

Mark Connors

From: David Laliberte
Sent: 03 September 2007 17:50
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Cc: David Archbold; Mark Connors; 'ageorge@telcordia.com'; 'Hayes, John R'
Subject: Call for Comments - Digicel Disclosure Request on FLLRIC Model
Importance: High
Follow Up Flag: Follow up
Flag Status: Green
Attachments: 2007_07_27_Digicel_Disclosure_Request.pdf; 07_08_06 ICTA Letter - Digicel Disclosure Request - Response.pdf; 2007_08_16_ICTA_re_Digicel_disclosure_request.pdf; ICTA Reconsider 2.pdf

Dear Licensees,

The Authority has received an application by Digicel for reconsideration of a decision, dated 16 August 2007 (the "Decision"), denying Digicel's request for the public disclosure of certain information redacted by Cable and Wireless in its responses to interrogatories as part of the FLLRIC proceedings. The Decision also denies Digicel's request that its economic and accounting experts have full access to the confidential FLLRIC model. For ease of reference, a copy of the relevant documents is attached to this e-mail.

The Authority hereby calls for comments from other licensees on Digicel's reconsideration application. Pursuant to subsection 78(4) of the ICTA Law, a decision must be rendered on this application no later than **27 September 2007**. Therefore, comments on Digicel's application must be received by the Authority no later than **14 September 2007**. A copy of the comments must be received by Digicel no later than the deadline for receipt of comments by the Authority. Digicel may file a written reply to any comments received concerning its application. This reply should be filed with the Authority, and a copy sent to the person who submitted the comments, by no later than **21 September 2007**.

Without restricting the scope of the issues to be considered, the following should be addressed in the comments and in Digicel's reply:

- whether the Authority has jurisdiction, under section 78 of the Law or otherwise, to reconsider the Decision;
- assuming that the Authority has jurisdiction, whether the Decision should be confirmed, reversed or modified, and for what reason(s).

The Authority will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out above have been followed.

David Laliberté

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 Information and Communications Technology Authority

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July 25, 2007

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

Dear Mr Archbold,

ICTA Decision for the Forward-Looking Long-Run Incremental Costing Consultation 2005-4 (the "Decision"): Cable & Wireless' responses to interrogatories

I refer to the redacted responses provided by Cable & Wireless ("C&W") dated 17 May, 25 May, 1 June, 8 June and 22 June 2007 to interrogatories issued on 16 April 2007 (ICTA/80/105/105-11) by and on behalf of the Authority.

Each response is redacted in places by C&W, which claims confidentiality under Regulation 3 of the Information and Communications Technology Authority (Confidentiality) Regulations 2003 (the "Regulations"). Pursuant to Regulation 4(f) of the Regulations, Digicel requests public disclosure of certain redacted materials (for the reasons elaborated on below) on the basis that they are not confidential or commercially sensitive, and that even if they are, there is a compelling interest in disclosure under Regulation 5(1) of the Regulations given the public nature and consequences of the FLLRIC process.

In particular, Digicel wishes to request disclosure of all of the following:

C&W submission 17 May 2007

Redacted figures and calculations at p. 35

Redacted LRIC figures and calculations, including the snapshot Excel spreadsheet at p.39

Redacted figures and calculations at p. 40

Redacted LRIC figures and calculations in both tables and accompanying text at p.44

Redacted figures and calculations, including LRIC figures at p.45

Redacted LRIC figures and calculation in table at bottom of p.48

C&W submission 25 May 2007 submission

Redacted figures and calculations for the tables at p.3

Redacted figures and calculations for the tables at p.4

C&W submission, 8 June 2007

Redacted Summary BU pure LRIC results for PSTN Access Residential Service (p.2)

Redacted BU pure LRIC and DLRIC results for PSTN Access Residential Service (p.7)

Redacted BU pure LRIC, DLRIC and FLLRIC results for PSTN Access Residential service (p.11)

Redacted BU pure and DLRIC results for Mobile Termination service and BTS network element (p.16)

Redactions: ' This proportion is ###%. Applying this to the FLLRIC markup value of ### gives the amount of FLLRIC allocated to the Mobile Termination Service. This is: ### x ###% = ### which is the value obtained in the paragraph marked Note 2 above.' (p.19)

Redactions Summary BU pure, DLRIC, FLLRIC LRIC results for Mobile Termination service and BTS network element (p.20)

Digicel wishes to challenge what it regards as yet another abuse of the redaction process by C&W. The exercise to develop a FLLRIC costing model for certain purposes is a public consultation exercise, the output of which is a generic financial model, not particular to an individual provider. This point is acknowledged by C&W in other responses, including, for example its response (Round 2, p.29) to question 3.6.1 of the latest round of interrogatories, where it refers to modeling exercise as 'predicated on building a hypothetical representative network'. As such, claims of confidentiality as to draft output calculations are untenable.

C&W also seeks to rely on its treatment of its own costing information on a confidential basis as somehow relevant for these purposes. That misses the point entirely, since the modelling exercise has clearly moved beyond the inclusion of C&W specific inputs. This request for disclosure concentrates on draft model outputs material which cannot be reasonably considered to qualify for confidential treatment simply because they are now being treated as confidential (i.e., being withheld) by C&W for its own, non-protected purposes.

Mr. David Archbold
July 25, 2007
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Equally mistaken are C&W's claims of significant but unspecified financial loss, none of which could flow from the publication of generic calculations. In particular, Digicel is at a loss to understand how disclosure of any of the requested information could allow competitors to develop targeted marketing or pricing strategy. Whatever its relevance to other C&W redactions, we submit that claims of this nature are little more than hyperbole in relation the information that we now seek.

Indiscriminate redaction of this nature obscures the public record, in addition to the operation of agreed imputation tests to be based on figures generated by the FLLRIC model. The ultimate outputs of the FLLRIC model (and consequentially the draft outputs) are also of significant commercial concern to Digicel since they are incorporated into agreed contractual mechanisms for the variation of interconnection rates. Furthermore, the disclosure of draft LRIC calculations across all of C&W's outputs is essential in order to allow headline detection of possible cost misallocation between C&W's various businesses. This, as the Authority will be aware, is a long standing concern of Digicel. Digicel submits that these three considerations are of paramount importance for the purposes of Article 5(1) of the Regulations.

Without full disclosure of the redacted information and access to the model in its current form, no interested party will be in a position to prepare meaningful responses to the replies to interrogatories, which we understand will be requested by the Authority once all of the replies to interrogatories have been received.

Separate and apart from this request, Digicel now believes that it is timely for its economic and accounting experts to have full access to all of the workings of the FLLRIC in its current form. Previously, access has been afforded to C&W costing models and information subject to conditions of confidentiality which Digicel representatives would again be prepared to undertake, but only in respect of genuinely commercially sensitive C&W inputs. Digicel has made this request directly to the Authority (as opposed to C&W which has carriage of the model) on the basis that other interested parties may also require access at this time, in which case the Authority is best placed to pursue this request with C&W.

Yours sincerely,



John D. Buckley
Chief Executive Officer

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



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Our ref: GRCR/GR 15.19
06 August 2007

Mr. David Archbold,
Managing Director,
Information and Communication Technology Authority,
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P.O. Box 2502,
Grand Cayman. KY1-1104

Dear Mr. Archbold:

Re: Public Consultation on Costing Manual (CD 2005-1) – Digicel Disclosure Request - Response

This letter constitutes our reply, pursuant to regulation 4(1)(g) of the *Information and Communications Technology Authority (Confidentiality) Regulations, 2003* (the “**Regulations**”), to Digicel’s 25 July 2007 letter, which the Authority views as a request for disclosure of confidential information pursuant to Regulation 4 (1)(f) of the Regulations. We believe the Authority should set aside the Digicel request as C&W’s confidentiality claims are justified and provided for by the process outlined by the Authority. We also reject Digicel’s renewed assertions that Digicel and/or its consultants be allowed to view C&W confidential models and results.

C&W’s claims for confidentiality were properly made within the framework established by the Regulations and, therefore, are valid. Regulation 3 in particular states that:

Any person who submits information to the Authority (“the submitting party”) may request that such information be designated “confidential” by the Authority if -

- (a) the information is a trade secret;
- (b) the information is financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the submitting party and the information is not otherwise publicly available;
- (c) the information is subject to a claim of legal privilege; or
- (d) the disclosure of the information could reasonably be expected-



- (i) to result in significant financial loss or gain to any person;
- (ii) to prejudice significantly the competitive position of any person; or
- (iii) to affect contractual or other liabilities of any person.

The information that C&W designated as confidential and that Digicel now seeks to publicly disclose, with a single exception, meets one or more of these criteria. We note that we inadvertently redacted the MSC routing factors for call-sensitive mobile network traffic. These routing factors were drawn from a public consultation (cited in the text) and therefore were not confidential. The figures are as follows:

| Call Type | GSM: MSC -call sensitive |
|-------------------------------|--------------------------|
| MOBILE INTERNATIONAL INCOMING | 2.60 |
| MOBILE ON NET CALL | 3.60 |
| MOBILE TERMINATION | 2.60 |

Apart from this exception, there were two types of information for which C&W claimed confidentiality. Firstly, there was demand information provided as back-up for the prepaid platform routing factors. The figures are actual C&W demand numbers. Actual C&W service demand information clearly satisfies the tests for confidential treatment in Regulations 3a, 3b and 3d.

The second type of information consists of results from the confidential LRIC model itself. The claim for confidentiality for this information is valid, not only per Regulations 3b and 3d, but also by virtue of the Authority's procedural letters of 6 January 2007 and 8 February 2006, which provided for the removal of confidential information from the FLLRIC model while requiring that formulas and calculations be left intact.

Furthermore, we reject Digicel's assertion that confidentiality is no longer relevant simply because "the modeling exercise has clearly moved beyond the inclusion of C&W specific inputs." These outputs are based on specific actual costs incurred by C&W in the provision of services, which we consistently treat as confidential and which is not publicly available and, when taken together with other information, could provide actual and potential competitors details of C&W's cost structure.

We similarly reject Digicel's view that these redactions are indiscriminate, obscure the public record or prejudice their ability to respond to interrogatories.

We emphasise that there could be no justification for the Authority to require C&W to disclose confidential demand information. The public interest (as opposed to Digicel's private interest) cannot conceivably be served by forcing disclosure of confidential C&W actual service demand or cost information.

If, however, with respect to the output redactions, the Authority believes that the process would be better served by producing non-confidential outputs, rather than redacted confidential outputs, then the C&W could produce the analogous outputs from the non-confidential model. In this manner, the confidentiality of the confidential model would be preserved, but interested parties would view actual model outputs. If the Authority opts for this alternative, we propose to produce the non-confidential results from the non-confidential model due to be submitted on 7 August 2007, so that all parties are working with the latest version of the model.

In the interest of clarity, a summary of our position on the disclosures requested by Digicel is given in the table below.

| Item | Redaction | C&W Comment |
|------|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 17 May submission: Redacted figures and calculations at p.35 | The routing factors for the MSC call sensitive is disclosed as per this 6 August 2007 letter; however, the routing for prepaid subscribers as a percentage of all mobile subscribers is based on actual C&W data, which should not be disclosed. |
| 2 | 17 May submission: Redacted LRIC figures and calculations at p. 39 | These are outputs from the confidential model and as such should not be disclosed. A possible alternative is presentation of analogous outputs from the non-confidential model could be disclosed. C&W suggests that the Authority consider this type disclosure on the basis of the updated non-confidential model due to be provided on 7 August 2007. |
| 3 | 17 May submission: Redacted figures and calculations at p. 40 | As above (item 2) |
| 4 | 17 May submission: Redacted figures and calculations at p. 44 | As above (item 2) |
| 5 | 17 May submission: Redacted figures and calculations at p. 45 | As above (item 2) |
| 6 | 17 May submission: Redacted figures and calculations at p. 48 | As above (item 2) |
| 7 | 25 May submission: Redacted figure and calculations in tables at p. 3 | As above (item 2) |
| 8 | 25 May submission: Redacted figure and calculations in table at p. 4 | As above (item 2) |
| 9 | 8 June submission: Redacted Summary BU pure LRIC results for PSTN Access Residential Service at p. 2 | As above (item 2) |
| 10 | 8 June submission: Redacted BU pure LRIC and DLRIC results for PSTN Access Residential service at p. 7 | As above (item 2) |
| 11 | 8 June submission: Redacted BU LRIC, DLRIC and FLLRIC results for PSTN Access | As above (item 2) |

| | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| | Residential service at p. 11 | |
| 12 | 8 June submission: Redacted BU pure and DLRIC results for Mobile termination service and BTS network element at p. 16 | As above (item 2) |
| 13 | 8 June submission: Redactions in text beginning "this proportion" and ending "Note 2 above" at p. 19 | As above (item 2) |
| 14 | 8 June submission: Reactions in Summary BU pure, DLRIC, FLLRIC LRIC results for Mobile Termination service and BTS network element at p. 20 | As above (item 2) |

Finally, C&W reiterates its strong disagreement with Digicel's proposal to include its staff and/or consultants into the confidential model review process. The Authority has already set in place a process for dealing with the issues that Digicel raises. Digicel has a model structure and the ability to input what it considers reasonable inputs into the model. It has had and will have further opportunity to comment on both the model structure and inputs. The Authority and its experts will then be the arbiter of that structure and those inputs. As we have previously outlined (in our 10 April 2007 letter on this subject), Digicel's proposal would only add a superfluous layer of review and would only serve to delay the proceeding. This would not be in the public interest.

Please contact me regarding any questions you may have.

Yours faithfully,
Cable & Wireless (Cayman Islands) Ltd.



Rudy B. Ebanks
Chief Regulatory and Carrier Relations Officer

cc: Timothy Adam, Chief Executive C&W
Ian Tibbetts, Chief Operating Officer C&W
Frans Vandendries, Vice President Regulatory Affairs C&W
Erik Whitlock, Regional Vice President Regulatory Finance C&W
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Information & Communications Technology Authority

Our ref: ICTA/80/105/105-11

16 August 2007

John D. Buckley
Chief Executive Officer
Digicel Cayman Limited
PO Box 700
Grand Cayman KY1-1107

Mr. Rudy Ebanks
Chief Regulatory and Carrier Relations Officer
Cable and Wireless (Cayman Islands) Limited
PO Box 293
Grand Cayman KY1-1104

Dear Mr Ebanks and Mr Buckley,

Re: C&W redactions in the FLLRIC (CD 2005-1) process

In a letter dated 25 July 2007, Digicel Cayman Limited ("Digicel") requested that the Information and Communications Technology Authority ("ICTA" or "Authority") order the public disclosure of certain information redacted by Cable and Wireless ("C&W") in its responses to ICTA interrogatories submitted on various dates between 17 May 2007 and 8 June 2007. Digicel's letter also set out the reasons for its request.

In the same letter, Digicel also requested that its economic and accounting experts have full access to all of the workings of the C&W FLLRIC model in its current form. Digicel stated that its representatives would be prepared to agree to conditions of confidentiality in respect to what it characterized as "genuinely commercially sensitive C&W inputs."

C&W replied to Digicel's request on 6 August 2007 stating that, with a single exception, the information Digicel is now requesting be publicly disclosed should remain

designated as confidential information. Regarding the exception, C&W noted that it had inadvertently redacted the MSC routing factors for call-sensitive mobile network traffic that were drawn from a public consultation and therefore were not confidential. C&W provided those routing factors in its letter.

In its letter, C&W also opposed Digicel's proposal to allow its experts to have full access to the C&W FLLRIC model.

Authority Analysis and Determination

The Authority notes that its determinations regarding confidentiality claims in this instance should not be taken as an indication of the manner in which such matters would be dealt with in the future in different circumstances.

Regarding the remaining disclosure requests, the Authority has reviewed each of the items in Digicel's request and notes that the information relates to specific C&W demand and cost information rather than to "generic calculations". Whilst the expectation that specific direct harm might result from disclosure is not, by itself, sufficient to justify maintaining a claim of confidentiality, based on all the material before it, the Authority is satisfied that the specific direct harm likely to result from disclosure outweighs the public interest in disclosure in these instances and therefore determines that C&W's confidentiality claims are justified and Digicel's disclosure requests are denied.

Regarding Digicel's request for a process to allow its experts to have full access to C&W's FLLRIC model, the Authority notes that in its 26 April 2006 letter dealing with Digicel's 27 March 2007 disclosure requests, the Authority denied a similar request from Digicel. The Authority remains of the view that the ICTA Law (Confidentiality) Regulations provide a process by which parties may request the disclosure of information that has been filed in confidence with the Authority and that the additional process requested by Digicel is not necessary. Therefore, the Authority denies that aspect of Digicel's request.

Yours sincerely,

[signed by Mark Connors for]

David A Archbold
Managing Director

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30 August 2007

Mr David Archbold
Information & Communications Technology Authority
PO Box 2502
Grand Cayman
KY1-1104
Cayman Islands

Dear Mr Archbold:

C&W redactions in the FLLRIC (CD 2005-1) process - Request to Reconsider

I refer to your letter of 16 August 2007 setting out your decision in response to our letter of 25 July 2007 requesting disclosure of certain redacted responses of Cable and Wireless ("C&W") to the interrogatories issued on 16 April 2007.

In your letter of 16 August, Digicel's disclosure request regarding this redacted information was refused, as was its request for its experts to be permitted direct access to the model in its current form (subject to confidentiality obligations). Regrettably, Digicel considers both of these decisions to be inconsistent with the Authority's prior practice, ICTA Decision 2005-4 on FLLRIC, and more generally, the ICTA Law. For the reasons indicated below, Digicel wishes to request the Authority to reconsider its decision refusing disclosure.

1. Lack of Clarity in the Decision

Digicel does not understand aspects of the Authority's letter of 16 August 2007, and in particular, its statement that:

"The Authority notes that its determination regarding confidentiality claims in this instance should not be taken as an indication of the manner in which such matters would be dealt with in the future in different circumstances."

LOI-7537287v1

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

By its terms, it would appear to contemplate a departure from previous practice, which has been to favour and facilitate disclosure wherever possible in accordance with the ICTA Law and secondary legislation. Equally, Digicel is uncertain as to what process the Authority has engaged in where it concluded that it was:

“ satisfied that the specific direct harm likely to result from disclosure outweighs the public interest in disclosure in these instances... ”.

In particular, Digicel has no idea what form of harm to C&W is of concern to the Authority, or what weight was attached by it to the public interest criterion. For its part Digicel cannot conceive of any harm that might be occasioned to C&W by disclosure, a position which is based on our firm conviction that the underlying (redacted) information that has been requested is in no way commercially sensitive. Digicel is also concerned about the Authority's reference to the fact that:

“ C&W also opposed Digicel's proposal to allow its experts to have full access to the C&W FLLRIC model. ”

Without wishing to be pedantic, Digicel would like to restate that the FLLRIC model is being developed by C&W on behalf of ICTA under ICT Decision 2005-4 and that C&W is instructed to ascertain the long run incremental costs of the hypothetical efficient operator, not of C&W specifically.

2. Information redacted cannot be described as confidential

In the letter of 16 August 2007 it is stated that:

“Regarding the remaining disclosure requests, the Authority has reviewed each of the items in Digicel's request and notes that the information relates to specific C&W demand and cost information rather than to 'generic calculations'.”

Digicel requests reconsideration on the basis that the information redacted in the C&W responses to interrogatories outlined above is not specific to C&W, and therefore cannot be fairly treated as confidential, and should be disclosed to all relevant parties. C&W is charged with developing a model of the hypothetically efficient operator, using a forward looking long run incremental cost methodology. To that end, C&W may be populating the model with data which is particular to it (and which therefore may be commercially sensitive), but it is also populating that model with data that is not specific to C&W. As a result, any calculations made using a mixture of inputs (specific and non-specific) cannot be fairly regarded as specific to C&W and should not be withheld.

Therefore, Digicel requests reconsideration of the quality of information redacted and disclosure of all the requested redacted materials on the basis that the information cannot be fairly described as satisfying the conditions within the confidentiality provisions of

Regulation 3 of the Information and Communications Technology Authority (Confidentiality) Regulations 2003.

Digicel wishes to restate its view that redaction by C&W of such non-specific information by C&W is an abuse of the redaction process and reiterates its concerns that disclosure of draft LRIC calculations across C&W's principal services is essential in order to allow transparency and headline detection of further cost misallocation between C&W's various businesses.

3. Importance of transparency at this stage

Digicel also requests reconsideration of the decision outlined on 16 August on the grounds that it is in the public interest for the redacted information to be disclosed. The FLLRIC process is a public consultation exercise, and under Principle 11 of Decision 2005-4:

"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."

Paragraph 63 of Decision 2005-4 also states that:

"In particular, the Authority must weigh the benefit of putting commercially sensitive information on the public record against the harm that such disclosure may cause a Licensee, such as the incumbent. Placing information on the public record is all the more important where it concerns rates for services or network elements for which Licensees have few or no practical alternatives other than using those offered by the incumbent."

Digicel has already requested an explanation and re-consideration of the balance of possible harm against the public interest, especially in light of the non-specific quality of the information that C&W claims is confidential. Digicel also requests reconsideration of the ICTA decision outlined on 16 August 2007 on the basis that the disclosure of the redacted information is in the public interest and of significant importance for the process of generating a verifiable FLLRIC model. Specifically, it is important for the purpose of preparing Digicel's response to the C&W answers to interrogatories.

4. Access to the Model

The Authority's letter of 16 August 2007 states that the above process requested by Digicel is available under the ICTA (Confidentiality) Regulations and that as such *"the additional process requested by Digicel is not necessary"*. Digicel requests that the Authority reconsider this conclusion in the light of Principle 11 of Decision 2005-4 regarding the transparency of the FLLRIC model. There it is indicated that:

"The Authority is pre-disposed to allowing parties to have sign of the final cost methodology, including the underlying actual data used."

ICTA has decided to change its previous position. Arguably, giving access to a costing model that was specific to C&W did involve Digicel's representatives getting access to commercially sensitive information, hence the very strict terms under which that access was afforded. So even if (which is strongly disputed with respect to the requested redacted information) access to the FLLRIC would allow Digicel's representatives access to commercially sensitive information, there is no reason not be afford access to the FLLRIC model subject to the same strict confidentiality requirements as previously applied to giving access to the FAC model.

For all these reasons Digicel respectfully requests reconsideration of the decisions outlined on 16 August 2007.

Yours sincerely



John Byrne
General Manager
Digicel

cc: Cable and Wireless