



Cayman's Bigger, Better Network.

Regatta Office Park, Leeward One  
1158A West Bay Road  
P.O. Box 700  
Grand Cayman KY1-1107  
Cayman Islands

March 29, 2012

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

Dear Mr. Archbold,

### **Response to LIME FLLRIC models and Related Data**

Digicel Cayman Ltd ("Digicel") hereby claims confidentiality in respect of certain elements of its letter of 28<sup>th</sup> March submitted in reply to the FLLRIC models and other data submitted by LIME in response to the Authority's Decision CD 2009-1 of 22<sup>nd</sup> December 2011.

Digicel claims confidentiality of the traffic related information and the impact on the MTR output consequently estimated pursuant to Section 3 of the *Information and Communication Technology Authority (Confidentiality) Regulations, 2003* ("Regulations") and in particular under sections 3(b) and 3(d)(i) and (ii). The traffic data provided provides actual details of Digicel's current traffic figures or enables actual figures to be extrapolated as does the MTR impact estimated.

All such data is consistently treated in a confidential matter by Digicel and disclosure would be of detriment to Digicel's competitive position and its financial position. It would enable a competitor to assess Digicel's traffic profiles and to target the competitor's marketing campaigns in order to compete more effectively with Digicel, as well as providing valuable information to help with future network dimensioning for the competitor and therefore again providing a competitive advantage.

Further, LIME already enjoys a very significant strategic and competitive advantage in driving the outputs of the various FLLRIC models by virtue of having full sight of all the relevant data. Digicel believes that (a) given the significant disadvantage it has been placed at in this process with respect to a continuous refusal to provide access to data, LIME's advantage should not be further compounded by having access to this current data being supplied by Digicel and (b) given there is no guarantee that the ICTA will determine that Digicel's data should be used in the FLLRIC model, there is no reason why LIME should have access to that data until that issue is determined.

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

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In this regard, Digicel's request for access to 'confidential' data has only ever been requested where that data has impacted on Digicel's business i.e. all data used in LIME's FLLRIC models has impacted on Digicel's business. By contrast, were the ICTA to refuse to take account of Digicel's demand profiles (notwithstanding Digicel's view that is obliged to under the law and the "principles" underpinning this process), then such data would have no impact on LIME's business. LIME or other interested parties are perfectly capable of commenting on whether new information pertaining to actual market developments, which would have obvious implications for a hypothetical entrant in the Cayman Islands, should be taken into account by the ICTA.

All the information over which we are claiming confidentiality relates to services that are subject to competition. We request that the period of confidentiality should be at least two years.

Digicel takes the following steps to secure the confidentiality of the information internally: minimising the number of staff with access to these documents; warning staff that this information remains confidential and should not be shared with anyone outside the company; and ensuring that that information is stored secure from access by any other person.

I attach a redacted and an unredacted copy of Digicel's response.

Yours sincerely,



Victor Corcoran  
Chief Executive Officer

cc: FLLRIC list



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Dear Mr. Archbold,

**Re:-Decision for the FLLRIC Implementation Consultation (CD 2009-1)**

The Authority invited comments on LIME's FLLRIC model, MTR and other information filed by LIME in response to the Authority's decision on 22<sup>nd</sup> December 2011. Digicel has a number of fundamental concerns in this respect.

1. The output of the update model indicates that the recent process is fundamentally flawed. The anecdotal evidence in this regard is very compelling when comparing outputs with international benchmarks. Contrary to all international experience LIME have managed to generate cost models which indicate that PSTN Termination ("for a small and simple network") is more costly than mobile termination. Such an outcome confirms without any review that something is badly amiss and exposes the limitations of relying on the integrity/objectivity of an incumbent operator that does not face standard separated accounting (best practice internationally) requirements where it runs both a fixed and mobile network. Digicel's ability to provide detailed comments on LIME's "assumptions" and "costing data" which supposedly reflects the costs of economically efficient operators, has been greatly hampered by LIME's ongoing (and the Authority's) refusal to allow access to this data contrary to the principle of transparency supposed to have been enshrined in this process. In this regard the Authority is reminded of what it said as far back as ICT 2005-04:

*"The process used to generate FLLRIC cost information should be transparent. This means that the processes for generating cost information are **clear and understandable** and that the numbers are **objective and based on verifiable data**" [also principle 11 of current decision at paragraph 392]*

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2. The majority of the data is not “verifiable” and certainly cannot be “objective” when it generates such an obscure outcome. If it were, the anomaly as outlined above – a fixed termination rate higher than the MTR could not have occurred. If a hypothetical model generates absurd results it is clear that it has been manipulated to produce that result and therefore should be rejected. No reasonable application of a model to costs existing in the Cayman Islands at this time could ever arrive at such conflicting numbers. Moreover there is not even an attempt to give reasons for such extraordinarily conflicting outputs. No doubt that is because they simply cannot be reconciled by any application of logic. When the commercial incentive of the “model builder” coincides with generating such an implausible outcome that compounds the need to reject such outputs. Digicel’s ability to rigorously review such a farcical outcome has however been denied time and again by refusal to provide access to all of the data. The only commercial implications for LIME of refusing access to this data is that it would expose where much of the distortion is taking place and in so doing, that would have (justifiable) implications commercially for LIME. There has been a failure during this process to allow Digicel a fair opportunity to put its case forward as a result of a failure to give Digicel access to the necessary information to make its case. That is a breach of the principles of natural justice.
3. Nevertheless, it is clear from what data is verifiable, that the demand figures being used by LIME are completely out of kilter with the market reality in Cayman. The profiles neither reflect that of a hypothetically efficient operator in the Cayman Islands nor a real operator on a forward looking basis. Therefore the 2G/3G models as they currently stand are in breach of principles 2, 3 and 9 as outlined by the Authority at paragraph 374, 376 and 388 respectively.
4. The ICTA Act (as revised 2011), at section 26, prohibits agreement “between licencees” that:

*“(a) may affect trade on the Island and (b) have the as their object or effect the prevention, restriction or distortion of competition relating to any ICT service.”*

***It is Digicel’s submission that if it were to enter into an interconnect agreement with LIME based on the proposed mobile termination rates, as underpinned by the demand profiles used by LIME in LIME’s model, that would***

***constitute a breach of section 36 of the Act i.e. Digicel are prohibited from entering into an agreement with LIME by virtue of the Act based on the current demand profiles used in the model.***

5. The Authority itself has noted at paragraph 115 that

*“Based on the Authority’s review of the modules, it is clear that the level of demand used to determine the MTR has a significant impact on the outcome”.*

Explicit in this statement is that the Authority recognises the significant impact on competition and effect on trade adopting wholly inappropriate demand profiles could have on the market. Digicel has recently reviewed its 2011 demand profile (which obviously was information not previously available) which illustrates a market profile considerably different to what the model reflects or indeed anticipates in terms of future trends. The Cayman Islands market is now relatively mature and the exponential growth in volumes seen in the earlier years of competition is no longer visible. In fact the evidence strongly suggests that it is contracting. While an investigation into the reasons for this slide would be helpful there are some obvious explanations associated with services that did not exist when the FLLRIC process began e.g. social media sites such as Facebook and, Skype (free calls), and Myspace appear to be having a negative impact on call volumes. The table below highlights the extent to which the FLLRIC model demand profiles are now completely devoid of reality based on the most recent data available.

	<b>2010</b>	<b>2011</b>	<b>Trend</b>	<b>FLLRIC Model</b>	<b>Model Over-estimate</b>
<b>Outgoing</b>					
<b>Digi-Digi</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>
<b>Digi-Other Mobile</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>
<b>Digi-fixed</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>
<b>Incoming</b>					
<b>Fixed - Digi</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>	<b>XXXX</b>

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6. We can see that the not only are the base figures totally out of line with the Cayman market, the trends for these services are actually downward. Digicel estimate that the impact on the MTR generated by the model could XXXXXXXXXXXX the level of the rate currently being generated.
7. Given the foregoing and notwithstanding LIME and the Authority's ongoing refusal to provide access to the data in the models (which would no doubt expose even greater cost misallocations/under or over estimations depending on the agenda), based on recent demand data alone as provided above, the models need to be adjusted in order to comply with Cayman law and the principles that ICTA have determined should be enshrined in the FLLRIC process.

Yours sincerely,



Victor Corcoran  
Chief Executive Officer

***cc: FLLRIC distribution list***