



ICT Decision 2005-6

Grand Cayman, 24th November 2005

Decision on TeleCayman Application for Determination of Mobile Termination Rates

Summary

The Authority denies the application by TeleCayman to modify the current interim mobile termination rate. The Authority notes that it is currently in the process of establishing a long run incremental costing methodology. After the establishment of this costing methodology, the Authority will employ it to determine the appropriate rate.

(Note: This overview is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

The Application

1. On 23 September 2005, TeleCayman Limited (“TeleCayman”) filed an application in accordance with the Dispute Resolution Regulations for the determination by the ICTA of mobile termination rates in Cayman. TeleCayman also sought an order expediting proceedings and an award of costs. TeleCayman served Cable and Wireless (Cayman Islands) Limited (“C&W”) and Digicel Cayman Limited (“Digicel”).
2. TeleCayman submitted in its application that the current rate, contained in the interconnection agreement with C&W, dated 27 July 2004, was driven by corollary issues, and was not cost-oriented as required by the ICTA Law. The agreement specifies that the current rate is an interim rate, pending a determination by the Authority of a final rate, which is to be applied retrospectively.
3. TeleCayman stated that it would take considerable time and resources to develop an understanding of the costs involved for each telecommunications company in Cayman. TeleCayman proposed, as a more expeditious alternative, that the interim rate be the lower of the two current rates employed by C&W and Digicel for terminating in the USA with Sprint and MCI. TeleCayman suggested that, after a period of six months, the Authority could review the success of this approach and issue a decision determining the final rate.

Process

4. On 27 September 2005, the Authority called for answers from the named respondents on the issue of an expedited process, due 30 September 2005, and accorded a right of reply to TeleCayman to any such answer by 4 October 2005. Digicel opposed the expedited process, noting that the twenty day period specified in the regulations is already a very short period in which to make submissions.
5. C&W also opposed the expedited process, and argued that TeleCayman ought to have included as a respondent Wireless Ventures (Cayman Islands) Ltd (Cingular Wireless), as it was one of the signatories to the agreement on rates of 27 July 2004. C&W suggested the addition of other telecommunications licensees, as they would also have an interest in this matter.
6. On 5 October 2005, TeleCayman replied to C&W, requesting the joining of Cingular Wireless to the proceedings, and also copied WestTel Ltd as a party which may wish to participate in the proceeding.
7. On 6 October 2005, the ICTA refused the request by TeleCayman for an order expediting the proceedings. The Authority noted that no reasons had been advanced for expediting the process, the Regulations are of recent vintage, and the time frame in the Regulations of twenty days is, as noted by the named respondents C&W and Digicel, quite tight already, especially for a proceeding of this depth and complexity. The Authority noted that the applicant did not file a reply to the answer of the named respondents, although invited to do so.
8. At the same time, TeleCayman was requested to serve the remaining telecommunications licensees, E-Technologies Cayman Islands Ltd, Blue Sky Wireless Ltd and Infinity Broadband Ltd, for the participation of all licensees might be of assistance to the Authority in making a determination in this proceeding. All were accorded the opportunity to file answers to the substance of the application by 27 October 2005, and TeleCayman was accorded a right of reply, to 7 November 2005.

Answers

9. On 27 October 2005, C&W and Digicel responded to the application, and opposed changing the rate. Digicel argued that TeleCayman has not adduced evidence that the current rate is not cost-oriented and that, in fact, the current rate is in line with costs filed by Digicel in confidence with the Authority. Digicel and C&W both argued that the FCC benchmark for international calls in all probability dictates that the rate for interconnection to the USA, favoured by TeleCayman for application to Cayman, is substantially below cost.

Reply

10. On 7 November 2005, TeleCayman replied that the Authority has an obligation to adhere to the requirement that mobile termination rates be cost-oriented.

TeleCayman argued that the US termination rates it advocates for Cayman must be cost-oriented, otherwise other services would be cross-subsidizing mobile termination rates for US carriers. Finally TeleCayman submitted that such an interim order could be put in place pending a full cost analysis of licensees in Cayman.

Authority Analysis and Determination

11. The Authority accepts the argument of the respondents that a policy to reduce out payments from the USA may indeed have been a factor in the determination of the American termination rates. The Authority has before it no evidence to suggest that these rates were determined with reference to appropriate costs.
12. In addition, the Authority is of the view that complex telecommunications commercial arrangements often tend to include a series of tradeoffs and may be subject to incentives that are difficult for the outsider to ascertain.
13. Accordingly, the Authority denies the application to replace the current negotiated rate in Cayman with the rate recommended by TeleCayman. Such a substitution, in the view of the Authority, would not substantially increase the probability that the rate would accurately reflect costs in Cayman.
14. The Authority notes that the review of the costing methodology it has selected, FLLRIC, is in progress in the context of a separate proceeding. After the establishment of this costing methodology, the Authority will employ it to determine the appropriate rate. The Authority currently anticipates that the FLLRIC costing methodology will be finalised during the third quarter of 2006.
15. It is of significance to the Authority that the current mobile termination rate between C&W and TeleCayman is an interim rate, pending a determination by the Authority of a final rate, to be applied retrospectively. Accordingly, the issue before the Authority becomes merely one of cash flow. The final rate could be higher or lower than the current interim rate, but in either case the parties will, in the end, be put substantially in the same position that they would have enjoyed, had the appropriate rate been prescribed at the outset.

Costs

16. Finally, there remains the matter of costs. TeleCayman has paid the non-refundable processing fee of \$750, requesting its return should a cost order be favourable to TeleCayman. Digicel has requested an award of costs against TeleCayman to cover the costs of the Digicel response.
17. The processing fee constitutes a partial recovery of the costs of the Authority associated with processing the TeleCayman application. The Authority does not view the unsuccessful TeleCayman application as meriting an assessment of this fee against any or all of the respondents.

18. The Authority has, nonetheless, come to the view that the matter raised by TeleCayman is of public interest, and merited airing in a public forum. Accordingly, the Authority has determined that no award should be made against TeleCayman to cover the costs of the Digicel response.