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LIME

January 18, 2010

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

Dear Mr. Archbold,

Re: Digicel/LIME Interconnection Agreement Dispute – LIME comments on Digicel’s request for reconsideration of the Authority’s December 24 interim determination

LIME hereby responds to the Authority’s call for comments on Digicel’s request for reconsideration of aspects of the Authority’s December 24, 2009 interim determination.

Digicel has sought, in its request for reconsideration, to indefinitely extend the applicability of the expired Interconnection Agreement (“ICA”) between Digicel and LIME. The fact that Digicel’s determination request seeks a glide path from the date of the determination does not restrict the Authority’s powers to deal with the dispute and all matters contained therein, including its effective date, having regard to all of the circumstances.

Without the possibility of retroactivity, there is an incentive for Digicel to prolong the resolution process and to foster delay in order to maintain the MTR at its current rate for the longest possible period.

Digicel is and was fully aware that not only had the ICA expired, but the additional 6 month period for negotiation had also expired, and LIME was well within its rights to decline to continue operating under its terms. LIME did not, in its November 27, 2009 letter threaten, implicitly or otherwise, to cease providing interconnection services or to disturb the interconnection links between the parties, and did not intend to do so.

LIME indicated in that letter that it would continue to offer interconnection services notwithstanding the expiration of the old ICA, the expiration of the period provided therein for negotiation, and the termination of any agreement which may have continued by default. The letter set out the price and terms on which the services are offered in the absence of a subsisting agreement between the Parties and until such time as the disputed issues between the Parties have been resolved. Digicel’s request in paragraph 19 of its determination request for maintenance of the status quo is an express statement of their intention for the very situation which LIME is seeking to redress to remain unchanged.

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In any event, in determination 4 of the interim determination, the Authority has acted effectively to halt any threat (real or perceived) to the interconnection between the parties by prescribing that the links not be disturbed.

LIME's action has not in any way interfered with the Authority's ability to deal with the disputes now before it.

The Negotiation Meeting

In response to Digicel's request, the Authority convened an urgent meeting at which the possibility of a negotiated interim solution was discussed. As is the normal course of business between large corporations in general, and, more specifically, in respect of agreements between LIME and Digicel, such discussions are subject to corporate validation and approval. The discussions did not and could not create a binding agreement until such time as they were reduced into writing and signed on behalf of both parties.

The discussions having not been finally approved and formally agreed, and the proposed alternative having been rejected by Digicel, the ICTA acted in the absence of a binding agreement between the parties by issuing the interim determination which is the subject of Digicel's request for reconsideration. While it is clear that the Authority would have preferred the parties to come to an agreement, it is equally clear that they did not.

Accordingly, it is LIME's submission that Digicel's primary objection, namely that the jurisdiction of the ICTA is ousted by the existence of a "prior agreement" between the parties fails, as there was no valid and subsisting prior agreement in force. The argument that the determination is inconsistent with an agreement between the parties fails for the same reason.

LIME disagrees with Digicel's submission that an agreement that covers only part of the relationship between the parties for an interim period pending completion of the new Interconnection Agreement need not be in writing to be effective. Particularly as it concerns aspects of the agreement which are of utmost importance to both parties in respect of interconnection, as evidenced by the very fact of the disputes before the Authority, nothing short of a duly executed document would satisfy the statutory requirement, regardless of whether it governed "only limited aspects of the relationship between Digicel and C&W and/or for an interim period pending completion of the entire ICA".

The Expired ICA

Digicel's alternative argument that the old ICA is still in force rests on equally shaky ground. As quoted above, the express terms of the old Interconnection Agreement provide for a period during which that agreement will remain in force, and following which the parties may choose to bring such agreement to an end in the event that a new agreement is not entered into. It would make nonsense of the clear contractual intention of the parties for the agreement to remain perpetually in force on the same terms and conditions following that six month period, save that, as happened in this case between July and December, the parties may continue by their actions to operate in accordance with the expired terms. LIME's November 27 letter brought an end (as of December 27, 2009) to any implicit agreement and put beyond doubt the non-operation of the expired agreement.

Digicel's submission that "the Authority could and should only have determined that the terms and conditions of the Old ICA (including rates) should be applicable up until the New ICA was agreed (if necessary following a dispute resolution proceeding with the Authority) and approved" presents an unduly restrictive view of the powers of the Authority. There is no basis for a position that would hold parties duly bound to the terms and

conditions of an agreement which has expired and in respect of which either party has expressly stated that it no longer wishes to be bound.

The possibility of retroactive application of rates is consistent with the termination of the agreement, and would in fact settle the issue of rates to be charged in respect of the period up to the resolution of the disputes.

The 2004 Settlement Agreement

As more fully stated in its response to Digicel's determination request, LIME submits that the Settlement Agreement between the parties entered into in 2004 is no longer in force. The agreement is not, and was not intended to be of perpetual effect. It was entered into by the parties in the contemplation that the FLLRIC model would have been in place by 30 June 2006, and has clearly been frustrated by the fact that to date, this still has not been achieved. 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.

Retroactivity

With no binding agreement having been finalized between the parties, there is no basis for Digicel's accusation that the interim determination is inconsistent with such an agreement.

Digicel's suggestion that the parties clearly intended the old ICA and the 2004 Settlement Agreement to continue to apply flies in the face of contractual principles. In the case of the old ICA, LIME has expressly terminated the agreement in accordance with its terms. In the case of the Settlement Agreement, it would be illogical for its effects to continue perpetually, and to extend it indefinitely makes nonsense of the intention and contemplation of the parties.

As regards the possible financial impact of retroactivity, the threat of an increase in Digicel's retail rates is a product of its failure to plan effectively, and evidence of its anti-competitive behaviour. The financial impact on licensees is not so large as Digicel would have the Authority believe, and is not unjustified given the length of the period over which a reduction in the MTR has been contemplated by the parties.

Conclusion

LIME submits that Digicel's application for reconsideration has not demonstrated that the Authority's interim determination is incorrect, inconsistent with law, or should not, for any other reason, be upheld.

Yours sincerely,

'Signed'

Anthony Ritch
Country Manager LIME (Cayman Islands)

Copy to: Victor Corcoran, CEO, Digicel (Cayman) Limited