CABLE & WIRELESS

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August 5th 2004

ATTENTION MRS CYRALENE BENSKIN-MURRAY

BY HAND DELIVERY

Fair Trading Commission
Manor Lodge Complex
Lodge Hill
ST MICHAEL

Dear Madam:

Re: Decision No.4 of 2004 Fair Trading Commission
Handed Down on the 20th July 2004
relating to Application No.3 of 2003 by the Company
for a Rate Adjustment on Domestic Line Rates
for Business and Residential Customers
and the Introduction of Flat Rate Charging Plans
and Usage Based Rate for Domestic Calls
made from Fixed Lines
(Hereinafter Called "The Decision")

We enclose under cover of this letter a Motion for Review, which seeks a review by the Commission of the abovementioned Decision.

This Motion is being served on the other Interveners to the Proceedings.

Yours truly,

Donald Austin
President

Registration Number:21007
Registered Office: Windsor Lodge
Government Hill, St. Michael
Barbados, West Indies.

BARBADOS

NO. OF 2004

BEFORE THE FAIR TRADING COMMISSION

IN THE MATTER of the Utilities Regulation Act, 2000-30

AND IN THE MATTER of the Telecommunications Act, 2001-36

AND IN THE MATTER of the Application by Cable & Wireless (Barbados) Limited to the Fair Trading Commission for Rate Adjustments pursuant to Section 16 of the Utilities Regulation Act, 2000-30

AND IN THE MATTER of the Application by Cable & Wireless (Barbados) Limited for a Review of the Decision of the Fair Trading Commission dated the 20th July 2004 No. 4 of 2004.

CABLE & WIRELESS (BARBADOS) LIMITED — **APPLICANT**

INTERVENORS

OFFICE OF PUBLIC COUNSEL
MR OLSON ROBERTSON
SUNBEACH COMMUNICATIONS INC.
MR NOEL G SMITH
MR ALVIN CUMMINS
MR HALLAM HOPE
MR GRENVILLE W. PHILLIPS
MR ALVIN THORPE
MR BARRY THORPE
MR LEROY H. McCLEAN
BARBADOS ASSOCIATION OF NON-GOVERNMENTAL ORGANISATIONS
BARBADOS CONSUMER RESEARCH ORGANISATION INC.
MR JOHN D.E. BOYCE
ALL CARIBE INC.
MS AUDREY McKENZIE
BARBADOS COUNCIL FOR THE DISABLED
CARIACCESS (BARBADOS) LIMITED

NOTICE OF MOTION FOR REVIEW

TAKE NOTICE that CABLE & WIRELESS (BARBADOS) LIMITED (hereinafter referred to as "the Applicant") **HEREBY**, in accordance with Section 36 of *The Fair Trading Commission Act 2000-31* and *Rule 53 of the Utilities Regulation (Procedural) Rules 2003* ("the Rules") applies for a Review of the Decision of the Fair Trading Commission ("the Commission") dated the 20th July 2004 (hereinafter called "the Decision"), there being substantial doubt as to the correctness of the Decision on the grounds more particularly stated in this Notice of Motion.

1. The Applicant's interest in the Decision relates to its Application dated 31st July 2003 ("the Application") for an adjustment to the domestic line rate for business and residential customers, the introduction of flat rate charging plans and usage based rates for domestic calls made from fixed lines (hereinafter being referred to as "the rates being applied for") and such further orders or relief not inconsistent with such relief sought in its Application which was filed on the 5th August 2003 by Cable & Wireless (Barbados) Limited and amended on the 12th August 2003 and 22nd September 2003.

Grounds for Review

1. That the Commission erred in fact and in law in its determination in paragraph 124 of the Decision that it must consider all relevant sources of revenue that should be collected by the domestic network before it could properly determine the level of adjustment needed to the domestic rates (which includes the rates applied for by the Applicant), in that:-

   a) all relevant sources of revenue were before the Commission in the form of evidence and/or the record;

   b) such finding is contrary to law in that such a consideration is contrary to the legal requirement of cost-oriented pricing set out in section 33(d) of the Telecommunications Act 2001-36;

   c) such finding is contrary to law in that such a consideration breaches section 39(2) of the Telecommunications Act 2001-36 which mandates the Commission to set rates which shall facilitate the policy of market liberalisation and competitive pricing; and

d) this was unnecessary since in order to make a determination on the rates being applied for, the Commission should have had regard to the deficit on the two services being applied for, information on which was before the Commission, rather than have regard to other revenues earned from other sources.

2. That the Commission erred in law and in fact in its determination in paragraph 130 of the Decision that the full pool of applicable revenues from the domestic service had not been put before it in that such information was put before the Commission in evidence and/or the record.

3. That the Commission erred in fact and in law in its finding in paragraph 126 of the Decision that "the cost of maintaining the domestic network facilities is fully borne by the domestic rate payers and they should accordingly receive the revenue", and in its finding at page 3 of the Decision that "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" in that:-

a) this finding was not supported by the evidence and/or the record;

b) this finding contradicts the Commission's own finding that "the cost of providing the domestic service is $177.586 million" and "that $127.6 million was the revenue received by the domestic service in the test year", thereby showing a deficit in the amount of $50 million in the test year;

c) this finding ignores the evidence that international services actually contributed the sum of $56.7 million toward the cost of operating and maintaining the domestic services in the test year;

d) the cost of maintaining the domestic network is in fact attributed to all services which use that network; and

e) the evidence and/or record showed that the costs of the domestic service were isolated in a manner that respects cost causality and therefore does not require the domestic rate payers to pay the costs attributable to international, mobile and internet service; the revenues attributable to these services are therefore not relevant to a determination of the revenue requirement.

In addition this decision on the part of the Commission raises an important matter of principle.

4. The Commission erred in fact and in law in its finding in paragraph 130 of the Decision that "The Commission finds that there is no evidence before it from which it can ascertain the levels 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 the 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" in that:-

a) information on the costs and revenues of all services (including international, mobile and internet) which use the domestic network was put before the Commission in evidence and/or the record;

b) the revenues from international, mobile and internet service cannot properly be attributed to the services for which rate adjustments were sought, namely fixed line access and fixed to fixed voice calling (hereinafter referred to as "the relevant services"), otherwise this would result in a cross subsidisation of the relevant services which would be in breach of the aforesaid provisions of the Telecommunications Act 2001-36 set out in Ground 1 above and section 10 (1) (a) of the Utilities Regulation Act 2000-30, which requires the Commission to set rates which are fair and reasonable;

c) this finding fails to take into account the evidence of the Applicant to the effect that no service could in fact enjoy a "free ride" with domestic rate payers bearing the costs of other users of the domestic network, such as international, mobile or internet, in that the Enhanced Allocation Model ("EAM"), which was put before the Commission in evidence, allocates to each service utilising the domestic network its rightful share of costs incurred in its use and consumption of the domestic network and identifies its applicable revenues;

d) it was unnecessary, in that in order to make a determination on the rates being applied for, the Commission should have had regard only to the deficit on the two services being applied for, information on which was before the Commission in evidence and/or the record; and

e) the evidence and/or record showed that the costs of the domestic service were isolated in a manner that respects cost causality and therefore does not require the domestic rate payers to pay the costs attributable to international, mobile and internet service; the revenues attributable to

these services are therefore not relevant to a determination of the revenue requirement.

In addition this decision on the part of the Commission raises an important matter of principle.

5. That the Commission erred in fact and in law in finding in paragraph 9 of the Decision that "The Applicant stated that the new rate structure as proposed is intended to provide an additional $24.7 million to meet the revenue requirement of the domestic service," and as a result the Commission misinterpreted the application for rate adjustments as filed by the Applicant in that:

a) such a finding was not supported by the evidence and/or the record; and

b) such a finding ignores the evidence that the $24.7 million additional revenue sought by the Applicant in the Application represented a proportion of the $29.6 million deficit on domestic calling and access services as demonstrated by the Enhanced Allocation Model.

In addition this decision on the part of the Commission raises an important matter of principle.

6. The Commission erred in law and in fact in its determination in paragraph 132 of the Decision that "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"

in that:-

a) all relevant revenues including revenues from international service were before the Commission in the form of evidence and/or the record to allow the Commission to make a proper determination of the Applicant's application for the rates applied for in respect of the relevant services;

b) the apportionment of interconnection charges is irrelevant for the purposes of a proper determination of the Applicant's application for the rates applied for in respect of the relevant services;

c) the availability of a financial contribution from the Universal Service Fund is irrelevant and/or inapplicable for the purposes of a proper determination of the Applicant's application for the rates applied for in respect of the relevant services; additionally the Universal Service Fund (even if available, which it is not) cannot be legally applied to pay for the cost of the use of the domestic services including the cost of the relevant services applied for;

d) the availability of financial contribution from an Access Deficit Charge does not exist, the Commission having itself denied the Applicant the recovery of any Access Deficit Charge from mobile carriers interconnecting to the Applicant's domestic network in its decision dated the 28th October 2003 on the Reference Interconnection Offer filed by the Applicant; and

e) the evidence and/or record showed that the costs of the domestic service were isolated in a manner that respects cost causality and therefore does not require the domestic rate payers to pay the costs attributable to international, mobile and internet service; the revenues attributable to these services are therefore not relevant to a determination of the revenue requirement.

In addition this decision on the part of the Commission raises an important matter of principle.

7. That the Commission erred in law in its determination in paragraph 135 of the Decision that the subject matter of the Barbados Telephone (Revenue Apportionment) Order 1989 ("the Order") no longer exists and that "the Commission cannot direct an intra-company transferral of funds on the basis of the Order" for the reasons given in the Decision or at all.

In addition this decision on the part of the Commission raises an important matter of principle.

8. That the Commission erred in law and in fact in its determination in paragraph 199 of the Decision that the Applicant had refused to develop and put before it a cost allocation manual or that the Applicant had refused to consider any other model to assist the Commission in that:-

a) there was no evidence before the Commission to the effect that the Applicant refused to develop and put before it a cost allocation manual;

b) the evidence before the Commission was that an earlier costing model developed by the Applicant was wholly unsuitable to enable for determining the cost of services and for the establishment of appropriate cost-oriented rates proposed in the Application and would therefore not have been of any assistance to the Commission in determining the Application and consequently the Enhanced Allocation Model (EAM), was submitted to the Commission to support the Application;

c) in that the earlier costing model developed by the Company was not before the Commission in evidence and/or the record as part of the Applicant's Application; and

d) such a finding was not supported by the evidence and/or the record.

9. That the Commission erred in law and in fact in its finding in paragraph 204 of the Decision that the EAM allocates the cost and services from the statutory financial statements of the former companies that comprise the "Cable & Wireless group" during the test year in that:-

a) such a finding was not supported by the evidence and/or the record;

b) such a finding ignores the fact (as confirmed in the evidence and/or the record) that while the EAM utilises statutory accounts for its inputs, it applies the regulatory lifing of assets as prescribed by the Commission; and

c) the Applicant was required to include in the EAM the other entities of the "Cable & Wireless group" for which there are no Regulatory Accounts but only Statutory Accounts.

10. That the Commission erred in law and in fact in its finding in paragraph 205 of the Decision that the EAM has "co-mingled the regulated and unregulated costs and revenues" in that:-

a) such a finding was not supported by the evidence and/or the record;

b) such a finding contradicts the evidence that costs and revenues for the relevant services are in no way co-mingled with the costs and revenues from any other service; and

c) the Applicant was required to include in the EAM the other entities of the "Cable & Wireless group" for which there are no Regulatory Accounts but only Statutory Accounts.

11. That the Commission erred in fact and in law in rejecting, at paragraphs 113 to 115 of the Decision (inclusive), the inclusion of deferred tax as a known and measurable change to the cost of service, and in stating that "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" in that:

a) such a finding is not supported by the evidence and/or the record;

b) such a finding does not fairly represent the reasons advanced by the Applicant for the inclusion of deferred taxes;

c) such a finding is contrary to the mandatory legal requirement in Rule 60 of the Rules that the service provider shall apply to the Commission in writing for a rate review and shall include information including calculation of deferred taxes; and

d) such a finding contradicts the Commission's own direction in the proceedings that the Applicant should submit a calculation of deferred taxes on the stated basis that deferred taxes is a critical component of the determination of the revenue requirement calculation.

In addition this decision on the part of the Commission raises an important matter of principle.

12. That the Commission erred in law and in fact in finding in paragraph 118 of the Decision that in the absence of full information on Customer Premises equipment ("CPE"), the Commission is not in a position to make any adjustments to cost of service and rates, in that:

a) the consideration of information regarding CPE is irrelevant to the proper determination of the cost of service of the relevant services; and

b) the consideration of information regarding CPE is irrelevant to the determination for the rates applied for in respect of the relevant services.

In addition this decision on the part of the Commission raises an important matter of principle.

13. That the Commission erred in law and in fact in its assessment of the EAM in paragraph 206 of the Decision in failing to give any weight or any sufficient weight to the evidence of the Applicant that the Applicant had at the Commission's request provided it with an overall reconciliation of the EAM to the Statutory Financial statements, as adjusted for regulatory lifing where appropriate, of the four constituent Barbados companies that now comprise the Applicant company.

14. That the Commission erred in law and in fact in its finding in paragraph 207 of the Decision that it "could not find a clear connection between the revenue requirement for Cable & Wireless (BARTEL) and the cost of the separate services that make up domestic service" in that it:

a) failed or neglected to give any or sufficient weight to the uncontradicted evidence of the Applicant that the EAM is a fully allocated accounting separation model which allocates or where appropriate, directly assigns costs to the various products and services using the domestic network, using wherever possible objective bases for attribution, with the principal output of the model being a disaggregated profit and loss account for each service or category of services where revenues are separately assigned to the service or each category of services which gave rise to such revenues and costs are separately attributed to each such service or category of services on bases reasonably regarded and verified as being objective and appropriate;

b) failed or neglected to give any or any sufficient weight to the uncontradicted evidence of the Applicant that the EAM was utilised in relation to the instant Application and showed a deficit arising on the relevant services of $29.6 million; and

c) failed or neglected to give any or any sufficient weight to the uncontradicted expert evidence of the Applicant's witness Mr. Alastair MacPherson that Pricewaterhouse Coopers LLP (UK) ("PwC") had carried out an independent review of the EAM ("the model") in relation to cost causality, granularity, transparency and consistency in accordance with international best practice and had found that:
    1) the structure and methodology employed in the model to calculate service profitability and loss generated by the

local/domestic services was reasonable and appropriate for the purpose;

2) the model adopted a sound methodology which it applies consistently to estimate the profits and returns of the various services covered by the model;

3) the model was appropriate for estimating the degree of cross subsidy between the various services with the model being highly detailed and granular;

4) that there was no need to independently verify the data which was used as an input to the model as it has been subject to an audit; and

5) that the tests carried out by PwC examined in detail the allocations applied in the model to see whether the were reasonable and that it was satisfied that the Applicant had produced a model (the EAM) which was unbiased and had been applied and created in as objective a manner as possible.

In addition this decision on the part of the Commission raises an important matter of principle.

15. The Commission erred in fact and in law at paragraph 111 of the Decision in disallowing the Applicant any rate case expenses to be included as a known and measurable change in the Applicant's operating expense for the test year without supporting documentation in that:

a) the Commission either ignored or failed to give any weight to the evidence before the Commission of the actual known expense incurred by the Applicant as it related to part of the Applicant's application for re-prescription of asset lives No. BAR0001-01;

b) it failed to recognise that rate case expenses for the instant Application before it and for the unascertained part of the rate case expenses for the application for re-prescription of asset lives, and the review and appeal of the said application can only be estimates of costs and therefore it is impossible to provide the Commission with supporting information to support such estimated expense; and

c) the Decision was unreasonable and not in keeping with established regulatory principles and precedent.

In addition this decision on the part of the Commission raises an important matter of principle.

16. That the Commission erred in fact and in law in finding in paragraph 162 of the Decision that the Applicant has not proven on a balance of probabilities that a rate-adjustment is merited in that such a finding is against the weight of the evidence and in particular is contrary to the accepted evidence before the Commission that the domestic services are provided in substantial deficit, that the relevant services are operated in deficit in the amount of $29.6 million, and the removal of the existing cross-subsidy from international service revenues to the domestic services was necessary to achieve the requirement of cost oriented pricing set out in the Telecommunications Act 2001.

    In addition this decision on the part of the Commission raises an important matter of principle.

17. The Commission erred in law and in fact in finding in paragraph 162 of the Decision that "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" in that:

    a) such a finding is contrary to the evidence before the Commission and in particular the evidence of Paul Taylor that a flat rate of $36.00 would have been an alternative rate provided that the domestic business rates applied for by the Applicant in the Application were approved by the Commission;

    b) there is no legal restriction on the Commission's power to amend the proposed rate structure of its own motion in making a determination on the Application or to require the Applicant to submit an alternative or modified rate proposal for its consideration, there otherwise being no legal burden on the Applicant to provide any alternative rate structure; and

    c) this finding ignores section 10(1) of the Utilities Regulation Act 2000 which gives the Commission the sole power and the duty to ensure that rates set shall be fair and reasonable.

    In addition this decision on the part of the Commission raises an important matter of principle.

18. The Commission erred in fact and law in finding in paragraphs 209 and 210 of the Decision that "if the Commission were to approve a rate for Phase 2, and the Applicant applied for 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. 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" in that Section 16 of the Utilities Regulation Act 2000, under which the Applicant filed its Application places no legal limitation on the Commission granting a rate review within a six month time frame and section 15(3) of the Utility Regulation Act 2000 (the section on which the Commission relied in its finding) only applies where a review is sought in respect of rates for which the Commission has fixed a period of time for which the rates will apply.

In addition this decision on the part of the Commission raises an important matter of principle.

19. The Commission erred in fact and law in finding in paragraph 211 of the Decision that "the Applicant has not provided a marginal cost study which is a critical input in the design of a new tariff structure" in that there was no legal requirement on the Applicant to provide such a study and neither is such a study a necessary component in the design of a sound rate structure.

In addition this decision on the part of the Commission raises an important matter of principle.

20. The Commission erred in fact and law in finding in paragraph 171 of the Decision that "no sensitivity analysis was undertaken" in that there is no legal requirement on the Applicant to perform such an analysis and neither is such an analysis a necessary component in the design of a sound rate structure.

In addition this decision on the part of the Commission raises an important matter of principle.

21. The Commission erred in fact and law in finding in paragraph 198 of the Decision that "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" in that such a finding is not supported by the evidence and/or the record.

22. The Commission erred in law and in fact in its finding in paragraph 171 of the Decision in reference to the Applicant's proposed rate structure and design that "an unacceptable degree of uncertainty plagues the model with respect to its ability to generate $24.7 million" in that:

a) such a finding was unsupported by the evidence and/or the record and is in fact contrary to the evidence before it; and

b) no reasoning was advanced by the Commission to justify such a finding.

23. The Commission erred in law and in fact in its findings in paragraph 212 of the Decision that it is not satisfied that the Applicant's proposed rate structure will produce rates that are fair and reasonable or that the Applicant's proposal did not satisfy the criteria for establishing a sound rate structure in that:

a) such findings were unsupported by the evidence and/or the record and is in fact a finding which contradicted the evidence before the Commission;

b) such findings ignored or give no weight or insufficient weight to Government Policy Objectives as outlined in its Green Paper on Telecommunications Sector Policy which had been approved by Cabinet and laid in Parliament as representing government policy and with respect to which the Application was consistent; and

c) no adequate reasoning was advanced by the Commission to justify such findings.

In addition this decision on the part of the Commission raises an important matter of principle.

24. That the Commission erred in fact and in law in its finding in paragraphs 192 to 196 of the Decision, inclusive, that the Commission was not convinced that the introduction of the proposed rate structure significantly alleviates the recurring congestion problem in that it was never the Applicant's case that the proposed rate structure was designed to alleviate recurrent congestion problems on its network, the avoidance of network congestion is not a necessary objective or a requirement of a sound rate structure, and such a finding was therefore irrelevant to the Commission's determination on the proposed rate structure.
In addition this decision on the part of the Commission raises an important matter of principle.

25. That the Commission erred in fact and in law in its finding in paragraph 211 of the Decision that the Applicant did not submit the terms and conditions relevant to the proposed rate structure and that this omission limited the Commission's full assessment of the implementation and application of the rates in that this finding:

a) was not supported by the evidence and/or the record;

b) ignored the evidence that the Commission already had the Applicant's terms and conditions, any adjustment required would be dependent on the outcome of the Application and the directives of the Commission; and

c) ignored the evidence that the Applicant was properly leaving to the Commission's determination the actual manner of the implementation of the rates approved.

In addition this decision on the part of the Commission raises an important matter of principle.

26. The Commission erred in law and in fact and acted unreasonably, unfairly and unjustly toward the Applicant in finding in paragraphs 66, 118, 130, 132 of the Decision that it could not make a determination of the Application in the absence of what it considered to be relevant and necessary information in that:

a) it failed to exercise its statutory duty and responsibility under Section 18 of the Utilities Regulation Act 2000 and under Sections 4(5) and 26 of the Fair Trading Commission Act 2000 that in determining rates it was required to request of the Applicant all such necessary information it considered necessary to make a proper determination of the Applicant's Application;

b) during the course of the proceedings the Commission made in excess of 167 information requests/Interrogatories (as well as further information and data) of the Applicant and the Commission did not, in spite of having the full opportunity and the power to do so, request of the Applicant the information which in its Decision it now states it required to make a proper determination of the Applicant's Application; and

c) prior to the commencement of the Hearing, the Commission indicated that the Applicant's Application as submitted was incomplete as it failed to provide the requisite information stipulated by the Rules and in response the Applicant submitted the requested information by 15th September 2003 and therefore reasonably concluded that the

Commission was in possession of all necessary information required in order to make a proper determination of the Applicant's Application.

In addition this decision on the part of the Commission raises an important matter of principle.

27. That the Commission erred in law and acted unreasonably, unjustly and unfairly towards the Applicant in making a determination in paragraphs 171 and 211 of the Decision that a sensitivity analysis and/or a marginal cost study was a requirement for a proper determination to be made of the Applicant's proposed rate structure in that:

a) the Commission had at no time prior to the hearing or during the course of the hearing established, directed, ruled, or indicated that as a matter of established principle for arriving at the rates to be charged a sensitivity analysis and/or a marginal cost study was required;

b) the Commission's ruling that a sensitivity analysis and/or a marginal cost study was a requirement for a proper determination to be made of the Applicant's proposed rate structure was only made after the hearing of the Applicant's Application was completed thereby affording the Applicant no opportunity to produce such sensitivity analysis and/or a marginal cost study;

c) there is nothing in the Rules, in any law of Barbados or previous ruling by the Commission or its predecessor (the Public Utilities Board) which would require the Applicant to submit a sensitivity analysis or a marginal cost study as part of its application for new rates;

d) the Applicant in its previous applications for rate adjustments (which were approved by the Public Utilities Board and the Commission) was never required to file a sensitivity analysis or a marginal cost study and therefore could not reasonably be expected to know that any such analysis and/or study was a requirement for its Application;

e) during the course of the proceedings the Applicant in response to requests of the Commission submitted in excess of 167 information requests/Interrogatories (as well as further information and data) and the Commission did not request of the Applicant either a sensitivity analysis or a marginal cost study as additional information needed for its making a proper determination of the Applicant's Application; and

f) during the course of the proceedings, the Commission indicated that the Applicant's Application as submitted was incomplete as it failed to provide the requisite information stipulated by the Rules and in response the Applicant submitted the required information by 15th September 2003 and therefore reasonably concluded that the Commission was in possession of all necessary information required in order to make a proper determination of the Applicant's Application, there being no mention by the Commission of the necessity for the Applicant to provide a sensitivity analysis and/or a marginal cost study.

In addition this decision on the part of the Commission raises an important matter of principle.

28. That the Decision was generally against the weight of the evidence and/or the record.

2. The Applicant will crave leave of the Commission to add, amend, vary and/or amplify the abovementioned grounds for review prior to the Hearing of the Review.

3. The relief sought by the Applicant in this review is the relief sought by the Applicant in the Application together with all necessary consequential orders and declarations.

4. The Applicant will rely on the evidence and/or record presented during the Application but will also crave leave of the Commission to produce further evidence in support of its Application for Review, such Application will be made by separate Motion to the Commission.

5. The Hearing of this Motion will be heard at such time and date as fixed by the Commission.

6. The name, address and telephone and fax numbers of the Applicant are as follows :-

Cable & Wireless (Barbados) Limited
Windsor Lodge
ST. MICHAEL

Telephone No. 292-5050
Fax No. 436-5036

7. Documents in relation to this Motion may be served on :-

Mrs. Claire Downes-Haynes

whose address for service is C/o. the Applicant as stated above.

Dated the 5th day of August 2004.

B. L. V. Gale Q.C., Counsel for The Applicant

TO : The Fair Trading Commission
Office Of Public Counsel (Intervenors)
Mr Olson Robertson
Sunbeach Communications Inc.
Mr Noel G Smith
Mr Alvin Cummins
Mr Hallam Hope
Mr Grenville W. Phillips
Mr Alvin Thorpe
Mr Barry Thorpe
Mr Leroy H. McClean
Barbados Association Of Non-Governmental Organisations
Barbados Consumer Research Organisation Inc.
Mr John D.E. Boyce
All Caribe Inc.
Ms Audrey Mckenzie
Barbados Council For The Disabled
Cariaccess (Barbados) Limited

BARBADOS

NO. OF 2004

IN THE MATTER of the Utilities Regulation Act, 2000-30

AND IN THE MATTER of the Telecommunications Act, 2001-36

AND IN THE MATTER of the Application by Cable & Wireless (Barbados) Limited to the Fair Trading Commission for Rate Adjustments pursuant to Section 16 of the Utilities Regulation Act, 2000-30

AND IN THE MATTER of the Application by Cable & Wireless (Barbados) Limited for a Review of the Decision of the Fair Trading Commission dated the 20th July 2004 No. 4 of 2004.

CABLE & WIRELESS (BARBADOS) LIMITED

FAIR TRADING COMMISSION

NOTICE OF MOTION FOR REVIEW

Presented for filing by:-
Mr. B.L.V. Gale, Q.C.
Attorney-at-Law for the Appellant