



The Bigger, Better Network.

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February 2, 2010

Attention: Mr. David Archbold

The Managing Director
The Information Communications and Technology Authority
P.O. Box 2502
Grand Cayman, KY1-1104
CAYMAN ISLANDS

Dear Sir:

Re: Determination Request December 11th 2009 – LIME (Cayman Islands) Limited & Digicel (Cayman) Limited.

We have a letter dated January 26th 2010 from TeleCayman responding (as allowed by ICTA correspondence of January 14th 2010) to our Determination Request of December 11th 2009.

TeleCayman has taken issue with the ICTA decision arising out of LIME's request to join both TeleCayman and WestTel as parties to the pre-contract dispute between Digicel and LIME. ICTA properly declined to do so and noted inter alia that the dispute and the resultant determination do not significantly affect TeleCayman and WestTel. The LIME request did not provide any evidence that the disputes between Digicel and LIME were also disputes between LIME and TeleCayman. LIME would have to prove that these issues are live between itself and TeleCayman and ICTA was not convinced that this was so. We cannot see how the matters raised in the October 27th 2009 letter provide evidence of a conflict between TeleCayman and LIME. That letter merely gave TeleCayman's opinion on the impasse between LIME and Digicel on the glide path and offered comments on a hypothetical direct interconnect request presumably from TeleCayman to Digicel. Offering a commentary on a dispute between two parties does not MAKE one a party to the dispute in much the same way as ICTAs asking for submissions on this dispute will make any submitting party a disputant. We find no fault with this position taken by ICTA. The Authority having dispensed with the issue of 'significant impact' on the joinder application, we make no further submissions thereon and in the interest of focusing on the deliberations at hand, we will also make no further submissions on the ICTA decision to allow WestTel and TeleCayman to comment on the proceedings.

In respect of its October 27th 2009 letter, we disagree with TeleCayman as we disagreed with LIME that the fact that the law mandates the use of a cost based MTR, the parties may not agree (as they did) to have this rate gradually introduced. The telecoms law in the Eastern Caribbean also requires rates to be cost oriented as does

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

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the regulation in Europe, yet it is generally accepted by the NRAs there that a glide path is consistent with the law. If it were otherwise, in every territory where MTR are cost based, there would never be a glide path or where they were applied, the courts would strike them down. In addition there are perfectly good and a valid, scientifically underpinned, reason why there should be a glide path applicable under the circumstances, in fact a glide path is regulatory best practice. In this aspect we also refer to our other submissions in this matter.

TeleCayman is fully aware that the rate of CI\$0.1845/min is one allowed by law with the proviso that LIME assist ICTA with the determination of a cost based MTR using the FLLRIC model. There is no merit to the argument that this rate was not agreed with ICTA nor TeleCayman and as such is not applicable to them. We agree with ICTA that the Glide Path dispute has no significant impact on TeleCayman and that based on the minutes historically sent by TeleCayman to us the imposition of a Glide Path will cause no real financial impact to them. The existence of a 30 month Glide Path with an equally distributed reduction will at the most in year one of the Glide Path, result in an incremental cost to TeleCayman of approximately CI\$# # # # per annum or less than CI\$# # # # per month.

We note with appreciation that TeleCayman acknowledges the agreement made by the mobile operators on July 2004 (the "Imputation Agreement") to be legal. In that very same agreement the Glide Path is also agreed and since, we contend, the Imputation Agreement still is in force we fail to see the validity of TeleCayman's complaint where it also accepted the validity of the agreement per se. TeleCayman also recognizes that the parties were at July 23rd 2004, NOT at that cost based rate and the legal process for determining that rate did not allow for the determination of a specific date and a date for its applicability. The parties therefore identified a mechanism to give effect to a cost based rate which required the 30 month glide path. If the parties had by the agreement attempted to fix the MTR at an artificially high level or sought to defeat the mandate of the Law by preventing the application of a cost based rate, then it would have been inconsistent with the Law and ICTA or the court could not allow the agreement to stand. It is open to both the parties and to ICTA to determine and apply a cost based rate using the glide path as they are not mutually exclusive.

We notice that TeleCayman repeatedly urges that the cost of the operators should be similar due to the similarities in technology and network topologies. We must state that, as ICTA is well aware, this is, totally irrelevant since the "cost-based" rates referred to in a LLRIC model actually has very little to do with the actual costs of a party's network but is rather a theoretical exercise which can be modeled in a variety of ways, which Digicel has elaborated on in its earlier submissions.

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Digicel agrees with TeleCayman that the interest of the Caymanian public is crucial. However ICTA's mandate under the Law extends to the industry which also includes the operators. This requires the ICTA to balance the interests of both and implicit in our argument for the glide path is the argument that any prejudice to the subscriber for bearing a MTR which over a period of time trends down to the cost based level, is offset by the financial stability of Digicel in a telecommunications climate where competition must be maintained.

Interestingly, TeleCayman complains of the possibility of having an artificially high MTR applied by Digicel in circumstances where there are no rates actually in discussions between us. In the circumstances there is no substance to this argument based as it is, on a hypothetical interconnection. We have no idea of what LIME may have said or represented as Digicel's view in any aspect of the interconnection discussions between LIME and TeleCayman, and as such we cannot really comment. We can confirm that LIME has never been authorized to represent Digicel in any discussions with other operators in Cayman, including with TeleCayman.

Of interest is the last section of TeleCayman's letter where it expresses its concern in offering rates to international carriers for incoming international calls terminating in a mobile network. Although we do not know exactly what kind of arrangement LIME and TeleCayman has, the interconnection agreement, dated 11 May 2004 posted on the website of ICTA clearly states that the Incoming International Call Termination to PLMN is 0.0864CI\$/min and an International Conveyance Consumption of 0.0288CI\$/min. We therefore fail to understand how a glide path of domestic rates would have an impact on its competitiveness to attract incoming international minutes and what competitive advantage it would give Digicel. It clearly cannot be the MTR element of the cost.

Finally, we share TeleCayman's concern that the process of determination of the disputes not be too long. We are however encouraged to date by the speedy response from ICTA on the reconsideration requests, the response to the LIME requests and the claims of confidentiality. This has given us no reason to believe these disputes will take an inordinately long time to resolve and any competitive disadvantage which TeleCayman may suffer ought to be very short lived.

Yours sincerely,

Digicel (Cayman) Limited



Victor Corcoran

Chief Executive Officer