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March 27, 2007

David Archbold
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Information and Communications Technology Authority
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Dear Mr Archbold,

Digicel Cayman Limited ("Digicel") wishes to inform the Information and Communication Technology Authority ("ICTA") of a very serious matter that, but for chance, would have severely prejudiced the FLLRIC process by depriving the participants (except Cable & Wireless) of a fair hearing. Had this matter not come to Digicel's attention it could have resulted in a very significant underestimation of the true FLLRIC cost of mobile termination.

On February 23rd, 2007 we received an email from Ms. Patricia Genoa of Cable & Wireless (Cayman Islands) Limited ("C&W") that purported to be the redacted response to interrogatories in the FLLRIC process. This information was also sent and disclosed to ICTA and members of the Cayman Islands telecommunications industry. Given the very substantial volume of information contained in the zipped file and the importance of this issue to Digicel, it began reviewing the documents immediately. However, on February 26th Ms. Genoa sent a further email to those recipients explaining that the file previously sent to them contained "*redaction errors*" and requesting that the original email should be deleted as it had contained information which C&W had considered confidential but had failed to redact. By that point in time, the information had of course lost the quality of confidentiality.

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On receipt of the new redacted documents Digicel was appalled to discover the type of information that C&W was now redacting given that in many instances (i) under no circumstances could such information be classified as 'confidential' and (ii) the information that was withheld under the pretence of being confidential was likely to have an enormous impact on the output of the FLLRIC model. This is contrary to any notion of fair procedure. Indeed, it directly contravenes the requirement for transparency in the legislation¹ and in the rules and principles on which the FLLRIC process is supposed to be conducted:

- (a) In ICT Decision 2005-4, the Authority noted "*C&W stated that 'transparency implies that the processes for generating cost information are clear and understandable, and that the numbers are objective and based on verifiable data'*"; and,
- (b) Principle 11 of the "Incremental Costing Principles Adopted by the Authority" in the same Decision states: "*The process used to generate FLLRIC cost information should be transparent. In this context, transparency means that the processes for generating cost information are clear and understandable, that the numbers are objective and based on verifiable data, and that any models used in the FLLRIC process are fully documented.*"

The evidence provided here by Digicel clearly highlights that these principles have been violated by C&W and there seems no doubt this information has been withheld in order that C&W can gain a strategic advantage over its competitors by sidelining them from key aspects of the consultation process.

Examples of crucial non-confidential information withheld by C&W

First, with respect to the file called "*Cayman_LRIC_26_01_interrogs_redacted.pdf*" and entitled "*C&W Cayman Islands Response to ICTA/Telcordia Interrogatories*", the following statements were found to be redacted in the revised version of February 26th:

"Fixed to Mobile: The volumes are derived in part on an assumption that

¹ ICTA Law s. 68. (3) The cost referred to in subsection (1) shall be based on cost-oriented rates that are reasonable and **arrived at in a transparent manner** having regard to economic feasibility, and shall be sufficiently unbundled such that the licensee requesting the interconnection service does not have to pay for network components that are not required for the interconnection service to be provided.

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the current on-net off-net pricing distinctions are likely to become less pronounced as the mobile termination rate reduces. (Revised redacted portion underlined)

There is absolutely no basis on which this information could be deemed confidential. Notwithstanding the fact that C&W are prejudging the outcome of what rates will be produced by FLLRIC, it is merely expressing a half hearted opinion on something that may or may not happen - something that they believe is "likely". Nevertheless this vague opinion has clearly contributed significantly to C&W's assumption about call volumes which in turn has a significant impact on unit costs. It is a widely accepted fact that off and on-net calling costs will differ if efficient network routing is in place. This is because for an on-net call various network elements are used for both terminating and originating calls thereby reducing the unit costs of both services while for an outgoing off-net call many of these same element's costs are associated with just call origination. This crucial point could not have been brought to light by Digicel had C&W achieved its objective of withholding this information.

In any case, on what basis did C&W believe it was privileged to make its loose assumption without comment or input from other competitors who may have very clear views on where they see off and on-net pricing going in the Cayman Islands irrespective of the final level of interconnect rates²?

Secondly, in response to the following interrogatory from ICTA/Telcordia:

"Has C&W accounted in its demand and traffic projections due to use of VoIP, for possible changes in fixed-mobile calling patterns or for mobile substitution? If so, how? If not, why not?"

C&W incredibly leave just the first three words of its response un-redacted:

"We have accounted for an expansion of those types of fixed traffic where VOIP options are currently available, in particular in fixed-to-fixed national calling and international outbound and inbound calling. The fact that the mobile traffic is not assumed to be susceptible to that effect means implicitly that there is movement in relative terms in favour of fixed calling."
(Revised redacted portion underlined)

² For example, Digicel expect that on completion of the FLLRIC process there would be a substantial fall in the level of fixed interconnect rates. It is a view that has been openly expressed by Digicel and one that has been open to consultation and comment by other interested parties.

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Again there is nothing remotely confidential about this information. It would be ridiculous to suggest that the mere opinion that mobile traffic demand is not susceptible to the effects of VoIP could be construed as confidential. C&W Plc is a public listed company that publishes extremely detailed financial information on a quarterly basis, yet C&W is somehow trying to represent that a non-binding, non-committal opinion on the likely demand impact from VoIP is commercially sensitive information.

The fact is that C&W have made what Digicel views to be an absurd assumption which can only be intended to be devised to generate a lower mobile termination rate for its own commercial gain. C&W tried covertly to fold this assumption into the process under cover of redaction in anticipation that - if not redacted - it would be aggressively challenged as part of a transparent process.

It is undisputed in the telecommunications industry that demand for VoIP services will increase worldwide. It is also many analysts', and, indeed, is Digicel's view, that this is likely to have an impact on demand for mobile voice minutes because, as a traditional voice substitute, VoIP is very likely to have an effect on the total cost level of voice communications. Had Digicel only been in receipt of the revised February 26th version of C&W's response document, C&W would have been afforded the opportunity to argue, unchallenged, for this untenable and unfounded input assumption in the FLLRIC mobile model. Indeed, if Telcordia did not read through both redacted and un-redacted versions of C&W's submission, which we suspect they would not have believed to be necessary, they may have mistakenly taken "*industry silence*" to suggest "*industry consensus*" on this matter when nothing could be further from the truth had the process been transparent from the outset.

Thirdly, in response to following interrogatory from ICTA/Telcordia;

"Why does there appear to be no consideration of growth rates in the mobile model?"

C&W responded:

"While no growth rates are explicitly provided for in the volumes, the demand levels used in the model, in terms of calls and minutes, are 20% higher than what they were in 05/06." (Revised redacted portion underlined)

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C&W have apparently determined that an arbitrary, unsubstantiated, unverified growth figure of a massive 20% in mobile traffic was not only justifiable but that this was also an arbitrary assumption that no other stakeholder should be entitled to comment on because it was 'confidential' to C&W. One of the key variables determining unit costs of mobile termination is the assumption made about traffic volumes. This is because volumes are the denominator in the equation that calculates unit costs. The more that C&W can misrepresent volumes upwards for mobile traffic the lower they can drive the mobile termination rate so that mobile operators are not fully compensated for terminating call traffic.

By way of example, and to demonstrate the consequences of withholding this information from other participants in the process, consider the following: Digicel conservatively estimate that C&W's current mobile traffic volumes are at least 20% higher than Digicel's, therefore if the traffic figures eventually used in the final FLLRIC model were, as C&W has proposed, i.e. 20% higher than C&W's current levels, this would mean that in calculating unit costs for Digicel's mobile termination rate, the traffic volume being used would be 44% more than Digicel's actual levels. This could result in anywhere from 30-40% *under-estimation* of Digicel's FLLRIC cost of mobile termination. In reality, the competitive threat from VoIP and providers of voice solutions based on technology such as Skype, a more prudent approach would be to forecast a reduction in mobile traffic demand for both domestic³ and international calls.

The serious nature of C&W's deliberate redaction of this vital information could therefore not be more pronounced. Digicel could present other examples of wrongful redaction, but believes the point has been made.

Next Steps

It is clear from recent events that no participant can have any confidence in the propriety of the FLLRIC process until a thorough review has been carried out of the redacted material in all of C&W's submissions to date. Without this, we simply cannot know whether C&W has deployed any further underhand techniques to make unwarranted and unjustifiable submissions without fear of

³ Note from the second example of withheld information, C&W expressed the view that fixed to fixed national calling would increase, yet against this background they anticipate mobile traffic will increase 20% next year in a market that has reached well over 100% penetration – consequently it is not merely a question of impropriety in withholding each piece of information in isolation but the problem is exacerbated in that Digicel are blind as to how one assumption relates to another

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being exposed. Digicel hopes that, if a review is carried out promptly and in a sensible manner, any delay caused by remedying this regrettable state of affairs should be kept to an absolute minimum.

Digicel suggests that the most efficient and least time-consuming manner of carrying out the review would be for 2 non-C&W participants in the process (i.e. individuals who are already familiar with the issues) to have access to the unredacted C&W submissions held by ICTA. They should, of course, sign suitable confidentiality undertakings to ensure that any confidential information that they do read cannot flow back to their respective employers. We propose that a Digicel employee that is familiar with the FLLRIC process should be one of the two reviewers. Any material that they consider, and the ICTA agrees, should not have been redacted by C&W can then be disclosed to all participants in the FLLRIC process for review and comment.

Digicel would hope that any review could take place in the coming week(s) and should take no longer than a day. As such, C&W's newly discovered tactics should not have a longer term effect on the FLLRIC (although we must necessarily wait to see the extent of the problem before expressing any final view on this).

We trust that you will agree that this is a suitable proposal to deal with C&W's (wrongful) redactions to date.

Two final points that we wish to be addressed in due course when the redaction issue has been dealt with:

First, we have long harboured concerns about the reliability of cost models generated by an integrated fixed and mobile operator, such as C&W, which is presented with significant opportunities for cost misallocation. This most recent revelation concerning the abuse of redaction heightens our concerns.

Secondly, we wish to flag to ICTA that despite the matter clearly having being raised a number of times (and, indeed, was noted by Telcordia in the interrogatories), C&W has refused to build a mobile model that incorporates the requirement to remain dynamically efficient i.e. only 2G networks are considered while conversely the fixed model entails a shift to IP networks. This obviously runs counter to the Principle II and Guideline 4 outlined by ICTA in ICT 2005-4. Digicel is perplexed why at this stage C&W continues to ignore the decision in this regard given that it did not seek reconsideration of or appeal these decisions.

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Digicel expects that it will have an opportunity to respond more fully on these matters later in the process. ICTA's immediate concern must be to deal with the substantive issue of C&W deliberately withholding relevant information in order to unfairly steer the process in a direction that is commercially in C&W's best interest.

Yours faithfully,



John D. Buckley
Chief Executive Officer

cc. Rudy Ebanks, Cable & Wireless (Cayman Islands) Limited