



ICT Decision 2010-1

Grand Cayman, 3 February 2010

Decision on Digicel's application to reconsider the 24 December 2009 ICTA determination on interim interconnection rates

Summary

In this decision, the Authority denies the application by Digicel to reconsider the 24 December 2009 ICTA determination on interim interconnection rates. The Authority considers that one of the issues before it in the main Digicel/LIME interconnection dispute resolution proceeding is the effective date of any new rates for certain interconnection services. To conclude at this point that there will be no retroactive adjustments requires the Authority to predetermine its findings in the main interconnection dispute. The Authority finds this to be inappropriate and therefore denies Digicel's reconsideration request.

(Note: This summary is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

BACKGROUND

1. In a 24 December 2009 letter (the "Interim Determination"), the Information and Communications Technology Authority (the "Authority" or the "ICTA") determined, among other things, that rates for certain interconnection services between Cable and Wireless (Cayman Islands) Limited ("LIME") and Digicel (Cayman) Limited ("Digicel") were made interim effective 27 December 2009 and that LIME and Digicel were to keep detailed records of the quantities and rates used to bill for certain interconnection services to enable any adjustment to be applied retroactively to that date.

THE APPLICATION

2. On 7 January 2010, Digicel submitted an application requesting that the Authority reconsider and/or clarify the Interim Determination to state that it will not have a retroactive effect. In its application, Digicel contended that the Interim Determination is inconsistent with an alleged 17 December 2009 interim agreement between the parties or, alternatively, it is inconsistent with prior agreements

between the parties which Digicel contends are still in effect. Therefore, in Digicel's view, the Interim Determination is unreasonable given the parties' prior agreements.

3. Digicel also submitted that the Authority has no jurisdiction in respect of the alleged agreed matters.

PROCESS

4. A call for comments on Digicel's application for reconsideration was issued by the Authority on 7 January 2010 and the record of the proceeding including the call for comments was posted on the ICTA's website.
5. The Authority received comments from LIME and reply comments from Digicel.
6. In its 18 January 2010 comments, LIME submitted that the fact that Digicel's determination request sought a glide path from the date of the determination in the interconnection dispute proceeding did not restrict the Authority's powers to deal with the dispute and all matters contained therein, including the effective date. LIME repeated its view, as previously stated in its 27 November 2009 letter to Digicel, that the old interconnection agreement had expired and that LIME could legitimately implement new rates for certain interconnection services.
7. LIME also disagreed with Digicel's characterization of the 17 December 2009 discussion between the parties as resulting in a valid interconnection agreement.
8. On 22 January 2009, Digicel filed a reply to LIME's comments.

AUTHORITY ANALYSIS AND DETERMINATION

9. The Authority is, and was at the date of the Interim Determination, fully aware that Digicel requested a determination that the new interconnection agreement would be effective from the date of the ICTA determination in the main interconnection dispute proceeding. However, the Authority notes that LIME has expressed the view that new rates should be effective 27 December 2009. These points, and indeed much of the parties' submissions in the reconsideration proceeding are duplicated in the main interconnection dispute proceeding.
10. Therefore, Authority considers that the effective date of any new rates is squarely before it in the main interconnection dispute proceeding and to grant Digicel's reconsideration request would preclude the Authority from possibly ultimately agreeing with LIME's position. The Authority considers that it is inappropriate that it predetermine one of the outcomes of the main interconnection proceeding and therefore, cannot approve Digicel's reconsideration request.

11. The Authority emphasises that, at this point in time, it has not determined that any new rates should or should not be applied retroactively to 27 December 2009 or some other date. The Interim Determination was issued to enable retroactive implementation of the rates if, after having received submissions from the parties and due consideration, the Authority's determination in the main interconnection dispute requires that to be done.
12. The Authority also notes that one of Digicel's arguments is that the 17 December 2009 discussions between the parties resulted in a valid interconnection agreement that was effective on that date and would also implement a rate reduction to the mobile termination rate effective 1 January 2010. As both of those dates have now passed, granting Digicel's request that the determination in the main interconnection dispute not have retroactive effect would also preclude the Authority from possibly ultimately agreeing with Digicel's position on that point. Again, at this point in time, the Authority does not consider it appropriate that it should be limiting the possible outcomes in the main interconnection dispute proceeding.
13. In light of the above, the Authority determines that Digicel's reconsideration application is denied. As the submissions of the parties in the reconsideration proceeding relate to one of the issues in the main interconnection dispute proceeding, the Authority hereby makes those submissions part of the record in the main proceeding.