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31 October 2006

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

Dear Mr. Archbold,

Re: Cable & Wireless Determination Request dated 25 October 2006

We write further to C&W's two letters to ICTA of 25 October 2006 which both request that you determine an appropriate mobile termination rate (MTR) between Digicel and C&W for application to all mobile ICT licensees in Cayman – one letter purporting to be a formal dispute determination request, the other being a generalised invitation to ICTA to intervene on this issue without any supporting legal basis for this.

A. C&W's 'Determination Request'

C&W's first letter states that it is a formal dispute determination request sent pursuant to Regulation 3 of the ICTA (Dispute Resolution) Regulations 2003 ("the Dispute Regulations"). However, the letter is not a valid dispute determination request as C&W has blatantly ignored the first part of the dispute resolution procedure in Regulation 3 which requires (**a**) a grievance notice to be served and (**b**) good faith negotiations between the parties to take place seeking to resolve the dispute without the need for ICTA's intervention, before a valid determination request can be made.
Further, even if C&W starts the procedure again (this time following the correct procedure), and it ultimately proves impossible for the parties to reach a negotiated settlement (which is by no means certain), this is a private dispute arising in respect of the MTR agreed by Digicel and C&W in their January 2004 Interconnection Agreement (as amended). It should and will be determined, if formal dispute resolution is required, by ICC arbitration. ICTA should decline jurisdiction if C&W again attempts to pursue the matter through a (valid) determination request.

- **Invalid Determination Request**

By issuing a determination request without first sending a grievance notice as required by Regulation 3(1) of the Dispute Regulations, C&W has ignored a key part of the dispute procedure. Under Regulation 3, C&W should have notified Digicel of its grievance, Digicel would then have had the opportunity to respond in writing, there would then have followed a 30 day period for good faith negotiations.

The importance of this part of the ICTA dispute process is underlined by Regulation 4: a party shall not submit a determination request unless it has first made good faith and reasonable efforts to settle such dispute. This was reinforced in ICTA's comment at paragraph 10 of its Decision 2006-1 consequent to TeleCayman's refusal in that dispute to comply with the grievance procedure:

> "Finally, as a practice note, the Authority expresses concern that TeleCayman apparently declined to file, as required by section 3(2) of the Regulations, a response to the Notice by C&W. In the Authority's view, that requirement is in the public interest, in that it seeks to minimize the intervention of the regulatory authority where circumstances are such that the parties may reasonably be expected to resolve the grievance in question themselves."

Indeed, its significance, and the invalidation of a determination request, which ignores it, was even recognized by C&W in its recent letter to ICTA of 28 August 2006 objecting to similar conduct by TeleCayman:

> "C&W notes that the correspondence from TCL… refers to a "Determination Request" by TCL. None of the procedures set out in the [Dispute Regulations] as being necessary prerequisites to the making of a determination request as defined under the Dispute Resolution Regulations have been complied with. Specifically, C&W received from TCL no written notice under regulation 3(1) of the Dispute Resolution Regulations informing C&W Cayman of the grievance…
>
> There was also no attempt by TCL, as is required by regulation 3(3) of the Dispute Resolution Regulations, to make good faith attempts to resolve the alleged grievance with C&W prior to submitting a determination request.
>
> That being the case, it is the position of C&W that no proper determination request within the meaning of the Dispute Resolution Regulations has in fact been made."

The settlement procedure is mandatory as a party cannot possibly know whether negotiations will resolve a situation unless it tries.

C&W has made a half-hearted attempt in its 25 October letter to somehow suggest that the parties are so far apart in their respective positions that *further* bilateral negotiations "are unlikely to produce a resolution". This is disingenuous, to say the least. Although there has been an exchange of correspondence, there have been no bilateral good faith negotiations. Without negotiations, the notice is defective due to the mandatory nature of the settlement procedure.

Further, and in any event, even though there has been some correspondence between the parties, there was no discussion about the legal issues. Indeed, one of C&W's two main arguments in support of its position, that the CI$0.1845 MTR was contrary to law, was only communicated to Digicel for the first time in Quin & Hampson's letter to Digicel's attorneys (Myers & Alberga) the same day as the determination request was

issued, 25 October. If Digicel has the opportunity to explain to C&W why this argument is without foundation then no formal dispute resolution process may ever be required.
In summary, C&W cannot decide its own dispute resolution procedure; it must follow that set out in Regulation 3. The 25 October letter is not a valid determination request and so should be rejected by ICTA.

- **This is not an ICTA dispute.**

Even if C&W starts the process again, next time following the required Regulation 3 procedure, ICTA should decline to deal with the determination request.

This is a contractual dispute between C&W and Digicel. The core issue is what the correct MTR should be for the purposes of the parties' Interconnection Agreement (as clearly set out in the exchange of correspondence attached to C&W's letter).The relevant MTR (to be applicable until the FLLRIC model is finalised) was added to the January 2004 Interconnection Agreement by the Settlement Agreement on 27 July 2004. The latter agreement was notified to ICTA, was not rejected, and has been applied by the parties for almost 3 years. Indeed, C&W has relied on it (asserting its validity) in the various ICTA proceedings brought by TeleCayman.

For whatever commercial reason, C&W has now decided that it is better suited to deny the existence of the Settlement Agreement and to refuse to pay the contractually agreed MTR (not surprisingly preferring to pay a lower rate). C&W has dressed up its commercial decision to resile from the contract in a movable feast of public policy arguments in its correspondence with Digicel (asserting new arguments as they occur to it) and is also trying to make this a market issue rather than just a dispute between two parties. However, in reality the short issue between the parties concerns the correct interpretation of their commercial agreement, i.e. the contractual construction of their Interconnection Agreement to determine the applicable MTR and quantify Digicel's consequent claim for damages based on this.

Digicel has now activated the relevant contractual dispute resolution process to resolve this. This will ultimately lead to ICC arbitration between the parties if C&W does not reconsider its position. This is not a regulatory issue, which should concern ICTA or involve other mobile operators in Cayman.

Accordingly, if a valid dispute determination request is ultimately produced by C&W, Digicel considers that this should be declined by ICTA pursuant to Regulation 10, whether for being vexatious (10(c)), an abuse of process (10(d)), governed by the terms and conditions of an existing contract (10(i)) or the subject matter of current litigation between the parties (10(j)).

B. C&W's further request of 25 October 2006

Under its separate, longer letter of the same date C&W has made an identical request to that contained in the defective determination request, proposing to ICTA that it "immediately institute a proceeding" to determine whether the final MTR of CI$0.1845

per minute agreed by the parties in the Settlement Agreement, the interim rate of CI$0.1555 per minute initially agreed by the parties in their Interconnection Agreement but then replaced by the final MTR, or a new interim rate of CI$0.11 per minute now suggested by C&W, should be the applicable MTR between the parties.

This generalised proposal appears to add nothing to the dispute determination request in its first letter (referred to above). In its first letter, C&W explains that it "has filed an application pursuant to section 68(3) of the Law [ICTA Law (2006 Revision)] and to section 6(h) of the Interconnection Regulations for the determination of a cost-oriented mobile termination rate for calls originating in the Cayman Islands and terminating on mobile networks in the Cayman Islands" and proceeds to rely on these statutory provisions as the sole legal bases for the "application" in its second letter. However, Section 68(3) appears to be completely irrelevant (dealing with the one-off cost of physical interconnection) and Regulation 6(h) (in conjunction with Regulation 6(c)) simply confirms that interconnection and infrastructure sharing rates should be reasonable and cost-oriented. Neither section contains a provision entitling C&W to apply to ICTA for a decision in this respect.

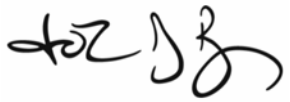
The only procedure through which C&W can apply to ICTA for a decision in relation to interconnection is by a dispute determination request issued under the Dispute Regulations – as provided by Regulation 6(l). C&W has done this, and, for the reasons set out above, this should be dismissed. This certainly does not extend to requiring a market review, being limited to the simple determination of a dispute between licensees. C&W's letter implicitly recognises the lack of any other statutory basis as it just makes a '<u>proposal</u>' that ICTA should institute a proceeding rather than a formal application requiring ICTA to do this.

In short, ICTA has no obligation to start any such proceeding outside the dispute determination request procedure. Digicel submits that in a matter where the parties have already agreed an MTR (in accordance with the ICTA law and regulations), have applied this with ICTA's approval for almost 3 years and are actively assisting in the finalisation of the FLLRIC model that will ultimately be used to replace this agreed MTR, it would be wholly inappropriate and illegal to do so.

In such circumstances, Digicel does not consider it necessary to comment in detail on the various matters raised in the C&W correspondence. However, for the avoidance of any doubt, it does not accept many of the factual assertions and legal propositions made by C&W and fully reserves all its rights in this respect.

We await your confirmation that the defective determination request of 25 October 2006 will be rejected by ICTA and that no further steps will be taken in respect of either of C&W's letters of that date.

Yours faithfully,



John D. Buckley
Chief Executive Officer
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CC: Timothy P. Adam, Chief Executive, C&W
Rudy Ebanks, Chief Regulatory & Carrier Relations Officer, C&W