



The Bigger, Better Network.

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February 9, 2010

Mr. David Archbold  
The Information Communications and Technology Authority  
P.O. Box 2502  
Grand Cayman, KY1-1104  
CAYMAN ISLANDS

Dear Mr. Archbold:

**Call for comments on LIME's reconsideration request of FLLRIC Phase 3 disclosure determination**

On 28<sup>th</sup> January 2010 the Authority called for comments on a LIME request for reconsideration of an ICTA determination, dated 14 January 2010 (the "Decision"), ordering the disclosure of certain LIME information in relation to FLLRIC Phase 3. In particular the Authority asked whether it had jurisdiction, under section 78 of the Law or otherwise, to reconsider the Decision.

**No Jurisdiction for the Authority to Reconsider Its Decision**

Digicel (Cayman) Ltd ("Digicel") has reviewed the relevant legislation and finds no grounds for reconsideration of this decision within the legislation. This is also bolstered by a previous determination on possible grounds for re-consideration by the Authority. As the Authority is aware in its Decision 2009-1 the Authority determined that:

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*In the Authority's view, paragraph 78(1)(l) requires that types of decisions be "prescribed" as decisions to which the reconsideration process is applicable using one of the regulation-making powers in the ICTA Law (e.g. section 97) or elsewhere (e.g. the Authority's non-statutory residual powers). Since the type of decision under which ICT Decision 2008-2 falls has never been identified as such; it is not a "prescribed" decision under paragraph 78(1)(l) of the ICTA Law.*

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In other words by inference we can see that the type of Decision contained in the Authority's letter of 14<sup>th</sup> January 2010 is not subject to reconsideration since it is not a "prescribed" decision.

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## The Authority has Given Reason for Disclosure

LIME has stated:

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*the Authority has erred in law by its failure to give reasons for ordering the disclosure of some of the information in the FLRIC Model. The Authority's approach is also repeated in respect of the responses to interrogatories and related appendices, where the explanation provided by the Authority is the repetition of the wording of Section 5(i) of the Regulations or variations thereof: “[t]he Authority is not satisfied that the specific direct harm likely to result from the disclosure outweighs the public interest in disclosure and therefore determines that LIME's confidentiality claims are not justified. [Digicel underlining]*

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Whether or not as a point of administrative law the Authority is required to give reasons for public disclosure of the information in question the fact is that in every, or virtually every, instance in which the Authority has used the wording underlined in the above text the Authority has given reasons for its decision. Yet for some reason LIME has chosen to ignore this fact. Perhaps this is simply because LIME does not agree with the reasons given. But just because LIME does not agree with the reasons given does not invalidate them.

## The ICTA has Sought Proportionality

LIME has claimed that there was a lack of proportionality in the Authority's Determinations on disclosure. However, the Authority has chosen to require that a level of information is provided that enables affected parties to have a reasonable chance of assessing the robustness of the cost models submitted by LIME. The more information that is redacted, and the more dummy data that is introduced, the harder and harder this becomes to the point where it becomes a major barrier to understanding and tantamount to impossible to draw meaningful conclusions. At one extreme affected parties could be required to provide every scrap of data for input to the models to determine whether the final output could be in any way reasonable and would pass a sanity test. That would be disproportionately costly and time consuming when weighed against any considerations of sensitivity due to disclosure of some of the data in question.

Yours sincerely,  
**Digicel (Cayman) Limited**



Victor Corcoran  
Chief Executive Officer