



**QUIN & HAMPSON**  
ATTORNEYS-AT-LAW

Third Floor,  
Harbour Centre,  
P.O. Box 1348, George Town,  
Cayman Islands, B.W.I.

Telephone: (345) 949-4123  
Facsimile: (345) 949-4647

E-mail: [info@quinhampson.com.ky](mailto:info@quinhampson.com.ky)  
Website: [www.quinhampson.com.ky](http://www.quinhampson.com.ky)

Writer's Direct E-mail: [hrobinson@qhlaw.ky](mailto:hrobinson@qhlaw.ky)

25 October 2006

Myers & Alberga  
Attorneys-at-Law  
2<sup>nd</sup> Floor, Harbour Place  
103 South Church Street  
P.O. Box 472  
Grand Cayman KY1-1106  
Cayman Islands

Dear Sirs

**Re: Cable & Wireless (Cayman Islands) Limited  
Digicel (Cayman) Limited**

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1. We refer to your letter dated 4 October 2006 on behalf of Digicel (Cayman) Limited ("Digicel") addressed to Mr. Timothy Adam, Chief Executive of Cable & Wireless (Cayman Islands) Limited ("C&W"). We have been instructed by C&W to act on its behalf with respect to the matters raised in C&W's letter to you dated 20 September 2006 and your response of 4 October. We ask that further communication on these matters be directed to us.
2. We do not necessarily intend to engage you in a point by point refutation of the several misstatements of facts which we are instructed are contained in your letter. The absence of a response by us to any statement in your letter should not however be treated as an admission to any part of the contents of such statement. C&W's position as stated in its letter of 20 September 2006 is supplemented by the points we now set out.

**Settlement Agreement was subject to approval by ICTA**

3. The Settlement Agreement of 29 July 2004 ("the Settlement Agreement") which you so vehemently assert on behalf of Digicel, was by its express terms subject to approval by the Information and Communications Technology Authority ("the ICTA"). There can be no question as to the proper interpretation of that condition in the Settlement Agreement, nor as to the clear intentions of the parties relative to the insertion of this condition.



4. The fact of the non-approval of the Settlement Agreement by the ICTA is irrefutable. Your statement in paragraph 12 of your letter that "the Agreement was accepted and approved by the Authority" is so contrary to the facts as being unworthy of a serious response. The non-approval of the Settlement Agreement by the ICTA is not an insignificant, inconsequential inconvenience which may simply be sidestepped. The condition was clearly inserted in the Settlement Agreement in recognition of the parties' contemplation at the time, of the likely consequences of an MTR agreed between some mobile carriers and not approved by the ICTA, (and therefore not made applicable to all other mobile carriers). These consequences have been borne out by the facts since the date of the Settlement Agreement. Digicel has itself participated in some of the many proceedings before the ICTA, brought mainly by TeleCayman, which have arisen as a direct consequence of the MTR in the Settlement Agreement not being made applicable to all telecoms licensees. To date the matter is still unresolved, to the detriment of C&W, and the consumers of the Cayman Islands, and to the obvious benefit of Digicel.

**Digicel benefiting from delay in FLLRIC Process**

5. The MTR agreed in the Settlement Agreement was only intended as an interim measure until the completion of the FLLRIC process. The parties to the Settlement Agreement projected then that the FLLRIC process would have been completed by 30 June 2006. On 8 February 2006 the ICTA set out a new set of procedures and timeframes requiring final filing of comments by 21 July 2006. Given that a Determination by the ICTA on an MTR based on the FLLRIC model would be some time after the close of the record it might be as long as a further 18 months before the FLLRIC process will be complete.
6. In the Settlement Agreement the parties committed "to fully assist the Authority in its completion of a FLLRIC model" by 30<sup>th</sup> June 2006, and also that the parties would "not do anything that would prevent or obstruct the completion of the FLLRIC model within that timeframe." We have noted the allegation in your letter that the delay in the completion of the FLLRIC model by 30 June 2006 was due "largely, if not exclusively" by reason of failures on the part of C&W. C&W denies this allegation. To the contrary, C&W asserts that Digicel by its preventive and obstructive behaviour has in large part caused or contributed to the non-completion of the FLLRIC model.
7. It is also evident that Digicel by its statements and pronouncements is not in any way committed to the completion of the FLLRIC process. This is supported by the statement in your letter of 4 October that "...Digicel now has serious concerns about the integrity of the FLLRIC model currently being prepared for Cayman ...". Although you assert the continued existence and validity of the Settlement Agreement, Digicel by its conduct, has sought to frustrate the attainment of the objective which would put an end to an MTR which was only intended, in any event, to have been an interim measure.



8 The continued existence within the market of multiple MTRs has provided licensees, including Digicel, with opportunities to engage in arbitrage in the retail market. We have been instructed, for example, that Digicel is offering two retail fixed to mobile prices to local businesses, CI\$0.15 per minute for calls from Digicel fixed lines to Digicel mobile phones, and CI\$0.20 per minute for calls from Digicel fixed lines to other mobile phones. These opportunities for arbitrage are not similarly available to C&W, which is constrained by Part 3, Annex 5 of its Licence, which requires that C&W set its retail fixed to mobile price above a cost floor based on "interconnect" rates.

9. C&W does not intend to allow Digicel to continue to benefit from its own unlawful acts.

**CI\$0.1845 per minute MTR contrary to law**

10. It is a fundamental requirement of the Information and Communications Technology Authority Law (2006 Revision) ("the Law) and the Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 ("the Regulations") that the rates for interconnection services in the Cayman Islands must be "cost-oriented" This is a legal requirement which is binding on the ICTA and on all licensees in the telecoms market, and supersedes any agreement which may have been entered between licensees.

11. The MTR of CI\$0.1845 per minute is not cost-oriented as defined by the Law and the Regulations and any assertion to the contrary is plainly insupportable. To the extent that the MTR of CI\$0.1845 is not "cost-oriented" it is contrary to the Law and the Regulations and any agreement based on such an MTR is to that extent unenforceable

12. As part of the general requirement that interconnection and infrastructure sharing charges be cost-oriented, regulation 10(1)(f), provides that interconnection and infrastructure sharing charges shall be based on the FLLRIC model. Due to the delays in its process, the completion of the FLLRIC model has been postponed well into the future. C&W cannot be expected to suffer the unfair consequences of the distortions in the market by the activities of some licensees, such as the arbitrage practices referred to above, which have been made possible by virtue of an MTR which is not cost-oriented and therefore unlawful and unenforceable

**C&W shall charge and pay C&W's adjusted FAC-based MTR**

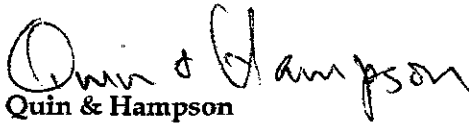
13. Regulation 10(2) provides that until the development of an approved FLLRIC model, C&W shall use its adjusted fully allocated cost model ("C&W's adjusted FAC model") for the determination of its interconnection rates. Being also the only completed cost model available, and having been rigorously inspected in ICTA proceedings and adjusted as advised by the ICTA, C&W contends that C&W's adjusted FAC model is the applicable cost model, until the completion of the FLLRIC model, or, if before, a cost-oriented rate is otherwise determined by the ICTA.



14. The MTR as determined by C&W's adjusted FAC model would be no more than CI\$0.11 per minute and C&W asserts that this is the applicable MTR until the completion of the FLLRIC process, or, if before, a cost-oriented MTR is otherwise determined by the ICTA.
15. Accordingly, C&W will charge and pay no more than CI\$0.11 per minute for calls terminating on any mobile network within the Cayman Islands. To that extent C&W's letter of 20 September 2006 is hereby amended. C&W's Invoice Number 90007450 dated 11 October 2006 for the billing period 1 September 2006 to 30 September 2006, which has been recalled, will be replaced by an invoice which calculates the MTR for that billing period at CI\$0.11 per minute. The invoices for all subsequent billing periods will calculate the MTR at the same rate until the FLLRIC process is complete or, if before, a cost-oriented MTR is otherwise determined by the ICTA. C&W expects to be invoiced by Digicel at the same rate of CI\$0.11 per minute.
16. For the avoidance of doubt C&W will not now be applying this rate and will not now seek an accounting from Digicel for any period prior to 1 September 2006. Nevertheless, C&W reserves all its rights generally.

Best regards.

Yours faithfully

  
Quinn & Hampson

Copy: Cable & Wireless (Cayman Islands) Limited