

MEMORANDUM OF UNDERSTANDING BETWEEN
GOVERNMENT OF BARBADOS AND CABLE AND WIRELESS
SIGNED ON OCTOBER 16, 2001.

THIS MEMORANDUM OF UNDERSTANDING (“the Memorandum”) is made and agreed this 16th day of October, 2001, Between:

The Government of Barbados (“the Government”)

Cable & Wireless BARTEL Limited, a company incorporated, registered and continued in accordance with the laws of Barbados and having its registered office situated at Windsor Lodge, Government Hill in the parish of Saint Michael (hereinafter referred to as ‘CWBARTEL’ which expression shall include its successors and permitted assigns)

and

Cable & Wireless BET Limited, a company incorporated, registered and continued in accordance with the laws of Barbados and having its registered office situated at Wildey in the parish of Saint Michael (hereinafter referred to as ‘CWBET’ which expression shall include its successors and permitted assigns).

RECITALS

WHEREAS:

- (i) CWBARTEL was formerly called The Barbados Telephone Company Limited until its name was changed to Cable & Wireless BARTEL Limited pursuant to

- the certificate of amendment issued by the Registrar of Companies on 6th August, 1998;
- (ii) CWBET was formerly called Barbados External Telecommunications Limited until its name was changed to Cable & Wireless BET Limited pursuant to the certificate of amendment issued by the Registrar of Companies on 6th August, 1998;
 - (iii) CWBARTEL is the national telecommunications carrier in Barbados operating under a licence (the "Domestic Licence") granted by the Government of Barbados and dated 1st October, 1991;
 - (iv) Under the Domestic Licence the Government grants to The Barbados Telephone Company Limited, (now called CWBARTEL), the exclusive right and licence to be the national telephone carrier of Barbados and to own and run the national telephone system and services of Barbados as specified in the Domestic Licence;
 - (v) CWBET is the international telecommunications carrier in Barbados operating under a licence (the "International Licence") granted by the Government of Barbados and dated the 30th October 1984 as amended by Amendment No. 1 dated 21st November 1991;
 - (vi) Under the International Licence the Government grants to Barbados External Telecommunications Limited (now called CWBET), inter alia the exclusive right and licence to provide and/or operate and/or augment the external telecommunications circuits and to carry on the telecommunications services as specified in the International Licence;

- (vii) The Domestic Licence and the International Licence both expire on 30th September, 2011;
- (viii) Cable & Wireless Caribbean Cellular (Barbados) Limited (formerly Barbados Communications Services Limited), (hereinafter referred to as "CWCC" which expression shall include its successors and permitted assigns) owns a mobile telecommunications network and operates a mobile telecommunications service in Barbados;
- (ix) CWBARTEL and CWBET each own fifty per cent of the shares issued in CWCC, and CWBARTEL and CWBET have been authorised by the Board of Directors of CWCC to make representations in this Memorandum on behalf of CWCC;
- (x) CWBET owns one hundred per cent of the shareholding of Cable & Wireless Information Systems Limited (hereinafter referred to as "CWIS" which expression shall include its successors and permitted assigns) and has been authorised by the Board of Directors of CWIS to make representations in this Memorandum on behalf of CWIS;
- (xi) CWBARTEL and CWBET are authorised to make representations in this Memorandum on behalf of Cable & Wireless (Barbados) Limited;
- (xii) The Cable & Wireless Companies in Barbados ("C&W Companies") wish to amalgamate and continue as a company called Cable & Wireless (Barbados) Limited ("CWB"), subject to the approval of their shareholders in accordance with the Companies Act Cap 308;

- (xiii) The Government supports the proposals to amalgamate the C&W Companies;
- (xiv) The Government and CWBARTEL and CWBET commenced discussions on 28th February 1999 with respect to the proposed amalgamation of the C&W Companies in Barbados, the proposed early termination of the Domestic and International Licences subject to the various conditions precedent in clause 4 of this Memorandum and the liberalisation of the telecommunications market in Barbados in accordance with the Transition Timetable attached as Schedule 2, (subject to the performance of the activities outlined in Schedule 1).

Pursuant to these discussions, CWBARTEL and CWBET have agreed to surrender their respective Existing Licences subject to the performance of clause 4.1 hereof, in consideration of the Government :

- (a) completing all the activities set out in Schedule 1 before December 1, 2001;
- (b) implementing and complying with the Transition Timetable as set out in Schedule 2;
- (c) implementing the New Telecommunications Act and the Amended Legislation and performing the obligations in clauses 3 and 4;
- (d) developing and implementing Regulations under the Fair Trading Commission Act, the Utilities Regulation Act and the New Telecommunications Act; and

- (e) issuing New C&W Licences under clause 3.1 of this Memorandum and in accordance with clause 5.1 and the New Telecommunications Act.

- (xv) On the 21st December 2000 the Cabinet of Barbados approved a Green paper on telecommunications sector policy dated 20th December, 2000 ('the Green Paper') which reflects the Government's vision for telecommunications in Barbados;

- (xvi) On 16th February, 2001, the Green Paper was laid in the Parliament of Barbados;

- (xvii) The Government wishes to achieve full liberalisation of the telecommunications market in Barbados on 1st August 2003 or such later date as agreed to by the parties to this Memorandum and subject to the performance of the various commitments herein stated;

- (xviii) The Government recognises that the full liberalisation of the telecommunications market in Barbados will require the revision of some existing legislation and the enactment of new legislation to reflect the Telecommunications sector policies as detailed in the Telecommunications Principles Document in Schedule 5;

- (xix) The Government further recognises that the legislative amendments referred to in (xviii) above must take place prior to December 1, 2001 to mark the start of the liberalisation process;

- (xx) The Government agrees to promptly take action against bypass of CWBET's international gateways before and during the transition to full liberalisation;

(xxi) An amended Utilities Regulation Act and an amended Fair Trading Commission Act ('the Amended Legislation') and the New Telecommunications Act are together intended to provide a regulatory framework whereby the telecommunications market will move progressively towards full, fair competition in three phases, commencing on December 1, 2001, before and during which time a) efforts would be made to align tariffs more closely with costs b) existing and future services which are not cost oriented will be funded by universal service contributions from all service providers in Barbados on a non-discriminatory basis and c) the rate of return regulation will be replaced with incentive based regulation.

NOW THIS AGREEMENT WITNESSETH that in consideration of the exchange of the mutual covenants herein contained in this Memorandum the Parties now agree as follows: -

1. **DEFINITIONS**

1.1 In this Memorandum:

Amalgamation means the amalgamation of the C&W Companies in accordance with the Laws of Barbados;

Amended Legislation means an amended Utilities Regulation Act and an amended Fair Trading Commission Act which reflect the Telecommunications sector policies as detailed in the Telecommunications Principles Document in Schedule 5;

Bypass means the commercial use or supply of either:

- (a) the passing of an international voice service (including the carriage of reconstructable voice channel within a data or mixed voice/data service) without passing through the international gateway switch of a licensed voice network operator; or
- (b) the termination of international voice services over the domestic switched telecommunications network by a person who does not originate the call or possess a valid interconnection agreement with that domestic network operator with respect to international voice services;

Cabinet means the Cabinet of Barbados;

Carrier Licence means a licence authorising the licensee to *inter alia* install, own and operate a telecommunications network in Barbados in accordance with the New Telecommunications Act;

Concessions means the exemptions outlined in Schedule 3 hereto;

CWBARTEL and CWBET means Cable & Wireless BARTEL Limited and Cable & Wireless BET Limited and shall include Cable & Wireless (Barbados) Limited, (where appropriate), which will be the continuing company after an amalgamation of the C&W Companies;

C&W Companies means Cable and Wireless (Barbados) Limited ("CWB") where appropriate and the Cable & Wireless companies operating in Barbados, namely Cable & Wireless BARTEL Limited, ("CWBARTEL"), Cable & Wireless BET Limited ("CWBET"), Cable & Wireless Caribbean Cellular (Barbados) Limited ("CWCC") and Cable & Wireless Information Systems Limited ("CWIS");

CWB means Cable & Wireless (Barbados) Limited being the continuing company upon the amalgamation of the C&W Companies and, if the amalgamation has not occurred or

does not occur, a reference to CWB in this Memorandum shall be taken to be a reference to CWBET, CWBARTEL, CWIS and/or CWCC as appropriate;

Dealer Licence	means a licence authorising the licensee <i>inter alia</i> to import, sell and/or trade certain prescribed telecommunications equipment in accordance with the New Telecommunications Act;
Domestic Licence	means the licence dated 1 st October, 1991 between the Government and The Barbados Telephone Company Limited (now CWBARTEL);
Existing Licences	means the Domestic Licence and the International Licence currently held by CWBARTEL and CWBET respectively;
Facility	means each physical component of a telecommunications network and includes wires, lines, poles, ducts, towers, satellite earth station, manholes, cables, cabinets, buildings and/or masts;
Fair Trading Commission Act	means Act 2000-31 of the Laws of Barbados;
Full liberalisation	means the stage at which the liberalisation timetable in Schedule 2 has been fully implemented as stipulated by an Order issued by the Minister responsible for Telecommunications made pursuant to the New Telecommunications Act and in accordance with this Memorandum;
Government	means the Government of Barbados;
Green Paper	means the paper on telecommunications sector policy approved by Cabinet on the 21 st December 2000 and dated the 20 th December, 2000;

Incentive based regulation	means a scheme (e.g price cap), applied by the Regulator which provides a utility with incentives to be efficient and which will be developed in accordance with Schedule 6;
International Licence	means the licence dated 30 th October, 1984 as amended by Amendment No. 1 dated 21 st November, 1991, between the Government and Barbados External Telecommunications Limited (now CWBET);
Interconnection	means the linking of public telecommunications networks to allow users of one licensed service provider to communicate with users of another licensed service provider
National Spectrum Management Plan	means the set of policies and rules developed by the Ministry responsible for Telecommunications in accordance with international conventions and agreement, and the New Telecommunications Act to determine the allocation and use of spectrum in Barbados;
New C&W Licences	means the licences to be issued to the C&W Companies, subject to clause 4 and in accordance with clauses 3 and 5 and the New Telecommunications Act, namely a Carrier Licence or Licences, a Service Provider Licence or Licences, a Spectrum Licence or Licences and a Dealer's Licence or Licences as the case may be;
New Telecommunications Act	means the Telecommunications Act which is developed consistent with the Telecommunication sector policies as detailed in the Telecommunications Principles Document in Schedule 5 and this Memorandum and which must be brought into effect prior to December 1, 2001;
Numbering	means the Minister responsible for Telecommunications or

Administrator	such other person as determined by the Government, who is authorized to manage the allocation of telephone numbers in accordance with the New Telecommunications Act;
Parties	means the Government , CWBARTEL and CWBET;
Phase 1	means 1 st December 2001 to 30th November 2002 or such later date as agreed by the parties;
Phase 2	means 1 st December 2002 to 31 st July 2003 or such later date as agreed by the parties;
Phase 3	means the 1 st August 2003 and onwards or such later date as agreed by the parties;
Regulator	means the Fair Trading Commission established in accordance with the Fair Trading Commission Act;
Regulated Services	means domestic telecommunications services and international telecommunications services as defined under the New Telecommunications Act that are subject to price regulation in accordance with the Utilities Regulation Act and the New Telecommunications Act;
Securities Commission	means the Commission established in accordance with the Securities Act 2001-13 of the Laws of Barbados;
Service Provider Licence	means a licence authorising the licensee to provide, <i>inter alia</i> , specified telecommunications services to the public in accordance with the New Telecommunications Act;
Spectrum Licence	means a licence authorising the licensee to use specified portions of the spectrum to operate a telecommunications network and/or provide telecommunications services in accordance with the New Telecommunications Act;

Stock Exchange	means the Barbados Stock Exchange incorporated under the Companies Act Cap. 308 of the laws of Barbados and having the powers and rights referred to in section 24 of the Securities Act 2001 - 13 of the Laws of Barbados;
Telecommunications Act	means the Telecommunications Act Cap. 282A of the Laws of Barbados;
Telecommunications Principles Document	means the document attached as Schedule 5 and which contains principles reflecting the telecommunications sector policies which are to be reflected in the New Telecommunications Act and the Amended Legislation;
Transition Timetable	means the timetable set out in Schedule 2 which proposes the liberalisation of specified telecommunications sectors in Phases 1, 2 and 3 commencing on December 1, 2001 subject to the parties' performance of the various commitments herein stated;
Unregulated Services	means telecommunications services provided from time to time other than Regulated Services;
Utilities Regulation Act	means the Utilities Regulations Act 2000- 30 of the Laws of Barbados.

2. AMALGAMATION OF THE C&W COMPANIES

2.1 The Government:

- (a) consents to the proposals for the amalgamation of the C&W Companies;
- (b) agrees to use its best endeavours to ensure that the Stock Exchange and the Securities Commission facilitate the approvals required for the amalgamation including the listing of CWB and the de-listing of CWBET and CWBARTEL in accordance with the Securities Act;

- (c) agrees to use its best endeavours to ensure that the Fair Trading Commission facilitates the issue of shares by CWB;
- (d) agrees to use its best endeavours to ensure that the C&W Companies are provided with all necessary consents and permissions which may be required from the Government for the amalgamation including the permissions required from the Central Bank of Barbados and the Exchange Control Authority;
- (e) agrees that from the date of the amalgamation, CWB:
 - (i) will enjoy all of the concessions previously enjoyed by CWBARTEL and CWBET as at the date of this Memorandum and set out in Schedule 3, and will assume all the rights and obligations of CWBARTEL and CWBET under the Existing Licences;
 - (ii) will be assigned the rights under this Memorandum and undertake all of the obligations of the C&W Companies under this Memorandum,
- (f) agrees to use its best endeavours to facilitate the enjoyment of these Concessions by CWB with effect from the effective date of amalgamation;

2.2 CWBARTEL and CWBET agree:-

- (a) to make a recommendation to their shareholders as to whether the C&W Companies amalgamate, and

- (b) that, if the amalgamation proceeds, CWB will develop an accounting separation model consistent with the New Telecommunications Act for review by the Regulator and which satisfies concerns about cross-subsidy between regulated and unregulated services offered by the C&W Companies.

3. **LEGISLATIVE PROCESS**

3.1 The Government shall:

- a) use its best endeavours to ensure that all the activities contemplated in Schedule 1 are completed prior to December 1, 2001;
- b) upon the enactment of a New Telecommunications Act, immediately issue to CWBET, CWBARTEL and CWCC and/or CWB as the case may be, the New C&W Licences in accordance with clause 5 of this Memorandum, and the New Telecommunications Act but in any event no later than thirty (30) days after December 1, 2001;
- c) ensure that the form and content of the New C&W Licences are determined and agreed by the Government and the C&W Companies;
- d) ensure that the New C&W Licences shall at least provide the right to CWBET and CWBARTEL and CWIS and CWCC, or CWB (as the case may be), to continue to own and operate those networks already owned and operated, provide those telecommunications services already provided, use those portions of the spectrum already allocated and/or in use and import, sell and/or trade in telecommunications

equipment as provided under the Existing Licences and the Laws of Barbados as at the date of this Memorandum.

4. **CONDITIONS PRECEDENT FOR SURRENDER OF EXISTING LICENCES**

4.1 CWBARTEL and CWBET agree to surrender their respective Existing Licences in consideration of the Government performing all of the following:

- (a) completing the activities set out in Schedules 1 and 6;
- (b) implementing and complying with the Transition Timetable as set out in Schedule 2;
- (c) proclaiming the New Telecommunications Act and performing the obligations in clauses 3 and 4;
- (d) developing and implementing Regulations under the New Telecommunications Act and the Amended Legislation; and
- (e) issuing the New C&W Licences under clause 3.1 of this Memorandum and in accordance with clause 5.1.

4.2 In the event that these conditions are not achieved by the Government, then CWBARTEL and CWBET or CWB as the case may be, shall have the right to terminate the Memorandum in accordance with clause 9.

5. **LICENSING**

5.1 The Government agrees :

- (a) subject to clause 4, that the Existing Licences shall continue to bind the Government and CWBET and CWBARTEL (or the Government and CWB as the case may be) until the New C&W Licences have been issued;

- (b) subject to clause 9, that from the date of issue of the New C&W Licences, the C&W Companies or CWB as the case may be shall surrender forthwith all entitlements and rights under the Existing Licences;

- (c) under the New C&W Licences CWBET will be required to provide Non-Commercial Maritime Emergency Radio Telephone Services until 1st August 2003 or such other date as agreed by the Parties, such provision to be subject to such funding arrangements as the parties agree;

- (d) that, from the date of issue of the New C&W Licences, CWBARTEL, CWBET, CWIS and CWCC and/or CWB as the case may be and their customers will be able to continue to use the telephone numbers assigned prior to the issue of the New C&W Licences;

- (e) that, from the date of issue of the New C&W Licences, CWBARTEL, CWBET and CWCC and/or CWB as the case may be will be able to continue to use the spectrum currently assigned/allocated to each C&W company prior to the issue of the New C&W Licences subject to the implementation of a National Spectrum Management Plan;

- (f) that, from the date of issue of the New C&W Licences, the C&W Companies or CWB as the case shall be required to pay licence fees on a non-discriminatory basis, up to a maximum cumulative sum of BDS\$1.5 million per annum for licences in respect of domestic telecommunications networks and services and licences in respect of international telecommunications network and services, for an initial period of two years from the date of the New C&W Licences and thereafter licence fees will be determined in accordance with the provisions of the New Telecommunications Act;
- (g) that from an agreed date after the date of issue of the New C&W Licences, C&W Companies or CWB as the case may be shall be required to pay an annual fee for new spectrum to be assigned/allocated to those companies after the issue of the New C&W Licences, provided that such fee is determined on a non-discriminatory basis;
- (h) to review, prior to the date of issue of the New C&W Licences, those Customs duties currently payable on the importation of mobile handsets ('handsets') so that all authorised dealers of handsets pay duties on a non-discriminatory basis;
- (i) that, upon commencement of the New Telecommunications Act, all customer equipment and wiring owned, operated and/ or maintained by CWBARTEL and CWBET and all technicians employed by CWBARTEL shall be certificated under the New Telecommunications Act;
- (j) to grant CWBARTEL and CWBET or CWB as the case may be powers and permission to enter on public lands in order to inspect the land to

determine whether the land is suitable for the purpose of installing facilities;

(k) to continue to grant CWBARTEL and CWBET or CWB as the case may be powers and permission to enter on public lands in order to install a facility that is part of a telecommunications network on such lands or to install cables on the seabed in the territorial waters;

(l) to continue to grant CWBARTEL and CWBET or CWB (as the case may be) powers and permission to enter on public lands in order to maintain a facility that is part of a telecommunications network on such lands or such cables as are located on the seabed within the territorial waters of Barbados ; and

(m) to grant CWBARTEL and CWBET or CWB as the case may be powers and permission to lay cables and other installations on the seabed within the territorial waters of Barbados.

5.2 CWBARTEL and CWBET agree, subject to the fulfillment of clause 3 the conditions in clause 4 and this clause 5 that, upon their consent to the issuance of the New C&W Licences, CWBARTEL and CWBET or CWB as the case may be shall surrender forthwith all entitlements and rights under the Existing Licences and shall at the same time release the Government from all of its obligations under the Existing Licences.

6. MANAGEMENT OF TRANSITION TO LIBERALISATION

6.1 The Government agrees:

- (a) to commence Phase 1 on December 1, 2001 provided that the activities outlined in Schedule 1 have been completed;
- (b) to make the public aware of the Transition Timetable in Schedule 2, and to adhere to the Transition Timetable;
- (c) to implement incentive based regulation in accordance with the Pricing Principles in Schedule 6, before Phase 3 is implemented, in order to facilitate and encourage the transition to cost oriented pricing;
- (d) that the transition to cost oriented pricing for domestic line service should be completed before the commencement of Phase 3, and, to that end, prior to the introduction of incentive based regulation;
- (e) that the interim pricing mechanism and the incentive based regulation to be applied by the Regulator will be developed in accordance with the Pricing Principles outlined in Schedule 6;
- (f) to ensure that the licences issued prior to full liberalization to carriers and/or service providers other than CWBET, CWBARTEL, CWCC or CWB as the case may be will contain clauses which will ensure that the carriers and/or service providers are only permitted to provide services and operate facilities identified within the specified phases set out in the Transition Timetable;
- (g) to promptly take appropriate enforcement or restraining action against bypass in accordance with the laws of Barbados or where breaches of the Transition Timetable or the existing Telecommunications Act and the New Telecommunications Act occur.

- 6.2 CWBARTEL or CWB as the case may be agrees that it will continue to perform the role of numbering administrator until such date as determined by the Government;
- 6.3 CWBET or CWB as the case may be agrees that it will continue to perform the role of administrator of the top level domain name '.bb' until such date as determined by the Government.
- 6.4 CWBARTEL and CWBET agree:
- (a) to develop, subject to the Regulator's approval, rate proposals which will accommodate the transition to cost oriented pricing and provide consumers with a choice of pricing plans for domestic line service including a flat rate, usage based pricing plan or such other hybrid plans; and
 - (b) to facilitate interconnection with their network to licensed telecommunications carriers in accordance with the New Telecommunications Act.

7. **SHARE OWNERSHIP**

- 7.1 If the amalgamation occurs, CWBET and CWBARTEL shall recommend to the shareholders of CWB that, within the first twenty-four (24) months following the amalgamation:
- a) the shareholders offer up to ten per cent of the then currently issued share capital of CWB (or agree to issue new shares being up to ten per cent of the issued share capital (calculated after the issue of new shares))(" the offered shares") provided that the total shareholding of Cable and Wireless (West Indies) Limited

shall not be reduced below seventy per cent of the total share capital of CWB;

- b) the offered shares shall be offered at a price that the shareholders consider reflects the value of CWB and nothing in this clause shall require a sale of the shares in the event that the share offer is not fully subscribed.

8. FOREIGN CURRENCY ACCOUNT

- 8.1 The Government agrees that upon amalgamation of the C&W Companies, CWB shall become the account holder of the "no limit" foreign currency account currently held by CWBET in order to enable it to meet any foreign revenue, capital, dividend or other financial requirements as set out in the Memorandum of Understanding dated 27th September 1991 between the Government of Barbados, the Central Bank of Barbados and Cable and Wireless (West Indies) Limited as amended by Amendment No. 1 dated 21st November 1991, which remains in effect.

9. TERMINATION

- 9.1 If either Party fails to observe the terms of this Memorandum or take any action which is inconsistent with these clauses, then this Memorandum may be terminated by the other Party in accordance with the following process:
 - I. A non-defaulting Party shall give notice of any breach to the other Party concerned.

- II. Where the breach is capable of remedy the notice shall require that the breach be remedied within sixty (60) days from the date of the notice failing which the non-defaulting Party may terminate this Memorandum forthwith.
- III. In the event that the breach is incapable of remedy, termination shall take place forthwith.

Where a fundamental breach occurs either party may terminate this Memorandum forthwith. The parties agree that a fundamental breach shall not have occurred in relation to Schedule 1 (1c, 1e, 1f and 2a-2l), Schedule 5 and Schedule 6.

9.2 For the avoidance of doubt, in the event of termination nothing in this Memorandum and no act carried out in performance of this Memorandum will be deemed to have affected or in any way otherwise prejudiced any claim or other rights and obligations that any one or all of the C&W Companies, Cable and Wireless (West Indies) Limited or Cable and Wireless plc may have against the Government after the date of this Memorandum, or any claim or other rights and obligations that the Government may have after the date of this Memorandum.

10. **DISPUTE RESOLUTION**

10.1 Before resorting to arbitration as provided for in clause 10.2, the Parties agree to use their best efforts to resolve all disputes arising out of or in connection with this Memorandum through good faith discussions between, in the first instance, the Minister responsible for Telecommunications and a senior person nominated by CWBET and CWBARTEL or CWB as the case may be to represent the C&W Companies in those discussions. In the event that the Parties are

unable to resolve the dispute within fifteen (15) days after written notice of the dispute has been served on either party then the dispute shall be referred to arbitration in accordance with clause 10.2.

- 10.2 The Parties agree that all disputes in connection with the Memorandum not settled under clause 10.1, shall, at the request of either Party be settled by three arbitrators in accordance with the Arbitration Act Cap 110 of the laws of Barbados.

11. **ENTIRE AGREEMENT**

- 11.1 This Memorandum embodies all the terms of the agreement between the Parties as to the matters referred to in this Memorandum and supersedes all previous correspondence and any other previous agreements and undertakings between the Parties with respect to those matters whether such be written or oral with the exception of those documents listed in Schedule 5 hereof and the Memorandum of Understanding dated 27th September 1991 between the Government of Barbados, the Central Bank of Barbados and Cable and Wireless (West Indies) Limited as amended by Amendment No. 1 dated 21st November 1991.

12. **GENERAL**

- 12.1 The Parties hereby confirm that they have the capacity and are duly authorised to enter into this Memorandum in terms appearing above.
- 12.2 If for any reason any provision or provisions of this Memorandum is or are deemed to be unenforceable and void, and neither party wishes to terminate the Memorandum in accordance with clause 9, that unenforceable and void

provision(s) shall be severed and the remaining provisions shall remain in full force and effect.

- 12.3 Headings in this Memorandum are for convenience only and shall not affect the interpretation of any provisions of this Memorandum.
- 12.4 The failure of either Party to enforce any of its rights or to require the performance of any obligation, responsibility or liability of the other party under this Memorandum shall not of itself be taken as a waiver of that Party's rights, obligations, responsibilities or liabilities under this Memorandum.
- 12.5 The Recitals and Schedules to this Memorandum are deemed to be incorporated into and form an integral part of this Memorandum.
- 12.6 This Memorandum may be amended by written agreement between the Parties.
- 12.7 References in this Memorandum to a clause or Schedule is, unless otherwise stated, to be a clause hereof or a Schedule hereto.
- 12.8 This Memorandum shall not affect the validity of the documents listed in Schedule 4 which shall remain in effect until the New C&W Licences are issued by the Government in accordance to clause 5.

13. **NOTICES**

- 13.1 Notices may be given hereunder by any Party by facsimile, hand delivery, courier or registered mail addressed to the other Party concerned in the case of any of the C&W Companies at their respective registered offices for the time being, and in the case of the Government at the office of the Minister

responsible for Telecommunications and shall be deemed to have been received in the case of a fax at the time of dispatch (or if the day of dispatch is not a business day, on the following business day), in the case of a courier, on the business day after dispatch, in the case of hand delivery when delivered (or if the day of delivery is not a business day, on the following business day) and in the case of registered mail on the fifth day after the date of mailing.

14. **GOVERNING LAW**

14.1 This Memorandum is made under the Laws of Barbados and shall be governed by and construed, performed and enforced in accordance with the Laws of Barbados.

15. **COMMENCEMENT AND EXPIRY**

15.1 This Memorandum shall commence immediately upon the date of its execution by the Parties.

15.2 Subject to the provisions of this Memorandum, this Memorandum shall remain in force until expressly terminated by written instrument signed by all the Parties to this Memorandum or in the case of CWBARTEL and CWBET or their permitted assigns, by their successors and permitted assigns.

Signed for and on behalf of the Government of Barbados

by Minister of Economic Development

The Honourable Reginald Farley

in the presence of:

Signature of witness:

Date:

Signed for and on behalf of Cable & Wireless BARTEL Limited

Name:

Title:

in the presence of:

Signature of witness:

Date:

Signed for and on behalf of Cable & Wireless BET Limited

Name:

Title:

in the presence of:

Signature of witness:

Date:

Schedule 1

Government will use its best endeavours to complete these activities prior to December 1, 2001

Government	Fair Trading Commission
<p>1 (a) Complete negotiations with the C&W Companies and sign Memorandum of Understanding</p> <p>(b) Engage consultants to develop interconnection policy and develop such policy</p> <p>(c) Provide institutional strengthening for the Telecommunications Unit</p> <p>(d) Develop licensing regime and new licences</p> <p>(e) Draft and implement the New Telecommunications Bill and develop regulations under the resulting Act</p> <p>(f) Complete legislative amendments to the Fair Trading Commission Act and Utilities Regulation Act and develop regulations under these Acts</p> <p>(g) Settle technical standards and equipment type approval for deregulated customer premise equipment</p> <p>(h) Issue New Licences to C&W Companies</p> <p>(i) Issue licences to existing service providers (ISPs, Paging service providers which have registered with the Telecommunications Unit) in accordance with a New Telecommunications Act</p>	<p>2 (a) Develop incentive based regulation to be used during the transition to liberalisation and in a competitive environment</p> <p>(b) Review accounting separation methodology presented by C&W Companies *</p> <p>(c) Settle outstanding appropriate depreciation lives application for CWBARTEL's assets</p> <p>(d) Implement Government's policies in relation to the regulation of the telecommunications sector</p> <p>(e) Develop interconnection guidelines and issue such guidelines</p> <p>(f) Implement the regulation scheme to be used for international telecommunications services during the transition to full liberalisation in accordance with Schedule 6</p> <p>(g) Develop regulations for procedures for rate applications and rate hearings</p> <p>(h) Settle the recovery by CWBARTEL of stranded investment for Customer premise equipment *</p> <p>(i) Agree the proposals for implementing cost oriented pricing *</p>

* These commitments are subject to the receipt of information from the relevant C&W companies. In the case of 2 (h) settlement at 2 (c) is required.

**SCHEDULE 2
TRANSITION TIME TABLE**

Service	← Phase 1	Phase 2	Phase 3 →
Customer Premise Equipment (CPE)	<ul style="list-style-type: none"> • Competition in single line sets • Competition in inside wiring • Competition in multiline systems under 30 ports (extensions) 	Multi-line CPE 30 ports (extensions) and over Full liberalisation in the provision of CPE	
2. Mobile	<ul style="list-style-type: none"> • Network based competition in cellular • Interconnection to CW BARTEL domestic network only • Cellular providers can resell Global mobile personal communications satellite (GMPCS) services with a commercial arrangement with CWBET for international services • GMPCS provider to have commercial arrangement with CWBET for bypass of international facilities and international access 		<ul style="list-style-type: none"> • Full liberalisation
3. Internet	<ul style="list-style-type: none"> • All Internet Service Providers (ISPs) will be licensed for administrative purposes • Resale over CWBARTEL and CWBET network • No voice services to be provided • No bypass 		Use of own facilities such as VSATs, for transmitting once appropriate licence is obtained
4. Domestic voice	<ul style="list-style-type: none"> • Competition in value added (non-basic) services 	<ul style="list-style-type: none"> • Domestic fixed (wireless) network based competition 	<ul style="list-style-type: none"> • Full Liberalisation
5. Broadcasting	<ul style="list-style-type: none"> • Permit Caribbean Broadcasting Corporation and Caribbean Media Corporation to use their own facilities for own use for broadcast purposes only subject to conditions including the following:- no bypass, no carriage of switched telecommunications services for resale or lease, no interconnection to Public switched Telephone Network (PSTN) or transmissions for third parties, no assignment of the benefit of the licence. 		<ul style="list-style-type: none"> • Full liberalisation
6. International voice	<ul style="list-style-type: none"> • Switchless resale of minutes over CW network (non network based) • International switchless leased circuit capacity resale 		<ul style="list-style-type: none"> • Full network based competition including use of VSATs
7. Call centres	<ul style="list-style-type: none"> • Use of bi-directional (receive and transmit) Very Small Aperture Terminals (VSATs) by call centre operators certified by the Barbados Investment Development Corporation only subject to the following conditions: • VSAT to be used solely for call centre business • There must be no interconnection of the VSAT to the PSTN • There must be no interconnection of the VSAT to the networks of domestic mobile carriers • No bypass • No resale of telecommunications services, lease or provision of any telecommunications services via the VSAT For the purposes of this provision "call centre operator" refers to a business registered in Barbados which employs a minimum of fifty Barbadians, generates and maintains a prescribed minimum number of minutes and which is engaged in a call centre activity as defined in a New Telecommunications Act. 		<ul style="list-style-type: none"> • Full liberalisation

SCHEDULE 3
CONCESSIONS

Cable & Wireless BARTEL Limited

- Customs Tariff (Amendment) Order 1998 - S.I. 1998 No. 50
(Table of Exemptions Part II Section B)
- Duties, Taxes and Other Payments (Exemption No. 22) Order, 1997
S.I. 1997 No. 120
- Value Added Tax Act 1996 - 15 Third Schedule, paragraph 5

Cable & Wireless BET Limited

- Customs Tariff (Amendment) Order 1998 - S.I. 1988 No. 50
(Table of Exemptions Part II Section B)
- Duties, Taxes and Other Payments (Exemption No. 22) Order, 1997
S.I. 1997 No. 120
- Value Added Tax Act 1996 - 15 Third Schedule, paragraph 5

SCHEDULE 4

Documents not superceded by this Memorandum

- Licence dated 30th October 1984 as amended by Agreement No. 1 dated 21st November 1991 between the Government of Barbados and Barbados External Telecommunications Limited (now CWBET)
- Licence dated 1st October 1991 between the Government of Barbados and The Barbados Telephone Company Limited (now CWBARTEL)

SCHEDULE 5**Telecommunications Principles****1. Introduction**

- 1.1 These Telecommunications Principles provide an overview for Government's Telecommunications Sector policies. A New Telecommunications Act and the Amended Utilities Regulation Act and the Fair Trading Commission Act will provide the detailed terms reflecting the Telecommunications Principles.
- 1.2 The Telecommunications Act, CAP 282A will be replaced with a New Telecommunications Act to provide the legislative foundation for the policy framework that will facilitate the liberalization of the telecommunications industry in Barbados.

2. Regulation of Telecommunications

- 2.1 The Telecommunications sector will be regulated by the Minister responsible for Telecommunications as well as the Fair Trading Commission.
- 2.2 The Minister responsible for Telecommunications will be responsible for setting policy for the management and regulation of the telecommunications sector.
- 2.3 The Fair Trading Commission will be responsible for rate setting, quality of service regulation and consumer protection consistent with the Government's Telecommunications policy.

3. Protection of Confidential Information

- 3.1 The New Telecommunications Act will detail how confidential information will be treated.

4. Rate Setting

- 4.1 The Minister responsible for Telecommunications will determine the services to be regulated.
- 4.2 The Fair Trading Commission will be required to establish the rate setting mechanism to be used to establish rates to be charged by service providers providing a regulated service.
- 4.3 The Fair Trading Commission will establish the rate setting mechanism to be used to establish rates to be used by a service provider of a regulated service.

5. SPECTRUM MANAGEMENT

- 5.1 The Minister responsible for Telecommunications will ensure that the national interest is served in managing spectrum for commercial (telecommunications and broadcasting), private and government usage, taking due account of safety, health and security. To the extent reasonable existing spectrum allocation will be preserved.
- 5.2 Spectrum use will be subject to a licence and the payment of a reasonable fee determined on a non-discriminatory basis.

6. ADMINISTRATION OF NUMBERS

6.1 The Minister responsible for Telecommunications will develop a National Numbering Plan in accordance with the North America Numbering Plan Administration Rules.

6.2 The Minister responsible for Telecommunications will assign telephone numbers to licensed operators on a non-discriminatory basis. To the extent reasonable existing number allocations will be preserved.

7. Number Portability

7.1 The Minister responsible for Telecommunications will detail a study to determine if the benefits of Number Portability are greater than the costs of providing such a service.

8. Domain Name

8.1 The Minister responsible for Telecommunications or his Nominee will assume the role of Administrator of the top level domain name “.bb” at a date to be determined by Government.

9. Technical Standards

9.1 The Minister responsible for Telecommunications will specify and modify certification standards for customer equipment, wiring and technicians from time to time.

10. RADIOCOMMUNICATIONS

10.1 Radiocommunications licences will be issued by the Minister responsible for telecommunications within the framework of the new liberalized environment.

11. INTERCONNECTION

11.1 Licensed carriers will negotiate interconnection agreements by way of commercial negotiations in accordance with the Regulations established under a New Telecommunications Act. The Fair Trading Commission will be entitled to intervene to resolve matters that are unable to be agreed to in commercial negotiations (i.e. where there is a dispute between carriers concerning interconnections) or where the agreement is not in accordance with the interconnection principles set out or where the agreement unfairly discriminates against other carriers or where the agreement is otherwise unlawful.

11.2 A New Telecommunication Act will provide interconnection principles and provide for the creation of guidelines.

11.3 The dominant carrier will be required to file a proposed Reference Interconnection Offer (RIO) with the Fair Trading Commission which sets forth the basic terms and conditions upon which other licensed carriers will be permitted to interconnect with a dominant carrier's telecommunications network.

12. UNIVERSAL SERVICE

- 12.1 The Minister responsible for Telecommunications will establish a universal service obligation by agreement between the Minister responsible for Telecommunications and a universal service carrier.
- 12.2 Funding of Universal Service shall be by payment of an access deficit charge in addition to a cost based interconnection charge by all carriers and service providers interconnecting to the universal service carrier's telecommunications network and contributions by all licensees to a universal service fund on a competitively neutral basis

13. Compliance and Management

- 13.1 The Government will ensure that the liberalization Transition Timetable is adhered to and will take the necessary action against any person attempting to provide services to the public without obtaining the relevant licence and before the relevant Phase of the Transition Timetable is implemented.

14. Licensing

- 14.1 The Government will grant non-exclusive licences to telecommunications operators on a non-discriminatory basis.
- 14.2 The following licences will be issued by the Minister responsible for Telecommunications:
- i. Carrier Licence will authorise a person to own and operate a telecommunications network

- ii. Service Provider Licence will authorise a person to provide specified telecommunications services to the public
- iii. Spectrum Licence will authorize a person to use the electromagnetic spectrum to operate the network or provide services
- iv. Dealer Licence will authorize a person to import, sell or trade certain prescribed telecommunications equipment
- v. Private Network Licence will authorise a person to use a telecommunications network for their own use by a person or group of affiliated persons, such affiliation having some purpose other than in connection with the provision of telecommunications services, and that is not interconnected with the public telecommunications network and that, except with respect to use of the electromagnetic spectrum, does not cross public rights of way

14.3 Persons providing telecommunications services will be required to obtain the appropriate licence.

15. Carrier Rights and Immunities

15.1 The Government will revise the guidelines and rules related to use of rights of way by carriers which will be prescribed in a New Telecommunications Act, to facilitate continued development of the country’s communications infrastructure. To the extent reasonable existing rights of ways will be preserved.

15.2 Carriers shall be entitled to discontinue service to any person using a telecommunications service illegally or in contravention of the terms of condition of service

16. Licensing During Transition Phases

16.1 There will be a transition plan which will establish the type of licences and the timeframe under which new licences will be granted, consistent with this Memorandum of Understanding signed between CWBARTEL and CWBET and the Government.

16.2 All licences or other enabling instruments issued to the existing telecommunications carriers and the existing service providers prior to the commencement of a New Telecommunications Act will continue to remain in full force and effect and will authorize the continued ownership and operation of telecommunications networks and provision of telecommunications services provided thereunder until such time as new licences are issued pursuant to a New Telecommunications Act.

16.3 The spectrum rights of the existing telecommunications carriers and all other persons who are allocated rights to spectrum in connection with licences granted under the Telecommunications Act Cap. 282A and under any other validly granted licence or authority under the laws of Barbados will be preserved until the implementation of a National Spectrum Management Plan.

17. Offences

17.1 A New Telecommunications Act will establish offences for contravention of specified provisions of the Act and will establish penalties for such offences.

SCHEDULE 6

In this Schedule reference to Cable & Wireless ("C&W") refers to the relevant regulated company.

Pricing Principles

I. Principles for pricing movements prior to the application of incentive based regulation and during the transition to cost oriented pricing ("Interim Mechanism")

The development of an incentive based regulation scheme is likely to take in excess of a year. Accordingly, during the transition to liberalisation of telecommunications services, there needs to be a mechanism ("the interim mechanism") that is not fully dependent on the development of the incentive based pricing scheme and which delivers price movement from existing levels to cost oriented rates.

The interim mechanism will be developed by a Pricing Principles Group ("the Group") chaired by a member of the Fair Trading Commission. The Group will have representatives from the Fair Trading Commission, ("the Commission") the Ministry responsible for Telecommunications, the Ministry responsible for Utilities Regulation and C&W Companies or CWB as the case may be. The interim mechanism should be completed by December 1, 2001 and the mechanism is to be implemented from that date.

This approach is necessary to facilitate the Government's desire to liberalise the telecommunications market in accordance with the terms of this Memorandum.

The Group will also work towards establishing an incentive based scheme of control, for implementation prior to the issuing of a second international licence in Phase 3 as set out in this Memorandum.

The Group shall meet, settle its terms of reference and commence work as soon as practicable, but no later than two weeks after the date of signing this Memorandum. Participants in the Group may contract consultants, as they consider necessary. The Group will be required to finalise an interim mechanism prior to December 1, 2001 and the Commission will implement the interim mechanism developed by the Pricing Principles Group.

The interim mechanism should apply, but not be limited to, the following principles:

- i. The existing rates for international, domestic and mobile services shall be deemed to be “maximum rates” as defined in the Utilities Regulation Act.
- ii. With respect to domestic telephone service:
 - A rate application by C&W Companies or CWB as the case may be will be made to the Fair Trading Commission for phased price changes to be applied over the transition period. The objective of the application will be to achieve the transition to cost oriented prices by the start of Phase 3 of the liberalization process and prior to the commencement of the incentive based scheme;
 - The explicit objective of the interim mechanism and a requirement for Regulator’s approval of the rate application for phased price changes, will be the removal of the cross subsidy between international and domestic telephone services;

- The revenue sharing arrangement in section 11 of the Telecommunications Act Cap 282A will be carefully examined with a view to agreeing how to manage the reduction of the subsidy during the transition. The objective is to gradually remove and eliminate the revenue sharing arrangement between the international rates and the domestic rates;
- A process for C&W Companies or CWB as the case may be to introduce rates for a single service, during the transition period must be developed by the Group;
- Where rates are filed with the Commission for a tariff for a single service the tariff shall take effect, for price increases, no sooner than 30 days from the date of filing, providing that the tariff is not inconsistent with the process required for filing of a single service tariff, or not set out in the form required by the Commission in Regulations and Law. The Commission shall be required to provide reasons (including but not limited to calculations) for the Commission's decision that the tariff is non-compliant;
- Pricing flexibility should be facilitated, particularly with regard to the enhanced services which are subject to the customer's discretionary take-up, and rate of return should not apply.

iii. With respect to International telephone services:

Until there is sufficient competition in these services in accordance with a New Telecommunications Act, then the following principles shall apply:

- Rate of return shall not be used as the Scheme of regulation;
- The Regulator shall consider a rate application initiated by C&W Companies or CWB as the case may be ;
- Guidance to be taken from the Ministry responsible for Telecommunications regarding the approval process used to date under the Telecommunications Act Cap 282A;
- The process of the mechanism should facilitate the need to bring new products and services to the market quickly.

iv. With respect to Mobile service:

Until there is sufficient competition in these services in accordance with a New Telecommunications Act, then the following principles shall apply:

- Rate of return shall not be used as the scheme of Regulation;
- The process of the interim mechanism should facilitate the need to bring new products and services to market quickly.
- Mobile rates shall be set in accordance with the Telecommunications Act Cap 282A as amended.

v. Competitive services

- Services which are already competitive or that become competitive shall not have their rates regulated, instead the prices shall be determined by market forces.

II Principles to be applied in establishing an incentive scheme of control such as price cap

- i. If the Minister responsible for Telecommunications determines that C&W Companies or CWB as the case may be is dominant in accordance with a New Telecommunications Act with respect to the provision of the following markets:
- fixed domestic telephony; and
 - fixed international telephony

then an incentive scheme of control should apply to C&W Companies or CWB as the case may be.

- ii. The Commission shall develop Regulations consistent with the principles contained in this Memorandum and the further details as developed by the Group and the interim mechanism. These Regulations should be developed through a consultative process.
- iii. An Incentive based pricing scheme, shall be implemented prior to the end of the transition period and in any event prior to the issue of a second international licence by Government.
- iv. The mechanism should provide that C&W Companies or CWB as the case may be should be subject to an incentive based scheme as developed from a stipulated date.

Dated this 16th day of October 2001

MEMORANDUM OF UNDERSTANDING

between

THE GOVERNMENT OF BARBADOS

and

CABLE & WIRELESS BARTEL LIMITED

and

CABLE & WIRELESS BET LIMITED