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November 17, 2006

Mr. David Archbold
Managing Director
Information and Communication Technology Authority
PO Box 2502
3rd Floor Alissta Towers
Grand Cayman, KY1-1104

Dear Mr. Archbold,

Re: Cable & Wireless Requests of 25 October 2006

We write further to C&W's two letters to the ICTA of 7 November 2006. Although C&W has written to you unprompted and at length, its letters have added nothing to the position as it stood following C&W's two letters of 25 October, our response of 31 October and C&W's two replies of 2 November. We have no wish to fall into the same trap of repetition for repetition's sake, but wanted to point out why C&W's extensive correspondence simply misses the point. We trust that the ICTA can now reach a decision on C&W's requests.

Determination Request

Although we explained in our letter of 31 October that the request was invalid because it ignored the grievance procedure in Regulation 3 of the Dispute Resolution Regulations (which the ICTA and C&W itself have correctly asserted was mandatory), C&W does not mention Regulation 3 in its 9 page letter. It repeatedly asserts (albeit wrongly) that the ICTA is obliged to resolve disputes validly referred to it, but does not and cannot deal with the fact that the dispute was *not* validly referred in the present case (having ignored Regulations 3 and 4). Contrary to C&W's apparent belief that it is the regulator and can determine its own dispute resolution procedure, it must follow the Regulation 3 procedure if it is to engage the ICTA. That is the end of this matter.

Although not necessary for the present purposes given the invalidity of the request, we went on to explain in our previous letter why the dispute would not be appropriate for ICTA dispute resolution even if C&W were to start the process again (in a perhaps vain attempt to stop the parties and the ICTA having to go through this process again). The key point is that no matter how many legislative provisions and regulations that C&W cites, nor how cunningly it words its 'specific determinations' to make this appear like a pressing market issue, this is a private contractual dispute between C&W and Digicel in which C&W is attempting to evade its contractual obligations to Digicel. It cannot justify an ICTA process.

Dealing first with C&W's bizarre attempt to suggest that the ICTA is obliged to resolve all disputes between licensees regarding interconnection. This takes up most of C&W's latest letter and yet, as with the validity issue, it doesn't deal with the one regulation cited by us in this respect in our 31 October letter and which is inconsistent with this argument: Regulation 10 of the Dispute Resolution Regulations.

The ICTA may decline jurisdiction if the request is vexatious, an abuse of process, governed by the terms and conditions of an existing contract, the subject matter of current litigation between the parties, etc. As such, the ICTA is not under an obligation to accept jurisdiction over all disputes.

Indeed, this is one such instance, being a private contractual dispute, where the ICTA should decline jurisdiction pursuant to Regulation 10 if C&W re-starts the process.

The parties agreed the CI$0.1845 MTR in July 2004 during negotiations of which the ICTA was appraised. Agreeing an MTR rather than having the ICTA impose it is, of course, the primary focus of the legislation (sections 66(5) of the Law and Regulation 6(b) of the Interconnection Regulations 2003). The rate was negotiated by reference to costs and was reasonable. Once the relevant agreement had been filed and accepted by the ICTA this became a private contractual matter, the parties becoming obliged as a matter of contract to pay the agreed MTR. All the parties to the agreement complied with the contractual obligation for over 2 years – as they were required to do. Indeed, C&W led the defence of the agreed MTR in 3 sets of ICTA proceedings brought by TeleCayman.

The present dispute simply concerns the contractual obligation to pay the agreed rate which C&W is threatening to breach without any right to do so. Whilst C&W is now dressing up its objections to the MTR by reference to statutory provisions and public policy arguments, and is suggesting in the press that it is acting on behalf of the consumer (various press reporting on 27 October 2006), all it is actually seeking to do is to evade a contractual position because it is the net payer (by reason of traffic flows) and therefore has a financial incentive (albeit no right) to resile from this. Just because the MTR was negotiated and agreed pursuant to a procedure required by statute, does not make this a public policy or regulatory issue.

The fact that this is a contractual dispute was apparent from the argument C&W initially advanced in an attempt to evade its contractual obligation. In its letter to us of 20 September 2006 it argued that the Settlement Agreement had not been expressly approved by the ICTA on filing (even though such approval was not required as a matter of law) and that the agreement therefore became null and void in accordance with its express terms. As a result it sought to apply, as a matter of contract, the interim MTR of CI$0.1555 in the Interconnection Agreement (which it asserted the Settlement Agreement had failed to amend) and a contractual accounting between the parties based on this 'new' contractual rate. When we pointed out that this argument did not work and it had no other respectable contractual arguments to support its position, it started to characterise the dispute as one of public policy (which it obviously is not) to achieve the same end.

Accordingly, this is a private matter between the parties and one that we are pursuing through the dispute resolution mechanism in Section 34 of our Interconnection Agreement with C&W. If C&W does decide to pursue a valid determination request regardless of this, Digicel will argue that the ICTA should decline it for these reasons (i.e. in accordance with Regulations 10(i) and (j)), but also because it is vexatious and an abuse of process (Regulations 10(c) and (d)) given C&W's apparent intent to embroil the ICTA in the private dispute to advance its financial interests under the contract.

Application to Determine a new interim MTR

Again, C&W cites numerous statutory and regulatory provisions in an apparent attempt to confuse the issue and to attempt to breathe life into a procedure which has no legal basis and is, frankly, absurd.

The lack of legal substance to the generalised request is evident from a review of what C&W is asking for in its two letters of 25 October. First, in the determination request it asks for a determination that CI$0.1845 is not cost-oriented; that CI$0.11 is cost-oriented; and, that all mobile ICT Licensees should pay CI$0.11 (i.e. a CI$0.11 pm MTR for all). In the generalised request it also asks for the application of the CI$0.11 pm MTR to all "*capping the MTR in the Cayman Islands at CI$0.11 per minute, with reference to C&W's adjusted FAC model… would bring MTRs more in line with the costs of mobile termination*" (page 3) (even though C&W's FAC model was deemed "not fit for purpose" in 2004 by independent consultants Ovum for determining cost-oriented rates and was further found to be riddled with misallocations).

In summary, and as explained at more length in our letter of 31 October, this generalised request adds nothing to the determination request. It is not surprising therefore that it is devoid of legal substance given that C&W is simply replicating the only suitable (albeit inappropriate) legal procedure. To the extent that C&W does have an issue in respect of the contractually agreed MTR, it should pursue it through the procedure set out in Regulations 3 to 5 of the Dispute Resolution Regulations. We respectfully urge the ICTA, should C&W pursue this course, to decline C&W's request for the ICTA to intervene in a private dispute.

Finally, the absurdity of a generalised request in the present situation is readily apparent if one considers its practical effect.

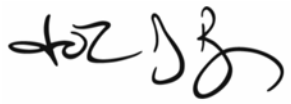
The CI$0.1845 per minute MTR, which C&W has now decided to complain about (despite having negotiated it, invoiced and paid it for more than 2 years), was specifically agreed so that it would apply in the period until the FLLRIC model was finalised. Since then, substantial resources of the ICT licensees and the ICTA have been utilised to develop and debate the FLLRIC model (as required by C&W's licence and the Interconnection Regulations).

To require these parties (including the Cayman people funding the ICTA) to incur yet more costs preparing, reviewing and discussing submissions in relation to a new *interim* rate when the FLLRIC model is nearing completion and when the previously negotiated CI$0.1845 MTR was specifically agreed to apply for this period and has been so applied for years, would be a gross waste of money. This is particularly the case when the 'new interim rate' reached at the end of the proposed time-consuming and expensive process would only apply for a matter of months, i.e. until the FLLRIC model was finalised.

Further, forcing the parties and the ICTA to engage in a new interim process can only divert resources and attention from the FLLRIC model – the permanent solution envisaged by the regulations – which is likely to further delay an already overdue process.

We hope that the ICTA can now rule on the invalid determination request and absurd request for the generalised market review without any additional correspondence seeking to further complicate this straight-forward issue.

Yours faithfully,



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