

**SAINT LUCIA**

**National Telecommunications Regulatory Commission**

**DETERMINATION NOTICE**

**LDN/NO04.001**

**on the**

**Recommendation of the**

**Eastern Caribbean Telecommunications Authority**

**(“ECTEL”)**

**to Approve or Disapprove a Price Cap Plan**

**for**

**Cable and Wireless (West Indies) Limited (“C&W”)**

**in Saint Lucia**

**November 16<sup>th</sup>, 2004**

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## 1.0 BACKGROUND

In keeping with the requirements under the *Price Caps Implementation Agreement* between Cable & Wireless (West Indies) Limited, the Eastern Caribbean Telecommunications Authority (ECTEL), and the ECTEL Member States which was signed on Friday, July 30<sup>th</sup>, 2004, in St. George's, Grenada, the National Telecommunications Regulatory Commission is required to approve or disapprove the proposed Price Cap Plan, which has been subject to consultation. The procedure for the consultation, as stated in the *Price Caps Implementation Agreement*, is as follows:

1.	NTRC publishes consultation document, with copy posted to NTRC and ECTEL websites requesting comments from the public.	4 <sup>th</sup> August 2004	0
2.	Members of the public file initial submissions, with copies sent to ECTEL and Cable & Wireless.	8 <sup>th</sup> September 2004	36 days
3.	ECTEL and Cable & Wireless file reply submissions with NTRC.	22 <sup>nd</sup> September 2004	14 days
4.	NTRC issues decision approving or disapproving Price Cap Plan.	19 <sup>th</sup> October 2004	26 days
	<b>Duration of Consultation Process</b>		<b>86 days</b>

Upon the request of ECTEL, the Commission approved an extension of time for ECTEL's and Cable & Wireless's comments on the views received, from September 22<sup>nd</sup>, to October 12<sup>th</sup>, 2004, which also pushed back the deadline date for the Commission to issue a decision, approving or disapproving the Price Cap Plan, to November 16<sup>th</sup>, 2004.

## **2.0 SOURCE MATERIAL & METHODOLOGY**

### **2.1 Source Material**

In arriving at its decision as to whether to approve or disapprove the proposed Price Cap Plan for Cable & Wireless in St. Lucia, the National Telecommunications Regulatory Commission reviewed the following documents:

1. The *Recommendation of the Eastern Caribbean Telecommunications Authority (“ECTEL”) to Approve or Disapprove a Price Cap Plan for Cable and Wireless (West Indies) Limited (“C&W”) in Saint Lucia*, for which comments were invited as Consultation Document, [LCD/AU04.003];
2. All submissions received on the Consultation Document. The respondents were
  - (i) Fusion Telecommunications International
  - (ii) Wireless Ventures (St. Lucia) Limited
  - (iii) Digicel (St. Lucia) Limited
  - (iv) Ministry of Commerce, Investment & Consumer Affairs
  - (v) Mr. Stuart MacPherson
3. The comments from Cable & Wireless and ECTEL addressing the views shared by the respondents to the Consultation Document

### **2.2 Methodology**

The Commission is of the view that the purpose of this consultation process, in addition to allowing public participation, is to identify any compelling reasons why the contents of ECTEL’s recommendation on a Price Cap Plan for C&W ought not to be implemented as proposed. In the spirit of a public and transparent consultation, through which the views of potentially affected parties, as well as experts were invited, the Commission limited its deliberation to the submissions before it.

In its deliberations, the Commission focused on assessing the merit of the comments made on the Consultation Document and the responses provided by Cable & Wireless and ECTEL. Specific attention was given to:

- identifying any significant issues raised by the respondents that might not have been adequately addressed by ECTEL and/or C&W, and finally
- deciding, in the event that there had been inadequate treatment of critical issues, whether the circumstances might be sufficient to persuade the Commission to not approve the proposed PCP.

### 3.0 SUMMARY OF ECTEL’S RECOMMENDATION

For the purpose of presenting the Commission’s determination, a summary of the contents of the document, *Recommendation of the Eastern Caribbean Telecommunications Authority (“ECTEL”) to Approve or Disapprove a Price Cap Plan for Cable and Wireless (West Indies) Limited (“C&W”) in Saint Lucia*, is presented below. This summary serves to highlight the main issues presented in ECTEL’s recommendation and to provide a reference for the issues raised in the submissions received. It is by no means a full account of the recommendations made, and it is advised that the Consultation Document is referenced

<b>Introduction</b>	The purpose of ECTEL’s recommendation to the Commission was to set out the principles, commitments, parameters and formulae for the implementation of a price cap plan that would be applied to the business unit of Cable & Wireless (West Indies) Limited. The proposed price cap plan had been agreed by C&W and ECTEL, and unless otherwise noted, it would work in conjunction with the draft Telecommunications (Retail Tariff) Regulations.
<b>PCP Baskets</b>	Initially three (3) Basket 1: Residential fixed line access services Basket 2: Business fixed line access services Basket 3: Other national fixed line services The rate elements that would be included in those baskets at the onset of the PCP were identified in an appendix.  A 4 <sup>th</sup> basket may be created to incorporate new regulated services that are introduced during the price cap period.
<b>PCP Equations</b>	Equations were provided for <ul style="list-style-type: none"> <li>• The Actual Price Index (API) for each basket</li> <li>• The API adjustment</li> <li>• The Price Cap Index (PCI) for each basket</li> <li>• The Inflation Factor (I)</li> </ul>
<b>Compliance Requirement</b>	That with respect to each basket, the API cannot be greater than the PCI, i.e. $API = PCI$ .

<b>Price Cap Rules:</b>	<p><b>1. Initial Rates &amp; Pricing Commitments</b></p> <p>For fixed-to-mobile and fixed-to-fixed calls that have been included in Basket 3, C&amp;W has agreed to a ceiling for those per minute rates and has included monthly free minutes for fixed-to-fixed calling on nights and weekends</p>								
	<p><b>2. Productivity Offset</b></p> <table border="1"> <thead> <tr> <th>Basket</th> <th>Offset (X)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Inflation factor (I)</td> </tr> <tr> <td>2</td> <td>0%</td> </tr> <tr> <td>3</td> <td>2.5</td> </tr> </tbody> </table> <p><i>Note: The elements in Basket 4 would not be subject to a productivity offset.</i></p>	Basket	Offset (X)	1	Inflation factor (I)	2	0%	3	2.5
	Basket	Offset (X)							
	1	Inflation factor (I)							
	2	0%							
	3	2.5							
	<p><b>3. Individual Service/Element Cap</b></p> <p>For any service in the PCP, C&amp;W may not increase an individual rate element more than the inflation factor (I) + 7.5% in any one year.</p>								
<p><b>4. Price Harmonization and Discontinuation Constraints</b></p> <p>For the duration of the PCP, C&amp;W agreed to comply with price harmonization rules for</p> <ul style="list-style-type: none"> <li>• Metered Residential access rates</li> <li>• Metered Business access rates</li> <li>• Fixed-to-Fixed calling rates</li> <li>• Fixed-to-Mobile calling rates</li> </ul>									
<p><b>5. New Services</b></p> <p>Based the specific designation of new services as set out in the proposed Telecommunications (Retail Tariff) Regulations, the PCP provides two criteria to determine which basket (Basket 3 or 4) a new service should be placed in for the calculation of subsequent APIs.</p>									
<p><b>6. Promotions</b></p> <p>Market Trials and Short Term Promotions, as defined in the TR, are excluded from calculation of the API</p>									
<p><b>7. Exogenous Cost Factors</b></p> <p>The factors constituting exogenous costs were identified. It was suggested that exogenous cost adjustments could be proposed during the review of the Annual Compliance Filing and would be considered on a case-by-case basis.</p>									

<p><b>Price Cap Rules:</b> (cont'd)</p>	<p><b>8. Compliance Filing</b> Subject to the PCP design and rules, C&amp;W may propose increases or decreases in its rates for regulated services during the term of the PCP by filing a Rate Change Compliance Filing (RCCF) with the Commission. C&amp;W will also be required to submit an Annual Compliance Filing which would include all information needed for ECTEL and the Commission to replicate and verify C&amp;W's calculations.</p>
	<p><b>9. Duration of PCP</b> The PCP would run for a term of four (4) years, from December 1<sup>st</sup>, 2004 to November 30<sup>th</sup>, 2008. The PCP will automatically renew for an additional 4 years, unless opposed by either C&amp;W, ECTEL or the Commission within 90 days before expiry of the PCP. In the absence of a renewal, the PCP can be extended to a fifth year, upon the discretion of the Commission, by notice given at least 45 days prior to expiry.</p>
	<p><b>10. Expiry of PCP</b> The PCP will expire on November 30<sup>th</sup>, 2008, unless renewed or extended for an additional year, in keeping with Rule 9. At the expiry of the PCP, a new incentive-based regulatory plan may be implemented in accordance with the proposed Telecommunications (Retail Tariff) Regulations.</p>

## **4.0 THE RESPONSES RECEIVED**

The responses received to the Consultation Document were varied and covered concerns ranging from the formulae and definitions provided, to matters that might be affected by the introduction of a Price Cap Plan (PCP). The concerns highlighted have been grouped into six subjects and are summarized in the following subsections:

- (i) The Productivity Offset or X Factor
- (ii) Review Procedures for the PCP
- (iii) Costs & Internal Subsidies
- (iv) Vague or Questionable Definitions/Terms
- (v) Effect of Price Cap Plan on Competition

### **4.1 THE PRODUCTIVITY OFFSET OR X FACTOR**

With respect to the productivity offset, which is a factor required to determine the Price Cap Index (PCI) for each basket of services, respondents were of the view that the proposed offsets were too low by international standards. Additionally, taking into consideration today's rapid technological change, the productivity gains may be higher than those presented.

#### **4.1.1 ECTEL and C&W's Response**

Both C&W and ECTEL disagree with the concern raised, and it was noted that no support was provided for the statement that offsets were too low by international standards. C&W indicated that the X factor should not be thought of in narrow terms of reflecting the productivity increases anticipated for the basket of services over the term of the PCP. It was noted that under the proposed PCP it would be required to contribute a great deal of reduction upfront, thus over the entire period, the reduction would be very aggressive in international comparison. ECTEL shared a similar explanation.

## **4.2 REVIEW PROCEDURES FOR THE PCP**

It was noted that the Recommendations failed to identify a review period for the PCP, highlighting that “it should not be assumed that the pricing proposed by C&W would remain valid for the duration of the PCP”.

It was proposed that the Commission consider holding a review proceeding at some point before the term of the PCP is complete. The process would give the Commission and other stakeholders, including C&W, an opportunity to fine-tune the mechanism and to assess the impact of the PCP on stakeholders and the public at large.

### **4.2.1 ECTEL and C&W’s Response**

Although the proposed PCP failed to identify a review period, it was noted that it did not preclude a review process. The suggestion that there should be a review proceeding was welcomed. ECTEL noted that Rule 9, Duration of PCP, provides for C&W, ECTEL and the Commission to have a say in the renewal (or otherwise) of the PCP. Also, it noted that in keeping with the proposed Retail Tariff Regulations, the Commission may hold any process, including a review process, it considers appropriate to aid it in that decision and under such a process, interested parties would likely be given an opportunity to provide their views.

However, both C&W and ECTEL stressed that a review process while a PCP is operating with the intention of modifying before it concludes cannot be supported. It was indicated that the purpose of a PCP, in addition to regulating a provider’s rates, is to provide a degree of certainty to the regulated company. Both parties were of the view that price cap regimes are designed to ‘run their course’ and modification midstream is not recommended.

## **4.3 COSTS & INTERNAL SUBSIDIES**

Internal Subsidies: Respondents were uncertain as to whether the rates for local service are reasonably close to their costs, and it was suggested that if this is not the case, the implementation of a PCP might be premature. Further, if there are still significant internal subsidies in the rate structure, they should be eliminated or minimized before proceeding with a price cap plan.

Actual Price Index (API): It was also observed that the formula presented for calculation of the Actual Price Index (API) did not readily identify a cost factor, and it did not indicate whether C&W used or excluded the use of tariffs in its pricing scheme for the PCP. It was suggested that the standard practice to establish pricing based upon some degree of cost, be it fixed or marginal, and that it would be helpful for C&W to clarify its cost relative to the calculation of the PCP and that ECTEL be given sufficient cost information in order to determine whether the maximum rates proposed are an accurate depiction of fair market pricing or that of a hefty mark-up.

#### **4.3.1 ECTEL and C&W's Response**

Internal Subsidies: C&W indicated that it has always advocated further rebalancing as one of the best means of reducing internal subsidies. It, however acknowledged that there are valid policy reasons to keep line rental below costs, and noted that it has not been unusual in international best practice for price caps to be introduced before internal subsidies are eliminated.<sup>1</sup> For its part, ECTEL noted that one of the positive aspects of price cap mechanisms is that, within certain constraints, it allows companies to move its rates closer to costs, thereby reducing internal subsidies.

API: Both C&W and ECTEL questioned whether the role of the Actual Price Index (API) was clearly understood. C&W indicated that the API is an index of the average level of prices, which will be compared against the PCI constraint. Accordingly, the API should not include any terms related to costs.

ECTEL noted that, based on international best practice, price caps mechanisms and the API in particular, are not defined with reference to a cost factor. Instead, rates are set out at a reasonable level, and are then permitted to move in accordance with the various rules set out in the PCP. As such, the proposed PCP does not make reference to a 'cost factor'.

ECTEL, however, welcomed the recommendation that it be provided with sufficient cost information by C&W. It also indicated that based on its analysis of current cost data and other information, it was satisfied that that proposed PCP is in the public interest, benefits C&W's fixed line consumers, and constitutes a fair and reasonable pricing framework for C&W's national fixed-line services.

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<sup>1</sup> Canada, U.S.A., UK and Australia all serve as examples.

#### 4.4 VAGUE OR QUESTIONABLE DEFINITIONS/TERMS

Bearing in mind that the purpose of a PCP is to serve as a regulating mechanism, there is a degree of pricing flexibility for individual services within a basket. Accordingly, attention must be paid to the definitions of the product baskets, as well as the pricing flexibility allowed.

Basket 4: Respondents were also concerned about the vague definition given for Basket 4 – *new services* – for which there might not be adequate pricing protection. It was requested that C&W provide more accurate descriptions of its ‘new services’, including the maximum rates to be imposed, prior to the acceptance of the PCP and at the beginning of each year of the plan.

Promotions: With reference to Rule 6, it was proposed that what constitutes a market trial or short-term promotion should be more clearly spelt out in the PCP document, and that reference to the Telecommunications (Retail Tariff) Regulations, which has not yet been approved, does not provide enough protection. It was further argued that without constraint, the references to market trials and promotions have the potential to render the PCP meaningless.

API adjustment: It was also unclear how the calculation for the API adjustment, described in Equation (2) as shown below, would be made.

API adjustment<sub>j,t</sub> = revenue-weighted average percent change in prices for all rate elements, k, for time t, in Basket j:

$$= \frac{\sum_{k,t} \left[ Revenue_{k,t} * \left[ \frac{Price_{k,t}}{Price_{k,t-1}} - 1 \right] \right]}{\sum_{k,y} Revenue_{k,t}} \quad (Equation \#2)$$

It was noted that in most countries the revenue weights are computed using the total quantity in (t-1), multiplied by the last price charged in (t-1). Accordingly, respondents were of the view that Equation (2) was drafted ambiguously, and that it should be re-written so that the revenue weights are computed using the total quantity from the period (t-1) multiplied by the last effective price in (t-1).

Harmonization Rules: It was observed that the harmonization rules stated in Rule 4 were difficult to read and unclear. It was suggested that the rules be revised as follows:

- A) **Residential:** The lowest monthly rate for a metered Residence access line must be more than 75 percent of the highest monthly rate for a metered Residence access line in any other Price Cap Country.

- B) Business:** The lowest monthly rate for a metered Business access line must be more than 82 percent of the highest monthly rate for a metered Business access line in any other Price Cap Country.
- C) Fixed-to-Fixed (“FTF”):** The lowest FTF Day/Evening/Night rate respectively must be more than 65 percent of the highest FTF Day/Evening/Night rate respectively in any other Price Cap Country.
- D) Fixed-to-Mobile (“FTM”):** The lowest FTM Day/Evening/Night rate respectively must be more than 65 percent of the highest FTM Day/Evening/Night rate respectively in any other Price Cap Country.

#### 4.4.1 ECTEL and C&W’s Response

Basket 4: Both C&W and ECTEL disagreed with the observation and recommendation made. C&W was of the view that until a new regulated service is developed, it would not be possible to give a description of that service. ECTEL was of the view that regulatory treatment of ‘new services’ should be and has been included in the proposed Retail Tariff Regulations. It therefore noted that since the proposed PCP applies only to C&W and is more operational in nature, it should be restricted to providing a description as to how new services are dealt with within the specificity of the PCP.

Promotions: Neither C&W nor ECTEL supported the concern raised. They did not agree that what constitutes a market trial or short-term promotion should be more clearly spelt out in the PCP document, and reassured the respondents that there were sufficient safeguards in the proposed Retail Tariff Regulations to manage potential abuses, including powers to the Commission to disallow any market trial or promotion that it determines is anti-competitive. Further, it was noted that since the regulations supercede any statement in a price cap document, reference to the regulations is sufficient.

API adjustment: Both C&W and ECTEL welcomed the observation made. Thus, Equation (2) has been revised as follows:

$$\text{API adjustment}_{j,t} = \frac{\sum_{k,t} \left[ \text{Revenue}_{k,t-1} * \left[ \frac{\text{Price}_{k,t}}{\text{Price}_{k,t-1}} - 1 \right] \right]}{\sum_{k,y} \text{Revenue}_{k,t-1}} \quad (\text{Equation \#2})$$

Harmonization Rules: Both C&W and ECTEL agreed that the wording of the rules could have been simplified. They however propose the following the revision instead:

- A) **Residential:** The lowest monthly rate for a metered Residence access line must be equal to or more than 75 percent of the highest monthly rate for a metered Residence access line in any other Price Cap Country.
- B) **Business:** The lowest monthly rate for a metered Business access line must be equal to or more than 82 percent of the highest monthly rate for a metered Business access line in any other Price Cap Country.
- C) **Fixed-to-Fixed (“FTF”):** The lowest FTF Day/Evening/Night rate respectively must be equal to or more than 65 percent of the highest FTF Day/Evening/Night rate respectively in any other Price Cap Country.
- D) **Fixed-to-Mobile (“FTM”):** The lowest FTM Day/Evening/Night rate respectively must be equal to or more than 65 percent of the highest FTM Day/Evening/Night rate respectively in any other Price Cap Country.

#### 4.5 IMPLICATIONS FOR INTERCONNECTION RATES

It was not clear how the services considered to be ‘essential services’ provided to competitors would be impacted by the PCP. Based on the contents of the PCP, it was argued that there was clear evidence that C&W should no longer be able to maintain its current Access Deficit Charges (ADC) on fixed interconnections in the ECTEL Member States, because the implications of the PCP as it has been presented indicates that no such deficit exists.

It was also suggested that the glide path on proposed reductions of fixed-to-fixed calls further supports the removal of the ADC from interconnection charges and interconnect charges independent of ADCs would need to be adjusted over the same time scales as the price cap in order that C&W remains compliant with the telecommunications law. Further, when the present termination charges and the proposed reductions in fixed-line calls are both considered, it would appear that the network cost of conveying a call could be greater than the proposed calling rates, which would suggest that either:

- (a) C&W will be forced to sell its retail services below costs, which will be detrimental to competition and investment in the sub-region, or if this is not the case,
- (b) C&W will be over-recovering the true cost of its termination service contrary to the Act.

It was noted that a price cap is the optimal tool through which the regulator can ensure that the access deficit is removed without significant detriment to consumers. Further, while ADCs are maintained in interconnection pricing, there is no incentive for the incumbent to remove inefficiencies in its provisions for fixed line access services.

#### **4.5.1 ECTEL and C&W's Response**

Both C&W and ECTEL were of the view a consultation on a proposed PCP was not the proper forum for discussion of the Access Deficit Charge (ADC), the effect of the proposed Plan on interconnection and on the provision of essential and wholesale services to competitors. C&W specifically noted the existing interconnection agreements have terms of three (3) years, and includes mutually agreed fixed ADCs. It is therefore not appropriate for it to be argued that those agreed to charges be (immediately) removed. ECTEL also noted that the proposed Retail Tariff Regulations include provisions to deal with below-cost pricing of regulated services by a dominant operator such as C&W.

#### **4.6 ISSUES IN THE CONSUMER'S INTEREST**

Respondents questioned the degree of savings to consumers under the proposed PCP, against the present pricing regime. It made comparisons in the fixed-to-fixed and fixed-to-mobile rates, currently and under the proposed PCP, and used the rates agreed to in Annex F<sup>2</sup> as a reference. The calculations done and inferences made suggested that the savings to the consumers did not compensate for the increase in prices experienced under the interim pricing mechanism in Annex F.

Secondly, the rates for line rental and payphones were seen as matters of national interest. It was recommended that they also be included as regulated services under the proposed PCP.

#### **4.6.1 ECTEL and C&W's Response**

In the absence of the comparison methodology used to calculate the savings (or lack thereof), neither C&W nor ECTEL could speak directly to the comparisons made. ECTEL indicated that it had negotiated the proposed PCP based on its analysis of current

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<sup>2</sup> Annex F of C&W's fixed public network licence.

cost data and other information, rather than on past pricing data. It was therefore of the view that the proposed PCP provides substantial benefits to C&W's fixed line consumers.

C&W, on the other hand, questioned whether the scenarios used included the free minutes allowed under the proposed Plan, and appeared to have excluded fixed-to-mobile calls and other rate elements that are declining. Similar to ECTEL's position, it indicated that the purpose of negotiating the PCP was not to roll back previous increases, but to put in place a sustainable long-term regulatory pricing framework for C&W's retail services.

With reference to the recommendation for line rental and pay phones to be included as regulated services under the proposed PCP, both C&W and ECTEL drew attention to the fact that both services had already been included as regulated services.

- Line rental (residential) has been included in Basket 1 (rate element 3),
- Line rental (business and government) have been included in Basket 2 (rate elements 6 and 9, respectively), and
- Payphones have been included in Basket 3 (rate elements 25, 26, 27)

## **5.0 THE COMMISSION'S DELIBERATIONS**

In keeping with the methodology adopted and upon review of the submissions made, the Commission's deliberations have yielded the following positions on the issues raised.

### **5.1 THE PRODUCTIVITY OFFSET OR X FACTOR**

The Commission agreed with C&W and ECTEL that the respondents to the Consultation Document who alleged that the proposed X factors are too low by international standards had not provided any support to that statement. Accordingly, it is difficult to justify that they ought to be increased without an indication of best practices and a recommendation as what those revisions might be.

### **5.2 REVIEW PROCEDURES FOR THE PCP**

The Commission appreciated the suggestion that review proceedings be held at some point before the end of the price cap period, which was supported by ECTEL and C&W. It was confirmed that provisions have been made within the proposed PCP and the proposed draft Telecommunications (Retail Tariff) Regulations to allow those proceedings.

With respect to a possible suggestion that there ought to be review proceedings to take effect during the term of an ongoing price cap, the Commission agrees with C&W and ECTEL, on the basis that that the PCP ought to provide certainty for the regulated company.

### **5.3 COSTS & INTERNAL SUBSIDIES**

Although from C&W's response there is an admission that there are still some internal subsidies, notably with respect to fixed-line rentals, but due to policy considerations complete rebalancing might not be a welcomed option, the Commission will be guided by ECTEL's position that the implementation of a price cap mechanism has the potential

(within certain constraints) to move rates closer towards costs. It is hoped that the proposed PCP for St. Lucia will be able to do so, hereby reducing internal subsidies.

With respect to the Actual Price Index (API), the Commission notes the position taken by C&W and ECTEL. It is, however, of the view that the arguments raised on this subject were to reflect similar sentiments to those on the issue of internal subsidies – the expectation that rates would be closer to costs – and that there would be some indication as to the disparity between the two. That interpretation appears to be ratified by the further suggestion, which was supported by ECTEL, that sufficient cost data be supplied by C&W to ECTEL so that it can be clearly determined how rates balance against cost.

#### **5.4 VAGUE OR QUESTIONABLE DEFINITIONS/TERMS**

With reference to the definition for Basket 4, the Commission agrees with C&W, based on the duration of the PCP, it might not be possible to give a description of a new regulated service until it is developed. Also, bearing in mind that the PCP is supposed to work in concert with the proposed Retail Tariff Regulations, the PCP might not be required to speak on all matters, if it is understood that Regulations would provide the required procedural (and legal) support.

With reference to the concerns raised on market trial and short-term promotions, the Commission is guided by ECTEL's response that there are adequate safeguards to avert the fears raised. Finally, the Commission appreciates and notes the revisions that have been made to the API adjustments and the harmonization rules, based on the comments and concerns raised.

#### **5.5 IMPLICATIONS FOR INTERCONNECTION RATES**

The Commission concurs that a consultation of a proposed PCP might not be the appropriate forum to address the possible effects of a PCP on competition, with the expectation of action. It, however, is of the view that should the PCP be implemented, issues such as ADC, interconnection, termination charges, wholesale and other essential services to competitors, ought to be given early attention to identify and resolve any possible detrimental effects on competition.

## **5.6 ISSUES IN THE CONSUMER'S INTEREST**

The Commission is of the view that the submissions for additional reductions in the fixed-to-fixed and fixed-to-mobile rates were not successfully made. It also confirms that line rental and payphones have been included for regulation under the proposed PCP.

## **6.0 THE COMMISSION'S DECISION**

### **6.1 THE COMMISSION'S CONCERNS ON THE PROPOSED PRICE CAP PLAN**

The Commission's role in this consultation is *'to approve or disapprove a Price Cap plan for Cable & Wireless (West Indies) Limited ("C&W") in St. Lucia'*, as a result of a recommendation put forward by the Eastern Caribbean Telecommunications Authority (ECTEL). This recommendation is a result of negotiations between ECTEL and the incumbent operator C&W, seeking to satisfy the requirement of implementing a price cap regime, initially stipulated in the May 20<sup>th</sup>, 2002 Agreement between C&W and the Governments of the ECTEL Contracting States.

In reply to submissions received on the Consultation Document, ECTEL indicated that the proceedings (i) to designate C&W dominant and (ii) to establish the jurisdiction of the NTRCs to regulate all of C&W's dominantly supplied services, would have been highly protracted. As a result, despite those proceedings having been initiated, ECTEL and C&W began negotiations in an effort to settle those matters outside of regulatory litigation, a course of action which could be expected to reduce the risk of loss to all parties concerned.

It was also reported that in order to competently address the price cap issues, the Tariff Regulations needed to be amended to enable more effective regulation of C&W under a price cap regime. Accordingly, the draft Retail Tariff regulations were prepared.

In keeping with the Price Cap Implementation Agreement, signed on July 30<sup>th</sup>, 2004, between ECTEL, C&W and ECTEL Member States, the proposed Price Cap Plan and Telecommunications (Retail Tariff) Regulations are expected to complement each other, with the Retail Tariff Regulations establishing the legal framework for the Price Cap Plan.

Noting that the proposed Price Cap plan is a negotiated document produced under a constraining time line, and the completion of which required compromise by both parties to the negotiations, the Commission recognizes the utilization of an approach which in some instances appear to be arbitrary. In the circumstances referred to above, it is inevitable that the Commission would have some concerns, to which it would wish to draw attention.

### **6.1.1 Productivity Offsets (X Factor) and Initial Rates**

The Commission is of the view that the productivity offsets chosen appear to be arbitrary and do not reflect any historical trends or projections based on advances in technology. It would have been helpful if ECTEL could have provided information regarding recent annual productivity gains within C&W and/or other providers worldwide.

It has been indicated that the offsets must be viewed in relation to the price reductions scheduled to become effective on December 1, 2004 and December 1, 2005. However, the Commission observes that these price reductions are applicable only to the services in Basket 3 (i.e. call charges) for which the productivity offset is proposed to be 2.5% per annum. The Commission would have liked to know the rationale underlying the choice of Basket 3 rather than Baskets 1 and 2 for the benefit of initial price reductions in addition to annual productivity offsets.

The implication thereof is that the price reductions on call charges have been given at the outset of the price cap period, in lieu of the application of a productivity decrease earned on an annual basis. If this is so, the Commission would again have been assisted by the production of any calculations on which such a 'trade off' was based. Specifically, the Commission would have been interested in knowing what the productivity offset would have been prior to the 'trade off' adjustment, or to state the question in other terms, how much of the annual productivity offset in Basket 3 would be applied to 'claw back' the initial price reductions over the price cap period.

With respect to Basket 1 (residential line access) and Basket 2 (business line access) there have been no initial price reductions; however the productivity offsets are 'the inflation factor' and NIL respectively. Since in these two baskets there are no initial price reductions to recoup in each subsequent year as with Basket 3, it would have been logical to expect to see much greater productivity offsets in Baskets 1 and 2 than the 2.5 % proposed for Basket 3.

The Commission believes that the X Factor should not be combined with the "price reduction/claw back" factor and it is therefore preferable that a "Y Factor" be included for such a purpose (assuming of course that quantifiable explanation as to a link between the price reductions going in to the PCP, and the proposed X factors could have been provided).

It seems to the Commission that the initial prices set in the PCP are the result of a negotiated settlement between ECTEL and C&W given the difficult time frame available to develop a "Rate Base-Revenue Requirement" mechanism to determine cost based initial prices. Accordingly, the Commission is of the view that such negotiated

initial rates are the closest representation of cost based prices possible under the circumstances. In light of the above it is difficult to understand why it is necessary to include in the X factor a mechanism to reverse the effects of the initial price reductions.

In summary then, the Commission believes that the X factors should be based upon studies that show historic and forecast productivity gains expected by C&W, and that any “offsets” to the impact of the application of the X factors should be quantified, justified separately and contained in a separate equation.

### **6.1.2 Internet Services**

It may have been more appropriate to create a separate basket for all services related to internet access and data transmission. Future prices for such services are much more likely to be influenced by competition than fixed line services. By including them in the same basket as all other call services, the opportunity exists for C&W to compete more effectively in such services by offsetting decreases in such services with increases in other call charges.

### **6.1.3 Quality of Service Factor**

It is desirable that a procedure be developed to monitor the quality of service during the price cap period to ensure that the quality of the regulated services does not deteriorate as a result of the drive to reduce costs and maximize profits. Thus a new factor could be added to the PCI equation from year 2 onwards, this would allow all parties sufficient time to develop a satisfactory procedure.

### **6.1.4 Rule 5: New Services**

Assignments of new services to baskets seems strange and the Commission is unclear as to the reason for including in Basket 3 a new service that is not composed of existing regulated service element whereas a new Basket 4 (with no X factor) is provided for new services that are composed of existing rate elements.

### **6.1.5 Future Price Cap Regimes and Tariff Applications**

The proposed Tariff Regulations should provide ECTEL or the Commission with the power to issue guidelines with respect to the principles, cost models and data

requirements with which the major supplier must comply for the purpose of developing a price plan or in support of an application to establish or change a tariff for a regulated service.

ECTEL and the Commission should endeavor to formulate such guidelines at the earliest convenience and well before the end of the present price cap period.

## **6.2 DECISION**

Based on the methodology adopted for Commission's role in this consultation, and through its deliberations on the submissions before it, the Commission is of the view that the issues raised by the respondents were adequately addressed by ECTEL and/or C&W. The Commission notes that although there were other issues raised that merited consideration and possible action, the extent of the consideration given had to be measured against their relevance to this consultation and its purpose therein.

The National Telecommunications Regulatory Commission therefore approves the proposed Price Cap Plan for Cable and Wireless (West Indies) Limited ("C&W") in St. Lucia, as recommended by the Eastern Caribbean Telecommunications Authority (ECTEL).