CABLE & WIRELESS

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Mr. David Archbold,
Managing Director,
Information and Communication Technology Authority,
P.O. Box 2502
3rd Floor Alissta Towers,
Grand Cayman, KY1-1104
CAYMAN ISLANDS

Dear Mr. Archbold:

**Re: TeleCayman Allegations Regarding Anti-competitive Practices**

Cable and Wireless (Cayman Islands) Limited ("C&W Cayman") is pleased to submit the following further to the 21 August 2006 e-mail on procedures from the staff of the Authority. We have received the 2 August 2006 letter from TeleCayman Limited ("TCL") (the "Request") requesting an investigation by the Authority, pursuant to s. 41 of the *ICTA Law (2004 Revision)* (the "Law"), into alleged anti-competitive practices relating to the 23 July 2004 Agreement between C&W Cayman, Digicel Cayman Limited ("Digicel") and Wireless Ventures (Cayman Islands) Limited ("AT&T") (the "Settlement Agreement"). It is interesting to note that this request was submitted after two of the principal actors in the Settlement Agreement began working for TCL after leaving their former positions at the Authority and AT&T. We have also received Digicel's 14 August 2006 response to that request (the "Response").

C&W Cayman agrees with Digicel that an allegation of price fixing is a serious allegation, and trusts the following will be of assistance to the Authority in determining that there are no reasonable grounds for conducting an investigation under s. 41 of the Law.

**TeleCayman's Application**

In C&W Cayman's reading of the Request, TCL puts forward three principal arguments:

1. the Settlement Agreement is a price-fixing agreement contrary to section 36 of the Law, insofar as it purports to fix the mobile termination rate ("MTR") to be charged by all mobile operators in the Cayman Islands;
2. the current interconnection regime discriminates against Fixed Wireless providers, as they pay a higher MTR than other domestic and international operators, and
3. the MTR is flawed because the rate is neither negotiated with TCL nor cost-oriented, which are, in TCL's view, the only two appropriate bases for setting an MTR in the Cayman Islands.

However, before issues raised by TCL can be properly addressed, it is necessary to review the applicable legislative provisions. These include the Part of the Law dealing with anti-competitive practices, specifically section 36, as well as the various provisions in the Law and in the *ICTA (Interconnection and Infrastructure Sharing) Regulations* (the "Regulations") which set out the basic principles governing the setting of prices for interconnection services.

**Section 36 of the Law**

The relevant provision in the Law reads as follows:

> 36. (1) Agreements by or between licensees or between one or more licensees and any other person, decisions by licensees or concerted practices which:
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> (a) may affect trade in the Islands, and
> (b) have as their object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to this Law,
>
> are prohibited.
>
> (2) Subsection (1) applies, in particular, to agreements, decisions or practices which:
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> (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
> (b) limit or control production, markets, technical development or investment;
> (c) share markets or sources of supply;
> (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
> (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the Islands or is, or is intended to be, implemented in such other manner as will affect the operation of any ICT network or ICT service in the Islands.

(4) Any agreement or decision which is prohibited by subsection (1) is void.

(5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by a licensee or a concerted practice, but with any necessary modifications unless the context otherwise requires.

(6) In this section,

"the Islands" means, in relation to an agreement which operates or is intended to operate only in a part of the Islands, that part.

The key provision is, of course, subsection (1). Subsection 36(2) sets out a number of specific examples, but C&W Cayman submits that these types of agreement must still be analyzed using the test set out in subsection (1). The question to be answered, therefore, is whether the Settlement Agreement "may affect trade in the Islands, and have as [its] object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to this Law."

It should be noted that, under this provision, the agreement in question does not actually have to affect trade. It merely has to have the potential of affecting trade. C&W Cayman submits that any agreement with respect to prices will satisfy this rather broad criterion. The focus of the analysis is, therefore, on the second part of the test.

**Basic Interconnection Pricing Principles**

The Law and the Regulations require interconnection rates to be (1) cost-oriented, (2) non-discriminatory, (3) reciprocal and (4) reasonable.

Cost-Oriented

The requirement that rates for interconnection services be cost-oriented is set out in section 68(3) of the Law, as well as section 6(h) of the Regulations. "Cost-oriented" is defined at section 10(1)(f) of the Regulations by reference to a FLLRIC costing methodology. A "public consultative process" proceeding is under way, as required by the Regulations, but a final decision on a LRIC methodology is not likely until mid-2007 even under the most unreasonably optimistic scenario.

In absence of that LRIC methodology, the regulations specify two other means of determining cost-orientation: (1) decide which party to a dispute has a cost model that most closely resembles the FLLRIC cost model (section 10(11)) and (2) refer to the C&W Adjusted FAC model (section 10(2)). In other words, there are three ways to determine a

"reference cost" for the purposes of setting interconnection prices: the FLLRIC methodology (which is still to be determined by the Authority), a FLLRIC-like methodology (which cannot be known until the Authority has determined the FLLRIC methodology) and C&W Cayman's Adjusted FAC model.

Note that "cost-oriented" does not necessarily mean "equal to cost". If it did, the Law and Regulations would have said "no higher than cost" rather than "cost-oriented". This provides the parties to a negotiation some flexibility to negotiate.

At a minimum, C&W Cayman submits that "cost-oriented" must mean "at or above the reference cost", the reference cost being determined (as noted above) by using a FLLRIC model, a FLLRIC-like model or the C&W Adjusted FAC model. However, at some point "at or above the reference cost" must logically cease to be "cost-oriented", if the difference between the reference cost and the rate is excessive (e.g. a $10 rate based on a $0.01 cost). C&W is on record that a # #% premium above a reference cost might be too great for the resulting rate to be considered "cost-oriented".[1]

It should be noted that the only source for a reference cost recognized by the Regulations, the C&W Adjusted FAC model, produced a reference cost of approximately CI$ 0.11 per minute for mobile termination, based on 2002/03 data.

Non-discriminatory

This principle for interconnection prices is set out in both the Law and the Regulations. It is defined in the Regulations as applying "equivalent conditions in equivalent circumstances in providing equivalent services" (section 10(1)(b)). The Law states that a network operator cannot vary its charges for a service based on the class of customers to be served or the type of services that the other operator intends to provide (section 65(7)).

The principle of non-discrimination applies to each network operator separately. In other words, each operator bears a separate obligation not to discriminate for or against any particular other operator, including himself. This is of particular relevance in the case of voice call termination, as the cost of providing termination services does not vary by the origin of a call. Once a call has been handed over to a network, the process for terminating the call is the same.

Reciprocal

The requirement for reciprocal rates is defined in the Regulations as paying the same rate for providing each other the same services (section 10(1)(c)). This recognizes, of course, that different services may have different rates (e.g. fixed call termination versus mobile call termination). Unlike the principle of non-discrimination, this principle is applied to each pair of interconnecting network operators, to the extent that they offer the same types of interconnection services to each other.

[1] Dispute between Cable & Wireless and Digicel and between Cable & Wireless and AT&T Wireless regarding the Mobile Termination Rate, Cable & Wireless' Position, 19 March 2004, at paragraph 44.

C&W Cayman has submitted to the Authority on several occasions the strong policy bases for this approach. C&W Cayman notes that the principle of reciprocal charges was recently strongly endorsed by an independent arbitration panel in Trinidad and Tobago,[2] and that the only regulator in the Caribbean to explicitly consider the reciprocity issue for mobile termination rates (as opposed to merely "approving" an interconnection agreement which includes reciprocal rates) also endorsed the principle.[3]

When taken with the principle of "non-discrimination", this principle effectively means all networks of the same type must charge the same price (reciprocity ensures any given pair of networks charge the same price for the same service, and non-discrimination ensures any given network charges the same price to all other networks for a given service).

Reasonable

Unfortunately, while this last principle is cited in both the Law (at section 68(3)) and in the Regulations (at section 6(c)), it is not defined in either the Law or the Regulations. Presumably a rate that does not comply with the other principles for setting rates would not be reasonable. This does not provide much guidance, though, in determining what is "reasonable".

One approach might be to apply "benchmarking" to determine reasonableness. In other words, if the rate applied in Cayman is reasonably similar to cost oriented rates in other jurisdictions, the rate in Cayman is likely to be "reasonable". The problem, of course, is determining which rates are appropriate to be included in the benchmarking exercise. In this regard, the arbitration panel in the aforementioned Trinidad and Tobago determination was particularly critical of rates in other countries in the Caribbean, even though they all have legislation requiring cost-oriented or cost-based rates.

> "The panel has little difficulty in believing that TSTT's mobile termination costs are well below the benchmarks for other Caribbean countries since there is no evidence that these benchmarks reflect costs. Experience worldwide – for example illustrated by the UK and New Zealand reports cited by the parties – suggests that mobile termination charges are likely to be substantially above costs without regulatory efforts to base them on costs."[4]

These "other Caribbean countries" include, of course, the Cayman Islands. With all due respect, C&W Cayman submits that the Authority has made no effort to ensure MTRs in the

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[2] Decision 2/2006 of the Arbitration Panel in the matter of arbitration / Telecommunications Authority of Trinidad and Tobago / Section 82, Telecommunications Act / Between: Digicel (Trinidad and Tobago) Limited v. Telecommunications Services of Trinidad and Tobago Limited, 16 August 2006, at page 79. Some of the benefits of reciprocal charges are enumerated at page 26. The panel also noted that, TSTT's costs, as determined by TSTT's cost model, Digicel's costs, as determined by Digicel's cost model, (once adjusted to reflect an efficient operator in a market that has reached a "steady" competitive state), and the New Zealand cost-based benchmark, defined a range of costs that was sufficiently small as to make reciprocal charges a reasonable approach in Trinidad and Tobago.

[3] The Public Utilities Commission in Anguilla, Telecom Decision PUC 2006-102, In the matter of prices to be included in the interconnection agreements between Cable & Wireless (West Indies) Limited (C&W) and the following operators: Caribbean Cable Communications (CCC), Weblinks Limited (Weblinks) and Wireless Ventures Anguilla Limited (WVA Ltd.), 22 November 2005, at paragraph 11.

[4] Decision 2/2006 of the Arbitration Panel, infra, at page 51.

Cayman Islands are based on costs. In particular, once the Authority "accepted the filing"[5] of the Settlement Agreement, all serious inquiry into mobile termination costs in the Cayman Islands ceased.

In any event, C&W Cayman submits that the current mobile termination regime in the Cayman Islands is not reasonable, for reasons that will be outlined below.

**Background to the Settlement Agreement**

While TCL's Request and the Digicel Response focus on the question of the MTR, the Settlement Agreement in fact addressed a broader range of issues. As the Authority is well aware, in the first part of 2004, Digicel, AT&T and C&W Cayman were involved in two parallel disputes, one relating to C&W Cayman's retail mobile rates, and the other relating to the MTR that the parties would charge. C&W Cayman and the Authority were also in court over the Authority's handling of the dispute over C&W Cayman's retail mobile charges.

The Settlement Agreement resolved all three proceedings. In summary, in exchange for C&W Cayman's agreement to withdraw its claim against the Authority, set a floor beneath which its retail prices should not go, and accept an MTR well in excess of the reference cost generated by the C&W Cayman's Adjusted FAC model, Digicel and AT&T agreed not to challenge before the Authority every C&W Cayman mobile rate and retail initiative.

In other words, the Settlement Agreement addressed prices in two separate markets, the market for retail mobile services and the market for wholesale mobile call termination services.

**Relevant Clauses of the Settlement Agreement**

With respect to the first of those two markets, the retail mobile services market, the two most relevant clauses in the Settlement Agreement are sections 3 and 8. It appears from those sections that C&W Cayman's retail mobile rates were 'accepted' if not 'agreed' by the other two parties to the Settlement Agreement.

> "Upon signature of this Agreement, it is understood between the Parties that C&W will bring into effect the postpaid rates filed with the Authority by letter of 8 July 2004, the details of which are attached as Annex I. If C&W chooses to have these rates become effective on 28 July 2004, the other Parties to this Agreement will have no objection."
>
> "The Parties agree and propose that provided Cable & Wireless' retail postpaid mobile packages are at least equal in price to those of WVCIL or Digicel, as adjudged by the Authority, then in no event will either WVCIL or Digicel make a case to the Authority alleging that any package fails the applicable imputation test..."

[5] Letter from the Authority to Digicel, C&W Cayman and AT&T, "23 July 2004 Agreement between C&W, Digicel and Wireless Ventures ("the Parties"), as modified on 27 July 2004", ref. ICTA/80/118, 29 July 2004.

In the case of the wholesale mobile call termination market, the relevant provision is in section 5. Here, the agreement of the parties to set a common price is explicit.

> "In the event that the Authority agrees that 30 June 2006 is the earliest feasible date by which the FLLRIC Model could be completed, it is agreed and proposed that the PLMN Terminating Access Service rate that shall apply as between the Parties from the date of this Agreement up to 30 June 2006 shall be $.1845 CI ($.225 US).
>
> For the avoidance of doubt, it is agreed and proposed that from the date of execution of this Agreement until completion of the transition of the PLMN Terminating Access Service rate to FLLRIC, there should be only one mobile termination rate that applies as between the Parties, as specified herein, which will apply to all calls delivered by any one of the Parties to the mobile network of any of the others, and in accordance with all Cayman Islands telecommunications regulations."

As Digicel correctly points out in its Response, the Settlement Agreement sets the MTR only as among the parties to the Settlement Agreement. However, that position is slightly misleading because, as noted above, by operation of the interconnection provisions in the Law and the Regulations, that MTR must also be charged to all other parties.

In any event, having reviewed the relevant facts and the law above, C&W Cayman will address below the issues raised by TCL. For convenience, these are:

1. the Settlement Agreement is a price-fixing agreement contrary to section 36 of the Law, insofar as it purports to fix the mobile termination rate ("MTR") to be charged by all mobile operators in the Cayman Islands;
2. the current interconnection regime discriminates against Fixed Wireless providers, as they pay a higher MTR than other domestic and international operators, and
3. the MTR is flawed because the rate is neither negotiated with TCL nor cost-oriented, which are, in TCL's view, the only two appropriate bases for setting an MTR in the Cayman Islands.

**The Settlement Agreement is not Anti-Competitive**

As noted above and by Digicel, the first issue raised by TCL, that of price fixing, is critical as it carries with it criminal sanctions. Nor is this a new issue. When the Settlement Agreement was being negotiated, C&W Cayman expressed its concern that when the three parties to the Settlement Agreement agreed to an MTR, it would by default be setting a rate that would be the default charge for calls originating from all carriers on the basis that the rate would have to be non-discriminatory. More specifically, C&W Cayman raised the concern that an agreement was being reached by the three parties for termination on their respective networks, yet C&W Cayman would also have to enter into negotiations with other carriers such as TCL who were not parties to the agreement or present during the discussions. Ironically, when this issue was raised, a representative of the Authority was present and the feeling amongst the other parties including the representative of the Authority was that this would not be an issue.

C&W Cayman submits that, when the Settlement Agreement set the MTR at CI$ 0.1845, it cannot reasonably be viewed as an example of anti-competitive price fixing. Rather, the parties to the Settlement Agreement were entitled to negotiate an MTR that they would charge among themselves. Then, as detailed above, those parties were bound to charge the same rate to third parties by operation of law in Cayman, specifically the principle of non-discrimination.

Further, Digicel was not being anti-competitive or refusing to negotiate when it said it could not discriminate among carriers: it would be an odd Law that would make compliance with its interconnection pricing principles a breach of its prohibitions on anti-competitive pricing.

Put simply, there is no evidence that the Settlement Agreement is an anti-competitive agreement contrary to section 36 of the Law, and there are no reasonable grounds for the Authority to determine to conduct an investigation under section 41 of the Law.

This is not to say, though, that there are no grounds for the Authority to intervene and review the MTR being charged in the Cayman Islands today. The Authority has an obligation to ensure that the MTR charged by mobile operators here satisfies the requirements of the Law and of the Regulations, even if the Settlement Agreement is not anti-competitive.

**The Current Regime Does Not Discriminate Against Fixed Wireless**

C&W Cayman also submits that the current regime does not discriminate against fixed wireless operators in the Cayman Islands. As noted above, the operation of the principles of reciprocity and non-discrimination would usually result in common rates for the same service. In other words, there should be one MTR applied by all mobile operators to all other operators. This result would be both lawful and good public policy.

If there is any discrimination, it is in fact in TCL's favour. TCL currently benefits from a substantially lower MTR (albeit only for traffic terminating on C&W's mobile network) than any other operator in Cayman, by virtue of the Authority's Decision 2005-6.

C&W Cayman notes that TCL's examples of "differing" MTRs require further analysis to be properly understood. C&W Cayman does not dispute that there are various MTRs in operation in Cayman, but these are not quite as stated by TCL. For example, it is incorrect to state that C&W Cayman does not "pay an MTR for on net calls from… [its] fixed wireline network." We understand the Authority would impute the standard domestic MTR of CI$ 0.1845 in any cost analysis of that retail rate. It is also incorrect to state that the "MTR for an incoming international call to a Digicel or C&W mobile is likely around CI$0.15 per minute." C&W Cayman will not confirm the actual level of the charge, as these are typically confidential. However, TCL is clearly referring to the international settlement rate, not to the MTR. Unlike the MTR, the international settlement rate includes an element to cover a portion of the international transmission of the call, not just the domestic termination of the call. As a result, it is not appropriate to compare directly the international settlement rate and the MTR. However, without revealing the confidential amount of the international settlement rate, C&W Cayman can confirm that the reason why the mobile termination rate

for incoming international calls is lower than the rate for domestic originated calls is that when the international settlement rates less the cost of international transmission are considered, there would not be sufficient net amounts to pay out the rate agreed for domestic-originated calls terminating on a mobile network.

**The MTR Is Flawed**

TCL's final argument is that the MTR is flawed because it is neither negotiated with TCL nor cost-oriented. As noted above, the fact that the current standard rate was not specifically negotiated with TCL does not, in and of itself, make the rate flawed. The principle of non-discrimination requires both C&W Cayman and Digicel to charge to TCL the same rate as they apply to each other and to other parties.

However, C&W Cayman submits that there is no evidence that the current standard domestic MTR of CI$ 0.1845 is a cost oriented rate. It is worth noting that the only source of reference costs presently available in the Cayman Islands, i.e. the C&W Adjusted FAC model, generated a reference cost some 40% lower than the current standard domestic MTR of CI$ 0.1845. Put another way, the current rate is more than 170% of the reference cost. As noted above, the FLRRIC model will not be available prior to the middle of 2007, and in fact is unlikely to be available prior to the end of 2007. It cannot, therefore, be considered a near-term alternative to the C&W Adjusted FAC model.

Note that the issue of the "reasonableness" of the MTR(s) in the Cayman Islands has never been considered by the Authority. It cannot, therefore, be considered *res judicata*.

Further, C&W Cayman submits that it is a stretch to argue that the issue of cost-orientation of the MTR(s) in Cayman is *res judicata*, when it appears from Decision 2005-6 that the Authority did not consider the issue at all. There is certainly little on the face of the decision to suggest that the Authority actually turned its mind to the question of cost-orientation, except paragraph 12 which can be read to suggest the Authority accepted that the rate was not cost-oriented. All the Authority did was to determine that the remedy proposed by TeleCayman was inappropriate, and to deny the application as a result. This, of course, is putting the cart before the horse, because normally a tribunal considers whether there is an issue that requires a remedy before considering whether the remedy is appropriate. Further, if the issue of cost-orientation is truly *res judicata*, this would mean that the Authority had satisfied itself that three widely disparate rates, ranging from CI$ 0.0864 to CI$ 0.1845, were all cost-oriented within the meaning of the Law and the Regulations. This result would be difficult to reconcile.

**The Current Situation is Unreasonable**

Further, because of the Authority's refusal to intervene and to regulate properly mobile termination rates, there is plenty of evidence that the current mobile termination regime in the Cayman Islands is not reasonable. This is evidenced by the existence of multiple rates for the same service (mobile call termination) and of a constant state of dispute among the Authority's ICT Licensees.

Multiple Rates

C&W Cayman is aware of at least three different MTRs being charged by operators in Cayman today. These include the basic domestic MTR of CI$ 0.1845 charged by Digicel and C&W Cayman for terminating calls originating within the Cayman Islands, the interim non-standard domestic MTR of CI$ # # charged by C&W Cayman for terminating calls on C&W Cayman's mobile network that originate on TCL's network in the Cayman Islands, and the international MTR of CI$ 0.0864 charged for terminating calls that originate overseas.

Given that there are three different rates in place for what is the same service (termination of calls on a mobile network in Cayman), there are clear inconsistencies in the way that mobile termination rates are being charged. All parties involved in this proceeding are aware of the origin and derivation of these different rates. Nevertheless, as long as these inconsistencies exist, it could be argued that one or more of the charges are therefore unreasonable.

In any event, whether or not any one or more of the rates are unreasonable, this situation is clearly unreasonable. It would be far more reasonable, and consistent with the letter and spirit of the Law and Regulations, if there were a single mobile termination rate for all calls irrespective of network of origination and irrespective of the mobile network in the Cayman Islands upon which that call terminates.

Multiple Disputes

Since early 2004, there has not been a single period of time during which the MTR was not in dispute in one way or another, or has not required active consideration by the Authority. As soon as the February 2004 disputes between C&W Cayman and Digicel and C&W Cayman and AT&T were "resolved" in July 2004, the dispute with TCL began. This dispute came to a head in September 2005 when it was raised as a formal dispute to the Authority by TCL. In February 2006, C&W Cayman was forced to raise another MTR-related dispute with TCL to the Authority. In April 2006, C&W Cayman filed a reconsideration request, asking the Authority to review its Decision 2005-6 on the grounds that the fundamental basis of the decision did not exist in fact. In June 2006, TCL filed its reconsideration request for Decision 2006-1, and in August 2006, TCL filed the present application.

This constant state of dispute among licensees in Cayman has represented an enormous waste of Authority and Licensee resources – and could have been avoided if the Authority had properly reviewed the Settlement Agreement when it first received it in July 2004 and had made a determination, instead of "accepting the filing" of the Agreement and hoping the problem would go away. Further, until such time as the Authority does so, the disputes and applications to the Authority are likely to continue.

## Proposed Determination

In the final paragraph of its Request, TCL proposes that the Authority conduct an investigation under section 41 of the Law, and proposes that the Authority substitute the

rate in the Settlement Agreement with the rate of CI$ 0.0864.[6] As C&W Cayman has stated above, **there are no reasonable grounds to conduct an investigation under section 41 of the Law, and this aspect of the Request must be denied**.

In any event, C&W Cayman proposes the following determination. The current situation of multiple MTRs, particularly multiple domestic MTRs, is unreasonable, and therefore is in breach of the Law and Regulations. There is also no evidence that the Authority satisfied itself that the MTR of CI$ 0.1845 in the Settlement Agreement is cost-oriented within the meaning of the Law and Regulations.

The Authority should, therefore, exercise its jurisdiction under section 22(2) of the Regulations and consider whether the MTR of CI$ 0.1845 "does not comply with the Law, conditions of the licence, relevant regulations, regulations, decisions, directives or standards and other guidelines that the Authority may prescribe", specifically whether it is not cost-oriented. The evidence submitted in this letter, in particular the fact that it is well in excess of the only available reference cost and the fact that the Authority itself appears to acknowledge it is not a cost-oriented rate, suggests that the Authority should act quickly and immediately reject that portion of the interconnection agreements in the Cayman Islands that employ that rate.

Further, C&W Cayman submits that the only appropriate alternative rate, at least in the short term, is CI$ 0.0864 per minute.[7]

This rate was established for incoming international calls terminating to mobiles because it would be impossible to pay the rate requested by Digicel and AT&T for terminating such calls, as the net amount of payments received through international settlements minus the cost of conveying those calls would have been less than the amount paid out. This would result in a loss for each call. Digicel and AT&T, therefore, agreed to a lower rate for terminating calls originating overseas. As noted earlier, this clearly illustrates the inconsistency in the existing rates. It also opens up potential arbitrage opportunities, where it would be more economically feasible to route calls overseas than to route them domestically (notwithstanding that Interconnection Agreements in the Cayman Islands do not permit such "tromboning" of calls). Clearly, it is not good domestic policy to allow inconsistent MTRs where a domestic carrier is better off using carriers overseas to transport the calls rather than domestic connections. Furthermore, on the assumption that Digicel and AT&T would also not want to make a loss on such calls, it is reasonable to assume therefore that the "incoming international" MTR of CI$ 0.864 is reasonable and above their cost of termination.

As a result, C&W Cayman recommends, in order to resolve the issue of unreasonableness, while maintaining reciprocal and non-discriminatory rates, that the Authority determine clearly and unequivocally that all mobile operators in the Cayman Islands should charge an MTR of CI$ 0.0864 per minute (C&W Cayman believes that this was also the rate that TCL

[6] C&W Cayman notes that TCL states CI$ 0.86 in their application. However, it is assumed that this is a typographical mistake, as they refer to the same rate as the international rate and also earlier in the text on page 5 they refer to the rate being set at 0.086. The actual international rate is CI$ 0.0864.

[7] In the alternative, the Authority could determine to apply the rate of CI$ 0.107 to calls originating in Cayman and the rate of CI$ 0.0864 to calls originating outside of Cayman, but this would mean some inconsistencies in rates would remain.

were intending as a proposed rate, from the context of their text, despite the typographical error stating 0.86) for all calls terminating on a mobile network in the Cayman Islands, whether these calls originate on a domestic or an international network, or a fixed or a mobile network, until such time as the FLLRIC proceeding is completed at which time Authority should review the position and issue a determination based on the FLRRIC and other considerations set out in the Law and Regulations such as reciprocity, non-discrimination and reasonableness.

**Confidentiality**

C&W Cayman is filing portions of this submission in confidence with the Authority. Some of this information represents an interconnection rate that remains confidential to the two interconnecting parties, and some is derived from information from the confidential interconnection negotiations between C&W and Digicel and AT&T in early 2004 which is still protected by the terms of Non Disclosure Agreements in place between the three companies. It would be inappropriate to disclose either type of information to the general public.

A redacted version, with all confidential information replaced by "###", will be provided for the public record.

Yours sincerely
Cable & Wireless (Cayman Islands) Ltd.

"Signed"

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Rudy B. Ebanks
Chief Regulatory & Carrier Relations Officer

Cc: Mr. Timothy Adam, Chief Executive, Cable & Wireless (CI) Ltd.
Mr. Frans Vandendries, Vice President Regulatory Affairs, Cable & Wireless
Mr. Lawrence McNaughton, Executive Vice President, Cable & Wireless Carrier Services (Caribbean)
Mr. Greg van Koughnett, Head of Licensing & Compliance, Information and Communications Technology Authority
Mr. Raul Nicholson-Coe, President & Chief Operating Officer, TeleCayman Ltd. (**redacted version only**)
Mr. Philip Brazeau, TeleCayman Ltd. (**redacted version only**)
Mr. John D. Buckley, Chief Executive, Digicel (Cayman) Ltd. (**redacted version only**)