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Information & Communications Technology Authority

13 December 2012

Mr. Chris Hayman
Chief Executive Officer
Digicel Cayman Limited
PO Box 700
Grand Cayman KY1-1107

Mr. Anthony Ritch
General Manager
Cable and Wireless (Cayman Islands) Limited trading as LIME
PO Box 293
Grand Cayman KY1-1104

Dear Mr. Ritch and Mr. Hayman,

Re: Public Consultation on FTR and Transit Rate (CD 2012-1): Disclosure Request

In its 2 October 2012 letter pursuant to the Authority's procedures set out in the public consultation on FTR and Transit Rate Proceeding (CD 2012-1) consultation document, Cable and Wireless (Cayman Islands) Limited ("LIME") submitted certain information in confidence with the Information and Communications Technology Authority ("ICTA" or "Authority"). In support of its claim of confidentiality, LIME stated, amongst other things, that the confidentiality of the FLLRIC models had been the subject of many proceedings before the Authority, and had been determined several times. LIME also stated that there have been no material changes in circumstances since those determinations and therefore no reason to modify them.

In a letter dated 12 October 2012, Digicel Cayman Limited ("Digicel") requested that the Authority order the public disclosure of all details contained in LIME's fixed module that was circulated to the FTR and transit rate proceeding distribution list pursuant to procedures stipulated in the public consultation on FTR and transit rate ("CD 2012-1"). Digicel's letter stated that it sought full disclosure of the module including all supporting calculations and any related documentation and explanations. Digicel's letter also requested that, if full public disclosure was not given, that full disclosure be permitted at an in camera meeting.

In an e-mail of 26 October 2012, LIME stated its opposition to Digicel's request for full disclosure and submitted that the question of confidentiality of the FLLRIC model data had been extensively dealt with in previous Authority determinations and in particular that the Authority in its recent disclosure ruling of 8 March 2012, in response to a Digicel request for full disclosure of the modules, determined that these requests were fully dealt with in the Authority's 14 January 2010 disclosure determination. In addition LIME claimed that the circumstances of this latest disclosure request by Digicel are exactly the same as in March 2012 and January 2010 - a review of a cost model with a view to using the outputs for setting interconnection prices. LIME submitted that there have been no changes to the structure of the model or to the principles behind its construction or to the uses to which the outputs will be put, that could constitute "different circumstances" that could justify a different balancing of Digicel's interest in disclosure and LIME interest in protecting its confidential information.

Scope of the current proceeding

In assessing LIME's claim that there has been no change in the circumstances of this proceeding and the previous proceeding, the Authority notes the scope of the previous and the current proceedings.

LIME claims that the previous proceeding was a review of a cost model with a view to using the outputs for setting interconnection prices by use of the plural word "prices". The Authority notes both the CD 2009-1 consultation document (the Phase III FLLRIC process) and the directions for the follow-up process that arose from the CD 2009-1 process (specified in paragraphs 365 to 370 of ICT Decision 2011-3) identify that only one interconnection price, the mobile termination rate, was under review in that previous proceeding. No other "prices" for interconnection were under review.

For the current proceeding, the Authority notes that the CD 2012-1 consultation document specifies that both the FTR and transit rate reviews are within the scope of this proceeding.

Therefore, LIME's claims that there has been no change in circumstances and that there has been no change to the uses to which the outputs will be put are unfounded.

In fact, in paragraph 22 of Decision on *LIME's Application to Reconsider the FLLRIC Phase 3 disclosure request*, (ICT Decision 2010-2), the Authority expressly noted that it did not require the disclosure of much of the underlying data in the fixed module because, consistent with the purposes of that proceeding, a review of the fixed interconnect services was not included in the scope of that FLLRIC Phase 3 proceeding.

Clearly, contrary to LIME's claims, the purpose and scope of this proceeding are different from those of the previous proceeding.

Lack of information filed in support of confidentiality claims

Paragraph 4(1)(b) of *The Information and Communications Technology Authority (Confidentiality) Regulations (2003)*, ("Confidentiality Regulations") requires confidentiality claims to be:

- ... accompanied by the reasons for the claim, and, where one of the reasons is that specific direct harm would be caused to the party claiming confidentiality, sufficient details shall be provided as to the nature and extent of such harm; and the minimum details which the submitting party shall provide shall be as follows-*
- (i) identification of the specific information for which confidentiality is sought;*
 - (ii) an explanation of the circumstances giving rise to the claim of confidentiality;*
 - (iii) an explanation of the nature and degree to which the information claimed as confidential qualifies as information falling under regulation 3;*
 - (iv) identification of the measures taken by the submitting party to prevent unauthorised disclosure;*
 - (v) an explanation of how the disclosure of the information could reasonably be expected to result in significant financial loss or gain to any person, to prejudice significantly the competitive position of any person, or to affect contractual or other liabilities of any person;*
 - (vi) identification of the degree to which the information may pertain to a service which is subject to competition; and*
 - (vii) justification for and the period of time for which the information should not be available for public disclosure;*

In its submissions in this proceeding, LIME has claimed that disclosure of information it has submitted in confidence could reasonably be expected to cause LIME financial harm. However, LIME has provided no explanation of that claim and has not provided the detailed information that it is required to submit under the Confidentiality

Regulations. Given this, in this determination the Authority has given less weight to LIME's confidentiality claims.

Documentation of data elements which have been filed in confidence

In the public version of the fixed FLRIC module (2012 10 02 CYM fixed – Public.xls), LIME has listed which data elements are redacted in the tab 'Public Model Redactions'.

The Authority has reviewed the public and confidential versions of the module and agrees that the listed data elements do accurately identify the data elements for which LIME has claimed confidentiality. However, the Authority notes that this exercise was less efficient than it could have been if LIME had used the same cell identification scheme in the confidential version as it used in the public version. Therefore, for future submissions of the FLRIC model the Authority directs LIME to use the same formatting of cells for values that are claimed confidential in both the confidential and public versions of the module; that is, use the red bordered cell approach in both versions. This will allow the Authority to identify directly values subject to masking in the confidential version of the module. In addition, LIME is directed to add the 'Public Model Redactions' tab, as modified in accordance with the directions below, to the confidential model to appropriately document the data elements for which LIME has claimed confidentiality. Except for the redactions and pasting of expense factors as described below, the form and content of the confidential version should be identical to the public version.

Pasting of expense factors

In the CD 2012-1 consultation document, the Authority directed that, if any information is filed in confidence with the Authority, it must be done so in accordance with the previous Authority determinations regarding disclosure of information in the FLRIC model and that, except for the pasting of values for certain intermediate calculations as previously directed by the Authority, all formulas, calculations and non-confidential data are to be left intact.

On pages 6 of the Authority's 14 January 2010 disclosure determination, LIME was directed to paste the expense factors in the 'Expense Factors' tab (cells E30:E101) and the 'overhead_exp' tab (cells E55:E94) from the confidential version into the public version and use GRV dummy data (row 2 of the 'Reval_Assets' tab in the current version) in the public version of the module subject to the conditions for masking real data to prevent calculation of the absolute expense factor information contained in the 'FAC Input' tab. Later, in the 8 March 2012 disclosure determination in relation to a

subsequent filing of the fixed, 2G and 3G modules, the Authority noted that LIME had not complied with that requirement and LIME was again directed to paste the expense factors from the confidential version to the public version of the model. In the public version of the fixed FLLRIC module submitted in this proceeding LIME has not followed this direction as the public version of the module contains formulas and not the pasted values. LIME is directed to comply with the Authority's previous determination and direction in the CD 2012-1 consultation document by pasting the expense factors from the confidential version to the public version. For avoidance of doubt, as specified in the 14 January 2010 disclosure determination, when actual expense factor percentage values are pasted into the public version of the module, LIME may continue to use dummy data for the absolute expense factor information related to the fixed network and overhead expenses in the 'FAC Input' tab (cells B4:B10, B13:B19, B22:B35, B38:B41, B44:B50, B53:B58, B61:B68, B71, B74:B82, B84:B88, D91:D95, B152:B156, B158:B165, B168:B183, B186:B190, B193:B198) in the public version of the module.

In addition to pasting the expense factor percentage values from the confidential version into the public version, LIME is directed to maintain consistency with its approach to documenting which cells have dummy data by adding another item to the table in the 'Public Model Redactions' tab in the fixed module that identifies that change and lists the affected cells. This documentation may also help to remind LIME in future filings that it must paste those values from the confidential to the public version of the module when it submits the public version files.

Missing public version of linked spreadsheets

In the directions to LIME in the CD 2012-1 consultation document, LIME was directed to file the fixed FLLRIC module and any appendices or spreadsheets that are directly linked to that module and parties were directed that if they filed any information in confidence with the Authority, they must provide a public record version to the distribution list for the proceeding at the same time the confidential filing is made to the Authority. In its 2 October 2012 submission, LIME did submit the linked spreadsheets in confidence to the Authority but did not provide the public versions of those linked spreadsheets to either the Authority or interested parties. In accordance with the directions in the CD 2012-1 consultation document, LIME is required to file a public version of the model that is a fully working copy. By not providing the public version of the linked spreadsheets, LIME has not complied with that direction. In addition, LIME is reminded of subsection 4 (c) of the ICTA (Confidentiality) Regulations that require, when a submitting party files information in confidence with the Authority, it must file a redacted version for the public record (or, in other circumstances not applicable in this case, a request to the Authority to file in place of a redacted version of the document a copy of a statement as to the existence and general nature of the document). LIME has not complied with either the Authority's directions in the CD 2012-1 consultation

document or the requirements of the Confidentiality Regulations. LIME is directed to provide public versions of the linked spreadsheets. If any of the data elements in those spreadsheets are confidential, it must use the same disclosure, cell identification and spreadsheet documentation practices as specified in this decision for the fixed module itself.

In order to help avoid such issues in the future, the Authority suggests that when LIME makes submissions with multiple files, it list those files in its covering letter so that both the Authority and the parties are aware of what LIME had intended to submit. This may also help to remind LIME that it must address the redaction of all files that are submitted.

In addition, the Authority notes that in the public version of the module, LIME has pasted values from the linked spreadsheets into the cells that, in the confidential version, use formulas. This approach does not comply with the Authority's directions that except for the use of dummy data and the pasted values as directed, the public version and confidential version should match in all respects and that all formulas and calculations are to be left intact. LIME is directed to comply with the Authority's direction in CD 2012-1 that, except for the pasted expense factor percentages, it must file a fully working public version with all formulas, calculations and non-confidential data left intact.

Disclosure determination

Under section 3 of the Confidentiality Regulations, parties who submit information to the Authority may request that such information be designated as confidential by the Authority if the information satisfies the criteria stipulated in that section. In its 2 October 2012 submission, LIME stated, amongst other things, that the information it requested the Authority to designate as confidential is commercially sensitive and is consistently not disclosed to the public. The Authority accepts LIME's statements that the information it requested be designated as confidential by the Authority satisfies some of the section 3 criteria and therefore determines that the information qualifies to be considered for designation as confidential by the Authority.

In making determinations related to disclosure of information requested to be designated as confidential information, as provided for by the Confidentiality Regulations, the Authority gives consideration to the nature of the information and assesses the relative weight of the specific direct harm to the party providing the information against the broader public interest in disclosing the information.

Where parties may be directly affected by an outcome such as, in this case, the determination of the FTR and transit rate, sufficient information should be provided

such that any outcome is well understood. Thus, in the Authority's view there is in this instance a strong public interest in disclosing the underlying data that has a meaningful effect on the estimated FTR and transit rate.

The Authority has conducted a sensitivity analysis of the data elements that LIME has claimed are confidential and notes that many of those data elements have either a very small or no impact on the FTR or transit rate calculations.

Accordingly, for this proceeding, the Authority considers that it is only when a data value that LIME has claimed as confidential has a non-trivial effect on either the cost of fixed termination or transit, that the value must be disclosed. If it does not, then the use of the masking rules allow interested parties to sufficiently assess the reasonableness of the assumptions and methodology.

As the Authority has required the disclosure of the calculated expense factors themselves in the "Pasting of expense factors" section above, LIME may apply the masking rules to: 1) the absolute expense factor information and GRV data specified in the "Pasting of expense factors" section above, 2) input fields related to the absolute expense factor values as specified in the paragraph concerning 'Appendix IV-FAC-TD Values 10_09_01_rev' below, and 3) the data values used to calculate the expense factor adjustment as specified in the paragraph concerning the covering letter below.

As a test for a non-trivial effect the Authority considers the following approach ("Disclosure Rule") to be appropriate for this proceeding:

for each of the data elements that LIME has filed in confidence in this proceeding, other than the expense factor related information specified above, if an increase in the actual value in the confidential version of the cost module, linked spreadsheets and covering letter by 50% or a decrease by 50% changes either the calculated FTR or transit rate by 0.5% or more, then the actual value must be disclosed. If not, then the provision of the masked value is sufficient.

The Authority recognises that changes in combinations or groups of individual values or changes in individual values beyond the 50% magnitude specified in the Disclosure Rule may have an effect on the FTR or transit rates that is beyond a plus or minus 0.5% threshold. However, by requiring the ranged masked values for all non-disclosed dummy data (that is, the dummy data itself must be within plus or minus 50% of the real data), the Authority is satisfied that interested parties will be able to do their own assessment of the impacts of any such scenarios.

In the Authority's view, requiring the disclosure of only those data elements that have a non-trivial effect on the FTR or transit rate, while maintaining the dummy data bounds

on the values of other data elements, appropriately balances the public interest in disclosure against any specific direct harm that may result from disclosure.

Therefore, of the data elements in the fixed module that LIME has claimed in confidence in its 2 October 2012 submission, LIME is directed to apply the above Disclosure Rule and disclose in the public version the actual values from the confidential version for those data elements that meet the above specified test.

As previously mentioned, in addition to the fixed FLLRIC module, LIME also submitted three Excel spreadsheets that link to the main cost module. LIME has not made available redacted versions for the public record.

Excel spreadsheet 'Appendix III Fixed Assets Revaluation_20-09-09 Conf' contains information on the asset revaluations and links to the 'Reval_Asset' tab in the fixed FLLRIC module where it provides the GRV of the revalued assets. LIME is directed to create a documentation tab consistent with what is used in the fixed module and provide a public version of that file using the Disclosure Rule for data elements with numerical values. For numerical data elements that do not require disclosure under the Disclosure Rule, LIME may use the masking rules for values it considers are confidential. LIME should use a consistent formatting in both public and confidential versions of the spreadsheet. For avoidance of doubt the Authority notes that the output GRV information that is linked to the fixed module from the 'Summary Expense Factors' tab should be redacted because disclosure of the values would allow calculation of the absolute expense factor values. In addition, LIME is directed to remove links to underlying spreadsheets that have not been provided by LIME, i.e. paste the values from these linked files. The Authority's review of the 'Appendix III Fixed Assets Revaluation_20-09-09 Conf' indicates that it contains links to previous versions of the mobile and fixed module (for example, cells P5, S5:V5 and Y5 in the 'Expense Factors 1' tab which references a spreadsheet named "CYM fixed 07-04-09 Conf Draft_v1.xls"). These should either be linked to the most recent versions of the modules before the pasting of the values or removed where they are no longer needed.

Excel spreadsheet 'Appendix IV-FAC-TD Values 10_09_01_rev' contains detailed FAC data used to determine the absolute expense factor values which are converted to expense factor percentages in the fixed FLLRIC module, and retail and bad debt costs that are used directly. LIME is directed to create a documentation tab consistent with what is used in the fixed module and provide a public version of that file using the Disclosure Rule for data elements with numerical values. For data elements with numerical values that do not require disclosure under the Disclosure Rule, LIME may use the masking rules for values it considers are confidential. LIME should use a consistent formatting in both public and confidential versions of the spreadsheet. For avoidance of doubt the Authority notes that LIME may use dummy data for inputs used to generate the absolute expense factor information in the 'FAC Input' tab of the fixed module (as the Authority has required that the expense factor percentages from the

confidential version be pasted into the public version), but that the disclosure rule must be applied to all other inputs cells, i.e. those used to generate retail and bad debt costs. In addition, LIME is directed to remove links to underlying spreadsheets that have not been provided by LIME, i.e. paste the values from these linked files.

Excel spreadsheet 'Appendix V-TD LRIC Input_10_06_30 Conf' is used to derive bad debt costs and retail costs used in the fixed FLLRIC module. LIME is directed to create a documentation tab consistent with what is used in the fixed module and provide a public version of that file using the Disclosure Rule for data elements with numerical values. For data elements with numerical values that do not require disclosure under the Disclosure Rule, LIME may use the masking rules for values it considers are confidential. In addition, LIME is directed to remove links to underlying spreadsheets that have not been provided by LIME, i.e. paste the values from these linked files.

Digicel request for full disclosure of the module including all supporting calculations and any related documentation and explanations also encompasses the requested disclosure of the information filed in confidence in LIME's 2 October 2012 covering letter. In Table 2 of that letter, LIME submitted the 2006/7 and 2011/12 operating expenditures in confidence to the Authority. Consistent with the logic and determinations specified above, LIME is directed to provide a revised public version of the letter that applies the masking rules to the data it provided in confidence.

For the information that LIME requested be designated as confidential by the Authority, other than as specified above, Digicel's request for disclosure is denied. The Authority notes that LIME states that such information is commercially sensitive and is treated consistently in a confidential manner. The Authority also notes that the information has no or very small impacts on the FTR and transit rate calculations. Therefore, the Authority is satisfied that any specific harm likely to result from public disclosure outweighs the public interest and determines that LIME's confidentiality claim is justified for those data elements.

Regarding Digicel's request for an in camera proceeding, the Authority is satisfied that the level of disclosure directed above will provide interested parties with sufficient information to adequately evaluate and comment on the fixed FLLRIC module and its output. Therefore, the Authority denies Digicel's request for an in camera proceeding.

Remaining Procedures

Taking into consideration the upcoming holiday period, the Authority will slightly extend the submissions periods for the next two steps in the process.

LIME is directed to provide the above identified information by **28 December 2012**.

In CD 2012-1, the Authority stated that if there are any requests for disclosure for information submitted by LIME, the Authority would issue the due date for the submissions of other parties at the time it makes its determination related to any such disclosure request. Therefore, the Authority specifies the following:

- 1) By **31 January 2013**, parties other than LIME may provide suggested changes to the assumptions, data or calculations proposed by LIME along with supporting documentation and detailed rationale to justify those changes.
- 2) If there are no requests for disclosure of information submitted pursuant to the above direction with the 31 January 2013 due date, then by **14 February 2013**, parties may address interrogatories to LIME regarding its submission that is due by 28 December 2012 and any other party who files submissions that are due by 14 February 2012. Responses to any such interrogatories are due by **7 March 2013** and when parties reply to any such interrogatories they should repeat the entire question above the reply for each question. However, if there are requests for disclosure for information submitted pursuant to the above direction with the 31 January 2013 due date, the Authority will issue the due date for the next steps at the time it makes its determination related to any such disclosure requests.
- 3) The Authority anticipates that it may address interrogatories to the parties. However, whilst the Authority may use more than one round of interrogatories for its questions, parties are to address all their interrogatories at the same time.
- 4) When the Authority has completed any interrogatories it intends to address, it will set dates by which parties can file Final Comments addressing the record of the proceeding and Reply Comments addressing points raised in Final Comments by other parties.
- 5) All parties are required to provide any submissions made in this proceeding to the distribution list for the proceeding at the same time they are submitted to the Authority.
- 6) If a party files any information in confidence with the Authority, it must provide a public record version to the distribution list for the proceeding at the same time the confidential filing is made to the Authority and any such filings must be made

in accordance with the Confidentiality Regulations. (The Confidentiality Regulations are available at <http://www.icta.ky/docs/Regs/ICTA-%20Confidentiality%20Regulations.pdf>.)

- 7) Any requests for disclosure of information filed in confidence with the Authority must be made within ten calendar days of the material being provided. All requests for disclosure and responses to disclosure requests must be in accordance with the Confidentiality Regulations.

Yours sincerely,

[signed]

Mark Connors
Head of Economics and Regulation

cc: CD 2012-1 distribution list