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Information & Communications Technology Authority

Our ref: ICTA/105/105-15

14 January 2010

To: FLLRIC Phase 3 distribution list

Re: **Digicel's submissions of 7 September 2009 and 4 November 2009**

In this letter, the Information and Communications Technology Authority (the "ICTA" or the "Authority") deals with two recent submissions by Digicel (Cayman) Limited ("Digicel") in the FLLRIC Phase 3 proceeding.

Submission of 7 September 2009

On 7 September 2009, Digicel submitted to the ICTA and copied to the FLLRIC distribution list a document which it stated were interrogatories in accordance with the schedule set by the ICTA for the FLLRIC process. On 9 September 2009, Digicel provided the FLLRIC distribution list with two attachments that were referenced in the 7 September 2009 submission.

On 16 November 2009, Cable and Wireless (Cayman Islands) Limited ("LIME") submitted a response to Digicel's 7 September 2009 letter by responding to the interrogatories contained in that submission. LIME also submitted that the bulk of what Digicel filed on 7 September 2009 could not reasonably be characterized as interrogatories and requested that Digicel's submission, except for the seven actual questions, be stricken from the record and not considered in any deliberations by the Authority in this proceeding.

The Authority notes that the process it stipulated to be followed in the FLLRIC Phase 3 proceeding first allowed parties to provide submissions on the FLLRIC model and Mobile Termination Rate ("MTR") costs studies and then allowed parties to ask interrogatories to other parties who made submissions. Clearly, the intent of the interrogatory phase was to allow parties to ask questions related to the submissions made by other parties.

The interrogatory phase is not an opportunity to submit new evidence or to ask questions related to topics that are beyond the scope of the proceeding.

In the Authority's view, Digicel has incorrectly used the interrogatory process to:

- 1) submit new evidence at a later stage in the process than is permitted and thus deny other parties a fair opportunity to examine and question Digicel's evidence,
- 2) inappropriately ask the Authority to provide its views during an active proceeding when the purpose of the proceeding is to develop a record on which the Authority will come to a conclusion, and
- 3) submit evidence and ask interrogatories about topics that are beyond the scope of the proceeding.

Therefore, the Authority determines that except for the seven actual questions that were repeated in LIME's 16 November 2009 response, Digicel's submissions of 7 September 2009 and 9 September 2009 are stricken from the record of this proceeding and will not be considered in any deliberations by the Authority in this proceeding.

In the Authority's view even some of the actual questions could reasonably be stricken from the record as they relate to topics that are beyond the scope of the proceeding. However, as LIME has provided responses to the actual questions, the Authority will consent to the questions and responses remaining part of the record.

Submission of 4 November 2009

On 4 November 2009, the Authority received a letter from Digicel concerning an Interconnect Billing System and the MTR. In that letter Digicel claimed, among other things, that the cost of inter-operator billing has to be included in the FLLRIC model and that the Authority must reassess the model to ensure that it includes an inter-operator billing system.

In a 20 November 2009 letter, the Authority required Digicel to provide a copy of the submission to the FLLRIC Phase 3 distribution list and the Authority provided an opportunity for any party to provide comments on whether Digicel's letter should be added to the record of the FLLRIC Phase 3 proceeding. The Authority received no comments from any party.

As with the 7 September 2009 submission, the Authority is concerned that Digicel is abusing the FLLRIC process by attempting to engage in ex parte communication with the Authority about topics that are the subject of an on-going proceeding and submitting new evidence almost three months after the due date of 7 August 2009 when, in accordance with the FLLRIC Phase 3 procedures, parties were to have filed

their submission regarding proposed changes to the FLLRIC models and MTR cost studies with supporting rationale.

However, taking into consideration that this cost item may have a material effect on the mobile termination cost, the Authority consents, as a limited exception to the established procedure, to making the 4 November 2009 letter part of the record of the proceeding.

The Authority will be issuing interrogatories to LIME related to this topic and will allow parties to address the topic when they submit Final Comments and Reply Comments in the FLLRIC Phase 3 proceeding. As previously identified by the Authority, when the Authority has completed any interrogatories it intends to address, it will set dates by which parties can file Final Comments and Reply Comments addressing the full record of the proceeding.

Yours sincerely,

[signed]

David Archbold
Managing Director