



CABLE & WIRELESS

Cable and Wireless (Cayman Islands) Limited
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Our Ref: GRCR/COMP 8.2
20 September 2006

Mr. John D. Buckley
Chief Executive Officer
Digicel (Cayman) Limited
P.O. Box 700
Grand Cayman

Dear Mr. Buckley,

Re: Mobile Termination and the July 2004 Agreement

As a result of recent regulatory proceedings, Cable & Wireless has concluded that the Authority has never formally approved the July 2004 Agreement between Cable and Wireless (Cayman Islands) Limited, Digicel Cayman Limited and Wireless Ventures (Cayman Islands) Limited (the "Settlement Agreement"), despite efforts by Cable & Wireless to obtain that approval. In fact, from the very start, in correspondence to the three parties to the Settlement Agreement, the Authority made it clear that, at most, they would do no more than "accept the filing of the Agreement" and refused to "be contractually bound by an agreement to which it is not a party" and to "prejudice or fetter its statutory rights and obligations." In other words, that approval would never be forthcoming.

As Digicel is aware, section 11 of the Settlement Agreement provides that "in the event that such approval, for all or any part of the Agreement, is not obtained, then the entire Agreement shall be null and void." The inescapable conclusion is that the Settlement Agreement was never valid or in effect, regardless of the outcome of TeleCayman Limited's application to the Authority for an investigation of the Settlement Agreement under section 41 of the *Information and Communications Technology Authority Law* (the "TeleCayman Application").

It further follows that the Interconnection Agreements signed in January and February 2004 among the parties to the Settlement Agreement could not have been "deemed to have been amended so as to give full effect to the terms of this Agreement", under the terms of section 9 of the Settlement Agreement. The domestic mobile termination rate in effect between our two companies remains, therefore, the interim rate of C\$ 0.1555 per minute. Similarly, the domestic mobile termination rate in effect for traffic between Cable & Wireless and Wireless

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Ventures, which Digicel acquired, would be the interim rate of C\$ 0.1355 per minute (although there has been no traffic on that Joining Service since 17 March 2006) .

Cable & Wireless hereby notifies Digicel that, effective the date of this letter, Cable & Wireless will neither charge nor pay more than C\$ 0.1555 per for calls terminating on any mobile network in the Cayman Islands.

Cable & Wireless also expects an accounting of all amounts representing the difference between the valid interim rate of C\$ 0.1555 per minute and the null and void rate of C\$ 0.1845 per minute for the period during which Cable & Wireless and Digicel were erroneously charging each other the higher rate, and, similarly, between the valid interim rate of C\$ 0.1355 per minute and the null and void rate of C\$ 0.1845 per minute for traffic exchanged between Cable & Wireless and Wireless Ventures.

For example, based on Cable & Wireless' billing records for the period from 23 July 2004 to 31 August 2006, Cable & Wireless would refund to Digicel C\$ 661,488.19 and Digicel would refund to Cable & Wireless C\$ 1,245,793.21. Similarly, Cable & Wireless would refund to Digicel, on behalf of Wireless Ventures, C\$ 552,529.01 and Digicel would refund to Cable & Wireless, on behalf of Wireless Ventures, C\$ 610,604.04. For convenience, we propose that Digicel remit the net differences of C\$ 584,305.02 and C\$ 58,075.03, respectively. As Cable & Wireless has been a net payer under the terms of the Interconnection Agreement, Cable & Wireless also expects expeditious repayment of those amounts. In order to assist Digicel, we propose to deduct these amounts from other amounts owed to Digicel, under clause 9.9 of our Interconnection Agreement. Once payment is received, Cable & Wireless will reimburse other carriers in the Cayman Islands for traffic they transited to Digicel and Wireless Ventures via Cable & Wireless.

Please note that Cable & Wireless has never been convinced that Digicel's costs were so high as to justify even the interim rate of C\$ 0.1555. In addition, for obvious reasons, the credibility of any arguments Digicel might once have had regarding the impact of being a new entrant with a small market share, have long since evaporated. The 16 August 2006 report of the panel in the matter of an arbitration between Digicel (Trinidad and Tobago) Limited and Telecommunications Services of Trinidad and Tobago (published by the Telecommunications Authority of Trinidad and Tobago) has also seriously tainted the credibility of the costing that Digicel provided to the Authority in March 2004 to justify an excessively high rate. Accordingly, until such time as a FLLRIC-based mobile termination rate is established, Cable & Wireless reserves the right to apply a rate of C\$ 0.0864, as we proposed in our 5 September 2006 submission in response to the TeleCayman Application, and neither charge nor pay more than C\$ 0.0864 per for calls terminating on any mobile network in the Cayman Islands. For the avoidance of doubt, though, Cable & Wireless will apply the interim rate of C\$ 0.1555 in the mean time.

Finally, please note that, irrespective of the past, Cable & Wireless is not prepared to enter

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into any agreement in the future that would include a mobile termination rate similar to, let alone higher than, the interim rate of C\$ 0.1555.

Yours sincerely,
Cable & Wireless (Cayman Islands) Limited

“Signed”

Timothy P. Adam
Chief Executive

c.c. Mr. David Archbold, Managing Director, Information Communications Technology Authority
Mr. Rudy Ebanks, Chief Regulatory & Carrier Relations Officer, Cable & Wireless
Mr. Lawrence McNaughton, Executive Vice President, Carrier Services, Cable & Wireless
Mr. Frans Vandendries, Vice President, Regulatory Affairs, Cable & Wireless