



FAIR TRADING COMMISSION

Proposed Standards of Service for Cable & Wireless (Barbados) Limited (C&W) 2022

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FTC/URD/CONSOSCW-2020-01	Consultation Paper- Review of Cable & Wireless (Barbados) Limited Standards of Service 2018 - 2020	April 23, 2021
FTC/URD/DECSOSCW-2017-03	Decision on Cable & Wireless (Barbados) Limited Standards of Service 2017 - 2020	September 29, 2017
FTC/URD/CONSOSCW-2017-01	Consultation Paper - Review of Cable & Wireless (Barbados) Limited Standards of Service	March 3, 2017
FTC/DECSOSC/2014-02	Decision on C&W Standards of Service 2014 - 2017	September 12, 2014
FTC/URD/CONSOSC 2013-01	Consultation Paper - Review of C&W Standards of Service	October 2013
FTC/URD/2010-02	Decision on C&W Standards of Service 2010-2013	February 22, 2010
FTC/CONS2008-02	Consultation Paper - Review of C&W Standards of Service	October 29, 2008

TABLE OF CONTENTS

SECTION 1	SUMMARY	4
SECTION 2	INTRODUCTION	6
2.1	Legislative Framework.....	8
2.2	Authority to Establish Standards of Service.....	8
2.3	Requirement to Consult.....	10
2.4	Requirement to have hearings.....	10
2.5	Fines and Penalties	11
	Participating in the Hearing	12
SECTION 4	CONSULTATION SUBMISSIONS & COMMISSION RESPONSES	15
4.1	Ms. Douglas' submission	15
4.2	Commission's Response to Ms. Douglas' Submission.....	15
4.3	C&W's view on its Monopoly Position.....	15
4.4	Commission's Response to C&W's View of its Monopoly Position.....	16
4.5	C&W's views on the amendments to GTS 4	16
4.6	Commission's Response to C&W's Views on GTS 4 Amendment	17
4.7	C&W's Views on Proposed Automatic Compensation.....	17
4.8	Commission's Response to C&W's Views on Proposed Automatic Compensation.....	18
4.9	C&W's Views on The Continued Regulation of Working Payphones	18
4.10	Commission's Views on The Continued Regulation of Working Payphones	18
4.11	C&W's Views on Exemptions.....	19
4.12	Commission's Response to C&W's View on Exemptions.....	19
4.13	C&W's Views on Confidentiality	20
4.14	Commission's Response to C&W's Views on Confidentiality	20
4.15	Summary of C&W's Responses to Consultation Questions	20
SECTION 5	STANDARDS OF SERVICE PROPOSALS	25
5.1	General Standards of Service Definitions and Specific Exemptions.....	25
5.2	Overall Standards of Service Definitions and Specific Exemptions.....	31
5.3	Guaranteed Standards of Service Compliance Targets	35
SECTION 6	GENERAL EXEMPTIONS	40
6.1	Other Exemptions and Conditions	41
SECTION 7	ADMINISTRATION.....	43
7.1	Monitoring and Enforcement of Standards	43
7.2	Public Disclosure of Information	44
7.3	Public Education	44
7.4	Implementation and review	44

SECTION 1 SUMMARY

This document is a review of the Standards of Service regulation applied to Cable & Wireless (Barbados) Limited (“C&W”), the designated universal service carrier of fixed-line telecommunications. As regulator of domestic and international telecommunications, the Fair Trading Commission (the “Commission”) has the responsibility to ensure C&W meets the standards necessary to ensure consumers have access to efficient and reliable fixed-line services. Given C&W’s sustained market dominance in the residential and business landline markets, fixed-line regulation remains necessary to ensure the protection of C&W’s subscribers. In order to protect subscribers, the Commission has the following responsibilities prescribed in section 3(1)(d) to 3(1)(f) of the Utilities Regulation Act CAP 282 of the Laws of Barbados (the “URA”):

s3(1)(d) – determine the standards of service applicable;

s3(1)(e) – monitor the standards of service supplied to ensure compliance; and

s3(1)(f) – carry out periodic reviews of the rates and principles for setting rates and standards of service.

In light of the above, on April 23, 2021, the Commission published a consultation paper inviting comments from stakeholders¹ on proposed amendments to the 2017-2020 Standards of Service Decision issued by the Commission. The 2017-2020 Standards of Service Decision was extended until June 30, 2020, and as such, this review applies to the 2022-2025 Standards of Service.

The consultation period for this review occurred between April 23 and May 20, 2021. On May 14, 2021, C&W requested an extension to respond to the consultation, and was granted an extension until June 3, 2021. The consultation related specifically to the review of the standards applicable to domestic voice telecommunications services of C&W; the standards do not apply to services such as mobile, broadband internet or television content. The Commission does not have jurisdiction over these services.

¹ The general public, service providers, representatives of consumer interest groups and any other interested parties.

Having analysed the two submissions in response to the consultation paper, one from a private citizen, Diana Douglas, and the other from C&W, the Commission hereby submits the following proposed amendments to the Standards of Service for C&W:

- A revised compliance target for Guaranteed Standard 1 (GTS 1)
- A new Guaranteed Standard called “Customer Complaint Resolution Time”, this shall replace Response to Customer Complaints as the new GTS 4 and will measure the time taken by C&W to resolve a subscriber’s complaint from the time the complaint is made
- A new GTS called “Account Cancellation Time after Customer Request” shall be introduced as GTS 9, this Standard will stipulate the time taken by C&W to completely terminate an account after a request by a customer
- C&W will be required to publish the Standards of Service and its fault reporting process clearly and prominently to the satisfaction of the Commission via C&W’s website, social media platforms and two (2) forms of news media.
- The target for Customer Service Response Time (OTS 6) is that at least 70% of calls must be answered within 40 seconds of being handed off by the interactive voice system (IVR) system to the service representative queue
- A new Overall Standard (OTS 7) will relate to the Complaint Resolution Rate, this Standard will stipulate the target for the amount of customer complaints successfully resolved given the number of total complaints submitted on a monthly basis.
- C&W will be required to provide the value of eligible and actual compensation broken down by Standard.

When adopted, the proposals will be part of the 2022-2025 Standards of Service, which becomes effective on July 1, 2022 and will remain in effect until June 30, 2025. Note however, that the Commission reserves the right to (i) review these Standards before the end of this period, and (ii) extend its Decision for two additional years (up to June 30 2027), if deemed necessary. Thereafter, the Decision will be subject to review by the Commission, at which time amendments may be made.

SECTION 2 INTRODUCTION

This document sets out the Commission’s proposed amendments to the Standards of Service for the domestic landline telephone services provided by C&W.

On April 23, 2021, the Commission issued a Consultation Paper² to review its September 2017 Decision on the Standards of Service. As required by section 4(4) of the Fair Trading Commission Act, CAP. 326B of the Laws of Barbados (the “FTCA”), the Commission sought comments from service providers, representatives of consumer interest groups and other interested parties.

Further, section 4 of the FTCA also mandates the Commission to enforce Standards of Service regulation, which is a quality of service (QoS) framework that requires the Commission to:

- ensure that a minimum QoS is maintained;
- provide incentives for improvements in the service provider’s QoS;
- create conditions for customer satisfaction;
- monitor service quality; and
- protect the interests of consumers.

Given C&W’s sustained dominance in the landline market, and notwithstanding increased competition in other telecommunications markets, these mandates remain a necessary feature of the Commission’s regulatory framework. Despite C&W claim³ that alternative calling platforms are competitive alternatives to traditional landline services, the market shows otherwise. Despite the increased demand for mobile voice services and services such as WhatsApp, the penetration of landline services remain relatively high. Currently, the landline penetration rate⁴ is approximated at 46%⁵. Note, this is a higher penetration rate

² The Fair Trading Commission. (2021, April 23). Review of Cable & Wireless (Barbados) Limited Standards of Service 2018 - 2020.

³ Cable and Wireless (Barbados) Limited. (2021). 2021 CWB Response to FTC Standard of Service Review Redacted Final.

⁴ $penetration\ rate = \frac{\#\ of\ landline\ subscriptions}{population\ size} * 100$

⁵ This number is an estimate computed from information collected by the Telecommunications Unit and the Barbados Statistical Service. Sources: Telecommunications Unit in the Ministry of Innovation, Science and Smart Technologies. n.d. ICT Statistics for Barbados. Accessed January 5, 2022.

than what existed prior to market liberalisation which was estimated at 44%⁶ in 2000. Compared to a period when services such as WhatsApp were not yet invented, and when C&W was the monopoly provider of all telecommunications services, there was a lower penetration of landline services.

C&W has the concern that regulation should apply to all service providers. The Commission acknowledges C&W's concern, however, until evidence emerges that C&W no longer has a dominant position, and when legislative amendments are made to reflect regulation in more competitive telecommunications sector, the Commission remains dutybound to regulate C&W's landline service. Absent a sufficiently competitive market, regulation incentivizes C&W to maintain high service quality, and acts as a proxy for a competitive market. Moreover, Standard of Service regulations are also important in cases where the service provider is subject to price cap regulation, as is the case with C&W. Price Cap regulation is the method used by the Commission to ensure the level of prices of services in a market that is not yet competitive, remains at or below a price cap index (PCI)⁷. The PCI specifies the maximum level of the aggregate price change for a basket of regulated services. In order to minimise costs and therefore maximise profits, a service provider that is subject to a PCI may seek to offer a lower QoS. The implementation of Standards of Service is meant to avoid such.

The Commission uses two (2) Standards of Service categories for effective monitoring. The first category is referred to as Guaranteed Standards of Service. Guaranteed Standards of Service require that C&W makes compensatory payments in the form of credits to the subscriber's account who is affected by C&W's failure to meet the target for a particular guaranteed Standard. The second category is the Overall Standards of Service (OTS). OTS are designed to monitor the overall performance of C&W, as such, the Standards do not apply to a breach that is specific to a particular subscriber. Compensation is not awarded to subscribers when C&W fails to meet an overall Standard. However, if C&W fails to operate

https://www.telecoms.gov.bb/index0edb.html?option=com_content&view=article&id=25&Itemid=127. And Barbados Statistical Service. n.d. Census. Accessed January 26, 2022. <https://stats.gov.bb/census/>

⁶ This number is an estimate computed from information collected from the Barbados Statistical Service. n.d. Census. Accessed January 26, 2022. <https://stats.gov.bb/census/> and contained in the Ministry of Industry and International Business. (2000). Green Paper on Telecommunications Policy.

⁷ For an explanation on the price cap index, see the Commission's Price Cap Plan Decision at [2016-03-31_commission_decision_price_cap_plan_2016.pdf \(ftc.gov.bb\)](#)

within the compliance targets, the Commission may impose penalty pursuant to section 38 of the FTCA.

The Commission understands that there are instances where C&W's failure to meet a particular Standard is due to circumstances beyond C&W's control, as such, this document also explains where exemptions apply.

General exemptions are all encompassing in the general sense that they cover unforeseeable circumstances which may prevent C&W from meeting a compliance target.

2.1 Legislative Framework

The Commission is empowered under the FTCA and the URA to determine, monitor and review the Standards of Service applicable to regulated utilities. The role of the Standards of Service Framework is to ensure operational consistency and outline the minimum standards of quality, customer service and reliability that must be met by C&W.

2.2 Authority to Establish Standards of Service

"Standards of Service" is defined at section 2 of the FTCA as 'the quality and extent of service supplied by service providers.'

The FTCA and the URA set out the Commission's authority to determine the Standards of Service for a service provider and the considerations that must be given when determining the same. These legislative provisions provide the over-arching framework necessary for the development and establishment of the Standards of Service for a regulated sector. Section 4(3) of the FTCA outlines the Commission's powers in relation to Standards of Service.

Section 4(3) states that:

"The Commission shall, in the performance of its functions and in pursuance of the objectives set out in subsections (1) and (2),

(a) ...

(b) ...

(c) ...

- (d) *determine the Standards of service applicable to service providers;*
- (e) *monitor the Standards of service supplied by service providers to ensure compliance;*
- (f) *...*
- (g) *carry out periodic reviews of the rates and principles for setting rates and Standards of service of service providers..."*

Section 3(1) of the URA mirrors section 4(3) of the FTCA insofar as it states that:

"The functions of the Commission under this Act are, in relation to service providers, to

- (a) *...*
- (b) *...*
- (c) *...*
- (d) *determine the Standards of service applicable;*
- (e) *monitor the Standards of service supplied to ensure compliance; and*
- (f) *carry out periodic reviews of the rates and principles for setting rates and Standards of service; and*
- (g) *..."*

Section 4 of the URA outlines the items that the Commission must take into account when determining standards of service, and states as follows:

"In determining Standards of service, the Commission shall have regard to

- (a) *the rates being charged by the service provider for supplying a utility service;*
- (b) *ensuring that consumers are provided with universal access to the services supplied by the service provider;*
- (c) *the national environmental policy; and*
- (d) *such other matters as the Commission may consider appropriate."*

And Statutory Instrument (S.I.) 2006 No.5 of the Telecommunications (Regulated Services) Order 2006 gives the specific categories of regulated telecommunications services. The specific services are:

- (a) *International Telecommunications Services;*
- (b) *Domestic Voice Telecommunications Services;*
- (c) *Services in respect of Interconnection Charges;*
- (d) *Leased Circuits; and*
- (e) *International Simple Resale*

Rule 63(2) of the URPR details the issues that may be included in the development of standards of service.

Rule 63(2) of the URPR states:

“Service Standards may include issues such as

- (a) universality of service;*
- (b) the provision of new services;*
- (c) the extension of services to new customers;*
- (d) the maximum response time permitted for responding to customer complaints and queries; and*
- (e) Standards related to service quality which are specific to each sector.”*

2.3 Requirement to Consult

When determining standards of service, the Commission is required to consult with interested parties in accordance with Section 4(4) of the FTCA, which states:

“The Commission shall, in performing its functions under subsection (3) (a), (b), (d) and (f) consult with the service providers, representatives of consumer interest groups and other parties that have an interest in the matter before it.”

As previously mentioned, the Commission has already carried out its consultation on the proposed standards of service for C&W with interested parties.

2.4 Requirement to have hearings

Section 15 (4) of the URA confers upon the Commission the authority to conduct hearings when reviewing standards of service. Section 15 (4) of the URA states as follows:

“In carrying out a review, the Commission shall hold a hearing in accordance with section 33 of the Fair Trading Commission Act.”

Section 33 of the FTCA states that hearings of the Commission shall be public, unless the circumstances warrant, or the Commission deems it appropriate to conduct a hearing in private.

Rule 64 of the URPR then outlines the application process by which persons may participate as intervenors in a standards of service hearing

2.5 Fines and Penalties

Standards of Service are binding on C&W and the consequences for breaching such standards of service may include certain fines or penalties. Sections 21, 31(1) and 38 of the URA state as follows:

Section 21 of the URA:

“Where a service provider fails to meet prescribed standards of service, the service provider shall make to any person who is affected by the failure such compensation as may be determined by the Commission.”

Pursuant to Section 38 of the URA, the Commission is then empowered make an order prescribing the amount to be paid by the utility service provider to the affected person. Section 38 of the URA states:

“The Commission may make

(a) rules;

(b) regulations; and

(c) orders with respect to

(i) imposing penalties for non-compliance with prescribed standards of service; and

(ii) prescribing amounts to be paid to the person referred to in section 21 for failure to provide a utility service in accordance with the standards of service set by the Commission.”

Failure to obey such an order made by the Commission will then result in further fines, as Section 31(1) of the URA provides that:

“Every service provider which fails or refuses to obey an order of the Commission made under this Act is guilty of an offence and is liable on summary conviction to a fine of \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day.”

Participating in the Hearing

Persons may participate in the Commission's hearing by submitting an Application for Intervenor Status, pursuant to Rule 64 of the URPR. Applications for Intervenor Status must be by way of a Letter of Intervention. Pursuant to Rule 64 of the URPR, Letters of Intervention shall:

- (a) be divided into paragraphs and numbered consecutively;
- (b) describe the intervenor, the interest of the intervenor in the proceeding and contain detailed grounds for the intervention;
- (c) contain a concise statement of the nature and scope of the intervenor's intended participation;
- (d) request the written evidence if it is desired; and
- (e) set out the full name, address, telephone number and facsimile number of no more than 2 representatives including counsel of the intervenor for the purpose of service and delivery of documents in the proceeding.

The Commission highly encourages parties to refer to the URPR, specifically Rule 64 with respect to Applications for Intervenor Status, when preparing their Letters of Intervention.

Letters of Intervention may also include views or comments on the matters discussed within this paper or intersecting areas that were not addressed that parties consider should be covered by the Commission's Standards of Service framework, which may also be accessed via the Commission's website, <http://www.ftc.gov.bb>.

Copies of the URA, the URPR and the FTCA, are available on the Commission's website at www.ftc.gov.bb and may be inspected at the Commission's office at "Good Hope", Green Hill, St. Michael between the hours of 9.00a.m. and 4.00p.m., Monday to Friday

The Commission prefers that Letters of Intervention be prepared as PDF or Word documents, attached to an email cover letter and forwarded to the Chief Executive Officer (Ag.): info@ftc.gov.bb. Letters of Intervention may also be faxed to the Commission at (246) 424-0300. Mailed or hand delivered responses must be submitted to the Commission to:

Chief Executive Officer (Ag.)
Fair Trading Commission
Good Hope
Green Hill
St. Michael
E- mail: info@ftc.gov

The Commission's hearing process for the proposed Standards of Service for C&W will commence on **May 26, 2022** and conclude on **June 3, 2022**.

The Commission is of the view that the hearing discussion is largely of a general nature. The Commission expects to receive views from a wide cross section of stakeholders and believes that views and comments received should be shared as widely as possible with all respondents. Respondents should therefore ensure that they indicate clearly to the Commission any response or part of a response that they consider to contain confidential or proprietary information.

SECTION 3 TELECOMMUNICATIONS SECTOR

There have been significant developments in the telecommunications sector, notably, the continued rollout of C&W's fibre network, the acquisition of C&W by Liberty Global, and Digicel's further development as a full-service telecoms provider. In light of these developments, the Commission continues to monitor the sector to ensure regulations are relevant to a rapidly changing environment, and on April 23, 2019, the Commission approved the C&W's Draft Reference Interconnection Offer (RIO) 2017. RIO 2017 resulted from the need to update RIO 2010 to reconcile interconnection costs to reflect the Commission's decision on long run incremental cost (LRIC) interconnection rates in 2015. As C&W continued its rollout of an optical fibre network, it became necessary for interconnection costs to reflect the cost associated with the upgraded infrastructure.

In February 2020, the Telecommunications Unit (TU) in the Ministry of Innovation, Science and Smart Technology, sought the Commission's assistance to develop and implement QoS for all licensed telecommunications services. Consequently, the TU and the Commission jointly prepared and submitted a cabinet paper, which was approved on June 18, 2020. That document sought approval for the development of a suite of QoS Standards for all mobile and internet services, and the expansion of the Commission's regulatory remit to cover same.

In April 2021, the Commission issued its decision on PCP 2021.

Globally, development in information communication technology continues to influence the growth the digital economy. In light of this, the Commission continues to remain vigilant to protect the rights of consumers, and at the same time, balance the interests of service providers.

SECTION 4 CONSULTATION SUBMISSIONS & COMMISSION RESPONSES

The Commission received two (2) responses to the Consultation Paper, a response from Ms. Diana Douglas and a response from C&W. This section will outline and discuss the comments submitted by the respondents, and will provide the Commission's comments on the issues raised.

4.1 Ms. Douglas' submission

Ms. Diana Douglas, a C&W subscriber, raised concerns about the lack of clarity and transparency with respect to C&W's bundle offerings and the terms and conditions of service. She opined that the cost and true composition of the bundles is often unclear. Moreover, she claimed that C&W changes aspects of the bundles without notifying customers. While Ms. Douglas acknowledged that her comments did not speak specifically to the questions posed in the Consultation Paper, they do express a frustration with the way in which C&W provides its services. She expressed that customers ought to be clear on what they are paying for and that there ought to be a "level playing field" among the Caribbean territories in which C&W operates, citing different prices for identical bundle offerings in different countries as a cause for concern.

4.2 Commission's Response to Ms. Douglas' Submission

The Commission acknowledges Ms. Douglas' views and concerns, and hopes to receive participation from other members of the public on similar issues. Though Ms. Douglas did not speak specifically to issues raised in the Consultation Paper, her argument possibly reflects a general discontent held by some of C&W's subscribers, which in some cases may speak to customers' unfavourable quality of service experience.

4.3 C&W's view on its Monopoly Position

In response to the Consultation Paper, C&W commended the Commission's efforts to balance the interests of the consumer with those of the service provider. However, C&W expressed concern that C&W is the only regulated telecommunications provider, stating that the regulatory framework is an "uneven Utility Regulation regime"⁸ and that it is no longer fair for to be treated as a monopoly. C&W continued by noting that landline revenues have

⁸ Cable & Wireless (Barbados) Limited. "C&W Response to the Fair Trading Commission's Review of Cable & Wireless (Barbados) Limited Standards of Service 2018 – 2020." Consultation Response, 2021.

decreased between 5% and 13% year-over-year since 2014. C&W attributed these declining revenues to customers' increasing adoption of mobile and over the top (OTT) voice services such as WhatsApp.

Further, C&W acknowledged the Commission's statement concerning C&W majority market share in the landline market, but attributed the market share position to Digicel's strategy to "cherry pick"⁹ lucrative market segments. C&W is of the view that Digicel has the opportunity to increase its market share, but chooses not to. C&W further stated that the Commission appears to "cast blame"¹⁰ and responsibility upon C&W for Digicel's failure to extend its services to certain locations.

4.4 Commission's Response to C&W's View of its Monopoly Position

While the Commission acknowledges that C&W is no longer a monopoly in the strictest sense of the word, it is nonetheless the dominant landline provider. Evidence gathered during the PCP 2021 review substantiates this fact and is therefore reflected in the continued price regulation in fixed-voice services. By extension and in keeping with prudent regulatory practice, the Commission proposes that the Standards of Service regime shall remain applicable to C&W's fixed-voice services until the market is sufficiently competitive. The Commission does not cast blame on service providers in the market for the actions or inactions of other service providers, but is dutybound to act on the facts.

4.5 C&W's views on the amendments to GTS 4

While C&W agreed with the Commission's proposal to remove the Response to Customer Complaints (GTS 4), stating that it shows a recognition of its ability to maintain acceptable levels of service provision, it was not in complete agreement with the proposal to implement Customer Complaint Resolution Time as a new Standard. C&W contended that the new Standard would overlap with existing Standards such as Fault Repair (GTS 2) and Wrongful Disconnection (GTS 7). C&W insisted that it already employs its best efforts to resolving customers' complaints in a timely manner as this is in its best interest. Moreover, C&W claimed that as the market develops, there is less need for these types of measures. C&W cited anomalous situations that involve billing complaints where the nature and scope fall outside of what is covered by its terms and conditions, and hence, are likely to take longer to

⁹ Ibid, pg3

¹⁰ Ibid, pg3

resolve. As an example, C&W stated that an issue may be dated months or even years in the past for which a customer query may not exist despite a subsequent claim of a long-standing issue¹¹. C&W asserted that if the Commission was committed to implementing a new GTS 4, it may be useful to adjust the scope to exclude issues already covered by other Standards.

4.6 Commission's Response to C&W's Views on GTS 4 Amendment

The new Standard, Customer Complaint Resolution Time, is meant as a catchall for all complaints related to C&W's regulated services, specific to issues not directly covered by the other Standards. It has been observed over time that some complaints become quite protracted and by the time the dispute is brought to the Commission's attention, the passage of time has made evidence collection or confirmation of details difficult or impossible. This Standard is intended to add structure to the complaint resolution process by setting a time by which the service provider must assess the complaint and make a determination. As it relates to the issue of pre-existing problems that customers have had for years but never queried, the requirement for the customer to report the matter would stand as it always has, and the window of time set by this Standard would only begin after the customer has made an official complaint to C&W.

4.7 C&W's Views on Proposed Automatic Compensation

As it relates to the issue of customer compensation and tendency for those eligible for compensation to outnumber those who actually receive it, C&W opposed the Commission's proposal to automate compensation for all Guaranteed Standards. At present, GTS 4, GTS 5 and GTS 8 require customer-initiated claims to ensure compensation for breaches. C&W claimed that to make the switch to automatic compensation in these instances would require substantial adjustments to its billing system and the input of the system vendor. This process is said to take months and pose considerable cost to C&W. Additionally, the C&W asserted that in some of these instances, it may remain dependent on customers to drive the process of identifying the breach and thus raising the alarm that compensation may be required. Moreover, C&W said that:

"The existing Standards that currently require customer-initiated compensation are those where generally of necessity some level of contact is required from the customer to advise of a

¹¹ Ibid, pg4

breach. As stated previously, the process of automating compensation is not a simple, short nor inexpensive process and C&W views this as an additional burden of regulation that is not required of our competitor and thus further unfairly skews the environment. C&W is of the view that efforts by the Company and the Commission to ensure that consumers are more aware of their entitlements would result in an increase in customers in this category requesting compensation."

4.8 Commission's Response to C&W's Views on Proposed Automatic Compensation

On June 15, 2021, the Commission made a request to C&W to submit the estimated cost of adjustments to their billing system, but this information has not been forthcoming. Nonetheless, in view of the forgoing and in keeping with the principles of fairness and a need to balance the needs of the consumer with the continued viability of the service provider, the Commission considers it prudent not to adjust the mechanisms for the delivery of compensation under the Standards of Service at this time.

4.9 C&W's Views on The Continued Regulation of Working Payphones

C&W expressed disappointment in the Commission's proposal to maintain the existence of Working Payphones (OTS 3). C&W is of the view that OTS 3 ought to be discontinued as it continues to face significant difficulties in reporting data related to the Standard. C&W further stated that the effort required outweighs the usefulness of the service, as payphones have been shown to be a severely declining technology. According to C&W, this area does not require regulatory oversight, stating that the enforcement of this Standard is based on the premise that C&W is the universal service provider, an artifact of the monopoly era. C&W is of the view that the universal service obligation ought to be brought up to date with prevailing technological and economic conditions. C&W continues to insist that the Commission's regime, which considers C&W as a monopoly provider in many instances, is outdated as many regulators in Eastern Caribbean jurisdictions have switched to more equitable modes of service quality regulation.

4.10 Commission's Views on The Continued Regulation of Working Payphones

The Commission's retention of Working Payphones (OTS 3) stemmed from its choice not to adopt a stance that could potentially signal that the provision of payphones is no longer required. It remains a legal requirement for the universal service provider to maintain

provision of payphones and the Commission's decision is one of the checks and balances in place that is meant to monitor this. Though the Commission acknowledges the decreased use of payphones in favour of more modern technologies, the Commission does not have the authority to amend the legal mandate to enforce payphone regulation.

4.11 C&W's Views on Exemptions

While C&W conceded that the Commission's stated exemptions are reasonable, it decried the process for making use of these as needlessly onerous, cumbersome and prohibitive. It contended that the need for formal motions and affidavits in light of exogenous national and indeed international circumstances is inflexible, quite unlike the manner in which the Commission expects regulated entities to operate. C&W cited as an example, its decision to withdraw its 2020 application for exemption from the Standards of Service due to challenges arising out of Government's COVID-19 restrictions. These restrictions prevented C&W technicians from visiting customers and caused C&W to close retail stores, effectively making it impossible for many of the Standards to be met as normal. The formal process required to access the benefits of the exemptions was seen by C&W as enough of an obstacle that withdrawal of the application was the preferred course of action.

4.12 Commission's Response to C&W's View on Exemptions

In cases where a service provider seeks exemption from supplying one or more of the applicable standards of service, the Commission requires that the service provider demonstrate, with proof, why supplying the relevant standard (or standards) of service is not possible. It is not automatic that the standard(s) of service will be held in abeyance simply due to the presence of a force majeure event, for example. A service provider seeking an exemption due to the existence of a force majeure event must therefore demonstrate, to the Commission's satisfaction, that the circumstances surrounding and/or created by the force majeure event rendered meeting the standard impossible. Based on the evidence provided by the service provider, the Commission would then make a determination on whether the service provider may be exempted from the applicable standard(s) of service.

4.13 C&W's Views on Confidentiality

C&W submitted that it was willing and able to continue complying with the stated reporting requirements. However, C&W reiterated its view that the current regime is uneven as all service providers ought to be subject to the same reporting requirements. C&W protested that having its performance metrics publicly available, noting that its competitors are not subject to the same. C&W further objected to the Commission's intention to publish all Standards of Service data including compensation amounts, claiming that this information is sensitive and its release could potentially be damaging. C&W further claimed that: "the Confidentiality Regulations which are invoked to secure the mentioned information have not been amended or repealed and we urge the Commission to take due notice of its provisions"¹²

4.14 Commission's Response to C&W's Views on Confidentiality

According to Regulation 4 of the Telecommunications (Confidentiality) Regulations, 2003 CAP. 282B, should the Commission believe that the information which was the subject of a confidentiality claim ought to be made publicly available, it must provide written notification of such action to the party making the claim. That party then has ten (10) business days to submit an objection to the disclosure of the information. On March 17, 2020, the Commission informed C&W that all Standards of Service data would be made public going forward. No objections to the disclosure were received from C&W.

4.15 Summary of C&W's Responses to Consultation Questions

The following is a summary of C&W answers to the questions asked in the Consultation Paper and the Commission's reply.

Q 1: What are your views on the Commission's continued imposition of Standards of Service for Cable & Wireless' domestic fixed line service?

C&W had no objection in principle to the enforcement of Guaranteed Standards, however, C&W reiterated that regulations ought to be extended to all service providers. C&W contended that the Commission's ability to protect the interests of consumers was hampered

¹² Ibid, pg6

by the fact that a significant segment of the population that are not customers of C&W, are not covered by current regulations.

Commission's response

The Commission acknowledges the significant development that have taken place in the telecommunications sector since the proclamation of the current regulations, and is of the view that legislative amendments which include other service providers would strengthen the regulatory framework. While the Commission's recommended amendments to regulate other licensed operators await a complete review by Government, the Commission reiterates that the imposition of regulations on entities not subject to regulatory oversight is ultra vires.

Q 2: What are your views on the establishment of a new Guaranteed Standard called Customer Complaint Resolution Time that replaces Response to Customer Complaints (GTS 4)?

C&W agreed with the removal of Response to Customer Complaints (GTS 4) and contended that it has served its purpose. However, as previously stated, C&W considered the establishment of the new Customer Complaint Resolution Time Standard unnecessary as it overlaps existing Standards, and that its application may pose challenges. However, C&W admits that the proposed terms in the Standard are not unreasonable.

Commission's response

The Commission intends for the new Standard to add a layer of structure to the complaint handling process. The intention is to hold C&W accountable for the time taken to resolve individual customers' complaints. Staff recalls several instances where customers have complained that complaint matters have been quite protracted even before the dispute was eventually brought before the Commission. Moreover, the new Standard would act as a catchall for all complaints related to the regulated services. For example, customers have reported having to wait an ordinate length of time for resolution and compensation. GTS 4 is likely to alleviate these issues.

Q 3: What are your views on the establishment of a new Guaranteed Standard called Account Cancellation Time after Customer Request?

C&W stated that it is opposed to “the implementation of any regulation that serves to further disadvantage the Company in an industry where it continues to be the only regulated entity and thus subject to penalties not ascribed to other providers”¹³. C&W made no comment on the proposed structure and implementation of the Standard, or the associated compensation.

Commission’s response

The Commission reiterates that at present, under the existing legislation, C&W is the only regulated telecoms service provider. While there have been developments that will potentially see QoS regulation extended to the sector as a whole, the legislative amendments required to facilitate this are not yet in place. The Commission considers that this Standard would address issues arising from the lack of information and ensure that complaints will be resolved in a timely manner.

Q 4: What are your views on implementing automatic compensation for all Guaranteed Standards?

C&W opposed this proposal. C&W claimed that the cost and complexity of the process in relation to the required changes to the billing system would be prohibitive, and this level of regulation is not required for its competitors. C&W also contended that the Standards which currently require customer-initiated claims are such that contact with the customer is necessary to even gain awareness of a breach. C&W suggested that C&W and the Commission could expend greater effort going forward to ensure that customers are more aware of the compensation to which they are entitled, and the processes for obtaining this compensation.

Commission’s response

The Commission acknowledges C&W’s argument, and the Commission agrees that actual compensation paid to customers can be improved by a greater focus on enhancing customer awareness. As such, the current structure for compensation remains the same.

Q 5: Should C&W be required to publish the Standards of Service and its fault reporting process, clearly and prominently, to the satisfaction of the Commission, via its website, social media channels, as well as in two (2) forms of news media, in addition to informing customers who make complaints of the means via which compensation may be sought? Please give reasons for your answer.

¹³ Ibid, pg7

C&W stated that it currently publishes the Standards of Service and its fault reporting process as required, but acknowledges that more emphasis can be placed on providing information on accessing compensation. C&W however sought clarity on how “to the satisfaction of the Commission” would be defined.

Commission’s response

Staff of the Commission has noted that the placement of the Standards of Service on C&W’s website is far from prominent. One must scroll to the bottom of the page in order to see the hyperlink that leads to the Standards of Service’s table. The average website visitor tends to pay attention mainly to the content that is presented front and centre as the page loads, and if they are not aware that the Standards of Service link is at the bottom, they are unlikely to even scroll to look for it. The Commission is seeking to correct this problem to help improve consumer awareness of the Standards of Service. Consequently, the Commission would require C&W to reposition the Standards of Service on its website to a more prominent position and submit this placement to the Commission for approval.

Q 6: What are your views on the implementation of a new Standard for Complaint Resolution Rate?

C&W stated that *“we submit that the regulation should be limited to a general requirement to submit data on the number of complaints received and resolved, within the definition of complaint agreed by the Commission, and no more. We note the parameters proposed for a new Overall Standard and subject to our reservations as to uneven regulation we do not find this to be an unreasonable request.”*

Commission’s response

In its annual compliance filing, C&W already records the average length of days for the resolution of an issue covered under the existing Standards. The Commission is of the view that this should maintain as customary, and as such, the imposition of a new Standard is not necessary.

Q 7: What are your views on adjusting the target for OTS 6 to match that of C&W’s internal KPI?

C&W had no objection to this adjustment.

Q 8: What are your views on requiring C&W to provide the value of eligible AND actual compensation broken down by Standard?

C&W had no objection.

Q 9: What other improvements would you suggest for the level of reporting?

C&W stated that emphasis ought to be placed on Overall Standards rather than Guaranteed Standards as these can potentially paint a distorted picture of its performance. For example, a low percentage score for a Standard that evaluates a few individual incidents may encourage a negative perception based on a few occurrences of an issue, all the while, consideration to C&W's overall customer base may not be considered. Moreover, C&W reiterated its concern with the Commission's treatment of the confidential information included in the Standards of Service reports.

Commission's response

The Commission acknowledges that the presentation of percentage scores without the benefit of the underlying data and explanations thereof could be problematic. However, in presenting performance results, the Commission offers full and clear explanations that qualify the percentage scores for average compliance in each Guaranteed Standard. The Commission also acknowledges C&W confidentiality concerns, and as required and practiced, the Commission will continue to adhere to strict confidentiality measures while exercising its authority to determine whether a confidentiality claim has merit.

SECTION 5 STANDARDS OF SERVICE PROPOSALS

Having reviewed submissions to the Consultation Paper and data from C&W's Standards of Service reports over the period 2017 to 2020, and having assessed complaints and queries made by consumers, the Commission hereby details the proposed and existing Standards.

5.1 General Standards of Service Definitions and Specific Exemptions

The Guaranteed Standards of Service are first presented in summarised form in **Table 1**, followed by a more detailed explanation of the definitions and applicable exemptions.

The term 'compensation' herein refers to a credit to the customer's account.

Table 1: Guaranteed Standards of Service for C&W

STANDARD	SERVICE CATEGORY	TARGET	COMPENSATION
GTS 1	Installation or Transfer of Service	No more than five (5) working days	Refund of first month's bill Automatic Compensation
GTS 2	Fault Repair	No more than two (2) working days	Automatic prorated credit of monthly telephone charge for the period customer was without service due to a fault on C&W's network. Automatic Compensation
GTS 3	Repeated Loss of Service	Faults should not reoccur within thirty (30) days of repair of first fault.	Credit of \$15 to residential customers and \$30 to business customers for repeated loss of service, due to the service provider's equipment, within thirty (30) days of original fault. Automatic Compensation
GTS 4 (New)	Customer Complaint Resolution Time	No more than 7 days for both business and residential customers.	Credit of \$15 to each affected residential customer and \$30 to each affected business customer. Automatic Compensation
GTS 5	Customer Appointments	All scheduled appointments should be honoured and are to be scheduled between the hours of (8:00-10:00,10:00-12:00,12:00-14:00,14:00-16:00)	Credit of \$15 to residential customers and \$30 to business customers for missing agreed appointments (subject to 15 minutes grace period i.e., 12:15 p.m. for 12:00 appointments and 4:15 p.m. for 4:00 appointments) The service provider may reschedule an appointment; however, the customer must be notified at least eight (8) working hours prior to the scheduled appointment

			A customer-initiated claim is required for compensation
GTS 6	Reconnection After Disconnection for Non-Payment	Reconnection of the service should occur within six (6) working hours of notification of payment.	Credit of \$30 to each affected customer Automatic Compensation
GTS 7	Wrongful Disconnection	Reconnection within one (1) working hour of notification by customer	Automatic minimum credit of \$15 to residential customers and \$30 to business customers. Following this, if the service is not reconnected within one working day of the customer's report of wrongful disconnection, compensation shall continue to accrue based on prorating of the month's line rental fee. Automatic Compensation
GTS 8	Billing accuracy	Bills should be error free (100% target)	For each bill containing errors, a compensatory credit of \$15 to each affected residential customer and \$30 to each business customer, upon confirmation of errors. A customer-initiated claim is required for compensation
GTS 9 (New)	Account Cancellation Time after Customer Request	No longer than five (5) working days after the customer's verifiable request.	No charges should accrue to the customer beyond the five (5) day period. If charges accrue, the customer shall receive full compensation for those charges. Automatic Compensation

GTS 1 Installation or Transfer of Service

This refers to the time it takes between the customer's application for service or transfer of service and the actual installation or transfer of service.

Service installation refers to installation up to the demarcation point (Optical Network Terminal or Network Interface Device) which is where the service cable connects to the

device on the customer's premises. The compliance target is no more than five (5) working days¹⁴.

Compensation is an automatic compensation¹⁵ of the first month's bill.

The specific exemptions are:

- Where plant (i.e., cabling and other necessary infrastructure used in the installation/transfer process) is unavailable for reasons outside of C&W's control; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

GTS 2 Fault Repair

This refers to the minimum allowable time for the repair of faults or restoration of service due to failure of C&W's equipment or network. Loss of service is defined as disrupted or degraded service including, among other things, no dial tone. The target for compliance for residential and business customer is no more than two (2) days.

If C&W fails to meet the target under this Standard, the affected residential and business customer will be entitled to an automatic prorated credit of their monthly telephone bill for the period of service disruption, excluding the first two (2) days which, as mentioned above, constitute C&W's approved repair timeframe. It must be noted that 'fault' is meant to carry the same definition as 'loss of service'.

The specific exemptions are:

- Where the fault is due to inside wiring or customer-owned equipment; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

¹⁴ "Working Days" refers to Mondays to Fridays from 8:00 a.m. to 4:00 p.m. only and excludes public holidays and weekends. In measuring the response time for targets expressed in terms of working days, the day the complaint is made is excluded. Any other reference to days means calendar days.

¹⁵ Automatic compensation is granted on confirmation of the breach by C&W and is administered as a credit on the customer's bill for the following month. For compensation which requires manual claims, customers must fill out a claim form and submit to C&W in order to receive due credit.

GTS 3 Repeated Loss of Service

This Standard states that a fault of the same nature shall not occur within 30 days of the repair of the original occurrence. Loss of service is defined as disrupted or degraded service including, among other things, no dial tone. It must be noted that 'fault' is meant to carry the same definition as 'loss of service'.

If C&W fails to meet the target under this Standard, residential customers are entitled to compensation of \$15 and business customers are entitled to \$30.

The specific exemption is when the fault is due to inside wiring or customer-owned equipment.

GTS 4 Customer Complaint Resolution Time

This Standard stipulates the minimum time to resolve an individual customer's complaint from the time the complaint is made either via telephone, email or post. As customary, complaints are broken down into residential and business categories. The Standard is meant to be a catchall for all complaints that could be brought against C&W in relation to regulated services. For the avoidance of doubt, the term 'complaint' shall be defined as any expression of dissatisfaction by a consumer of C&W's regulated services, related to service/network functionality, billing or customer service. Moreover, 'resolution' in this instance occurs when C&W has assessed the customer's complaint, has made a decision based on the facts presented and has communicated this to the customer. Should the customer be in disagreement with C&W's decision, he or she may submit an official complaint to the Commission for final resolution of the disputed issue.

The specific exemptions are:

- When the issue that is the subject of the complaint is caused by customers' internal wiring; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

GTS 5 Customer Appointments

Where C&W's representatives schedule appointments to visit a customer to correct a fault on the network, all scheduled appointments shall be honoured. Appointments may be scheduled in the morning (8:00 a.m. to 12:00 noon) or afternoon (12:01 p.m. to 4:00 p.m.), with a fifteen (15) minute grace period allowed in each time period. Appointments may be rescheduled only if the customer is notified at least eight (8) hours prior to the scheduled appointment.

If C&W fails to meet the target under this Standard, residential customers are entitled to compensation of \$15 and business customers are entitled to \$30.

The specific exemptions are:

- Where the fault is due to inside wiring or customer-owned equipment
- Where C&W is unable to gain access to the customer's premises at the time agreed with the customer for access; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other
- form of civil disturbance (whether lawful or not).

GTS 6 Reconnection after Disconnection for Non-Payment

This Standard stipulates the allowed timeframe for reconnection of a customer's service after settlement of overdue amounts and reconnection fees where applicable. For both residential and business customers, reconnection of service shall occur within six (6) working hours of notification of payment.

If C&W fails to meet the target under this Standard, the customer is entitled to a compensatory credit of \$30.

The specific exemptions are:

- Where the overdue amount is paid via a third-party such as SurePay or the Barbados Post Service.
- Where the customer fails to notify the Company and provide proof of payment, i.e., receipt number; and

- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

GTS 7 Wrongful Disconnection

This Standard pertains to instances where a customer experiences loss of service due to errors by C&W. For both residential and business customers, reconnection of service shall occur within one (1) working hour of notification by customer.

If C&W fails to meet the target under this Standard, residential customers are entitled to compensation of \$15, and business customers are entitled to \$30. Additionally, should C&W fail to restore service within one (1) working day of customer notification, compensation will continue to accrue based on proration of the customer's monthly bill.

GTS 8 Billing Accuracy

This Standard seeks to provide recourse to customers who receive bills which contain errors as defined under OTS 5. Bills should be accurate and free of errors.

If C&W fails to meet the target under this Standard, residential customers are entitled to compensation of \$15 and business customers are entitled to \$30. Additionally, customers are not to be disadvantaged while a dispute over a billing error is pending.

The specific exemptions are:

- Charges due to fraud or faulty customer equipment.
- Overdue amounts reflected on subsequent bills in the event that the previous bill was paid after its due date; and
- Issues pertaining to format or frequency of bill delivery.

GTS 9 Account Cancellation Time after Customer Request

This Standard stipulates the minimum time in which a customer's account shall be cancelled after the customer's request. All requests for cancellation must be recorded either physically or digitally and each customer must be given a copy of said request. C&W shall not be allowed to issue any new charges on the account for any period beyond five (5) working days after the request is made. For example, if a customer requests cancellation on the day before his/her next cycle begins, C&W may charge on a pro rata basis for service during the

five (5) working days allowed to effect full cancellation of the account, but not thereafter. In addition, no charges should accrue beyond the five (5) day period, if charges accrue, the customer shall receive full compensation for those charges.

Account cancellations should not be conditional on settlement of balances owed. However, customers are not excused from settling outstanding debts. Account cancellations should proceed regardless of those debts. Should C&W fail to cancel the account within the specified time, each affected residential customer shall be entitled to a compensatory credit of \$15 and affected business customers shall be entitled to credits of \$30. The specific exemption is if the customer's cancellation request cannot be confirmed.

5.2 Overall Standards of Service Definitions and Specific Exemptions

The Overall Standards of Service are first presented in summarised form in **Table 2**, followed by a more detailed explanation of the definitions and applicable exemptions.

Table 2: Overall Standards of Service for C&W

STANDARD	SERVICE CATEGORY	TARGET
OTS 1	Fault Repair The speed with which faults due to failure of C&W's equipment or systems are repaired. Faults due to inside wiring or customer-owned equipment are not included.	80% of faults shall be repaired within twenty-four (24) hours of receipt of the report from the customer.
OTS 2	Repeated Loss of Service This Standard refers to the repeated or frequent loss of phone service within thirty (30) days of the occurrence of the original fault and due to problems on C&W's network. 'Loss of service' is defined as disrupted or degraded service including, inter alia, no dial tone.	No more than 5% of faults shall reoccur within thirty (30) days of repair of the original fault.
OTS 3	Working Payphones The number of payphones which are fully functional on a daily basis.	At least 75% of public payphones shall be in working order daily.

OTS 4	Fault Incidence This measures the monthly percentage of faults on C&W's network.	No more than three (3) faults per one hundred (100) subscribers per month.
OTS 5	Billing Accuracy This governs the accuracy of C&W's bills. Billing errors do not include charges due to fraud or faulty customer-owned equipment. They also do not include the reflection of overdue amounts on subsequent bills if that amount was paid after the due date or pertain to format or frequency.	Billing errors are permitted in no more than 0.5% of the total bills issued each month.
OTS 6 (Amended)	Customer Service Response Time This refers to the time it takes for a C&W customer service representative to respond to a customer service call from the time the telephone rings.	At least 70% of customer service calls shall be answered by a customer service representative within forty (40) seconds of being handed off by the Interactive Voice Response System (IVR) to the next available customer service representative.
OTS 7 (New)	Complaint Resolution Rate This Standard stipulates the target for the amount of customer complaints successfully resolved given the amount of total complaints submitted on a monthly basis.	On a monthly basis, a minimum of 75% of all complaints must be resolved within 7 days while a minimum of 95% of all complaints must be resolved within 14 days.

OTS 1 Fault Repair

This Standard pertains to the speed with which faults are repaired. When faults occur on C&W's network, no less than 80% of these shall be repaired within twenty-four (24) hours of receipt of report of the fault by the customer. It must be noted that 'fault' is meant to carry the same definition as 'loss of service'. The specific exemptions are:

- Where the fault is due to the customer's equipment or inside wiring; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

OTS 2 Repeated Loss of Service

This Standard captures instances where loss of service, due to problems of the same nature on C&W's network, is experienced on a repeated basis, i.e., within thirty (30) days of the original occurrence of the fault. Loss of service is defined as disrupted or degraded service including, among other things, no dial tone. A maximum of 5% of faults may occur within thirty (30) days of the original fault. The specific exemptions are:

- Where the fault is due to the customer's equipment or inside wiring; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

OTS 3 Working Payphones

This Standard aims to monitor the number of payphones that are functional on a daily basis. It stipulates that at least 75% of public payphones shall be in working order daily. The specific exemption is where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

OTS 4 Fault Incidence

This Standard aims to monitor the number of faults per segment of subscribers per month. It provides deeper insight into the service quality performance of C&W and ensures a minimum level of service quality. There shall be no more than three (3) faults per subscriber per month. It must be noted that 'fault' is meant to carry the same definition as 'loss of service'. The specific exemptions are:

- Where the fault is due to the customer's equipment or inside wiring; and
- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

OTS 5 Billing Accuracy

This Standard pertains to the accuracy of C&W's billing mechanism as given by the information presented. No more than 0.5% of the total bills issued shall contain errors. A billing error may be any mistake on a monthly statement, including but not limited to:

- Charges for a product or service that lists the wrong date, amount, or is not in keeping with the officially communicated rates or prices;
- Charges for products and or services not requested and/or delivered;
- Mathematical or calculation errors;
- Failure to send a bill to the customer's current address, provided that the service provider received notification of a change of address in writing at least thirty (30) days before the billing period ends; and
- Incorrect addresses printed on bills.

The specific exemptions are:

- Charges due to fraud or faulty customer equipment;
- Overdue amounts reflected on subsequent bills in the event that the previous bill was paid after its due date; and
- Issues pertaining to format or frequency of bill delivery.

OTS 6 Customer Service Response Time

This Standard holds C&W accountable for the time it takes a customer service representative to respond to a call from the time the phone rings. At least 70% of calls shall be answered by a service representative within forty (40) seconds of being handed off by the IVR (Interactive Voice Response System) to the service representative queue. The specific exemptions are: where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not).

OTS 7 Complaint Resolution Rate

This Standard stipulates the target for the amount of customer complaints successfully resolved given the number of total complaints submitted on a monthly basis. On a monthly basis, a minimum of 75% of all complaints must be resolved within 7 days while a minimum of 95% of all complaints must be resolved within 14 days. The terms 'complaint' and 'resolution' shall be defined as outlined under the new GTS 4 above. The specific exemptions are:

- Where the problem is due to the customer's equipment or inside wiring; and

- Where there is a strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not);

5.3 Guaranteed Standards of Service Compliance Targets

This section reviews the compliance targets for each Guaranteed Standard, specifically, it provides the rationale for the amendment to the compliance target for GTS 1, it explains the compliance targets for the new Standards, namely GTS 4 and GTS 9, and explains why the compliance targets remain the same for the other Guaranteed Standards.

There are two main defining aspects of Standards of service regulation:

- i. a Standard specific to a function carried out by the service provider's activity and;
- ii. a target which determines whether the service provider is in compliance with the Standard.

The purpose of a Standard is to define the minimum quality of service which the regulator determines as acceptable for fair and reasonable service, and balances the interest of the consumer and the interest of the utility. The determination of a Standard is based on what is important to the consumer for the maintenance of quality service, and what is preventable and remediable by the service provider to maintain an acceptable level of service. In many jurisdictions, regulators typically consider activities such as service provision, fault incidence, fault clearance, billing etc., as the critical activities important for quality-of-service maintenance.¹⁶

The enforcement of these activities is critical, because, the inconvenience experienced by the consumer in the event of a quality-of-service breach is tantamount to the imposition of a hidden cost borne by consumer. Moreover, in instances where the service provider has a monopoly in the market, service quality is of greater concern due to potential insensitivity to the consumer's plight on the part of the service provider, and the absence of choice in the market. Where there is competition in the market however, Standard of service enforcement is still important, because regardless of the level of competition, service providers will always have information about service quality that the consumer lacks access to. This

¹⁶ Milne, Claire. 2001. "Regulating Quality of Service." In *Telecom Reform: Principles, Policies and Regulatory Practices*, by William H. ed. Melody, 179-188. Lyngby: Den Private Ingeniørfond, Technical University of Denmark.

information asymmetry¹⁷, wherein the service provider possesses information otherwise unknowable unless compelled to share, is a major concern. The nature of telecommunications is such that it is difficult for a consumer to be aware of some of the technical issues that may exist on a service provider's network, hence, quality of service regulation substantially reduces information asymmetry, thereby mitigating the imbalance which favours the service provider and harms the consumer.

In order to ensure Standard enforceability, whether it be service quality or remedial work to address consumers' concerns, the compliance target is the measure by which the regulator determines a breach has occurred. As a Standard is specific to a particular service activity, so is the target which measures compliance of the Standard. A well-defined target is fair and reasonable to ensure realistic compliance and mitigation against harm to the consumer. The achievement of this balance therefore requires the regulator to account for the reasonableness with regard to the allotted timeframe necessary to remedy an issue, as well as the preventability of a quality-of-service issue within the service provider's control.

Different jurisdictions impose a range of Standards and associated targets. In the case of British Telecom (BT) in the UK, there are Standards specific to consumer issues and Standards specific to retail providers of telecommunications services that purchase wholesale telecommunications services from the incumbent service provider BT. With regard to fault repairs, the regulator, Office of Communications (Ofcom), requires BT to repair faults within two working days.¹⁸ In Australia, the Australia Communications and Media Authority (ACMA) has fault repair targets based on the geography of the location:

- Urban (10,000+ people) – end of next working day
- Rural (201 to 9999 people) – end of second working day
- Remote (up to 200 people) – end of third working day

With respect to service installation ACMA's targets are:

- Urban (10,000+ people) – within 5 working days

¹⁷ Bannock, Graham, R E Baxter, and Evan Davis. 2003. *The Penguin Dictionary of Economics*. London: Penguin Books Ltd.

¹⁸ Office of Communications. 2020. *Improving Broadband and Landline Standards: A Review of How Ofcom's Service Quality Rules have affected Openreach's Service level performance*. London: Office of Communications.

- Major rural (2501 to 9999 people) – within 10 working days
- Minor rural (201 to 2500 people) – within 15 working days
- Remote (up to 200 people) – within 15 working days¹⁹

Though important for benchmarking purposes, the experiences in the UK, Australia and other jurisdictions are used as a guide to compare industry Standards with C&W's actual performance. As such, it is important that the Commission considers the local environment and C&W's performance for a fair and reasonable determination of a compliance targets.

The current target for the installation and transfer of a service, GTS 1, is resolution within 7 days for a residential customer and 5 days for a business customer. Benchmarked against compliance targets in other jurisdictions, and assessed based on C&W's performance, the evidence provides insufficient justification for a 7-day target for residential customers. As shown in **Figure 1**, the average time taken to complete an installation or transfer of service shows that C&W continually exceeded the target with an average time of completion not exceeding 2.5 days, and a target achievement between 94% and 98% from 2018 to 2021.

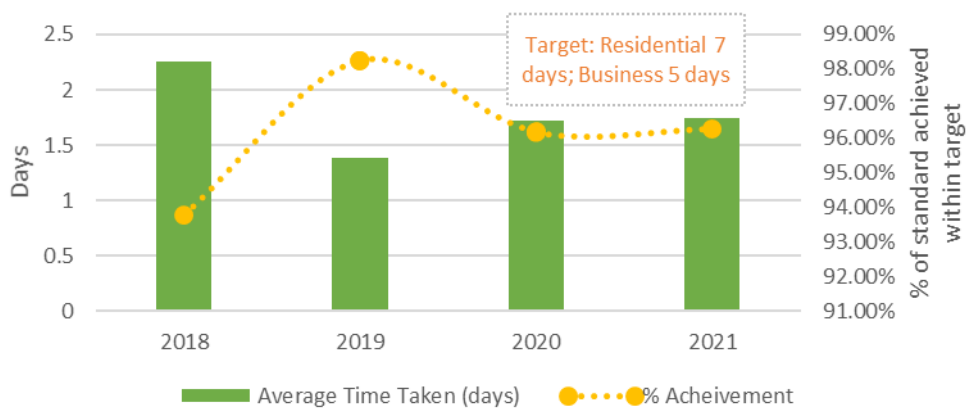


Figure 1: Installation or Transfer of Service Performance
Source: Derived from data submitted by C&W

In light of this evidence, target compliance for GTS 1 has been revised to 5 working days for both residential and business customers.

With regard to the current target for fault repair, GTS 2, C&W has to repair a fault within two (2) days.

¹⁹ Australian Communications and Media Authority. 2021. Customer Service Guarantee: Australian Communications and Media Authority. January 29. Accessed March 10, 2022. <https://www.acma.gov.au/customer-service-guarantee>.

Recall, OFCOM also has a two-day target for fault repair, and when compared to C&W's performance, **Figure 2** shows C&W has averaged significantly below 1.5 days between from 2018 to 2020. In the period examined, 2021 is an anomaly, which C&W attributed to challenges in the terms of access to customers' residences due to the COVID-19 pandemic. Those challenges notwithstanding, C&W average resolution time was 2.6 days and met the target 74% of the time.

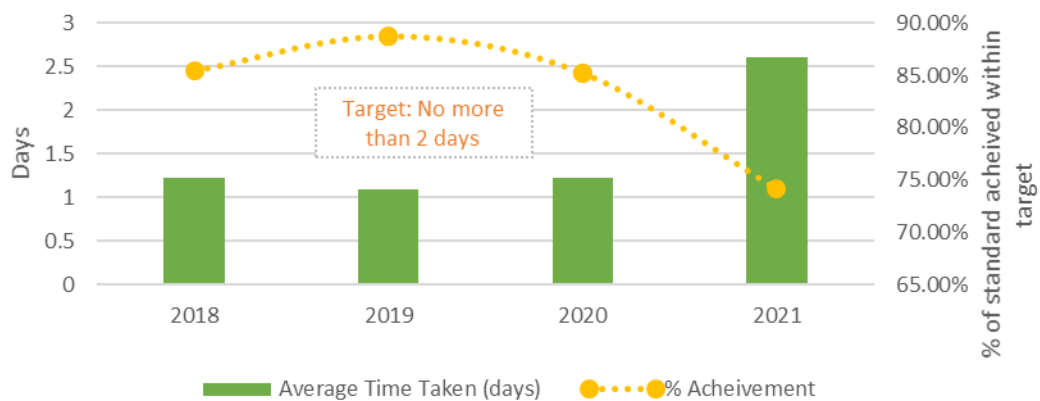


Figure 2: Fault Repair Performance
Source: Derived from data submitted by C&W

In light of this evidence, the Commission is of the view that the compliance target for a fault repair remains at no more than two (2) days.

Similarly, the Commission is of the view that the compliance target for repeated loss of service, GTS 3, shall remain the same. Classifying the reoccurrence of a fault within 30 days is reasonable for both the consumer and C&W.

Given that it is a new Standard, customer resolution time, GTS 4, there is no record of C&W's performance. In the absence of a performance record however, the previous GTS 4, response to customer complaints, is used as a proxy to show C&W's ability to respond and resolve a complaint. **Figure 3** shows that average time take to respond to a complaint is between less than one (1) day and just over two (2) days, with the exception of 2020 when the response time averaged marginally above 10 days.

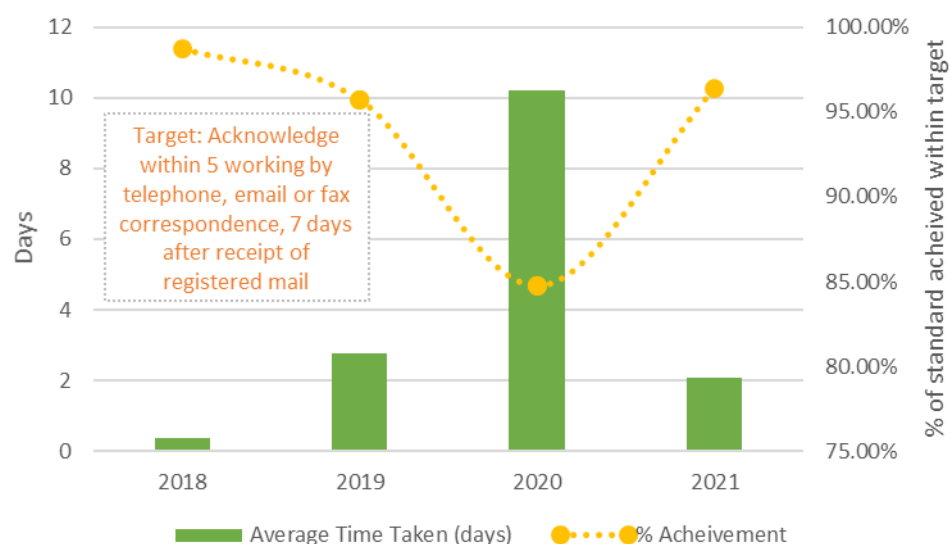


Figure 3: Response to Customer Complaints Performance
Source: Derived from data submitted by C&W

In any event, the C&W's ability to resolve complaints can be improved. For this reason, the target for GTS 4 is seven (7) days.

As for GTS 5, GTS 6, GTS 7, and GTS 8, the Commission is of the view that the existing compliance targets are fair and reasonable, and as such, do not require revision. As for GTS 9, five (5) days are reasonable for C&W and the consumer.

SECTION 6 GENERAL EXEMPTIONS

Quite apart from the specific exemptions, the Commission is of the view that there are other situations where failure to meet Guaranteed Standards of Service should not require compensatory credits to customers from C&W. Consequently, the Standards of Service may be placed in abeyance in circumstances where conditions, outside the control of C&W, make it impossible to meet the targets. The term used to define these events is *Force Majeure*. Black's Law Dictionary (2009) defines *Force Majeure*²⁰ as:

"An event or effect that can be neither anticipated nor controlled; esp., an unexpected event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riot, strikes and wars)."

The Standards of Service regime states that the *force majeure* conditions under which the exemptions from the Standards of Service may be granted are:

- (a) An act of war (whether declared or not), hostile invasion, act of foreign enemies, terrorism or civil disorder;
- (b) A strike or strikes and/or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not);
- (c) Landslides, lightning, hurricanes, floods, storm, earthquake, volcanic eruptions tsunami or any other natural disaster of overwhelming proportions;
- (d) Riots;
- (e) Civil commotion;
- (f) Acts or threats of terrorism;
- (g) Insurrections;
- (h) Epidemics/Pandemics;
- (i) Trade restrictions;
- (j) Inability to obtain any requisite Government permits; and
- (k) Breakdown of machinery or equipment or any other force or cause of similar nature not within the control of the company and which by the exercise of diligence it is unable to avoid, prevent or mitigate.

²⁰ Bryan Garner, Black's Law Dictionary (United States: Thomson Reuters, 2009), 718.

6.1 Other Exemptions and Conditions

The Commission is cognisant that other circumstances may exist from time to time which might impede C&W's ability to meet the prescribed Standards of Service. In such circumstances, where a customer is dissatisfied with C&W's application of an exemption, that customer may seek the Commission's guidance. Thereafter, the Commission may sanction C&W's action or require an alternative approach.

The situations which might fall into this category may include but are not limited to the following:

- (a) Where C&W is unable to gain access to the customer's premises at the time agreed with the customer for such access;
- (b) Where inadequate directions have been provided by the customer;
- (c) Where C&W is requested by a public authority to provide emergency communication to assist in emergency action and the provision of such services restricts the connection of a customer to a specified service or the rectification of a fault or service difficulty;
- (d) Where the customer or the customer's agent fails to fulfil his obligations;
- (e) Where there are legal constraints that may prevent C&W from meeting the Standard;
- (f) Where the breach is due to a malfunction of the customer's own equipment;
- (g) Where, after following C&W's credit and disconnection guidelines, the customer has not paid applicable charges and remains disconnected;
- (h) Where the Commission reasonably considers that the customer's request or complaint is frivolous or vexatious;
- (i) Where C&W has reasonable grounds to believe that the customer would be unwilling or unable to pay the charge as it becomes due;
- (j) Where there is a negligent and wilful act by the customer;
- (k) Other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot foresee by using its best efforts.

The Commission expects that reasonable consideration shall be given to the customer under similar circumstances including but not limited to the customer's obligation as aforementioned.

SECTION 7 ADMINISTRATION

7.1 Monitoring and Enforcement of Standards

C&W is required to submit quarterly regulatory Standards of Service reports no later than one (1) month after the end of the quarter, including information on:

- The number of breaches under each Guaranteed Standard of Service and percentage compliance;
- The actual average times taken to respond to and/or rectify issues referred to under each Guaranteed Standards of Service;
- The level of compliance, as a percentage, of each Overall Standard of Service (OTS 1 to OTS 5);

Details of any extenuating circumstances that would have prevented the company from achieving the targets of the Overall Standards of Service; and the value of compensation attributable to each Guaranteed Standard.

C&W is required to submit annual reports no later than January 31 each year. These reports shall include information on:

- The number of customers eligible for compensation during the previous financial year;
- The total value of eligible compensation
- The number of customers actually receiving compensation;
- The amount of compensation actually paid; and
- The value of compensation attributable to each Guaranteed Standard as well as the actual value of compensation paid in each instance (New).

Compliance with the Standards of Service will be evaluated on a monthly basis and annual reports shall be submitted one month following the end of each reporting period. The Standards of Service reporting period will begin on July 1, 2021 and end on December 31, 2024.

The Commission reserves the right to conduct independent investigations that seek to determine the extent to which the service provider is meeting the Standards of Service.

The Commission further issues an Order pursuant to section 38(c) (ii) of the URA. This Order is attached to this Standards of Service Decision.

Where an Overall Standard is not met, C&W shall provide an explanation to the Commission. Where C&W continually fails to meet an Overall Standard, and it appears that no reasonable effort has been made to rectify the breach, section 43 of the FTCA and sections 31 and 38 of the URA may be invoked as required by these Acts, which make provisions for the imposition of fines and penalties when the service provider is deemed not to be in compliance with prescribed Standards of Service.

7.2 Public Disclosure of Information

The Commission will make public the yearly statistics related to C&W's performance in attaining these Guaranteed and Overall Standards.

7.3 Public Education

C&W shall make available to its customers by post or electronically within two (2) months of the implementation of this Decision, the Table of Guaranteed Standards of Service as set out in this Decision. This table should include information on the service categories, target times, and compensatory credits where applicable. The placement of this table on C&W's website shall be submitted to the Commission for approval at least 5 working days prior to publishing.

In addition, C&W is being encouraged, through public relations efforts, to educate its customers about its fault reporting process including publicizing contact numbers and e-mail addresses for making complaints. C&W should place the claim forms and complaint forms on its website and also in its retail outlets.

7.4 Implementation and review

When adopted, the proposals will be part of the 2022-2025 Standards of Service, which becomes effective on July 1, 2022 and will remain effect until June 30, 2025. Note however, that the Commission reserves the right to (i) review these Standards before the end of this period, and (ii) extend its Decision for two additional years (up to June 30 2027), if deemed necessary. Thereafter, the Decision will be subject to review by the Commission, at which time amendments may be made.