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LIME

Our ref: GRRCR/GR 15.19
18th December 2009

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

Dear Mr. Archbold:

Re: Digicel's 25 November 2009 FLLRIC Disclosure Request

Cable and Wireless (Cayman Islands) Limited, trading as LIME ("**LIME**") is responding to the 25 November 2009 request by Digicel Cayman Limited ("**Digicel**") for full disclosure of the fixed, 2G and 3G mobile forward-looking long-run incremental cost ("**FLLRIC**") models as well as all information filed in LIME's responses to the Authority's 19 August 2009 interrogatories. Digicel does not provide much of an explanation for such a sweeping disclosure of LIME's confidential information, other than noting that the Authority noted some errors in the models as filed previously, asserting that Digicel does not have the full model, and implying that without access to LIME's confidential information Digicel must "trust" that the models include all relevant costs.

LIME strongly **opposes** Digicel's request.

False Premise

The underlying premise of Digicel's application is false. Digicel does in fact have full access to the model. Consistent with the Authority's 4 January 2006 ruling on the subject, and consistent with LIME's practice since that date, LIME has provided the complete cost models, albeit with confidential information removed and substituted with so-called "dummy data", with all formula left intact. The cells containing the "dummy data" are all highlighted in blue as "user input" cells, primarily in the various tabs containing cost and demand assumptions and in the "Volume Input for TD" tabs. This means that Digicel is, and has been since 2006, fully able to review the models themselves and

determine whether there are any changes it would propose to the models. It is not necessary to have access to the confidential information in order to do this.

Nor is it necessary to have access to LIME's confidential data in order to assess whether corrections to the formula in the models have been correctly modified following the Authority's interrogatories. Consistent with the Authority's 4 January 2006 ruling, all such formula are included in both the confidential and public versions of the models. Nothing, therefore, is taking place "behind a veil", as Digicel states, and Digicel and all interested parties can review all changes to the models that LIME may have made in response to the Authority's interrogatories.

If Digicel wishes to test the models using its own confidential data, it is fully capable of doing so with the public versions of the models, simply by substituting its own data for the "dummy data". If Digicel is of the opinion that some costs have not been included or might have been understated, it is again fully capable of submitting this view to the Authority using the public versions of the models. The objective of the FLLRIC proceedings is to determine the costs of a forward-looking efficient operator, not necessarily the costs of a specific operator. As such it is not necessary for Digicel to have access to LIME's confidential information.

Inappropriate Request

LIME notes that under regulation 4(1)(f) of the *Confidentiality Regulations*, Digicel must identify the information it wants to be disclosed, as well as the reasons why that information must be disclosed and why it is in the public interest to do so. Digicel, however, makes a blanket request for anything and everything that LIME filed in confidence with the Authority in response to the Authority's 19 August 2009 interrogatories, and makes no attempt to identify precisely what information it requires or to justify it in any level of detail. In particular, Digicel does not explain why the public interest in disclosure outweighs the harm that would be done to LIME if disclosure were to be ordered. Without prejudice to LIME's view that disclosure of the information is not in fact required, Digicel's statement that it must otherwise "trust" that the model includes all relevant costs – and the necessary implication that it does not therefore trust the Authority and its consultants to properly review the models – is inadequate. Digicel's disclosure request is inappropriate and amounts to a fishing exercise that is unacceptable before any administrative or judicial tribunal.

Unfair Competition

There is no legitimate reason for Digicel to need to see LIME's confidential cost, traffic and customer information. In a competitive market, this information is highly sensitive and carefully protected from disclosure to the public and to competitors. LIME submits that Digicel is not seeking access to LIME's confidential information in order to assess the models, because it is fully capable of doing so now, but rather to unfairly and inappropriately use a regulatory proceeding in order to obtain competitively sensitive cost and demand information. This would give Digicel an unfair competitive advantage, and would not be in the public interest.

In Camera Proceeding

In this regard, LIME must also object to the proposed *in camera* approach. As explained above, it is unnecessary in order to assist Digicel or any other interested party in reviewing the model, as the model is already fully available to all interested parties.

Nor is LIME confident that an *in camera* hearing would in fact protect LIME's confidential information from disclosure or inappropriate use. As the Authority is aware from LIME's 15 August 2005 letter to the Authority, LIME believes Digicel has already breached the Authority's 2004 Protective Order, and continues to do so, for example, in a Witness Statement filed by Digicel in an ICC Arbitration involving LIME in 2007. LIME does not believe Digicel would accord any greater respect to any new Protective Order from the Authority.

LIME, therefore, remains firmly opposed to the disclosure of its confidential information to Digicel, even in an *in camera* proceeding.

Conclusion

LIME is opposed to Digicel's request for disclosure of LIME's confidential information filed in response to the Authority's 19 August 2009 interrogatories.

Such information is not necessary for the stated purpose of reviewing the FLLRIC models, but would give Digicel an unfair competitive advantage over LIME. Further, Digicel has not explained why disclosure of the information is necessary and why the public interest in disclosure would outweigh the harm that would be done to LIME if the information were to be disclosed. Digicel should not be permitted to abuse the regulatory process in this manner.

Please do not hesitate to contact the undersigned if you should have any questions.

Sincerely,

Cable and Wireless (Cayman Islands) Ltd. t/a LIME

'Signed'

Frans Vandendries
Vice President Legal Regulatory and Corporate Affairs

c.c. Anthony Ritch, Country Manager, LIME
Donald Austin, EVP Legal Regulatory and Corporate Affairs, LIME
Camile Facey, Vice President Legal, Regulatory and Corporate Affairs OFC, LIME
Frans Vandendries, Vice President Legal, Regulatory and Corporate Affairs Central, LIME
Interested Parties in CD (2009) - 1