



# **Fair Trading Commission**

## **First Decision**

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### **Review of the Price Cap Mechanism**

No. FTC/UR/2008-1

Date: February 1, 2008

## TABLE OF CONTENTS

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<b>1. SECTION 1</b>	<b>INTRODUCTION .....</b>	<b>3</b>
	Background .....	3
	Requirements under Compliance Rules.....	4
	Review Process .....	5
<b>2. SECTION 2</b>	<b>FIRST DECISION .....</b>	<b>7</b>
	Decision.....	7
	Reasons for Decision.....	7
<b>3. SECTION 3</b>	<b>DEVELOPMENT OF THE SECOND PRICE CAP PLAN .....</b>	<b>13</b>
	Possible Revisions to Price Cap Structure .....	13
	Final Stage of Price Cap Review .....	17
	Conclusion.....	18
 <b>APPENDICES</b>		
<b>APPENDIX 1</b>	<b>LEGISLATIVE FRAMEWORK.....</b>	<b>19</b>
<b>APPENDIX 2</b>	<b>ADDITIONAL INFORMATION ON NEW TELECOMMUNICATION POLICIES.....</b>	<b>23</b>
<b>APPENDIX 3</b>	<b>EXAMPLES OF PRICE CHANGES .....</b>	<b>24</b>

## SECTION 1 INTRODUCTION

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### 1. BACKGROUND

1. Price cap regulation of telecommunications services came into force as a result of the Fair Trading Commission's "the Commission" Decision FTC/UR/2005/01. In this Decision, the Commission outlined the reasons for the move from the Rate of Return form of economic regulation to the Price Cap methodology to regulate the telecommunications services provided by Cable & Wireless (Barbados) Limited "Cable & Wireless". In accordance with its Decision<sup>1</sup> the Fair Trading Commission is mandated to review the Price Cap Mechanism no later than nine months before the expiry of the current Price Cap Plan.
2. In order to assess the Company's performance under the Price Cap Plan the Commission, in the Price Cap Mechanism Decision and the complementary Price Cap Compliance Rules and Procedures established a process to fully review the initial experience of price cap regulation.
3. The review includes:
  - a) an assessment of the Company's regulatory and financial performance, its productivity achievements, and the overall market developments that have impacted and would continue to impact its performance;
  - b) public consultation inviting interested parties to comment on the Price Cap Plan; and
  - c) Consultation with the Company.

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<sup>1</sup> See Appendix 1 for the Legislative Framework

4. The Commission also takes into consideration the perceived level of competition and the liberalisation of the telecommunications sector.
5. The Commission is guided by policy decisions issued by the Minister responsible for Telecommunications, with respect to the services to be regulated.

## **2. REQUIREMENTS UNDER COMPLIANCE RULES**

6. The review of the Price Cap mechanism requires that the Commission issues two decisions.
7. In the first instance the Commission is required to make a decision as to whether it will continue with price cap regulation or adopt another method of incentive regulation for regulating Cable & Wireless. This is in accordance with the Price Cap Compliance Rules Section 13.7 which states:

*“The Commission shall publish its determination at least 6 months before the end of the initial Price Cap Plan.”*

8. This first Decision will also identify elements of the current mechanism that will be revised.
9. The Compliance Rules also state that in the event the Commission concludes that the Price Cap Mechanism is not the appropriate form of regulation, the Commission shall announce that the initial Price Cap Plan shall end on 31 July 2008 and give notice of the form of incentive regulation that should be applied. The Commission will then consult with the Service Provider and

interested parties regarding the appropriate form of regulation to be used thereafter.

10. The second Decision will be delivered after the Commission has held further discussions with the service provider and any interested parties, who so request, on revision to the structure of the Price Cap plan or any other incentive regulation. This second decision will provide detailed information on the mechanism to be used to regulate the prices of the regulated services of Cable & Wireless and the associated rules and procedures.

### 3. REVIEW PROCESS

11. The review included engagement of consultancy services to assist the Commission in analysing the financial and regulatory information provided by Cable & Wireless. The assessment of the current price cap regime will inform recommendations for the regulation of Cable & Wireless's telecommunications services.
12. The Commission also issued its consultation paper on the price cap regime (FTC/CON2007/01) on September 19, 2007. Interested parties were invited to respond by October 26, 2007. The Commission received a total of eight (8) responses from:
  - a) Barbados Association of Non-Governmental Organisations (BANGO).
  - b) Barbados Consumers Research Organisation (BARCRO).
  - c) Caritel.
  - d) Cable & Wireless (B'dos) Ltd.
  - e) Digicel.
  - f) Blue Communications Ltd.

- g) Ideas 4 Lease (BARBADOS) Ltd.
  - h) The Office of Public Counsel.
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- 13. Meetings were also held with parties who responded to the consultation paper. They also met with the Commission and its consultants to discuss their concerns.
  - 14. An Information Paper was subsequently issued on January 4, 2008 and two (2) responses were received, one from Caritel and the other from the Office of Public Counsel.
  - 15. Several consultation meetings have been held with Cable & Wireless in order for them to respond to queries and concerns raised during this process.
  - 16. The Commission thanks all those persons and organisations who responded to the Consultation and Information papers.
  - 17. The review process is on going.

**4.      DECISION**

18.    **The Fair Trading Commission has decided that it will continue to regulate Cable & Wireless using Price Cap Regulation.**
19.    **The Commission believes that a price cap mechanism still remains the best regulatory approach to satisfy the regulatory objectives and principles which were set out in the 2005 Price Cap Decision and which are still valid today. The Commission has also determined that the current structure of the price cap mechanism will be modified.**

**5.      REASONS FOR DECISION**

20.    During this review the Fair Trading Commission has received responses from interested parties and extensive financial and regulatory information from Cable & Wireless (Barbados) Ltd. In assessing the information the primary question that the Commission addressed in this first Decision was,

*Should Price Cap Regulation continue to be used for the regulation of Cable & Wireless (Barbados) Ltd.?*

21.    The Commission in answering this question sought to examine whether its objectives for adopting price cap regulation as set out in its 2005 Decision were met. The Commission's assessment of each of the objectives is as follows:

*Objective a) Provide the company with the economic incentive to reduce operating costs;*

22. The Commission is of the opinion that price cap regulation provides a regulated Company with an economic incentive to reduce costs and improve efficiency since, by doing so, it can retain any increased earnings generated by exceeding the target productivity (X) factor included in the price cap formula.
  
23. The financial and productivity information provided by Cable & Wireless, indicates that Cable & Wireless has, in fact, reduced its operating costs under the current price cap regime.

*Objective b) Provide the company with an incentive to be innovative and replace plant in an efficient and prudent manner;*

24. The Commission is also of the view that price cap regulation provides the regulated Company with an economic incentive to be innovative and replace plant in an efficient and prudent manner. The Commission has also noted that the drive to replace plant may have been influenced by technological changes. With respect to respondents' concerns pertaining to potential decrease in quality of service provided by Cable & Wireless, the Commission's Standard of Service scheme instituted in June 2006 was implemented to mitigate such concerns. However the Commission recognises that there are still some unresolved quality of service issues and these will be addressed in the review of the Standards of Service which is due later this year.

*Objective c) Provide the company with a reasonable opportunity to earn a fair return;*

25. The Commission established the first price cap mechanism using a forward-looking zero profit price cap model (PCM) that relied on, *inter alia*, forecasts of market developments over the course of the price cap period. It

was explicitly designed to provide Cable & Wireless with a reasonable opportunity to earn a fair rate of return on its regulated services (which, at the time, was determined to be 17% before taxes). Based on available historical financial information for Cable & Wireless, it appears that Cable & Wireless was able to exceed the targeted rate of return. This may be attributed to the fact that the Company increased its prices to the ceiling in the case of domestic access rental in Basket 1, as well it may have achieved greater efficiency and incurred lower input costs.

*Objective d) Allow efficiency gains to be passed onto consumers through reduced prices of telecommunications services;*

26. The current price cap regime was designed to allow the benefits of expected efficiency gains to be passed onto the consumer through reduced rates of services assigned to Baskets 2 and 3 (e.g., business, VAS<sup>2</sup> and outgoing IDD<sup>3</sup>, etc.), while prices for residential access services were allowed to rise within a set limit. To date, the rates for services in Baskets 2 and 3 are priced, on average, below their respective allowed price caps.

*Objective e) Foster competition within the telecommunications market;*

27. Although the price cap regulation has not been in existence long enough to assess whether it contributed significantly to competition in Barbados, nevertheless the Commission believes that the regime has not hampered competition. The fact that the prices for Baskets 2 and 3 are below their respective allowed price caps reflects that Cable & Wireless was subject to some competitive constraints for these services. While competition for international services can be expected to develop relatively quickly in the future (especially given recent decisions of the Ministry responsible for Telecommunications in

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<sup>2</sup> Value Added Services

<sup>3</sup> International Direct Dialed calls

respect of VoIP , Two Stage Dialling and Equal Access<sup>4</sup>), the same is not necessarily true for fixed access line services in the business and residential market segments. In any event, price cap regulation accommodates a transition to competitive markets, in that services found to be subject to sufficient competition can be readily removed from the price cap mechanism.

*Objective f) Streamline regulatory procedures relating to rates;*

28. The Commission is also of the opinion that the adopted price cap mechanism has provided a means of streamlining regulatory procedures relating to rate changes. The several rate changes<sup>5</sup> that occurred during the period did not involve the level of human and financial resources utilised as with the previous type of regulation.

*Objective g) Facilitate pricing flexibility and responsiveness to evolving technological, legal and market conditions;*

29. The Commission is satisfied that the adopted price cap mechanism has facilitated pricing flexibility and responsiveness to evolving technological, legal and market conditions, as evidenced by the fact that Cable & Wireless has reduced prices below the price cap constraints in the case of business and international services (i.e., price cap service Baskets 2 and 3 under the existing regime).
30. Based on the above considerations, the Fair Trading Commission considers that regulating prices through a price cap mechanism continues to be the most efficient and effective incentive-based form of regulation for Cable & Wireless' regulated services. Price cap regulation continues to be the most common form of regulation on a worldwide scale where there is transition to competition.

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<sup>4</sup> See Appendix 2

<sup>5</sup> See Appendix 3

31. Additionally the Commission has seen no compelling reasons to revert to rate of return regulation as suggested by some respondents. In fact, doing so would be inconsistent with existing legislation because rate of return regulation is not generally considered to be an incentive-based form of regulation.
32. Examination of the responses to the Price Cap Consultation and Information papers ranged from those in the minority who suggested the price cap mechanism was a failure and that the Commission should revert to rate of return regulation; to those in the majority who suggested that while it was the way of the future the structure should be modified.
33. Some of the respondents were of the opinion that the lack of relevant financial information inhibited their ability to carry out serious analysis of the issues and felt that the policy of information confidentiality needed to be reviewed. Others felt that serious inequities resulted due to the increase in residential fixed line access rental in Basket 1 without any consideration to productivity gains and therefore the structure of the Price Cap Plan needed to be re-examined.
34. The issue for most of the respondents was not the mechanism itself but how Price cap regulation could be used to bring about greater equity to the rates which both residential and corporate consumers had to bear.
35. Cable & Wireless was of the opinion that the price cap regulation was able to meet the stated objectives. However, they indicated that competition could be fostered by a more effectively administered competition law regime.

36. The Commission realises that there are other incentive regulatory regimes, for example, “earnings sharing” regulation that could be considered as an alternative incentive-based regulatory mechanism to price cap regulation. However, earnings sharing regimes are complex to implement and administer, which explains why they have been relatively rarely implemented in recent times. Furthermore, shifting regulatory regimes too quickly creates uncertainty in the market place, which can have a negative effect on innovation and investment. Not allowing this regulatory mechanism to mature would be to preclude the potential benefits.
37. **The Commission has therefore decided that it will continue to regulate Cable & Wireless using Price Cap Regulation. The Commission believes that a price cap mechanism remains the best regulatory approach to satisfy the regulatory objectives and principles which were set out in the 2005 Price Cap Decision and which are still valid today. The Commission has also determined that the current structure of the Price Cap Mechanism will be modified and the possible revisions will be discussed in the next section.**

## SECTION 3 DEVELOPMENT OF THE SECOND PRICE CAP PLAN

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### 6. POSSIBLE REVISIONS TO PRICE CAP STRUCTURE

38. Whilst the Commission has determined that the Price Cap Mechanism should be maintained, a number of enhancements are being considered for the second price cap period.

39. These enhancements will involve:

- Simplifying the price cap basket structure by reducing the number of service baskets under the second price cap regime relative to the first;
- Applying a standard price cap index formula  $(I - X)$  to all price-capped service baskets;
- Reorganising regulated service assignments such that some services currently subject to price cap constraints are shifted into the “uncapped” services category or vice versa (depending on the current and expected degree of competition for such services);
- Shifting services from one service basket to another in order to achieve homogeneity of the services within a given basket; and
- Setting the price cap parameters to take into account explicitly forecasted year-on-year Cable & Wireless earnings for price cap services during the next price cap period. This represents an enhancement to the PCM used to set the price cap parameters in the 2005 Price Cap Decision, whilst not fundamentally changing the approach to setting the X-factors.

40. More specifically, the FTC is considering the following changes to the current price cap regime for implementation in the next price cap mechanism:

**41. Domestic Residential Fixed Line Access Service (Basket 1):**

- a) Elimination of the existing “escalator” on residential access services given that there is no evidence available at this time that supports the need for further “rebalancing” of these rates.
- b) Adoption of a standard “Inflation I – Productivity X” price cap index for residential access services, where the X-factor for this basket would :
  - (i) ensure that rates do not decline in nominal terms (i.e. X would be set equal to the expected rate of inflation or simply set as  $X = I$ ); or
  - (ii) allow at most, rate increases equal to the rate of inflation (i.e.  $X=0$ ); or
  - (iii) work independent of the I so that there would be the possibility of either rate increases or decreases.
- c) Consideration will also be given to moving residential installation charges currently in Basket 2 to Basket 1.

**42. Domestic Voice Telecommunications Services (Basket 2):**

- a) Continued application of a standard “I – X” price cap index constraint for services in this basket but ensuring that an earnings constraint on price capped services is met over the course of the price cap period.
- b) Inclusion of domestic private leased circuits (“DPLC”) in Basket 2. DPLC is currently included in the uncapped services category, Basket 4. However, there does not appear to be sufficient competition to constrain

the pricing of these services at this time; therefore, to the extent this is found to be the case, DPLC would be included within Basket 2.

- c) Inclusion of voice mail in Basket 2 to ensure similar treatment of this and other value added services. Voice mail is currently included in the uncapped services category, Basket 4.

**43. International Telecommunications Services (Basket 3):**

- a) Elimination of basket 3 in view of the existing and emerging competition for international outgoing calling (IDD) services. In this case, international calling services would be moved into the “uncapped” services basket. In fact, leaving IDD as a price capped regulated service would result in a situation where increases in domestic rates would be required to compensate Cable & Wireless for losses in IDD, possibly resulting in an anti-competitive cross-subsidisation. The treatment of international private leased circuits will also be considered.

**44. Other Retail Telecommunications Services (Basket 4):**

- a) Retention of the uncapped assignment of services in this basket. Services assigned to this basket would remain uncapped, as they are under the existing regime. Changes to the contents of this basket are not necessarily limited to the suggestions already provided above.

**45. Setting the X-Factors for the Next Price Cap Period:**

- a) Application of a similar methodology as in the first price cap regime, where the X-factors applicable to all price cap baskets should be set using a forward-looking financial model. The model will take into account actual Cable & Wireless data, the forecast of market developments and the forecast year-on-year earnings of Cable & Wireless during the price cap period.
- b) Application of a Test Year period for the model based on Cable & Wireless's audited fiscal year 2006/07 financial information (i.e. covering the period: April 1, 2006 to March 31, 2007).

**46. Term and Structure of the Next Price Cap Period:**

- a) Facilitation of simpler monitoring of the price cap mechanism by changing the current annual price cap period (i.e., August to July) to coincide with Cable & Wireless's financial year (i.e., April to March). This implies that an initial 8-month Bridge Period (August 1, 2008 to March 31, 2009) would be required at the outset of the second price cap period. From that time on, the annual price cap periods would be synchronised with the Cable & Wireless' annual financial year. As a consequence, the annual X-factors adopted for the next price cap period would be prorated to reflect the initial Bridge Period at the outset of the next price cap period.
- b) Adjustment of the term of the next price cap period to 3 years and 8-months.

## 7. FINAL STAGE OF PRICE CAP REVIEW

47. The Commission is now in the final stages of the review of the current price cap regime. In this regard the Commission will be considering the possible revision to the structure of the price cap plan as identified in the previous section through ongoing consultation with Cable & Wireless and interested parties and consideration of the issues raised by respondents to both the Consultation and the Information Papers.

48. This ongoing work will include consideration of the following:

- The allocation of costs to the various regulated services. This allocation affects the financial profitability of Cable & Wireless's services and subsequent treatment of the services within the Price Cap Plan.
- Consideration of related test year issues such as expense adjustments. These adjustments would affect the Company's financial results.
- The evaluation of Cable & Wireless' claims that residential domestic services are priced below cost. The findings of this evaluation will inform the Commission's treatment of residential access service within the revised price cap plan.
- The assessment of the total factor productivity of the regulated services and of the Company as a whole. This will provide information on cost and efficiency parameters in the revised price cap plan.
- The development of a revised price cap model. A revised model will be finalised based on the Commission's determination on the various issues previously outlined in this paper.

- The revision of the compliance rules and procedure. This will be informed by the final structure of the price cap plan and model.
- The broadening of the definition of the Z factor to include a wider range of events.

## 8. CONCLUSION

49. The Commission will complete its review and issue its **Second Decision** before the end of **June 30, 2008**. This Decision will explain the structure of the revised price cap plan and also provide the rationale for the Commission's decision.
50. Parties may therefore submit any response pertaining to the matters to be considered by the Commission on or before February 18, 2008.

## LEGISLATIVE FRAMEWORK

The telecommunications sector in Barbados is regulated by the Commission and the Ministry responsible for Telecommunications.

The Commission is responsible for establishing rate-setting principles, approving and monitoring rates and conducting periodic reviews of the rates charged by service providers by virtue of the Fair Trading Commission Act CAP. 326B, the Utilities Regulation Act CAP. 282 and the Telecommunications Act CAP. 282B.

Section 3(1) of the Utilities Regulation Act states:

*(1) "The functions of the Commission under this Act are, in relation to service providers, to:*

- a) establish principles for arriving at the rates to be charged;*
- b) set the maximum rates to be charged;*
- c) monitor the rates charged to ensure compliance;*
- 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."*

When establishing the principles to regulate a service, the Commission must in accordance with section 3(2) have regard to:

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

### **Protection of Consumer Interest**

Under section 3(3) of the Utilities Regulation Act, the Commission is specifically charged with the protection of the interests of consumers. Section 3(3) (a) states:

*(a) “The Commission shall protect the interests of consumers by ensuring that service providers supply to the public, service that is safe, adequate, efficient and reasonable.”*

Furthermore, under section 10(1) the Commission is charged with inter alia,

*(vi) “ensuring that consumers are provided with universal access to the utility services supplied by the service providers; and*

*(vii) such other matters as the Commission may consider appropriate.”*

Additional responsibility is conferred upon the Commission through the Telecommunications Act CAP. 282B. In particular, Section 6 (1) states that:

6 (1) *“The Commission shall*

c) *be responsible for the regulation of competition between all carriers and service providers in accordance with this Act to ensure that the interests of consumers are protected; and*

d) *establish and administer mechanisms for the regulation of prices in accordance with this Act, the Fair Trading Commission Act and the Utilities Regulation Act."*

The duty of the Commission is to establish an incentive based rate setting mechanism and to facilitate market liberalisation and competitive pricing. This duty is described in section 39 of the Telecommunications Act.

Section 39 (3) of the Act states "*Subject to this Act, the Minister shall at such time as is specified under this Act, and after consultation with the Commission, require that the Commission use an incentive based rate setting mechanism to establish the rates to be charged by a provider.*" In pursuance of this, the Minister instructed the Commission to adopt the price cap form of incentive based rate setting mechanism.

Section 39 (4) states "*The incentive based rate setting mechanism referred to under subsection (3) shall be established by the Commission in the manner prescribed; and the Commission shall monitor and ensure compliance with the mechanism.*"

### **Duty to Consult**

The Commission has an obligation to consult with interested parties in making determinations of rates and standards of service. Section 4(4) of the Fair Trading Act CAP. 326B specifically sets this out:-

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

The referenced subsections (3) (a), (b), (d) and (f) of the Fair Trading Act CAP 326B pertain to the following:

- Establishment of principles for arriving at the rates to be charged;
- Setting of maximum rates;
- Determination of the standards of service applicable; and
- Carrying out periodic reviews of the rates and principles for setting rates and standards of service.

## ADDITIONAL INFORMATION ON NEW TELECOMMUNICATION POLICIES

**Voice over Internet Protocol (VoIP)** is a generic term, for a multitude of standards which enable smart devices and computer networks to carry multiple forms of multimedia, including two-way voice, videoconferencing, text and documents.

VoIP is, by definition, designed to carry two-way voice over an Internet Protocol (IP) network. The VoIP policy would therefore facilitate different classes of service to customers making local or international calls using alternative service providers who host gateways that connect the call through their IP network. Alternatively existing Carriers may have IP networks incorporated into their network

**Two Stage Dialling** is a facility whereby a subscriber is able to call a local number, and reach a “calling platform” operated by an alternative Carrier. This carrier then facilitates a call to an international number.

**Equal Access** allows a subscriber to request that all international calls be terminated by a specific Carrier other than the Carrier providing the Subscriber's domestic telephony service.

**Indirect Access** provides the facility for a subscriber to, on a call-by-call basis, indicate that the call is to be conveyed for termination by a specific Carrier.

## APPENDIX 3

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### EXAMPLES OF PRICE CHANGES<sup>6</sup>

#### Basket 1

Residential Fixed Line Access (Includes 15% VAT)

	2004/2005	2005/2006	2006/2007	2007/2008
Tariff	\$32.20	\$34.45	\$36.86	\$39.44

#### Examples of Basket 2 Changes 2004-2007 (Includes 15% VAT)

	Old price	New Price/\$
Payphone Local	\$0.25 for 3 minutes	\$0.25 for 5 minutes
Change number advisory (residential)	\$11.23	\$9.99
Line Fax	\$90.56	\$90.00
Line - Business Exchange	\$94.01	\$92.00
Line - PBX Trunk	\$116.44	\$115

#### Examples of Basket 3 Price Changes 2004-2007

International Direct Dialed Residential Rates (Includes 15% VAT)

Country	Old Price Daytime	New Price Daytime	Old Price Evening	New Price Evening	Old Price Evening	New Price Evening
Cuba	\$1.30	\$2.30	\$0.99	\$1.99	\$0.80	\$1.80
Martinique	\$0.80	\$1.30	\$0.45	\$0.99	\$0.30	\$0.80
Suriname	\$1.99	\$0.99	\$1.49	\$0.80	\$0.99	\$0.65
Guyana	\$0.80	\$0.99	\$0.45	\$0.80	\$0.30	\$0.65

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<sup>6</sup> This is not an exhaustive list of the price changes that have occurred during the 2005 Price Cap Plan.

**International Digital Private Leased Circuit (Includes 15% VAT)**

**Speed 128 kbps**

<b>Country</b>	<b>Old Price</b>	<b>New Price*</b>
U.S.A	\$10,764	\$2,415*
Canada	\$10,764	\$4,347
Jamaica	\$8,570	\$3,856

*\*Prices are for half circuits from Barbados and do not include cost of local loop or installation.*

Dated this 1<sup>st</sup> day of February 2008

*Original signed by Neville V. Nicholls*

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Neville V. Nicholls  
Chairman

*Original signed by Floyd H. Phillips*

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Floyd H. Phillips  
Commissioner

*Original signed by Trevor T. Welch*

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Trevor T. Welch  
Commissioner

*Original signed by Andrew Downes*

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Andrew Downes  
Commissioner

*Original signed by Gregory Hazzard*

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Gregory Hazzard  
Commissioner

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