DIGICEL (CAYMAN) LIMITED REPLY TO CABLE & WIRELESS (CAYMAN ISLANDS) LIMITED RESPONSE TO DETERMINATION REQUEST OF DECEMBER 11th 2009

TO: **THE INFORMATION COMMUNCIATION AND TECHNOLOGY AUTHORITY**

ATTENTION: **MR. DAVID ARCHBOLD**

IN the Matter of Section 67 of the Information and Communications Technology Authority Act 2006 (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 and implementation method of new rates agreed under The Imputation Agreement dated July 27th 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 2004 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 to offer LIME any underlying interconnect service necessary to provide any new retail services it introduces in the market. This obligation arises in part from Clause 42 of the old ICA and Part 6 Wholesale Services - Annex 5 sections 64-70 of LIME's License dated July 10th 2003.

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 should they 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 3rd 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 retail rates to the its fixed subscribers in the Cayman Islands 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**
3rd FLOOR ALISSTA TOWERS
P.O. BOX 700
GRAND CAYMAN KY1-1107

AND

CABLE & WIRELESS (CAYMAN ISLANDS) LIMITED
1 TECHNOLOGY SQUARE
P.O. BOX 293
GRAND CAYMAN KY1-1104

1. Digicel disagrees with LIME's response at paragraph 1 and replies that the expiration of the period set out in the Agreement of January 29, 2004 i.e. at July 28th 2009 does not mean there are no terms and conditions for interconnection thereafter. The parties carry out the services as were provided for under the written agreement and are allowed to negotiate terms for a new period. Our argument is that the Dispute Regulations set out the process by which the new terms are to be settled by recourse to the ICTA and LIME has no power to bring the discussions to a premature end by imposing unilateral terms 'or else'. The situation when an existing interconnect

agreement is to be replaced by a new interconnection agreement is clearly different from the situation when a new operator is about to enter the market. A new entrant cannot launch until the physical interconnection is up and running. To Digicel's knowledge, LIME has objected to provide interconnection in any of its Caribbean operations until an agreement is signed by both parties. In other words there will not be a situation when interconnection is up and running without an existing interconnection agreement, hence all involved parties will at all instances know what the applicable terms and conditions are. The existing ICA only provided an option to stop providing services, which from a contractual standpoint would make sense, i.e. if there is no service there is no need for an agreement. However this is a situation which the ICTA (understandably) would not allow to happen, which it clearly said in its determination of December 24, and as a consequence the existing ICA should still be applicable. In any event, if the January 29th 2004 ICA comprehensively set terms and conditions for our interconnection and services continue to be carried out there under whilst negotiations take place for a new period, a one month notice dated November 27th 2009, is ineffective to bring this longstanding agreement to an end.

2. Digicel hopes the ICTA does not accept the response at paragraph 2 as it is the clear intent of the November 27th 2009 letter to terminate the existing agreement with a mere one month's notice if terms which were already in dispute under the Regulations were not met by Digicel.

3. Digicel agrees with the response set out in paragraph 3 however in relation to paragraph 4, replies that the Direct Mobile to Mobile interconnection always was an issue between the parties and many without prejudice offers and counter-offers flew between the parties prior to the Determination Request of December 11th 2009. In fact, prior to the "offer" finally submitted by LIME on October 26 2009 (well outside the stipulated regulatory timeframes), the parties' positions had crystallized and LIME was aware that the last so called offer by them would not find favour as Digicel had previously made it abundantly clear that it was not acceptable. Further LIME's behaviour across the Caribbean on the Direct Mobile to Mobile issue made it patently obvious throughout the

negotiations that they would most likely not agree to Direct Mobile to Mobile under any terms other than the ones they were now presenting to Digicel.

4. Contrary to its response in paragraph 5 we insist the November 27th 2009 threat was real and if we did not agree the very terms which were to be settled by ICTA under the Regulations or had not sought the immediate intervention of ICTA on December 11th 2009, the "danger to the continuity of Digicel's services to the Caymanian public" would have materialized.

5. With respect to paragraphs 6-9 of LIME's response we see no value in joining issue over who caused what delay in the resolution of the issues now before ICTA. Digicel is of the view that we had agreed that there existed 6 outstanding issues but that LIME said it would be premature to have the direct mobile to mobile in the same dispute request. Since we had not seen their "offer", they wished to have that dealt with in a different proceeding which could run simultaneously. That fact itself should be sufficient to confirm that there was a dispute. It cannot be that an operator can delay a determination or involvement by the ICTA by not complying with its obligation to submit an offer as stipulated in the Act and thereby force an aggrieved party to go through another delaying period of fruitless mandatory negotiations. Should this be allowed it would obviously undermine the whole regulatory regime since an obstructing operator would then by drip-feeding information and breaching regulations be rewarded for its obstruction and refusal to comply with the set regulations by gaining more time. Having had these discussions, Digicel's understanding was that **LIME** should refer the outstanding issues to dispute resolution at ICTA – instead of preparing the Determination Request to hasten the resolution of our disputes they penned the November 27th 2009 letter. The only logical conclusion from this course of action is that LIME has no desire to have the direct mobile to mobile issue resolved and that they will do their utmost to delay and obstruct this issue in the proceeding and that they wanted this dealt with separately. Should the ICTA exclude this matter LIME will have no incentive to progress any proceeding including the mobile to mobile direct interconnection but will obstruct and delay such proceedings in all possible ways.

6. With respect to paragraph 10 Digicel will neither deny nor confirm the responses set out therein.

7. Regarding Paragraph 11, Digicel repeats that the Imputation Agreement is in force as a valid agreement which the parties made of their own free will and binding in law. LIME cannot now complain that it may have a deleterious effect on its operations.

8. Further, in response to Paragraph 12, we say our reliance on the signed agreement cannot be construed as unreasonable or anything other that what prudent commercial persons acting on legal advice might do. Denial of the Imputation Agreement repeatedly or even early in the tenure of the agreement does not reduce its credibility or legal standing where reasonable legal interpretation supports its authenticity. In fact at an earlier occasion in 2007, when LIME challenged the validity of the Imputation Agreement Digicel was forced to take them to arbitration, where LIME eventually conceded and paid Digicel's costs. Digicel having signed the Imputation Agreement with parties fully aware of its significance and having the power to agree, is entitled to proceed in its commercial business on the basis that the agreement is binding and that its validity will be supported completely by the Law and ICTA. The financial decisions which rely on the Imputation Agreement are therefore justifiable and totally reasonable in the circumstances. LIME would have to demonstrate that any financial decision which is made in the reliance on the Imputation Agreement is arbitrary unreasonable and reckless. Interestingly, LIME is admonishing Digicel for not taking sufficient heed of the waterbed effect while at the same time denying without even providing one iota of economic rationale, that the concept exists or has any impact on the prices in the telecommunications market as argued by Digicel. Without LIME's demonstration by vigorous economic analysis that the well established theories on the 'waterbed effect' does not support on submissions, we ask that ICTA place no weight on LIME's

unsupported and baseless dismissal of the theory and accept our submission as a more credible statement of the facts.

9. In response to Paragraph 13, the ICTA should note that the FLLRIC rates as contemplated by the Imputation Agreement were expected to be determined **AT THE EARLIEST** in 2006 not the latest as LIME would have ITCA believe. It follows from the Imputation Agreement that any later date than the envisaged June 30, 2006 would extend the start of the glide path on a day by day basis consistent with the additional time needed to complete the FLLRIC proceeding. It is somewhat odd that LIME, being the party responsible for the creation of the model and therefore a driving force in influencing the time period within which to determine the rate, would now use the fact of the delay of the finalisation of the FLLRIC model as an argument that there should be no glide path. They were instrumental in extending the date beyond 2006 and now complain about an extension which is a natural consequence of the Imputation Agreement they signed. We are of the view therefore that the parties were perfectly aware and did accept the risk that the MTR might reasonably be determined **AFTER** the earliest possible date. This provision reflects what two commercial men standing at arms length, making the best forecast they could given the market and the facts at their disposal, could reasonably intend to agree and did in fact agree. LIME cannot now claim after the fact, that these are "excessive rates" comprising 'unjustified revenues' and its own agreement so offends the requirements of the Law that it amounts to a nullity. LIME's position seem to admit that had the FLLRIC model been finalized by, say June 30, 2009, the Glide path would have been applicable since there would be no argument that the ICA and thereby the Imputation Agreement at that time was in force. A glide path would then have started on July 1, 2009 and ended on December 31, 2011.

10. The reference to the Glide Path is that applied by ECTEL in the Eastern Caribbean in circumstances where the parties had no valid agreement of a measured price reduction as they have in The Cayman Islands. The 24 month period used by ECTEL is very consistent with the 30 month period agreed by LIME in The Cayman Islands, although leading jurisdictions in Europe have adopted a longer period. What it does show

is that the concept of the Glide Path as recognized by the parties themselves under the Imputation Agreement is fully recognized in the Caribbean and by European regulators.

11. The rationale for glide paths is not country or jurisdiction specific; the arguments are generally applicable. They arise due to the fact that contracts and are drawn which depend on the MTR and because of the complex linkages between the MTR and other aspects of the business - these things having been discussed in our 22 December submission. LIME has not addressed these arguments but has asserted without serious argument or evidence that they do not apply in the Cayman Islands. LIME's rationale for rejecting glide paths is shallow in the extreme. Indeed all the parties operating in the Cayman Island recognized in their own wisdom, that the Cayman Islands were a proper environment for the adoption of Glide Paths. Differences in jurisdictions aside we urge the ICTA to honour the parties' intention as they can derive from a reading of the law, the circumstances surrounding the Agreement and the also the Agreement itself.

12. In relation to Paragraph 16 we also accept that a lower rate is more cost oriented however as ICTA is well aware, the MTR is seriously influenced by the methodology employed in determining such a rate. Further, depending on whether the rate is determined using a FAC, FLLRIC, LRIC or any myriad of processes, the same "cost oriented" MTR may differ. Finally as LIME has stated in the attached email Exhibit A, recently disclosed in an open court proceeding, the modeller can (which apparently LIME does) influence the outcome of a model depending on how it allocates costs, so it is disingenuous by LIME to pretend that a cost model exercise is a precise science.

13. We cannot therefore conclude that LIME's determination of a cost based MTR is in fact the only real determination, or even that any cost based MTR must be significantly lower than the current rate of 0.1865C. As ICTA is now thankfully aware, Digicel only recently discovered that the model developed by LIME was missing key costing elements, the inclusion of which will have a significant impact on the final MTR.

14. In relation to Paragraph 18, Digicel does not deny that LIME at some point prior to the Determination Request began asserting that the Imputation Agreement was not in force. We reiterate that we know of no provision of law which allows a denial of an agreement written and signed by the parties, to automatically act to terminate the agreement. A repeated and vociferous denial of the agreement does no more to diminish its legal status than the initial denial. It is also trite law that where the parties are perfectly capable of carrying out the terms of the agreement, albeit with unforeseen economic prejudice to one or more of the parties, this does not amount to a frustration of the agreement. We submit that it is reasonable corporate behaviour to hold LIME to the Agreement and to operate on the basis that there being a strong legal case for us to do so, we should expect a glide path to be put in place at the point of determination or agreement of the new MTR.

15. At Paragraphs 19-20 LIME has made heavy weather of an MTR which they say is excessive and fosters inefficiency, even when we indicate from empirical evidence that same is not significantly above rates in most countries in Europe with similar markets. Moreover, LIME has dismissed without discussion the well established arguments in favour of glide paths.[1] LIME has neglected to point out that its FTR is more than 3 times higher than the average FTR in Europe and that the Transit rates are significantly higher than generally accepted rates in Europe. In other words the FTR and transit rates applied by LIME are as a percentage significantly higher than what the MTR is compared to European average rates. The issue of whether any party is receiving excessive rates and unjustified profits would equally, or more so, apply to LIME in these circumstances. We maintain that the evidence and the practice supports the implementation of the said cost based rates over a period of time by way of glide path and the Parties have by agreement determined how this should be done.

[1] Glide paths avoid hoisting windfall losses on mobile network operators (MNOs) and abrupt price rises on MNOs' customers. Glide paths are also well understood to be an "incentive mechanism" which improve the efficiency of MNOs and enable these gains to be shared with end-users in the form of lower prices. Glide paths thus dominate definitive price setting by the authorities; they provide for relatively greater Public Welfare than other forms of regulated price adjustment.

16. In response to LIME's Paragraphs 21-22 we continue to point us that LIME cannot simply dismiss established economic theory and empirical evidence on a whim without offering any supporting arguments. Digicel notes that the Waterbed effect was uncovered by academic researchers who applied two-sided market theory to mobile networks, where the applied results were obtained by employing advanced econometric methods. Clearly in virtually any jurisdiction there are numerous factors at play over a set period, some putting downward pressure on prices, and some putting upward pressure on prices. Econometric methods have been developed to isolate these from the factor or factors being analysed. LIME has drawn a conclusion about the waterbed effect in the Caribbean by adopting an approach often referred to as "casual empiricism". Needless to say there is no scientific integrity to such methods. Indeed, LIME does not present the methods used to arrive at this conclusion; it simply asserts that the data does not show a Waterbed effect. Digicel suggests that LIME's observations on this matter represent unsubstantiated and uninformed opinion. The Waterbed theory is as real as LIME's behaviour in the Eastern Caribbean where in reaction to reduced MTR, and only after pressure was applied by the regulator, a small reduction in LIME's fixed retail rates occurred although this was only a fraction of the MTR reduction. Digicel suggests that behaviour is likely to also follow in the Cayman Islands unless the Authority directs otherwise. The situation as set out in Digicel's Determination Request where one party suffers an immediate reduction of its profit and the other receives a windfall not shared with its customers, did in fact take place.

17. In response to paragraph 23 we state that the application of glide paths in Europe is also for operators that have been operating in excess of 10 – 15 years. New entrants in Europe, in addition to being allowed a glide path, are usually allowed asymmetric rates, i.e. they can charge a higher MTR than the well established mobile operators can.

18. In relation to Paragraph 25, we maintain that the Imputation Agreement is in place until the FLLRIC result is determined or a new agreement that replaces the Imputation Agreement is agreed. Clearly the Imputation Agreement can and will survive until the

finalization of the glide path. This is exactly what is stated in the Imputation Agreement and what the parties agreed to when signing the agreement.

19. As indicated above, the Imputation Agreement envisioned the earliest possible completion date that the parties could estimate. Obviously they could not fix the date as a date LIME was legally obligated to meet hence the estimate. This estimate must have been understood as a moving date as estimates are and LIME as experienced operators in the market, ought to have known as Digicel did, that the date was not set in stone. Therefore both parties anticipated this would be a moving target and could never have expected that a completion date that no one could predict, would coincide with the expiration of any five year term or a date fixed in the Interconnection Agreement. The ICTA needs no urging that this argument that the Imputation Agreement was designed to expire in 2009 is baseless and LIME is being totally disingenuous.

20. We accept that the Imputation Agreement never intended to maintain a final MTR over a lengthy or indeterminable period. However the parties could make this agreement simply because the MTR BY LAW had to be determined at some point and both parties, (moreso LIME) were confident, that an MTR **would** be determined using the FLLRIC model. LIME after all was the creator of the model and if anyone could be confident that the model would at some point have to be created, it would be them. The probability of the completion date passing June 2006 was therefore a risk which the parties were aware of and properly took. The fact that the model has taken longer than all parties actually forecast simply does not make the Agreement unworkable, illegal or unreasonable. At no point did anyone think that (nor was it possible for) the MTR to be indeterminable and the Imputation Agreement to be of perpetual effect.

21. With regards to Paragraph 29, LIME cannot be making a serious submission on frustration of a contract and we are happy they have devoted little time to it. We have in any event commented on same above.

22. We are not of the view that the Exhibit 2 (the Letter from the ICTA of July 29th 2009, is proof that the Imputation Agreement should be treated as being of no effect. The Imputation Agreement is closely related to, but from a contractual point of view not an integral part of the ICA. The Imputation Agreement includes several clauses that do not appear in standard interconnection agreements. Most importantly these clauses describe how rates would change following their determination, including taking account for the situation that the rates would not be determined on June 30, 2006; and there is no "long-stop date" on that mechanism which would have been the natural choice should the parties have intended that it should or could lapse before the FLLRIC rates were set.

23. On Paragraph 31 we disagree with any decision to impose an MTR from any date prior to the date of determination without the imposition of the Glide Path as agreed by LIME and Digicel. We have already set out our further arguments in our Request for Reconsideration of the Interim Determination made by the ICTA on December 24th 2009.

24. In relation to Paragraphs 32 – 34 Digicel states that it has contracts with its customers and suppliers which are dependent on the MTR. This would seem to apply to any mobile network provider. An immediate change in the MTR would make these contracts inefficient and potentially hoist losses on Digicel. Such contracts take time to change – as we pointed out in the supplement to our 22 December 2009 submission. What is more, the economics of this two-sided market platform confirms the linkage between crucial investment decisions and the MTR – something we also pointed out in the 22 December supplement. This is a complex area of economics but it is not in any way contentious; the linkages between the MTR and investment and retail decisions are well established. LIME has not seriously addressed these matters in its submission. Notwithstanding the above Digicel asserts that a negative annual net impact of approximately CI$ # # # is significant to any business (including LIME) and to state that this is not an area of concern for Digicel is disingenuous.

25. In the Table below paragraph 32 LIME present numbers that it says show the financial impact on it of a reduced MTR. Digicel knows that such impacts are extremely

complex to model and unavoidably require several very strong assumptions. The resulting estimates are in no way 'deterministic'. For one thing they require a sub-model of the linkage between wholesale and retail prices which unavoidably also requires several strong assumptions. Sensitivity analysis is a MUST in these circumstances and so a range of numbers is needed along with a discussion of the assumptions. Given the brevity of the information provided by LIME Digicel suggests that LIME's numbers should be dismissed as an unsubstantiated claim.

26. In regard to LIME's paragraphs 33 and 34, LIME has dismissed arguments of windfall losses without actually showing it has even understood them. Indeed, LIME has failed to articulate even a rudimentary understanding of the economic concept of "windfall losses" . Digicel pointed out the evidence in its December submission. LIME is out of step with expert thinking on these matters.

27. Digicel disagrees that the Direct Mobile to Mobile Interconnection issue is not properly being put before the ICTA. The Request for Determination of December 11th 2009 has indicated that the parties have had the full slew of discussions on ALL the matters put before the ICTA and now it is pointless for LIME to call for further discussions when they are fully aware of the offensiveness of their final "offer". If they had not bargained in good faith, they have no one to blame at this time but themselves. We need resolution of all remaining issues on the ICA and LIME has not indicated in any of its discussions with Digicel's Legal Counsel or in any of the other LIME territories that any worthwhile offers were yet to come.

28. We admit that the first email sent by Digicel in relation to Direct Mobile to Mobile Interconnection was 3rd of March 2009 but insist that this matter was addressed in meetings in January 2009.

29. It is typical of LIME's strategy to take the letter of the law or the spirit of the law whichever one suits them at the time. They now quote Section 65 of the Law in a brazen attempt to avoid a determination of the ICTA based on a technical point that there is no

early record of a request for direct mobile to mobile interconnection in the form set out in Section 65. It is understandable that this requirement exists when you are a new entrant negotiating interconnection. However it is evident that the traffic volumes involved here would be the same as currently being transited through LIME's fixed network for termination in its mobile network and vice versa. In the existing ICA there is regulation in relation to forecasts which would cover any actual need that may exist. We have had no similar requests by LIME in e.g. Eastern Caribbean, where we have requested to get an offer for direct mobile to mobile interconnection since the information requested already is known by LIME (as it is in Cayman Islands), although all offers received to date are in most aspects very similar and have met the same objections by Digicel. In the event that ICTA sees any merits in LIME's arguments in requests for traffic volumes etc., the offer was submitted by LIME 6 weeks or 41 days after they received the complete information requested and as such they were in breach of section 65 of the Law as well as section 8 (7) in the Interconnections Regulations which both states that an offer should be made within 30 days. We hope the ICTA will see that as it is and recognize that Digicel has always had an issue with the transit fees charged by LIME which arose because LIME effectively "refused" to give direct mobile to mobile connection. In any event, we note in LIME's Paragraphs 38-51, that it amply acknowledges that the parties were indeed engaged in discussions on Direct Mobile to Mobile Interconnection and the questionable technical point is not advanced much. We have always recorded our dissatisfaction with the decision by LIME to transit our calls at a charge instead of either giving us the connection direct or waiving the charges.

30. The following more comprehensively explains the situation referred to by LIME in Paragraph 38 – 43.

LIME did in fact send the e – mail dated September 8th 2009 the said e mail records the last meeting of August 25th 2009 which discussed M2M, it also records discussions **subsequently** on the M2M issue which LIME confirmed had **'broken down'.**

Our Jan Tjernell replied on the same date (Exhibit B attached) and in his e mail he draws attention to the fact of Digicel's January 2009 request. Had this not been true one expects

LIME would have immediately taken issue with the reply. They did not. We ask ICTA to take special note of this.

LIME indicated its offer on M2M would be sent in a further three weeks from September 8th 2009. It was not.

After Digicel wrote several e mails demanding the offer (Exhibit C attached) , only then did we receive the October 26th 2009 offer.

The October 26th 2009 offer was identical or very similar to offers made by LIME in the subsequent meetings referred to in its e mail of September 8th 2009 and which Digicel was emphatic would not find favour with it.

31. In respect of Paragraphs 38-43 we repeat that we have exhausted all efforts to bring amicable resolution to the Direct Mobile to Mobile dispute and are happy for the ICTA to make a determination thereof as part of the Determination Request.

32. It is not correct to say LIME has never refused to directly connect its mobile network to Digicel's simply because LIME has 'offered' to do so on terms. Where the party required by law to make the offer, does so on terms which are clearly offensive and or onerous, it cannot be said that it has discharged its legal obligation to make the offer. In effect it may have constructively refused to make the offer if the offer is one that on the face of it is not made in good faith. If it were not so, any party required to make an offer to another party would simply do so on terms which could not be reasonable, uncompetitive or otherwise unacceptable. For the avoidance of doubt, Digicel has less problem with the transit rate as far as it relates transit to a third party network since we believe, and our experience elsewhere in the Caribbean tells us, we would be able to agree direct interconnection on much more commercially viable terms and conditions Such commercially viable terms and conditions would be in line with the ones Digicel requested ICTA to decide in this Determination Request for resolution should the number of minutes exchanged between the networks reach such levels as it would make commercial sense to make the investment in a direct interconnection (i,e, CAPEX incurred to make a direct interconnection be outweighed by the OPEX – transit fees - you avoid). This opportunity does not exist with LIME based on their "offer" since the

cost would just be transferred from transit fees to various monthly/annual "joining" and "license" fees.

33. We have made the point that the majority of the costs of the Direct Mobile to Mobile Interconnection which LIME wishes to impose on Digicel are costs which should be costs provided for in the operations of a reasonably efficient operator in the market and that these costs should have been provided for in LIME's cost model. To the best of our understanding they are not. In the alternative, even if costs should be bourne by Digicel, we see no evidence which supports these specific costs as costs **exclusively** incurred by LIME to connect any Digicel subscriber to LIME's mobile network. Further, any costs incurred by LIME must necessarily include costs incurred by LIME mobile subscribers connecting to the Digicel network and so should be apportioned equitably between the two operators.

34. With respect to Paragraphs 46-48 Digicel would suggest that LIME's reading of the Law and Regulations is misguided. The Law and Regulation are obviously drafted in a way to cover not only the situation when a new operator enters the market but would also be applicable when you have two or more new operators entering the market. On LIME's interpretation of the Law and Regulations an interconnection between two new entrants would turn out to be a "chicken race" in the sense that whichever operator that brings the question of direct interconnection to the negotiating table would have to carry not only its own costs but also its competitor's costs. This cannot have been the intention since that would most certainly mean that such new operators would never get directly interconnected unless under direction by the ICTA which then would have to decide on how the costs should be split. The proper reading must be that a request is made whenever a minute is being handed over to the other network.

35. We repeat that these costs are costs properly to be incurred in the operations of any reasonably efficient ICT operator of LIME's nature and are for its account. In the alternative we maintain that the price if any, which LIME can ask from Digicel as a condition of the M2M connection would have to be determined on a cost oriented basis

and the costs presented to us in LIME's October 26th 2009 offer are not proven to be cost oriented as they have alleged. No evidence of the veracity of the costs have been provided and LIME has not indicated how these costs are exclusive to Digicel and therefore not to be shared. The requested proof is necessary in light of a recorded occasion in the Cayman Islands where LIME stated it had ordered new equipment (MUX) while it was subsequently during a court proceedings was discovered that LIME in fact had used an old one it already had in its possession. Digicel admits that its "easier alternative" is not addressed in the legislation but only made the point that it would be a much easier way of solution to this issue since the Authority, at least to some extent, would avoid minutely scrutinizing all alleged costs. Should ICTA so determine, Digicel of course would accept to pay the costs LIME would be entitled to have recovered (i.e. not any costs related to "Billing" or "IT") provided LIME would cover the same costs that Digicel would incur to facilitate same.

36. In reply to Paragraph 50 and 51 Digicel does not consider that LIME has made a good faith offer to Digicel as an alternative to the Transit fee. A one-off fee seems likely to simply recover all at once the transit charge that LIME wanted to charge on a per minute basis. The law also seeks to impose on LIME the obligations to make the offer reasonable and shall not seek to obstruct or impede the interconnection. Setting unreasonable conditions for the interconnection effectively does that. As the Authority may be aware, LIME in Trinidad & Tobago as in the Cayman Island, has to be forced to make a good faith offer which is subject to negotiations and agreement. Where the offer is not so, then we have not been given an alternative to the transit fee which we can properly consider.

37. One of the purposes of the provisions of the Licence (Annex 5) is to encourage competition in the telecommunications market. Indeed the Law (Section 36(1) informs the requirement set out in the Licence which seeks to ensure that a licensee does not unreasonably withhold interconnection on new services in order to

(a) ....affect trade in the Islands; and

(b) have as their object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to the Law,

It was provisions such as these in Law and Licence which mandated that the material clause of the current ICA be formulated. LIME is now saying that there is no need for this clause because the market is now six years old and Digicel is no longer a new entrant. The fact is this clause was there in support of the legal prohibition against anti-competitive behaviour in the market, which prohibition still exists. It is protection for the **MARKET**. It was not inserted merely to protect new entrants to the market. Until the Law and the License are amended this clause must continue to be a feature of our interconnect arrangement with LIME.

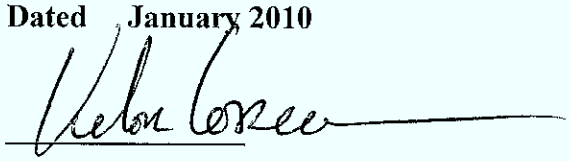
38. Paragraph 56-57 of the Response urges ICTA to keep the FTR unchanged until a determination is made. The only argument presented is that it is determined by LIME using the FAC cost model. We do not believe this argument sufficiently differentiates the MTR argument such that the MTR should be changed pending a Determination of the disputes (or be made retroactive) and the FTR should not be.

39. We maintain that LIME merely saying the Transit rates are cost oriented does not make them so, especially in light of Exhibit A attached. These rates cannot hold as they have not been subject to independent scrutiny and are being used by LIME to effectively charge asymmetric MTR.

40. As stated above, Digicel is not overly concerned with transit rates to third parties. We are concerned that LIME is using the Transit Rates to unfairly inflate the total costs we pay to them for terminating our calls on the LIME mobile network. As indicated in our Request for Determination, this payment distorts the reciprocity of rates and it is a matter of fact that for each call we terminate on LIME's mobile network, our MTR is increased by the value of the Transit fee.

41. In relation to paragraphs 61 – 62 we repeat our views in the Request for Determination.

Dated January 2010



Victor Corcoran

CEO

DIGICEL (CAYMAN) LIMITED

REDACTED VERSION

From:	Thompson, John
Sent:	Monday, July 7, 2003 5:22 PM (GMT)
To:	Little, Colin <little_c@cable and wireless.com>; Whitlock, Erik <erik whitlock@cwc>; Agard, Lisa <agard_l@cable and wireless.com>; Vrancken, David <vrancken_d@cable and wireless.com>; Forrest, Chris <forrest_c@cable and wireless.com>; McNaughton, Lawrence <lawrence mcnaughton@cwjm>
Subject:	Mobile termination rates

Colin, apologies for the delay in getting this to you, but events in Cayman and other small crises have kept me preoccupied to date.

As we discussed, the issue of whether a low, high or middling mobile termination rate generates the biggest impact on our overall profitability depends to a large extent on what we expect the outcome of a number of key variables will be.

In Cayman, we plumped for low mobile termination rates because:

1. Reciprocity was built into the HOA.
2. We expect the FTM retail rate to be fixed for at least two years.
3. Low termination rates undoubtedly hinder the competiton in their quest for subsidised network roll-out.
4. High GDP in Cayman reduces the liklihood that FTM customer subsitution will be significant.

When it comes to Barbados - the OECS already locked into a high mobile termination rate environment - we have some unknowns in the key variables that require careful consideration:

a. CPP. When do we expect this to take place in Barbados and what will the rates look like.....will, they be uniform for all new entrants?

b. In relation to CPP, do we expect the FTC to implement a call termination methodology (the way most of the world is going), or could they impose a call origination model (as in Jamaica).

c. Reciprocity. What are the chances we will achieve this in Barbados?
d. Market Share for CW Mobile.
e. FTM customer substitution. More modestGDP in BAR means this could be somewhere between Cayman and Jamaica?
f. What costs have already been presented in support of our CPP proposals?
Others?

As David has confirmed, by legitimately reallocating costs in the model it is possible to generate a much lower TDMA mobile termination cost in Barbados.

Ultimately these are questions for the business as a whole. Erik has re-confirmed his willingness to perform the value analysis once some guidance has been given on the above points.

Best Regards, JT>

From: Jan Tjernell [mailto:Jan.Tjernell@digicelgroup.com]
Sent: 22 October 2009 09:30
To: Nelson, Derrick
Cc: Morris-Gillespie, Christine; Gawaine Forbes; Raul Nicholson-Coe; E Jay. Saunders
Subject: RE: Moile 2 Mobile
Importance: High

Derrick.

This has now been outstanding far too long. You are in blatant breach of the regulations in TCI. You have missed at least 2 promised delivery dates of the T&C. Unless this is provided by tomorrow at the latest we have no option but to file with the regulator.

Best regards
Jan Tjernell

Digicel Group | General Counsel
Telephone Number: +1 876 470 8683

From: Nelson, Derrick [mailto:derrick.nelson@time4lime.com]
Sent: Monday, October 12, 2009 7:48 AM
To: Jan Tjernell
Cc: Morris-Gillespie, Christine; Gawaine Forbes; Raul Nicholson-Coe
Subject: RE: Moile 2 Mobile

Jan,

Based on the reports from the Network team the M2M costing should be ready by October 20, 2009, sorry for the delay.

Regards,

Derrick Nelson
VP Carriers and Service Providers
Jamaica and OFC
Desk: +1 876 936 4845
Mobile: +1 876 997 9085
Fax: +1 876 511 7246
E-mail: derrick.nelson@time4lime.com
www.time4lime.com

From: Jan Tjernell [mailto:Jan.Tjernell@digicelgroup.com]
Sent: Tuesday, October 06, 2009 5:26 PM
To: Nelson, Derrick
Cc: Morris-Gillespie, Christine; Gawaine Forbes; Raul Nicholson-Coe
Subject: Moile 2 Mobile
Importance: High

Hi Derrick

According to my notes you promised to send over your offers for M2M in Cayman and TCI by Friday September 25. I have not received any such offers. When will we have these?

Best regards
Jan Tjernell

Digicel Group | General Counsel
Telephone Number:+1 876 470 8683

From: Jan Tjernell [mailto:Jan.Tjernell@digicelgroup.com]
Sent: 08 September 2009 12:33
To: 'Wynter, Simone'
Cc: Nelson, Derrick; Morris-Gillespie, Christine; Vandendries, Frans; Gordon, Courtney; Raul Nicholson-Coe; Gawaine Forbes
Subject: RE: M2M Cayman

Hi Simone

We will fill in the form and return. However I would like to comment that our request for direct M2M was made in January and that the discussion re a potential alternative route was primarily made in June and July and seen as an alternative. I would not accept that it should be used as an "excuse" from LIME on its very late response to our January request.

BR
Jan

From: Wynter, Simone [mailto:Simone.Wynter@time4lime.com]
Sent: Tuesday, September 08, 2009 12:24 PM
To: Jan Tjernell
Cc: Nelson, Derrick; Morris-Gillespie, Christine; Vandendries, Frans; Gordon, Courtney
Subject: M2M Cayman

Jan,

As you are well aware, Digicel Cayman and LIME were up until recently discussing some options, which if there was agreement would negate the need for Direct interconnection to the LIME Cayman Mobile Network. Unfortunately the talks have broken down since our last meeting on August 25, 2009 to discuss this matter as well as others. Accordingly we will be proceeding to provide you with the estimate of costs for the Direct Mobile interconnection to the LIME Cayman Mobile Network as well as the draft terms and conditions for your perusal within the next three weeks.

Attached is the forecast form for your attention. Please fill in the required details and have it returned to us.

Regards,

Simone P. Wynter
Desk: +1 876 936 2691
Mobile: +1 876 322 1815
Fax: 5117484

E-mail: Simone.Wynter@time4lime.com
www.time4lime.com