

# Hello.

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# LIME

January 11, 2010

Mr. David Archbold  
Managing Director  
Information, Communication & Technology Authority  
P.O. Box 2502  
3<sup>rd</sup> Floor Alissta Towers  
Grand Cayman

Dear Mr. Archold,

**Re: Digicel/LIME Interconnection Agreement Dispute – LIME Response to Digicel Determination Request**

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LIME hereby submits for the consideration of the Authority its response to Determination Request filed by Digicel (Cayman) Limited on December 11, 2009, and Supplemental Submission, filed December 22, 2009.

LIME requests, in accordance with the Information and Communications Technology Authority (Confidentiality) Regulations, that certain information submitted in paragraphs 32 and 33 of its response, be treated as confidential on the basis that such information is commercially sensitive, as it relates to interconnect traffic volumes and corresponding financial information.

To that end, LIME submits herewith a redacted version of its Response, in which the confidential information is replaced with “###”.

LIME anticipates the Authority's prompt consideration of the disputes before it, and stands ready to provide any additional information that the Authority may require.

Yours sincerely,

'Signed'

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**Anthony Ritch**  
**Country Manager**

Copy to: Victor Corcoran, CEO, Digicel (Cayman) Limited  
Michael Edenholm, CEO, Westel Limited  
Richard Brazeau, President and CFO, Telecayman Limited

**RESPONSE TO DETERMINATION REQUEST  
TO THE INFORMATION COMMUNICATION AND TECHNOLOGY AUTHORITY**

**IN THE MATTER OF** section 67 of the Information and Communications Technology Authority Law (2006 Revision) (the Law) and Regulations 3 and 5 of the Information and Communications Technology Authority (Dispute Resolution) Regulations 2003 (the Regulations)

**AND**

**IN THE MATTER OF** a dispute (No.1) over whether any rates agreed under the Imputation Agreement dated July 27<sup>th</sup> 2004 between LIME, Wireless Ventures and Digicel (Cayman) Limited continues to apply to any new Interconnect Agreement between LIME and Digicel (Cayman) Limited or if it does not, whether a new Glide Path should apply to any subsequent interconnection rates agreed by or imposed on LIME and Digicel (Cayman) Limited under the Law.

**AND**

**IN THE MATTER OF** a dispute (No. 2) over (a) whether LIME is required under the Law to provide a Direct Mobile to Mobile Interconnection with Digicel (Cayman) Limited as requested by Digicel (Cayman) Limited from as early as January 2009 before the expiration of the Interconnection Agreement dated January 2005 and (b) on what terms and (c) whether LIME is entitled to levy a charge (the transit fee) for Digicel calls to traverse LIME's PSTN network until such time as direct mobile to mobile

interconnect is provided and if so how should such transit fee be determined.

**AND**

**IN THE MATTER OF** a dispute (No. 3) over whether Digicel (Cayman) Limited being a non-dominant operator has an absolute obligation (similar to what C&W has following Annex 5 sections 64ff in its License) to offer LIME any underlying interconnect service necessary to provide any new retail services it introduces in the market.

**AND**

**IN THE MATTER OF** a dispute (No. 4) over what Fixed Termination Rates should be charged by LIME for set up and per minute fees and how they should be determined.

**AND**

**IN THE MATTER OF** a dispute (No. 5) over what Transit Rates should be charged by LIME when transiting a call via its fixed network to a 3<sup>rd</sup> party operator or its own mobile network for set up and per minute fees and how should they be determined.

**AND**

**IN THE MATTER OF** a dispute (No. 6) over whether LIME is entitled under the Law to charge different Fixed to Mobile termination rates to the operators in the Cayman market and whether those rates can differ from the rates LIME charges to terminate fixed calls on its own mobile network.

**BETWEEN**

**DIGICEL (CAYMAN) LIMITED  
P.O. BOX 700  
GRAND CAYMAN KY1-1107  
CAYMAN ISLANDS**

**AND**

**CABLE AND WIRELESS (CAYMAN  
ISLANDS) LIMITED  
P.O. BOX 293  
GRAND CAYMAN KY1-1104  
CAYMAN ISLANDS**

Cable and Wireless (Cayman Islands) Limited, trading as "LIME" ("**LIME**") hereby responds to the claims as set out by Digicel (Cayman) Limited ("**Digicel**") in the Determination Request submitted December 11, 2009 and Supplement to that Request dated December 22, 2009. Failure or omission to respond specifically to any allegation or suggestion made by Digicel does not constitute concurrence with Digicel's position, and LIME reserves the right to make further comments/responses to any issues raised:

1. In respect of paragraph 1, LIME agrees that Digicel and LIME entered into an Interconnection Agreement dated January 29, 2004 which expired on January 28, 2009, and which in clause 2.2 provides that "in the event that the [5 year] period set out in Clause 2.1 expires and the Parties have not concluded an agreement replacing this Agreement, the terms and conditions of this Agreement shall continue in full force and effect until such time as a replacement agreement is negotiated and approved, provided however that, neither party shall be obliged to continue to provide service if no agreement is reached and approved within 6 months of the conclusion of the term referenced in Clause 2.1".
2. Further in respect of paragraph 1, contrary to Digicel's assertion that LIME has threatened to terminate interconnection facilities, LIME's letter of November 27, 2009 clearly indicates that LIME would continue to offer interconnection services, and sets out the price and terms on which it is prepared to do so in the absence of a subsisting agreement between the Parties and until such time as the disputed issues between the Parties have been resolved. The implementation of the new agreed rate and the interim

utilization of the terms and conditions contained in the draft agreement do not amount to a denial or disruption of service to Digicel.

3. In respect of paragraph 2, LIME agrees that the Parties have engaged in good faith negotiations, and that the proposed Glide Path, the obligation to provide underlying interconnect services necessary for the provision of new retail services, rates for fixed termination and transit services, and the proposed restriction of LIME's ability to set its own retail rates are in issue.
4. However, LIME submits that Direct Mobile to Mobile Interconnection is a matter which has not been negotiated fully by the parties, as required by Regulation 3 of the *Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003* (the "**Dispute Resolution Regulations**"), and in respect of which the intervention of the Information and Communications Technology Authority (the "**Authority**") at this time would be premature.
5. LIME reiterates that its letter of November 27, 2009 does not in fact pose an imminent danger to the continuity of Digicel's services to the Caymanian public.
6. LIME joins Digicel in urging upon the Authority the need to expeditiously arrive at a determination, but vehemently denies the allegation that LIME has no interest in bringing the disputes to the attention of the Authority, and in fact asserts that a Determination Request, the contents of which have now been incorporated into the current response, was being prepared for submission to the Authority at the time when the Digicel's Determination Request was served.
7. LIME respectfully submits that any interim solution which serves to delay the implementation of more cost-oriented rates is not in the best interests of Cayman's consumers and defeats the objectives of liberalization. It is in Digicel's interest to postpone mobile termination rate reductions for the longest possible period. Consequently, retention of the existing rates and terms and conditions for the duration of the Authority's consideration of the

dispute without the possibility of retroactive implementation of new rates potentially would have the impact of facilitating such delay.

8. As regards paragraphs 3 and 4, LIME takes no issue with the negotiation correspondence attached to Digicel's Determination Request as Annex 1, nor with Digicel's indication that negotiation meetings were in fact held on during the period July to September.
9. LIME agrees that having been presented with LIME's standard interconnection agreement, Digicel raised in excess of 150 issues to be negotiated, and that only the issues mentioned in paragraph 3 above remain unresolved in respect of the conclusion of negotiation of the terms of the Interconnection Agreement.

#### **Dispute No. 1 (Glide Path for MTR)**

10. LIME agrees that the parties have agreed a new mobile termination rate ("**MTR**") under the PLMN Terminating Access Service of CI\$0.08965 per 60 seconds in place of the CI\$0.1845 per 60 seconds currently charged. The parties disagree on whether this rate ought to be implemented now or in thirty months.

#### *Glide Path Proposal*

11. LIME opposes the introduction of a "Glide Path", and submits that the goal of implementation of cost-oriented rates pursuant to the Law and the Regulations is not in keeping with a thirty-month delay for implementation of the agreed MTR of CI\$ 0.08965 per 60 s, and that such a delay is not in the best interest of customers, and runs counter to the objectives of liberalization.
12. As a company experienced in business in general and telecommunications in particular, Digicel ought to plan with sufficient flexibility that it avoids putting itself in the position of planning for a guaranteed return, particularly in circumstances where the MTR reduction was foreseen, or ought to have been foreseen, years in advance, and should have had in place plans to offset the so-called "waterbed effect" of MTR reduction (for the avoidance of doubt, LIME

disputes that any such "waterbed effect" exists). The FLLRIC rates were contemplated by the Parties for implementation in 2006, and in any event Digicel knew the now-expired 2004 Interconnection Agreement (and the rates it contained) would be expiring in 2009 and would therefore be renegotiated. There should, in 2010, be no further need to introduce ameliorating remedies, as unjustified revenue streams at the higher MTR from 2006 to 2009 should more than compensate for the revenue reduction today.

13. As regards paragraph 8 of the determination request, LIME is pleased that Digicel is mindful of the wording of the *Information and Communications Technology Authority Law* (the "**Law**") as it relates to interconnection rates. The Law requires interconnection rates to be cost-oriented. A thirty-month delay from the current excessive rates to more cost-oriented ones does not comply with that requirement. In keeping with its mandate to uphold the provisions of the Law, the Authority therefore ought not to take a position which dilutes the requirements of the statute under which it is constituted.

14. The starting level of rates where a glide path has been used to facilitate reductions is an important consideration in the question of whether one ought to be used in this case. In the case of ECTEL, the phased reduction in MTRs to an average rate of EC\$ 0.2512 on April 1, 2011, was started by a single sharp reduction in 2009 from EC\$ 0.61 (or EC\$ 0.55, depending on the country and on whether the call originated on a mobile network) to EC\$ 0.369. This contrasts sharply with Digicel's proposal of reducing the MTR in equal increments. LIME also notes that ECTEL proposed that the reductions take place over a two-year period, not the thirty months proposed by Digicel here in the Cayman Islands. Even if the Authority were to take the position (which LIME maintains it should not), that the precedent of reductions in ECTEL ought to be followed, at the very least, the initial reduction ought properly to bring the rates which are currently excessive, when compared with rates in other countries, into a range that is more in keeping with the target cost-oriented rate.



15. The telecommunications markets of the European Union differ significantly from the market in the Cayman Islands. The existence of glide paths in some countries of the EU is an inadequate basis on which to impose a glide path in the Cayman Islands, specifically having regard to the circumstances surrounding the current rates, the legislation in force here, and the significant time that has elapsed since the reduction in MTRs was first contemplated.
16. Not only has Digicel supported the fact that a lower rate is more cost-oriented than the current MTR and therefore in keeping with the objectives of the *Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations 2003* (the "**Interconnection Regulations**"), but it has expressly stated in its 10 August 2009 response to the Authority's Public Consultation on FLLRIC Implementation (CD 2009-1, issued on January 15, 2009) that, based on its own analysis and that of its external consultants, an MTR of CI\$0.0929 was arrived at using a modified version of the 3G mobile FLLRIC model. Digicel's letter to the Authority dated 10 August 2009 together with its attachment from Digicel's external consultant is attached hereto as **Exhibit 1**.
17. Note that it is not entirely clear what modifications to the model or inputs may have been made by Digicel in arriving at that figure of CI\$ 0.0929. In addition, the CD 2009-1 consultation is still ongoing. As a result, the foregoing comments regarding Digicel's figure should not be taken as acceptance by LIME of Digicel's August 10, 2009 submission, but as an indication of Digicel's acceptance that the cost oriented rate is significantly lower than the current MTR.
18. Finally, Digicel states in its supplemental submission that it was operating on the assumption that there would be a glide path based on the July 27, 2004, Settlement Agreement among LIME, Digicel and Wireless Ventures (Cayman Islands) Limited. Based on the history of that agreement, and in particular on the fact that LIME has stated on record on numerous occasions (including in particular in 2006 and 2007) that the agreement was no longer in force, it would be

irresponsible and unreasonable of Digicel to assume that there would be a glide path after the expiration of the now-expired Interconnection Agreement or that there would be no sharp reduction in the MTR. Further, if LIME's position had not been clear before, LIME's position on the glide path during the negotiations leading to this dispute was clear, and Digicel could not have had any legitimate expectations that the parties had "agreed" to a glide path.

#### *Digicel's Efficiency Arguments*

19. On page 4 of the supplemental submission, Digicel has put forward the view that glide paths improve efficiency. However, it is not the glide path itself that encourages efficiency, but the more cost-oriented rates themselves. An MTR that remains well in excess of costs will not encourage efficiency, and the glide path being proposed by Digicel, which would defer for thirty months the implementation of a more cost-oriented rate, will only further delay achieving any efficiencies.

20. In a market such as the Cayman Islands where the MTR is exorbitant, where Digicel is currently generating excessive profits from that MTR, and where the target is a cost-oriented rate, LIME submits that the appropriate method of improving efficiency is to set a more cost-oriented rate, which would then force operators to become more efficient.

#### *Impact on Retail Markets*

21. Digicel has proposed in its December 22, 2009, supplemental submission, theoretical support for its position that a glide path is necessary for transition to the agreed MTR. In particular, Digicel's suggestion of a "waterbed effect" and its threat of increased retail prices and other "consequences" are indicative of Digicel's resistance to fair competition.

22. LIME notes that Digicel admits at page 10 of its supplemental submission that these "consequences'" are not real, but only "the accepted ones that academic theory predicts". There appears, however, not to be any evidence that theory is reflected in reality. In

other markets where Caribbean MTRs have been reduced, for example, Turks & Caicos, Anguilla and the ECTEL markets, the threatened consequences have not materialized.

23. Digicel seeks to present itself as a new entrant in the Cayman Islands market. After more than five and a half years, and as a company with more or less half of the mobile market share in the Cayman Islands, there is no support for any suggestion that Digicel qualifies as a small new entrant in need of special subsidies (for the avoidance of doubt, LIME does not believe in any event that small new entrants require special subsidies in the form of above-cost call termination charges).

24. LIME submits that Digicel's interest in retaining an excessive MTR for as long a period as possible is in fact motivated by a desire to compete unfairly in the fixed market. LIME is aware that Digicel is offering its customers a price of CI\$ 0.15 per minute for "on-net" fixed-to-mobile calling (that is, for calls from Digicel's fixed services to Digicel's own mobile network). This price is clearly below the level of the MTR, and would be for some time under Digicel's glide path proposal. LIME is unable to respond competitively to this price, and lower its own on-net fixed-to-mobile calling prices,<sup>1</sup> because the imputation test imposed on it by its ICT Licence forces it to base its retail fixed-to-mobile price on the MTR<sup>2</sup>. When the MTR is well above cost, the ICT Licence forces LIME's retail prices up well above cost. The other fixed operators in the Cayman Islands are similarly disadvantaged, as all of their fixed-to-mobile calling services are by definition "off-net" and must be priced high enough to cover the MTR. As a result, they too cannot compete with Digicel's price for on-net fixed-to-mobile calling services. An excessive MTR would give Digicel an unfair competitive

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<sup>1</sup> Digicel attempts to confuse the issues by suggesting that LIME would not adjust retail rates in response to changes to the underlying wholesale rates. This is misleading at best. Digicel is well aware that, in St Vincent and the Grenadines, LIME lowered both its fixed-to-mobile rates and its mobile-to-mobile prices following reductions to the MTR in that country, whereas Digicel chose not to adjust its prices.

<sup>2</sup> LIME's request for a change in the imputation test methodology, was put forward to the Authority in letter dated March 6, 2009, to which no response has been received.

advantage<sup>3</sup> in the Cayman Islands, no doubt a key driver behind Digicel's support for a glide path.

*The 2004 Settlement Agreement*

25. Digicel refers extensively in its submissions to the July 27, 2004 Settlement Agreement, referred to by Digicel as the "Imputation Agreement". LIME submits that this agreement is no longer in force. That agreement was made in July 2004 between Cable and Wireless (Cayman Islands) Limited, Wireless Ventures (Cayman Islands) Limited and Digicel Cayman Limited, and was intended to govern "(a) the proper application of imputation tests to be used for the evaluation of C&W's retail mobile rates by the Authority and (b) the final mobile termination rates to be put into place as part of the Parties' various interconnection agreements;" Such an agreement was not and cannot have been intended to be of perpetual effect. Further, this agreement cannot therefore be properly said to stand on its own, and LIME submits that it cannot be said to survive the expiration of the previous interconnection agreement.

26. As set out in clause 4 of that agreement, entitled "FLLRIC", the Parties "...acknowledge... that... the earliest feasible date by which a FLLRIC model could be completed is... 30 June 2006", agree to "...assist the Authority in its completion of a FLLRIC model, *within that time-frame...*" (emphasis supplied). That projected date for completion of the model was clearly fundamental to the parties' mutual expectations, and heavy reliance is placed on that date throughout the agreement. Consequently, the Parties contemplated a transitional period of 30 months from 30 June 2006 (clause 6) of the rates from \$0.1845 to the FLLRIC-derived rate. Had the Forward-Looking Long-Run Incremental Cost ("**FLLRIC**") model been completed at that time, or even within a reasonable time thereafter, the 30-month proposed period would now have expired, and the rates would now be the FLLRIC rates arrived at utilizing the model.

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<sup>3</sup> The unfair advantage comes from both the ability to undercut its competitors' prices as well as from the implicit subsidy it is receiving from the competing fixed networks. Mobile to mobile traffic is more or less balanced, meaning the net subsidy to Digicel is coming from fixed subscribers (LIME's as well as those of TeleCayman Limited and WestTel Limited. These cross-subsidies are unfair and significantly damaging to the market.

27. The MTR contained in the Settlement Agreement was never intended to be a final MTR applicable for a lengthy and indeterminate period of time. Rather, it was intended to be a short- to medium-term measure only, pending completion of the FLLRIC process. At the time when the Settlement Agreement was entered into, the 30-month transitional period was identified because its expiration in December 2008/January 2009 would coincide with the expiration of the five year term of the Interconnection Agreement.
28. More than three and a half years having passed since the originally-anticipated introduction of FLLRIC, the need for a gradual reduction of the current excessive MTR has effectively been eliminated.
29. The 2004 Agreement, having been entered into in contemplation of the introduction of LRIC in 2006, the performance of that agreement in 2010 would be radically different from what was undertaken by the parties to the Settlement Agreement at the time when it was entered into. LIME therefore submits that the Settlement Agreement has been discharged by frustration, as the unexpected delay in the completion of the FLLRIC model goes far beyond the parties' contemplation.
30. Alternatively, even if the Authority were to disagree with LIME's submission that the Settlement Agreement has been frustrated, LIME further submits that it was inexorably linked to the now-expired Interconnection Agreement and should be treated on that basis as being of no further effect. By letter dated 29 July 2004, a copy of which is attached hereto as **Exhibit 2** the Authority indicated that it "considers the whole Agreement is an integral part of [the] interconnection agreements". In keeping with its original stated position, therefore, the Authority ought to treat the agreement, as having no further existence beyond the expiration of the Interconnection Agreement.

*The Authority's Interim Determination*

31. LIME refers to the Authority's determination on interim rates set out in letter dated December 24, 2009, which maintains the MTR at its current level until such time as the Authority has determined the disputes submitted for its consideration. LIME reiterates its position that a glide path ought not to be imposed, and asks the Authority to determine, in keeping with the Law and Regulations, that the agreed rate of CI\$ 0.08965 per 60 s should be implemented with effect from December 27, 2009.

*Financial Impact (Confidential)*

32. The immediate implementation of the agreed rate of CI\$ 0.08965 would not have the kind of material financial impact on either LIME or Digicel that would necessitate a lengthy period of adjustment. The table below shows the estimated net impact on LIME, on an annualized basis, of a 9.485 cent reduction of the MTR (from CI\$ 0.1845 to CI\$ 0.08965) based on rounded figures of traffic received or sent by LIME in the last 12 months:

<b>Reduced In-payments to LIME</b>				
From	To	Minutes	In-Payment	
Digicel	LIME Mobile	###	###	
TeleCayman	LIME Mobile	###	###	
WestTel	LIME Mobile	###	###	
Subtotal			###	
<b>Reduced Out-payments from LIME</b>				
From	To	Minutes	Out-Payment	
LIME Fixed	Digicel Mobile	###	###	
LIME Mobile	Digicel Mobile	###	###	
Subtotal			###	
<b>Net Impact on LIME</b>				<b>CI\$ ###</b>

33. Based on the above, LIME will save only CI\$ ### per year. Given the size of the LIME and Digicel mobile operations in the Cayman Islands, this is not the sort of impact that could be characterized as a windfall or that would cause financial shock in the absence of a thirty month period of adjustment.
34. LIME submits that, in light of these figures, Digicel is not truly concerned about the financial impact of the MTR reduction. Digicel's primary concern is to maintain the unfair competitive advantage that it maintains in the fixed market, as described above. In light of the Authority's statutory mandate to promote competition in the telecommunications sector, it would be inappropriate for the Authority to favour one fixed operator over all of the others.

#### **Dispute No. 2 (Direct Mobile to Mobile Interconnection)**

35. LIME reiterates its position that this matter is not properly before the Authority. No negotiations can be said to have taken place between the parties in respect of direct Mobile to Mobile interconnection ("M2M"). This issue therefore fails on a preliminary point to meet the criteria required for the submission of a dispute in accordance with Regulation 3 of the Dispute Resolution Regulations.
36. As regards paragraph 10, LIME has no record of a request for M2M dating back to January 2009. The first informal request on LIME's records is contained in e-mail from LIME to Digicel dated March 3, 2009, and discussion following, a copy of which is attached hereto as **Exhibit 3**.
37. Section 65 of the Law requires that "[a] licensee who wishes to make any interconnection shall make his request for interconnection with another licensee in writing". Regulation 8(2) of the Interconnection Regulations provides that a request (defined in section 2 as a formal application for interconnection of infrastructure sharing) should contain the following information: (a) the reference number of the requestor's ICT licence; (b) a technical description of the requested services; (c) locations;

(d) dates required; and (e) projected quantities to be ordered with a period of 3 years forecast.

38. Notwithstanding that this request fails to comply with the Interconnection Regulations, LIME in fact took steps towards the preparation of a proposal in response thereto. The parties then entered into negotiations which, if brought successfully to closure would have addressed Digicel's requirement for the service. Those discussions having failed, as alluded to in e-mails dated September 8, 2009, attached hereto as **Exhibit 4**, LIME requested from Digicel a forecast, in accordance with the abovementioned Regulation 8(2), which was needed for completion of the processing of the abovementioned informal request. LIME reiterates, despite Digicel's response, that it has no record of a request, formal or otherwise, made in January.

39. In any event, the requested forecast was received by LIME on September 15, 2009, and the proposal, as mentioned in Digicel's determination request, was submitted to Digicel on October 26, 2009, within the timeframes contemplated by the Interconnection Regulations.

40. LIME having now presented that proposal, the Parties ought properly to discuss its contents and Digicel's issues in a commercial forum. LIME therefore asks the Authority to exercise its discretion in accordance with Regulation 8 of the Dispute Resolution Regulations, to direct the parties to commence or continue reasonable efforts to resolve the dispute.

41. Having regard to paragraph 10 (i), the Law is clear that "the cost of making any interconnection to the ICT network of another licensee shall be borne by the licensee requesting the interconnection" (section 68). That section goes on to designate such costs as "accommodation, mechanical and electrical connection and **electronic programming**" (emphasis supplied), and to carve out any loss of business to the interconnection provider as a result of the interconnection.

42. Having regard to paragraph 10 (ii), LIME reiterates the clear statutory position that Digicel



is, by all definitions, the requestor in this case and is therefore obliged to pay the full cost of interconnection. The establishment of bi-directional links in no way diminishes Digicel's role as requestor, and the suggestion that each minute could be considered a request is incompatible with a proper interpretation of the legislation.

43. Notwithstanding, if, having noted LIME's objection, the Authority wishes to proceed to deal with the issue of M2M, LIME's responses to the issues raised the Digicel's determination request are contained in the following paragraphs:

44. First of all, LIME has not in any way refused to provide interconnection between the mobile networks of the parties. As the Authority is aware, interconnection in the Cayman Islands is provided primarily if not exclusively by way of LIME's fixed network (LIME would not be privy to any interconnection between two other ICT Licensees). The transit service, of which Digicel complains, is provided in the transmission of calls across LIME's fixed network to terminate on a mobile network or a third party fixed network.

45. The costs listed in LIME's proposal to Digicel will be incurred by LIME only for the purposes, and only as a result, of M2M implementation. The costs designated as "Billing Upgrade" and "IT Services" are required for the facilitation of interconnect billing, an essential component of M2M. LIME therefore opposes Digicel's submission that the these items ought to be removed, and submits that they are properly presented as the cost of interconnection to be borne by the licensee requesting interconnection in accordance with the legislation.

46. As regards paragraph 10 (ii), the Law and Regulations are both crystal clear:

- Section 68 of the Law provides in plain language for "[t]he cost of making any interconnection to the ICT network of another licensee [to be] borne by the licensee requesting the interconnection

- Regulation 2 of the Interconnection Regulations defines, in equally clear language, the terms "request", "requestor" and "responder" as follows:

"request", means a formal application for interconnection or infrastructure sharing;

"requestor" means a licensee who makes a request for interconnection or infrastructure sharing;

"responder" means a licensee to whom a request for interconnection or infrastructure sharing has been made;

The Interconnection Regulations are expressly structured around these clearly defined terms, making the role of requestor and responder clear in each circumstance.

47. Digicel has put forward the view that, despite the fact that it is the licensee making the request, it should not be considered the requestor. The Authority is being asked, therefore, to disregard the clear words of the statute, and to take the position that because the links provided in response to Digicel's request are bi-directional, LIME becomes a requestor, and that each minute handed over should be treated a separate "request". This view flies in the face of the legislation and should be entirely rejected. Likewise, the "easier alternative" suggested by Digicel is inconsistent with the legislation.

48. As regards paragraph 11, therefore, LIME asks the Authority to reject each of Digicel's requests and to determine instead that Digicel, as the party requesting direct mobile to mobile interconnection is undeniably the requestor as defined in Regulation 2, and obligated to pay all costs associated with such interconnection, and further to approve the inclusion of costs for "Billing Upgrade" and "IT Services" as appropriate costs of interconnection.

49. Exhibit D, presented by Digicel as the proposed cost of M2M interconnection, does not cover the cost of Digicel's request which is by law to be borne by Digicel.

50. In respect of paragraph 12, LIME submits in light of the foregoing that there has not been an inordinate delay, as is the case, for example, Digicel's refusal to provide MMS interconnection from 2006 to present. Digicel has made reference to a March 2008 arbitration in Trinidad and Tobago. What Digicel have failed to disclose to the Authority is that the arbitration panel in that matter in fact found in that case was that the transit charge should not be offered until such time as TSTT had offered an alternative to the transit arrangement, and that "the Panel considers that 30 days would provide adequate time for Digicel to analyse an offer... for a typical direct connection sought by Digicel and accordingly, *in the event that Digicel chooses to continue using the tandem connection after receiving a proposal for such direct connection, the tandem transit rate shall apply from 30 days following the offer for direct connection*"<sup>4</sup>.

51. If the Authority chooses to give weight to the finding of the panel on this issue, it would follow that LIME has already met the requirement of presentation of a proposal to Digicel in respect of the reasonable costs of M2M interconnection, and that Digicel ought to continue to pay the transit charges for the use of the transit service until such time as the parties are able to agree on terms and conditions (and charges) for the service, or until such time as (after negotiation) the parties have properly referred the matter to the Authority as a dispute for resolution. The decision cannot properly be used to support Digicel's proposal that zero transit fees should be applied until the service is up and running. Pages 59-61 of the Panel's decision are attached hereto as **Exhibit 5** for the better information of the Authority.

### **Dispute No. 3 (New Retail Services)**

52. LIME disagrees with Digicel's interpretation of clauses 64-70 of Annex 5 of LIME's July 10, 2003 ICT Licence (the "**Licence**"). LIME must, as stated in paragraph 67, "offer any service to other licensed operators on a wholesale basis **if the Authority has**

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<sup>4</sup> Report and Decision of the Arbitration Panel, Ref. 4/7/06/04 between Digicel (Trinidad and Tobago) Limited and Telecommunications Services of Trinidad and Tobago Limited, March 7, 2008

***issued a written direction requiring C&W to do so*** (emphasis supplied). LIME is prepared to comply with a directive given by the Authority in exercise of its powers, but ought not to be obliged to exceed that obligation.

53. The now-expired Interconnection Agreement contained the clause "Where C&W introduces a new retail service which the Telco may wish to provide to its customers, C&W shall provide any underlying interconnection service necessary to provide that retail service by the date the retail service is first made available to a customer. However, this obligation will only apply where there is objectively verifiable market based demand for the underlying interconnection service." This is a contractual obligation that goes beyond the requirements of the legislation and of LIME's ICT Licence. Given the changes in the market in the more than six years since liberalization LIME is of the view that it is no longer appropriate to deal with Digicel as a new entrant.

54. Further, if there is to be an obligation to provide underlying wholesale services, whether by contract or by licence or by regulation, LIME submits that the obligation ought to be reciprocal. For example, if the now-expired Interconnection Agreement had contained a reciprocal clause, Digicel might have been persuaded to provide LIME with the MMS message termination services that LIME has been unsuccessfully requesting since September 2006.

55. LIME therefore asks the Authority to reject Digicel's request for the inclusion of the asymmetric obligation and to mandate the inclusion of a mutual contractual obligation under the Interconnection Agreement to provide underlying wholesale services. In the alternative, LIME asks that this clause be deleted in its entirety, and that the power to mandate the provision of a wholesale service should rest solely with the Authority.

#### **Dispute No. 4 (Fixed Termination Rate)**

56. LIME submits that the Fixed Termination Rate ("FTR") should remain unchanged. The current FTR is

cost-oriented as determined by the C&W Adjusted Fully Allocated Cost Model, per Regulation 10(2) of the Interconnection Regulations. It would be inappropriate to apply a different rate until a determination is made in FLLRIC proceedings.

57. As regards the last sentence of paragraph 14, LIME submits that the idea that mobile subscribers are effectively subsidizing the fixed network is preposterous, especially given the excessive MTR currently being charged.

#### **Dispute No. 5 (Transit Charge)**

58. LIME submits that the current charge for the transit service should remain unchanged. This charge is based on genuine cost incurred in the provision of the transit service and, as such, is consistent with the Law and Regulations.

59. The transit charge is not a part of the MTR and should not be considered as such. It has long been recognized that transit is a separate service offered by which calls from one network are passed across another to arrive at a destination network. Where this occurs, the party over whose network a call is passed is entitled to charge a transit fee for that service.

60. LIME reiterates its responses to Dispute No. 2 as regards Digicel's submission that transit charges ought to be set at zero until the M2M service is up and running. If the Authority were to so rule, Digicel would have no incentive to negotiate M2M and would be in a position to simply continue using a service for which it is not obliged to pay. This would result in LIME subsidizing Digicel calls to LIME's mobile network, which is contrary to the Law and Regulations.

#### **Dispute No. 6 (Restriction on setting of Retail Rates)**

61. Interconnection is, by its very nature, a wholesale arrangement between licensees. Any attempt to restrict a party's ability to set its own retail rates to its customers ought properly to be outside of the purview of an Interconnection Agreement. LIME

notes that its retail services are already extensively regulated by the terms of the ICT Licence given to LIME. On this basis, LIME is opposed to the inclusion of a clause in the Interconnection Agreement which would serve to restrict LIME's freedom to set its own retail rates within the parameters of the Law, Regulations and Licence.

62. The expired Interconnection Agreement contained the clause "C&W agrees that the retail rates for a Fixed to Mobile Call shall be the same for Calls from C&W PSTN Subscriber Connection to any mobile Service Provider, including C&W mobile". Neither the Act, the Regulations nor LIME's Licence justifies the inclusion of such a clause in the Interconnection Agreement between the parties.

### **Conclusion**

63. LIME therefore requests that the Authority find as follows in respect of the disputes before it:

- (i) That the imposition of a glide path for the implementation of the agreed MTR is not justified by the circumstances of the Cayman Islands telecommunications market, and that the agreed rate of CI\$0.08965 per 60 seconds should be introduced with effect from December 27, 2009.
- (ii) That the Authority's intervention in the issue of direct mobile to mobile interconnection would be premature at this time or, in the alternative, that Digicel, as requestor is obliged to pay the costs associated with its request, as proposed by LIME;
- (iii) That Digicel's proposal of an asymmetric obligation under the Interconnection Agreement for the introduction of new retail services is rejected;
- (iv) That the cost-oriented FTR be maintained at its current rate;
- (v) That the transit charge be maintained at its current rate;
- (vi) That the clause purporting to restrict LIME's ability to set its retail rates ought not to form part of the interconnection agreement.



**Exhibit 1 - Digicel letter to the ICTA dated Aug 10, 2009, and  
attachment from WIK (2 pdf documents)**





The Bigger, Better Network.

Cayman Financial Centre  
36A Dr. Roys Drive  
PO Box 700 GT  
Grand Cayman, Cayman Islands  
Tel: + 1 345 623 3444  
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August 10, 2009

**VIA E-MAIL & COURIER**

Mr. David Archbold  
Managing Director  
Information, Communication & Technology Authority  
P.O. Box 2502, 3<sup>rd</sup> Floor Alissta Towers  
Grand Cayman KY1-1104  
Cayman Islands

Dear Mr. Archbold,

**Re: Public Consultation on FLLRIC Implementation (Ref: CD 2009-1):  
Submission related to any proposed annual adjustments to a FLLRIC  
based MTR**

This letter and the accompanying report by WIK-Consult, represents Digicel's submission related to any proposed annual adjustments to a FLLRIC based MTR. This submission is due today following the grant of an extension by ICTA to the original date which was 7 July 2009.

In order to complete this submission Digicel engaged the services of WIK-Consult which is the consulting arm of the respected German research organisation Wissenschaftliches Institut fuer Kommunikationsdienste (WIK). WIK is one of the World's leading telecommunications and postal cost modelling organisation. They are also highly respected economic consultants whose employees have been long standing advisers to several governments and well known international institutions.

The ICTA will note that some compromises were required in regard to the data inputs as Digicel's system does not provide all the inputs required in the form needed to be inserted in the model. Moreover, while we can obtain a register of prices for 2G equipment Digicel cannot provide this for a 3G network and in the time available WIK could not either. WIK presently has a 2G but not a 3G assets base. The prices for 3G equipment are apparently not yet stable. On WIK's advice we thus accepted the values that were in the model provided to us.

Digicel realises this is not an entirely satisfactory situation but we believe C&W is likely in a similar situation. Perhaps one solution would be to ask Telcordia to assemble a 3G assets price list and allow the parties and their consultants to comment on it.

Digicel notes that values and methods for calculating the values that were ruled upon by ICTA were not changed.

**Directors:** Denis O'Brien (Chairman), Michael Alberga, Leslie Buckley, Conor O'Dea

Page 2

August 10, 2009

Mr. David Archbold

Re: Public Consultation on FLLRIC Implementation (Ref: CD 2009-1):

Submission related to any proposed annual adjustments to a FLLRIC based MTR



The Bigger, Better Network.

Using the model the MTR obtained by WIK-Consult for a hypothetical Digicel 3G network was CI\$ 0.0929 per minute.

Yours truly,

**Digicel (Cayman) Limited**

A handwritten signature in black ink, appearing to read "Victor Corcoran", followed by a long horizontal line.

Victor Corcoran  
Chief Executive Officer

**Directors:** Denis O'Brien (Chairman), Michael Alberga, Leslie Buckley, Conor O'Dea

6 August 2009

### **Comments on the calculation of the cost of termination with the 3G cost model for Digicel Cayman**

Digicel Cayman asked the German consulting firm WIK-Consult to review the model and to adapt it to the situation of Digicel so that it would be able to generate an estimate of Digicel's termination rate.

Concerning the structure of the model and its population with network elements, given the lack of available time, it was not possible to carry out a full review that involved the structure of the network. It appears, however, that in light of Digicel's current 2G network structure, the modeled 3G network would reasonably approximate a 3G network that could be built by Digicel. Similarly, it is difficult for Digicel to gather information on the prices for the facilities and the cost of the equipment which would be required were it to build a 3G network. The review of the prices implemented in the model, however, appear with only a few exceptions reasonable and have thus mostly been retained. This also holds for the lengths of economic life stated for the different types of facilities and equipment. The derivation for annualized capital expenditure (Capex), based on these inputs and the value of the WACC as determined by ICTA have also been left as stated in the model.

The focus of the adaptation lies, on the one hand, on determining Digicel's operating expenditures (Opex) and expenditures for overhead and, on the other hand, on determining the volumes of Digicel's services. Besides Capex, these are the other important inputs into the model to arrive at the per-unit cost of services.

Following the approach that is generally used in WIK-Consult's bottom-up cost models, Opex was calculated as a percentage of the gross investment value of facilities and equipment that, according to the network model, make up the 3G network. The appropriate percentage was determined using information provided by Digicel. Similarly, overhead cost was determined as a mark-up on the total network cost (Capex plus Opex, as derived above). This same approach was accepted by other regulators, in particular the Australian Competition and Consumer Commission. The two main advantages are that: (i) it is based on the performance of several mobile operators and does not suffer from the accusation that existing costs may not be efficient costs, and (ii) no redaction is necessary.

As regards volumes, Digicel's starting point is based on the ICTA's announcement that it is its policy to have three operators providing 3G mobile services on Cayman Islands. Thus, in a forward-looking bottom-up costing exercises, the volume per operator for a three-operator market situation is used to derive the per-minute costs of the various services. These volumes were determined based on Digicel's current annual volumes by scaling them up to reflect total market volumes and by dividing the results by three.

Given the above adaptation, the model calculates a per-minute cost of terminating a call on Digicel's 3G network of CI\$ 0.0929.

**Exhibit 2 - Letter dated Jul 29, 2004 from ICTA to Licensees re:  
Settlement Agreement**



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Fax: (345) 945-8284

Web: [www.icta.ky](http://www.icta.ky)

Information & Communications Technology Authority

ICTA/80/118

29<sup>th</sup> July 2004

Mr. John D. Buckley  
CEO  
Digicel (Cayman) Ltd.  
P.O. Box 700 GT  
Grand Cayman

Mr. Rudy Ebanks  
Vice President, Regulatory and Carrier Relations  
Cable & Wireless (Cayman Islands) Ltd.  
P.O. Box 293 GT  
Grand Cayman

Mr. Raul Nicholson-Coe  
General Manager  
Wireless Ventures (Cayman Islands) Ltd.  
P.O. Box 31235 SMB  
Grand Cayman

Dear Sirs,

**23 July 2004 Agreement between C&W, Digicel and Wireless Ventures ("the Parties"), as modified on 27 July 2004**

The Information and Communications Technology Authority ("the Authority") is in receipt of your jointly signed correspondence of 27 July 2004 regarding the application of imputation tests for the evaluation of C&W's postpaid retail mobile rates and the final mobile termination rates that will form part of your respective interconnection agreements. Receipt is also acknowledged of the final agreement ("the Agreement") which you enclosed.

As noted in your covering letter and the Agreement itself, the various provisions of the Agreement are inseparable. The Authority therefore considers that the whole Agreement is an integral part of your respective interconnection agreements. Accordingly, the Authority accepts the filing of the Agreement, as set out in the ICTA Law and the Interconnection and Infrastructure Sharing Regulations, 2003.

The Authority also notes the Parties' consequent withdrawal of their Mobile Termination Rate Dispute Determination Requests.

On the matter of 30 June 2006 being the earliest feasible date by which a FLLRIC model could be completed, the Authority notes that it is not an unreasonable assumption for the Parties to make. In any event, as the arrangements detailed in Clauses 5 to 7 of the Agreement are contractual matters between the signatories, the Authority's concurrence is unnecessary.

With respect to the application of the imputation test to C&W's postpaid mobile services, the Authority has no objection to the use of the effective rate threshold by the Parties for the purposes stated in the Agreement.

It is assumed that paragraph 5 of your covering letter is intended to be a joint recommendation that C&W is to use the mobile termination rate in the Agreement as its cost of "off-net" mobile termination for the purposes of the postpaid mobile imputation test. The Authority understands from subsequent conversations that "off-net" traffic is C&W's mobile traffic terminating on Digicel's and Wireless Ventures' mobile networks. The Authority notes that the proposal in paragraph 5 is consistent with causal cost principles. The Authority would find the use of such cost inputs to be reasonable.

In Clause 8 of the Agreement, the Parties make various recommendations concerning the imputation test. The Authority has two observations concerning the final paragraph of that Clause. Firstly, the Authority understands from subsequent conversations that the intent of the Parties was that, from 30 June 2006, C&W would use, for C&W mobile-to-own mobile traffic ("C&W on-net mobile") only, a cost of mobile termination that was derived from the FLLRIC Model, regardless of any MTR paid under the Agreement. The Authority is minded to adopt such a proposal provided that at the appropriate time it can be demonstrated there are significant, justifiable cost differences between terminating C&W on-net mobile traffic and terminating off-net traffic; and concerns of competitive equity from the perspective of Licensees that are not signatories to this Agreement are addressed.

Secondly, with respect to the issue of excluding mark-ups for common costs and the costs of interconnection for all types of traffic other than C&W on-net mobile traffic, the Authority in discharging its obligations reserves the right to more fully review the Parties' proposals at the appropriate juncture.

Finally, whilst the Authority is fully supportive of the spirit and intent which led to the Agreement, it cannot, as I am sure you appreciate, be contractually bound by an agreement to which it is not a party, nor can it prejudice or fetter its statutory rights and obligations.

Yours sincerely,

[Signed]

David A. Archbold  
Managing Director

**Exhibit 3 - e-mail trail March 3, 2009**



**[Original document redacted and provided to ICTA only]**

## **Exhibit 4 - e-mail trail September 8, 2009**

**[Original document redacted and provided to ICTA only]**

**Exhibit 5 - extract from TSTT Arbitration Panel decision**

REFERENCE NO: 4/7/06/04

IN THE MATTER OF AN ARBITRATION  
TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO  
SECTION 82 OF THE TELECOMMUNICATIONS ACT 2001

BETWEEN

DIGICEL (TRINIDAD AND TOBAGO) LIMITED  
Complainant

AND

TELECOMMUNICATIONS SERVICES  
OF TRINIDAD AND TOBAGO LIMITED  
Respondent

**Report and Decision  
of the Arbitration Panel**

Arbitration Panel:

Avory Sinanan S.C. (Chairman)  
Robert C. Atkinson  
Donald Bowles

**March 7, 2008**

model has not been subject to the level of scrutiny that would be required to assess the appropriateness of its allocation of costs to the various services and its allocation of common costs. Indeed, the TERA report specifically indicates that there is uncertainty about the treatment of common costs.<sup>111</sup> Accordingly, the Panel must consider other factors including benchmarks and rate relationships. In its finding with respect to Issues 1(a) and (b), above, the Panel found it prudent to establish a higher mobile termination rate and a lower fixed termination rate to address these concerns. Having considered all of the above, the Panel considers that a fixed interconnection rate of 7.0 TT cents to be appropriate. This rate shall be valid until the sooner of: a) the end of the term of the parties' Interconnection Agreement; or, b) the date upon which rates prescribed by the Authority, based on the cost models and cost separations it is developing, become effective.

**C. Transit Rates: Issue 1(d)**

*Issue 1.(d) Subject to the issue outlined from Complaint #2 below, is TSTT entitled to charge Digicel a transit rate and, if so, what is the transit rate to be paid by Digicel to TSTT under the Interconnection Agreement?*

**THE PANEL'S DECISION**

**For the reasons explained below, the Panel has determined that the transit rate should be 0.4 TT cents per minute, billed on a per second basis. This rate shall be valid until the sooner of: a) the end of the term of the parties' Interconnection Agreement; b) the date upon which rates prescribed by the Authority, based on the cost models and cost separations it is developing, become effective. The Panel has also determined that TSTT may not apply this charge to Digicel until Digicel has been offered the alternative for a typical direct connection to TSTT's mobile network,**

In its response to Issue 9, below, the Panel finds that in the absence of a definitive written agreement regarding transit rates, Digicel has not waived its right to a cost-based transit rate by agreeing during uncompleted negotiations to a TT\$ 0.035 per minute rate. Therefore, the Panel will consider what the cost-based transit should be.

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<sup>111</sup> TERA Report at 31.

In its Complaint, Digicel argued that it was forced to use TSTT's transit service because TSTT did not offer direct interconnection to its mobile network. Accordingly, Digicel was of the opinion that TSTT did not have the right to charge Digicel a transit charge.<sup>112</sup>

TSTT submitted that a transit charge was appropriate in the circumstances. TSTT submitted that Digicel requested interconnection at only one point in TSTT's network to terminate traffic to both TSTT's mobile and fixed networks.<sup>113</sup>

TSTT pointed out that its mobile network had not been designed to provide for direct interconnection and that if Digicel wished to connect directly to the mobile network, significant time and investment would be required to make the necessary network modifications. TSTT also pointed out that if such modifications had been pursued, Digicel's market entry would have been delayed.<sup>114</sup>

TSTT submitted that since it incurs a cost to carry Digicel's traffic through its fixed network to TSTT's mobile network, it is appropriate to charge Digicel for this service.

In its Final Submission, TSTT stated:

TSTT's position that the transit rate should be set at TT\$0.035 flows from the parties' agreement to this rate; to the extent that this Panel declines to uphold that agreement, TSTT submits the output from TSTT's cost model of TT\$ 0.004 would be the appropriate cost-based transit rate.<sup>115</sup>

The interconnection obligations of concessionaires are set out in section 25 of the Act and with regard to this issue, most specifically in sections 25(2)(d) and (m). In the Panel's view these obligations contemplate the interconnection of two mobile carriers by way of a direct connection between their respective networks. This arrangement is consistent with the overall objective of the efficient provisioning of services. This connection would typically consist of trunk groups jointly managed by both parties to ensure an appropriate grade of service and the costs of the trunk groups would be shared by the two parties.

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<sup>112</sup> Digicel Complaint pages 38-41 and Digicel Closing Submission, 28 December 2007, ¶ 287

<sup>113</sup> TSTT Response to Complaint at ¶45

<sup>114</sup> TSTT Response to Complaint at ¶148.

<sup>115</sup> Closing Submission on Behalf of the Respondent at ¶89.

Each party would be responsible for the provisioning of the trunk terminating equipment at their respective ends of the trunk group.<sup>116</sup> Accordingly there would be no specific transport charges under this typical arrangement.

In the instant situation, however, TSTT has decided for its own quite legitimate reasons to use its fixed network tandem switch as Digicel's point of interconnection to both the TSTT fixed network and the TSTT mobile network. This of course is entirely an appropriate engineering choice for TSTT but the internal network engineering decisions of TSTT should in no way adversely affect a competitor. Specifically, the Panel's opinion is that TSTT has no justification in this circumstance for charging Digicel for the transport of traffic from the TSTT tandem switch to the TSTT mobile switch when Digicel would prefer to have direct trunks to a switch on the TSTT mobile network.

However, if TSTT were to offer Digicel the option of interconnecting at the TSTT mobile switch and if Digicel then decided for its own good engineering reasons that it wished to connect to both the TSTT mobile and fixed networks only at the TSTT tandem switch, then it would be appropriate for TSTT to apply what is effectively a transit rate to transport the traffic from the tandem to the mobile switch. As noted above, TSTT has produced evidence in this proceeding that the cost of this transport is 0.4 TT cents per minute and the Panel finds that this would be the appropriate rate for this transit function.

Accordingly, the Panel has determined that the appropriate rate for transit service is 0.4 TT cents. However, the Panel also finds that TSTT is not entitled to apply this charge to Digicel unless and until TSTT has offered Digicel a typical direct interconnection alternative of the sort described above (e.g., jointly provisioned trunk group with no further transport charges). The Panel considers that 30 days would provide adequate time for Digicel to analyse an offer from TSTT for a typical direct connection sought by Digicel and accordingly, in the event that Digicel chooses to continue using the tandem

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<sup>116</sup> As noted in the "History of This Proceeding," the Third Dispute between these parties was about whether Digicel was required to pay for the trunk terminating equipment at the TSTT end of the trunk group. The arbitration decision was that Digicel was liable for the costs because the equipment was put in place prior to their being an obligation to interconnect, implying that Digicel would not be liable for the costs after the obligation to interconnect attached.



connection after receiving a proposal for such a direct connection, the tandem transit rate shall apply from 30 days following the offer for direct connection. To the extent that Digicel uses the tandem interconnection after the activation of a direct interconnection (i.e., for overflow or an outage in the direct trunks), the transit rate shall be applied.

This transit rate shall be valid until the sooner of: a) the end of the term of the parties' Interconnection Agreement; b) the date upon which rates prescribed by the Authority, based on the cost models and cost separations it is developing, become effective.

**D. Per Minute vs. Per Second Rates: Issue 1(e)**

*Issue 1. (e) Should interconnection charges be charged in accordance with the same unit (e.g. per second or per minute) by which TSTT charges its customers?*

**THE PANEL'S DECISION:**

**For the reasons explained below, the Panel has determined that interconnection rates should be applied on a per second (or fractional minute basis) regardless of the structure of the associated retail rates.**

Digicel submitted that, with respect to the calling from TSTT's fixed network to Digicel, the interconnection rate should be applied on the same basis as the retail rate. Presumably, since the retail rate is applied on a per minute basis (rounded up to the next minute) then Digicel is arguing that the mobile termination rate for fixed to mobile calls should also be applied in this manner.<sup>117</sup> Digicel argues that if the Mobile Termination Rate (MTR) were applied on a per second basis for these calls, it would:

“...lead to allocative inefficiency as too little of Digicel's good (mobile termination) is being purchased and utilised by customers because of the charging structure being operated [sic] by the upstream interconnecting party (TSTT landline). In short, volumes to Digicel's network would be severely depressed and so efficient recovery of costs is being disrupted by virtue of different charging structure i.e. TSTT would be significantly over recovering their costs while Digicel is under recovering its costs<sup>118</sup>

In support of its position Digicel cited a passage from an OECD document that stated:

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<sup>117</sup>Witness Statement of Kevin Barrins, Aug. 24, 2007 at ¶¶ 42-50

<sup>118</sup>Id. at ¶43.