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November 4, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: Ex parte presentation, IB Dkt. No. 97-142

Dear Mr. Caton:

On November 4, 1997, Richard E. Wiley of Wiley, Rein & Fielding; Richard H. Brown, Chief Executive Officer of Cable & Wireless plc; and Alan Peyser, CEO of Cable & Wireless, Inc., made a presentation to Chairman William Kennard, Commissioner Susan Ness, Commissioner Michael K. Powell, Commissioner Harold Furchtgott-Roth, Commissioner Gloria Tristani, Ari Fitzgerald, Thomas Powers, Regina Keeney, Diane Cornell, David R. Siddall, Jane Mago, Katie King, and Paul Gallant, regarding IB Dkt. No. 97-142. The substance of the material discussed is attached.

Sincerely,

Carl R. Frank
Counsel for Cable & Wireless, Inc.

CRF/bap
Attachment (for William Caton only)
cc: Chairman William E. Kennard
Commissioner Michael K. Powell
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Gloria Tristani
Ari Fitzgerald
Thomas Powers
Regina Keeney
Diane Cornell
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CABLE & WIRELESS, INC.

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CABLE & WIRELESS - Resale of Switched Services

Background: The FCC has long known that the U.S. international telecommunications marketplace is far from competitive and, indeed, is less open than U.S. domestic long distance. For this reason, the Commission has encouraged carriers to enter the market by the resale of switched services to provide switched services. This type of market entry, which is often used by new carriers beginning to compete with existing players, is now under siege by AT&T and other established carriers.

Resale Services: In contrast to facilities-based services and ISR, the resale of switched services to provide competitive switched services does not require the creation of large domestic infrastructure by U.S. carriers to enter the market. Nor does it require the new entrant to reach agreements with foreign carriers to act as correspondents. Rather, resellers simply contract with another U.S. carrier that already has circuits to the relevant countries over which they then can provide switched services; the reseller never has to reach an agreement with the foreign country because the other U.S. carrier already has such an agreement. The reseller simply uses the services of established underlying carriers.

Benchmarks: At present, U.S. carriers sending traffic to overseas locations make arrangements with correspondent foreign carriers and then pay them a "settlement rate" to terminate the traffic. In the agency's recent Benchmark Order, the FCC required U.S. carriers to reduce these settlement rates paid to foreign carriers over a transition period lasting from 1-5 years (depending on the relative wealth of the foreign country). For foreign-affiliated U.S. carriers, the Commission essentially required that the foreign carrier forego the FCC's transition period and instead immediately reduce its settlement rates to the benchmarks. Consistent with its long-standing practice, the Commission did *not* impose similar conditions on entry via resale of switched services, because in that case the U.S. affiliate has no contractual relationship with the foreign carrier for carrying traffic between the two countries.

The Problem: AT&T now proposes to extend the benchmark conditions applicable to facilities-based and ISR services to the resale of switched services. Resellers with foreign affiliates would be denied (or would lose) their

authorizations if settlement rates on affiliated routes were not within benchmarks. This is a sharp departure from long-standing Commission policy: Less than five months ago, the agency said, in the *Foreign Participation NPRM*, that "we continue to believe that the resale of international switched services by a U.S. carrier whose foreign affiliate has market power in the destination country does not present a substantial possibility of anticompetitive conduct in the U.S. international services market." (*NPRM*, ¶ 31). The FCC did not suggest that it would consider reexamining that view until after the comment period had closed.

C&W View:

(1) C&W has been reselling switched services pursuant to FCC authority for more than 10 years and has *never* been accused of any market-distorting practice.

(2) The conduct AT&T fears would amount to "predation," which is already unlawful; no additional FCC policy is necessary.

(3) If a carrier with a foreign affiliate did engage in predation, it would be easily detectable: Cable & Wireless and other resellers have to obtain service from established U.S. carriers, who will accordingly know Cable & Wireless's costs of services. International tariffs are publicly available.

(4) Resellers do not deal directly with their foreign affiliates. They do not negotiate settlement agreements and so cannot distort the market.

(5) Resale of switched services has afforded new carriers a low-cost and rapid way of entering the market. Burdening such entry would *decrease* not *assist* competition in the U.S.-international market, to the benefit of AT&T. Indeed, AT&T's real mission may be to shield its high-margin international services from competition.

Consequence:

If the FCC sides with AT&T, U.S. carrier Cable & Wireless Inc., — now providing service in competition with AT&T and other big carriers — would not be able to provide services between the United States and the 30 routes on which it has an affiliate. The inability to be able to provide ubiquitous, world-wide services to customers would likely force the company out of business in this market, placing 80,000 customers at risk, and potentially resulting in the loss of over 2,500 U.S. jobs.

Status: The International Bureau recently rejected AT&T's argument when it approved the application of a TelMex/Sprint partnership to provide switched resale service to Mexico. In an important sense, the TelMex/Sprint case was more difficult than Cable & Wireless's situation: Cable & Wireless resells service through *unaffiliated* U.S. carriers; TelMex/Sprint will use Sprint as their carrier. Thus, having approved TelMex/Sprint, Cable & Wireless's "arms-length" operations clearly should be acceptable.

Request: This issue may determine whether Cable & Wireless, Inc. survives as a competitor in the U.S. market. Cable & Wireless thus requests the Commission to re-affirm that switched resale with an affiliate is pro-competitive and, will result in greater (and more rapid) market entry. Thus, the agency should confirm that foreign affiliates of a U.S. carrier need not forego the transition period already provided for by the FCC and drop settlement rates to the benchmarks immediately.