruments that were made under the Barbados Telephone Company Act, the Cable & Wireless (West Indies) Limited Act and the Wireless Telegraphy Act. Section 71 (1) of the Telecommunications Act CAP 282A stated:

"Without prejudice to section 30(3) of the interpretation Act all statutory instruments made under the Wireless Telegraphy Act, the Cable & Wireless (West Indies) Limited Act and the Barbados Telephone Company Act shall, in so far as they are in force on the October 01, 1991 and are not inconsistent therewith, continue in force and may be amended or revoked as if made under the corresponding provisions of this Act."

144. This savings clause therefore allowed the survival of the Barbados Telephone (Revenue Apportionment) Order as this Order derived from the Barbados Telephone Company Act and was a Statutory Instrument made before October 1st, 1991.

145. The Telecommunication Act CAP 282A was amended on August 27, 2001, by the Telecommunication (Amendment) Act 2001-24. Section 4 of the Telecommunications (Amendment) Act deleted the word "Minister" and substituted the words "The Fair Trading Commission" in Section 11 of CAP 282A.

146. Section 4 of the Telecommunication (Amendment) Act enacted on August 27,2001 stated:

“Section 11 of the principal Act is amended in subsection (1) by deleting the word “Minister” appearing in line 8 and substituting the words “Fair Trading Commission.”

147. This resulted in the Fair Trading Commission being responsible for prescribing the percentage of revenue that was to be apportioned between the external telecommunication carrier BET and the national telecommunications carrier BARTEL.

148. On April 1, 2002, BET and BARTEL amalgamated and formed the present entity Cable & Wireless (Barbados) Limited ‘Cable & Wireless’.

149. The separate entities of BET and BARTEL no longer exist.

150. On September 30, 2002 the Telecommunications Act CAP 282B was enacted which repealed the Telecommunications Act CAP 282A. The Telecommunications Act CAP 282B also contains a savings clause at Section 114.

151. Section 114 (2) and (3) (a) of the Telecommunications Act CAP 282B states that:

“(2) Notwithstanding subsections 2, section 11 of the Telecommunication Act, shall remain in force until repealed.

152. The following instruments shall remain in force and shall apply in so far as they are not inconsistent with this Act until repealed;

153. Section 114 of the Telecommunications Act permitted both section 11 of the Telecommunications Act “Act” and the Barbados Telephone (Revenue Apportionment) Order to survive if it is not inconsistent with

the Act. Yet, this survival of the Barbados Telephone (Revenue Apportionment) Order is challenged because paragraph 4(3) of the First Schedule of the Telecommunications Act CAP 282B has not been proclaimed into law.

154. Paragraph 4(3) of the First Schedule of the Telecommunications Act CAP 282B states that:

“The revenue sharing arrangement of the former Act will be systematically altered to manage the reduction of the subsidy during the transition to achieve the objective of gradually removing or eliminating the revenue sharing arrangement between the international rates and the domestic rates.”

155. This section of the Telecommunications Act was not proclaimed into law.

156. Moreover it should be noted that under this new telecommunications act no reference has been made to the terms external telecommunications carrier and national telecommunications carrier. Terms which were used in the former telecommunications act and which at that time referred to two entities BET and BARTEL respectively. In anticipation of the liberalisation of the telecommunications sector the new Telecommunications Act introduces the concepts of service provider and carrier.

157. A service provider is defined as a person granted a licence by the Minister pursuant to this Act to provide telecommunications services to the public. Cable & Wireless (Barbados) Ltd. was granted a licence by the Minister of Telecommunications to supply domestic telecommunications services and international telecommunications services. Section 2 of the Telecommunication Act also defines a carrier as a person who has been granted a licence by the Minister pursuant to the Act, to own and operate a public telecommunications network.

158. The terms external telecommunications carrier and national telecommunications carrier as defined in the prior Telecommunications Act have no parallel or companion definitions under the Telecommunication Act CAP 282 B instead the words “carrier” and

“service provider” are used. The incompatibility of the definitions is evident when one observes the new licensing scheme and movement towards the introduction into the market of multiple telecommunications providers.

159. Under the new licensing scheme Cable & Wireless (Barbados) Limited is recognised as both a “carrier” and a “service provider” as they are defined under section 2 of the Telecommunications Act CAP 282B, and provision is made in the legislative scheme for the granting of similar licences to other providers.

160. The Revenue Apportionment Order therefore confers no authority on the Fair Trading Commission to transfer funds from an external telecommunications carrier to a national telecommunications carrier as such entities do not exist in the present scheme.

161. The Commission is of the view that is not in a position in light of the evidence to determine the amount of revenue that is properly earned by the domestic service and cannot do so without:

- The revenues from international service for its use of the domestic network facilities.
- The apportionment of interconnection charges in order to recognise mobile providers use of the domestic network facilities.
- The availability of financial contribution from the Universal Service Fund and Access Deficit Charge

RATE STRUCTURE AND DESIGN

162. Even though at this stage the Commission finds that the Applicant has not proven on a balance of probabilities that a rate-adjustment is justified the Commission will proceed to consider the introduction of flat rate charging and usage based plans as proposed by the Applicant. The Applicant proposed only one means by which the Commission should make the adjustment to rates i.e. by means of the proposed rate structure. The Commission was not given any alternative rate structure or latitude to amend it should the Commission find that there were insurmountable difficulties in the plans as proposed.

163. The existing rate structure for business and residential is a flat rate unlimited calling. The relevant tariffs approved by the PUB in its 1992/93 Decision are as follows:

| Direct Exchange Lines | Monthly rate |
|--------------------------------|---------------------|
| a. Residence – Basic | \$ 28.00 |
| b. Business - Basic | \$ 81.75 |
| c. Business / Residence –Basic | \$ 40.00 |
| d. Charity Rate – Basic | \$ 40.00 |

Comnet Lines

| | |
|--------------------|-----------|
| e. Comnet 1 | |
| f. 1- 4 lines | \$ 90.00 |
| g. 5 - 10 lines | \$ 84.00 |
| h. 11-15 lines | \$ 73.25 |
| i. 16 -30 lines | \$ 61.75 |
| j. 31-100 lines | \$ 50.50 |
| k. 101 plus lines | \$ 45.00 |
| l. PABX Trunk Line | \$ 101.25 |

164. In addition the Applicant requested that the rate adjustment be applied in two (2) phases. The Applicant proposed that both phases be approved with the proviso that it can apply for an adjustment in rates at Phase 2 if necessary depending on whether the Phase 1 pricing plans achieve/exceed the revenue requirement." The Applicant proposes to introduce the rate adjustments in two (2) phases with a six month period between the first and second phase of price changes.

Applicant's Rate Design Objectives

165. The Applicant' President stated that in designing the rate structure the following factors were taken into account. That the rate structure and design should seek to provide

- (a) an aspect of revenue neutrality;
- (b) ease in implementation and understanding; and
- (c) consumer equity where the impact on consumer groups would be similar

It should facilitate the

- (d) recovery of the deficit of \$24.7 million;
- (e) avoid rate shock; and
- (f) maintain class affordability while according with government's policy in terms of offering choice and commitments in the Memorandum of Understanding for rates to accommodate transition to cost oriented pricing.

166. Charles F Phillips refers to Bonbright in "Regulation of Public Utilities" at page 434 where he lists eight (8) criteria of a sound or desirable rate structure:

1. *The related, "practical" attributes of simplicity, understandability, public acceptability, and feasibility of application.*
2. *Freedom from controversies as to proper interpretation.*
3. *Effectiveness in yielding total revenue requirements under the fair-return standard.*
4. *Revenue stability from year to year.*

5. *Stability of the rates themselves, with a minimum of unexpected changes seriously adverse to existing customers. (Compare "The best tax is an old tax.")*
6. *Fairness of the specific rates in the apportionment of total costs of service among the different consumers.*
7. *Avoidance of "undue discrimination" in rate relationships.*
8. *Efficiency of the rate classes and rate blocks in discouraging wasteful use of service while promoting all justified types and amounts of use:*
 - a. *in the control of the total amounts of service supplied by the company;*
 - b. *in the control of the relative uses of alternative types of service (on-peak versus off-peak electricity, Pullman travel versus coach travel, single-party telephone service versus service from a multi-party line, etc.).*

167. Bonbright suggests that the three primary criteria should be numbers 3, 6 and 8; namely,

(a) the revenue-requirement or financial-need objective, which takes the form of a fair-return standard with respect to private utility companies; (b) the fair-cost-apportionment objective, which invokes the principles that the burden of meeting total revenue requirements must be distributed fairly among the beneficiaries of the service; and (c) the optimum-use or consumer-rationing objective, under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationship between costs incurred and benefits received.

168. The Commission finds that there are four steps in rate design and accepts the steps as formulated by the Massachusetts Commission and set down in re Western Mass. Elec. Co., 114 PUR4th 1, 41 [Mass. 1990].

"First, a company must perform a marginal cost study which accurately determines a company's marginal costs. Second, marginal costs must be converted into rates for each rate class. Third, the marginal-cost-based rates must be reconciled with the total class revenue requirement by adjusting the most

demand inelastic portion of that rate. Fourth, the resulting rate structure must be compared with the existing rates. If it is found to represent a change which violates the goals of continuity, the existing rates must be adjusted to move rate design towards marginal-cost-based rates in a manner which does not violate the goal of continuity.”

169. The proposed rate structure has previously been set out in this Decision. The Commission examined the Applicant’s stated objectives as it reviewed the rate structure and made the following observations and findings.

Recovery of the deficit - \$24.7 million

170. Public Counsel took issue with the Applicants proposed rate changing due to:-

- lack of adequate cost studies;
- Potential rate shock and;
- the potential for windfall profit.

171. The specific details of the model were not presented to the Commission to enable the Commission to assess any potential changes in the input parameters. Based on the evidence it is clear to the Commission that (a) no sensitivity analysis was undertaken to determine how robust the results would be with respect to changes in price elasticities to affect the deficit in the provisioning of the domestic service and (b) an unacceptable degree of uncertainty plagues the model with respect to its ability to generate \$24.7 million.

Ease in Implementation and Understanding

172. The Applicant submitted that it is now providing customers with information on the total number of minutes spent on fixed to fixed calls per month so as to facilitate the customers satisfaction of choosing a calling plan. The Applicant also advised that if the customer failed to indicate their choice of plan it would place the customer in the optimal plan for their usage.

173. The Intervenors submitted that this rate structure was a form of metering. This was challenged by the Applicant who submitted that it was usage-based packages.

174. The Commission accepts that the Applicant has put certain measures in place to assist with the implementation of the plan.

Consumer Equity

175. The Applicant submitted that the rate was designed to ensure that customers who use the network more also pay more.

176. The Commission finds that while this objective is laudable in reality it may not be achieved. The Commission accepts the arguments from Mr. Douglas Skeete and other Intervenors that two customers who was use the same number of minutes in a given month will be required to pay different sums.

177. For example if one customer chooses Plan 1 and ends up using 3000 minutes in a given month then that customer will pay

$$\$28.00 + (1000 \times 0.017) = \$28 + \$17 = \$45$$

as opposed to another customer who had selected Plan 2 and was paying \$38.00.

Rate shock

178. The Applicant submitted that rate shock is where prices are changed to such an extent that consumers either cannot afford the increase or their usage pattern has to change.

179. The Applicant also admitted that it expects to see a shift in the usage profile of residential customers as a result of the proposed rate structure.

180. Mr. Cummins submitted that the rate design would change customer usage pattern and the social structure of Barbados. The issue of repression of use was also of concern to the Intervenors' participating in the case.

181. The Commission is satisfied that there may be a significant rate shock for those customers who select Plan 2 and Plan 3.

Affordability

182. The Applicant submitted that its goal was to keep rates as low as possible to the majority of residential users. The Applicant also submitted that with the two phased approach to the rate adjustment, the majority of customers would not see an increase in rates in Phase 1.

183. Intervenors were concerned about the affordability of rates vis a vis the low income, elderly, or disabled persons. Such a rate designed for this class of persons is generally referred to as “Lifeline rates” and are below the cost of the service.

184. The condition that rates charged for public utilities should depend in part on the wealth and means status of the rate payers is referred to as the *Ability to pay principle*. Rate makers and regulators have however generally focused on the standard *cost of service principle*.

185. Concern was expressed by CARITEL, BARCRO and Mr. Cummins on the effect that these (metered) usage rates would have on the pensioners and the disabled.

186. The Applicant submitted that its rate design was affordable to the majority of residential customers. This submission was based on the Company’s data that indicated that the majority of customers would fall within Plan 1. The Commission is however particularly concerned about those low income earners who choose Plan 2 and Plan 3 and face affordability constraints.

Government Policy in Terms of Offering Choice

187. The Applicant proposed a rate structure which offered customers a choice of three plans designed to meet various usage profiles.

188. The Commission finds that although the rate structure has three options the actual usage profile of the customers determines the optimum plan that should be chosen. The Commission is in agreement with the Intervenors that an incorrect choice may result in a substantial increase in the customer's monthly bill as indicated in the earlier discussion on consumer equity.

Revenue Neutrality

189. The Applicant submitted that in the event that the Commission accept the Applicant's rate adjustments, the Applicant intends to adjust the international direct dialed rates for most destinations below the existing maximum rates. The Applicant submitted that the rate adjustment would facilitate a removal of cross subsidies whereby international revenues subsidize domestic services. The Application submitted further that the rates were not intended to raise additional revenue.

190. The Commission is concerned that revenue neutrality as an ex ante concept may not achieve the objectives ex post due to variations in the elasticities of demand for domestic and international services.

Other Factors

191. In light of the Applicant's submission on the design objectives the Commission consider the following :

- a. Network Congestion
- b. Discrimination
- c. Cost Oriented rates
- d. EAM

Network Congestion

192. The Applicant submitted that there were unusual heavy demands on the network which led to congestion problems. Dial-up internet traffic also contributes to these congestion problems. The Applicant stated that it had constructed an overlay data network to relieve the voice network of internet dial-up traffic.

193. The Applicant also submitted that the current flat rate system contribute to very high traffic levels that lead to recurring congestion and indicated it had adopted engineering measures to alleviate the

network congestion. This assertion was made in the absence of empirical evidence as to the causality between the flat rate and congestion.

194. The Applicant's witness Mr. Layne, gave evidence that if the usage charges reduced the usage per customer and therefore the traffic on the network, the Applicant would be able to utilize its equipment more efficiently.

195. The Commission notes with interest that although Mr. Layne's testimony spoke to the impact of the flat rate system on network engineering the Applicant witness Mr. Austin stressed that the application does not directly relate to relieving congestion on the network. Mr. Austin further stated that the rate structure would provide additional capital related to the evolving congestion problem on the network.

196. Given the state of the evidence the Commission is not convinced that the introduction of the proposed rate structure significantly alleviates the recurring congestion problem.

Discrimination

197. The Commission examined whether the proposed rate structure was unduly discriminatory . Internet calls are not charged on a usage basis. The Applicant stated that there is a differential between voice calls and data calls measure of differentiation between the tariffs for these two services is permissible.

198. The proposed rate plan forces customers to select between plans and once the selection is made the customer is locked to that plan for a period of time.

Cost Oriented Rates

199. The Applicant submitted that the rate were designed to remove cross-subsidies whereby international rates and revenue support domestic services. The Applicant asked the Commission to approach

this question by reference to an EAM. Prior to the hearing the Commission asked the Applicant to develop and put before it a Cost Allocation Manual "CAM" and the Applicant refused. Thereafter the Commission directed the applicant to develop the same. During the hearing the Commission expressed doubts about the appropriateness of the Enhance Allocation Model "EAM" for the task at hand. The Applicant refused to consider any other model to assist the Commission in relation to this application.

200. The Applicant submitted that the rates were designed to remove cross subsidies whereby international service supported the provision of domestic service. The Enhanced Allocation Model (EAM) was designed by the Applicant to meet the following objectives:

1. Develop an understanding of its costs and service profitability
2. provide network cost for the interconnection arrangement
3. provide access / local service deficit quantification
4. to support its rate adjustment application (rebalancing equipment)
5. provides an understanding of existing cross subsidies

201. During the hearing the Commission expressed doubts about the appropriateness of the EAM in deciding the matter before it. The Commission enquired about the status of the Cost Allocation Model (CAM) which was proposed by the Commission to facilitate accounting separation and identify cross subsidies.

202. The Applicant was not prepared to submit the CAM as requested.

Enhanced Allocation Model (EAM)

203. The Commission accepts the Applicant's Evidence that the EAM was developed by the Applicant to determine the profitability of its services and to determine interconnection charges.
204. The EAM allocates the costs and services from the Statutory Financial Statements of the former companies that comprise the Cable & Wireless group during the test year.
205. The Commission finds that the EAM having allocated the costs and revenue of not only CWBARTEL but the other regulated and unregulated entities of the Cable & Wireless group, has commingled the regulated and unregulated costs and revenues. The Commission was therefore not in a position to clearly identify the regulated aspects of the Company's submission.
206. The Commission had further difficulty in accepting the EAM for the Applicant failed to reconcile the EAM to the regulatory financial statements stating that this would take two months to produce.
207. The Commission could not find a clear connection between the revenue requirements for Cable & Wireless (BARTEL) and the cost the separate services that make up domestic service.

Two Phases

208. The Applicant's proposed tariff structure consists of adjustments of the rates in two phases. The Applicant would like the Commission to approve both rates with the provision that the Applicant can :
- a) Apply for an adjustment of Phase 2 rates depending on the take up of Phase 1 pricing plans by customers; and
 - b) Apply Phase 2 rates six months after the proposed effective date from Phase 1 (1 October 2003)

209. If the Commission were to approve a rate for Phase 2, and the Applicant applied for and review and adjustment of these rates , the Commission would be in contravention of the legislation if it granted such a review within a six month time frame. This is because URA section 15 (3) states:

“The Commission shall not grant a request for a review by the same service provider more than once in any year.”

210. The Commission therefore has a responsibility to ensure that the rates determined in this hearing are such that review would not be required within a one year period.

211. The Commission finds that the Company’s proposal does not satisfy the criteria for establishing a sound rate structure. Additionally the Applicant has not provided a marginal cost study which is a critical input in the design of new tariff structure. Furthermore, the Applicant did not submit the terms and conditions relevant to the proposed rate structure. This omission limits the Commission’s full assessment of the implementation and the application of the rates.

212. Having considered the Applicant’s evidence and the various submissions the Commission is not satisfied that the Applicants proposed rate structure will produce rates that are fair and reasonable.

The specific details of the model were not presented to the Commission to enable the Commission to assess any potential changes in the input parameters.

QUALITY OF SERVICE

213. In accordance with the Utilities Regulation Act, Cap. 282. the Commission in setting rates sought to take into account the standards of service being offered by the service provider. The Commission requested that the Applicant submit its current standards of service and those proposed for this Application.

214. The Applicant submitted that the current quality of service of the Applicant are as follows:

| Item | Measurement | Target |
|--------------|---|--------|
| Installation | Residential - % installation in 15 working days | 90% |
| Faults | Residential % faults cleared in 12 working hours | 90% |
| Faults | Payphones % faults cleared in 8 working days | 95% |
| Faults | Loss of Service Residential - total faults cleared in 12 working hours | 90% |

215. The Applicant also submitted information on whether these standards have been met over the last 3 years. The Commission is of the view that the establishment of quality and service standards could not be achieved by this hearing on the information provided and is best achieved through a consultative process with the participation of all of the stakeholders.

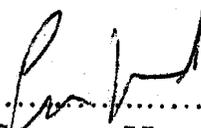
Dated this 20th day of July 2004



.....
Mrs. Vivian-Anne Gittens



.....
Professor Andrew Downes



.....
Mr. Gregory Hazzard

PART FOUR - ORDER

BARBADOS

No.4 of 2004

THE FAIR TRADING COMMISSION

IN THE MATTER *of the Fair Trading Commission Act CAP 326B* of the Laws of Barbados.

AND IN THE MATTER *of the Utilities Regulation Act CAP 282.*

AND IN THE MATTER *of the Utilities Regulation (Procedural) Rules, 2003 S.I. 2003 No. 104.*

Cable & Wireless (Barbados) Limited
APPLICANT

Office of Public Counsel
Mr. Olson Robertson
Sunbeach Communication Inc
Mr. Noel F. Smith
Mr. Alvin Cummins
CARITEL
Mr. Grenville W. Phillips
Mr. Alvin Thorpe
Mr. Barry Thorpe
Mr. Leroy Mc Clean
Barbados Association of Non-Governmental
Organisations (BANGO)
Barbados Consumer Research Organisation Inc. (BARCRO)
Mr. John D. E. Boyce
All Caribe Inc.
Ms. Audrey McKenzie
Barbados Council for the Disabled
Cariaccess (Barbados) Limited

INTERVENORS

BEFORE

Mrs. Vivian-Anne Gittens
Professor Andrew Downes
Mr. Gregory Hazzard

Chairman
Commissioner
Commissioner

APPEARANCES

Mr. Patterson K. H. Cheltenham, Q.C.
Mr. Barry L. V. Gale, Q.C.
Senator Gregory Nicholls, Esq.
Mr. Barry Carrington
Mr. Michael Carrington
Ms. Keisha Hyde

Upon reading the Application filed by the Applicant; and

Upon reading the written submissions filed by the Parties; and

Upon hearing the evidence adduced; and

Upon hearing Counsel for the Applicant; and

Upon hearing the Intervenors.

IT IS HEREBY ORDERED that the Application by Cable & Wireless (Barbados) Limited for an:

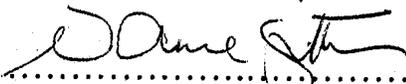
- (a) adjustment to the domestic line rate for business and residential customers; and for
- (b) the introduction of flat rate charging plans and usage based rates for domestic calls made from fixed lines

is denied.

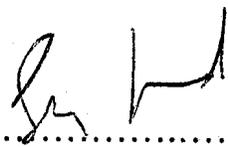
AND IT IS FURTHER ORDERED that:

- (i) The existing rates shall prevail; and
- (ii) The Commission will hear the parties on costs on a date to be determined.

Dated this 20th day of July 2004


.....
Mrs. Vivian-Anne Gittens


.....
Professor Andrew Downes


.....
Mr. Gregory Hazzard