



**CABLE & WIRELESS**

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2nd November, 2006  
Our Ref: GRRCR/GR 15.24

Mr. David Archbold  
Managing Director  
Information and Communications Technology Authority  
P.O. Box 2502  
George Town  
Grand Cayman, KY1-1104

Dear Mr. Archbold,

**Re: Cable and Wireless Determination Request dated 25 October 2006**

C&W writes in response to Digicel's letter to the Authority dated 31 October 2006. We note that, in the e-mail from Mr. Greg van Koughnett dated 1 November 2006, the Authority advised that C&W may respond to Digicel by 20 November 2006.

Digicel in the same letter addresses the two proceedings commenced by C&W on 25 October 2006. The two proceedings are procedurally distinct. Until or unless the Authority exercises its powers pursuant to regulation 12(1) of the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 ("the Dispute Resolution Regulations") and elects to conduct a public hearing, the proceedings arising from the Determination Request involve only the parties to the dispute which is the subject of the Determination Request. On the other hand C&W's application for the determination of a cost-oriented MTR was intended to be binding on all telecommunications licensees with telephony services, hence the application was copied to all such licensees. Until the Authority orders a public proceeding or otherwise invites telecommunications licensees other than Digicel to participate in the proceedings arising from the Determination Request, C&W will continue to treat the two proceedings as separate.

#### **Digicel's responses to C&W's Determination Request**

Digicel contends firstly that C&W has failed to make a valid determination request pursuant to the Dispute Resolution Regulations in that, (a) a grievance notice has not been served, and (b) good faith negotiations have not taken place between Digicel and C&W towards resolution of the dispute. Secondly, Digicel contends that the Authority should decline

jurisdiction to entertain the Determination Request since, as Digicel contends, the proper procedure would be the dispute resolution proceedings set out in the Interconnection Agreement between C&W and Digicel dated 29 January 2004 (“the Interconnection Agreement”) leading ultimately, failing resolution, to International Chamber of Commerce (ICC) arbitration.

*Digicel’s Contention – No Valid Determination Request*

Digicel relies on regulation 3 of the Dispute Resolution Regulations. Digicel’s submission fails to take a purposive approach to the interpretation of this regulation. Although it is clearly intended by the Dispute Resolution Regulations that the parties in dispute make good faith efforts to resolve their dispute before submitting a Determination Request to the Authority, it could not have been the intention that parties be made to engage in negotiations which are meaningless, and which have no prospect of producing a resolution, if only to satisfy the procedural timetable set out by the Dispute Resolution Regulations. In fact such negotiations would not be “good faith” negotiations within the meaning of the Dispute Resolution Regulations.

In the present case there is clear disagreement between C&W and Digicel even as to the definition of the dispute and as to the appropriate forum for the resolution of the dispute. C&W contends that an MTR of CI\$0.1845 is not cost-oriented within the meaning of the Information and Communications Technology Authority Law (“the Law”) and the Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 (“the Interconnection Regulations”), and is consequently unlawful. C&W, in the two proceedings issued on 25 October 2006, requests the ICTA to determine a cost-oriented MTR, which C&W contends should be determined by reference to C&W’s adjusted FAC model. That is distinctly a regulatory issue. C&W is requesting the Authority to interpret and apply the provisions of the Law and the Interconnection Regulations to the determination of the appropriate MTR. To such a determination an agreement between licensees would be irrelevant.

*Digicel’s Contention – Dispute Resolution under the Interconnection Agreement*

Digicel on the other hand contends that the dispute is one which has arisen under the Interconnection Agreement as supplemented by the Settlement Agreement and ought to be determined in accordance with the dispute resolution procedures set out in the Interconnection Agreement.

It is difficult to see how any negotiations proceeding from such disparate positions could be meaningful or bona fide. Digicel from the outset, as disclosed in its letter dated 31 October 2006 to the Authority, does not even recognise the jurisdiction of the Authority to entertain the dispute which is the subject of C&W’s Determination Request.

Further, as noted earlier, the issue of a cost-oriented MTR is a regulatory issue. Such an MTR must necessarily affect all other telecommunications licensees in the Cayman Islands. In these circumstances, it is difficult to see how bilateral discussions under the Interconnection Agreement as suggested by Digicel could lead to a satisfactory final result. A

Determination Request under the Dispute Resolution Regulations which would result in a determination by the ICTA remains the most appropriate forum.

### Further Discussions with Digicel

Notwithstanding this, C&W is not opposed to having bona fide negotiations with Digicel on the specific issues raised by C&W's Determination Request, namely:

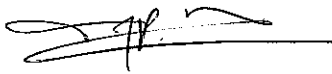
1. Is an MTR of CI\$0.1845 per minute in the Cayman Islands a cost-oriented rate as prescribed by the Law and the Interconnection Regulations?
2. Should the MTR be fixed at CI\$0.11 per minute, being such a cost-oriented rate?
3. Should all mobile ICTI Licensees in the Cayman Islands charge CI\$0.11 per minute for the termination on their mobile networks of calls originating in the Cayman Islands until a new rate based on the FLLRIC cost methodology is determined by the Authority?

C&W will enter such negotiations if Digicel, (copied on this letter), confirms within 2 working days that it is prepared to enter negotiations on the above three issues and advises that it would have no objections to other telecommunications licensees participating in such negotiations. In the absence of such confirmation from Digicel, C&W will request the Authority to continue the proceedings commenced by C&W's Determination Request.

### Other Issues

At that time C&W will provide a detailed response to Digicel's submission that the Authority has no jurisdiction to entertain the Determination Request and will also address other issues arising from Digicel's response to the Determination Request. C&W will also then separately address the submissions made by Digicel in response to C&W's application under section 68(3) of the Law and regulation 6(h) of the Interconnection Regulations for the determination of a cost-based MTR.

Yours faithfully,  
Cable & Wireless (Cayman Islands) Ltd.



Timothy P. Adam  
Chief Executive

cc. Mr. John D. Buckley, Chief Executive Officer, Digicel (Cayman) Ltd.  
Mr. Rudy B. Ebanks, Chief Regulatory & Carrier Relations Officer, C&W  
Mr. Frans Vandendries, Vice President Regulatory Affairs, C&W