



CABLE & WIRELESS

Cable & Wireless
(Cayman Islands) Limited

P.O. Box 293
Grand Cayman KY1-1104
Cayman Islands.

www.cw.ky

Telephone +1 (345) 949-7800
Fax +1 (345) 949 7962

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26 October 2007

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

Dear Mr. Archbold:

Re: Public Consultation on Costing Manual (CD 2005-1) – Second Digicel Disclosure Request – C&W Response

This letter constitutes our reply, pursuant to regulation 4(1)(g) of the *Information and Communications Technology Authority (Confidentiality) Regulations, 2003* (the “**Regulations**”), to the letter dated 28 September 2007 in which Digicel Cayman Limited (“**Digicel**”) requests disclosure of certain confidential information in the responses filed by Cable and Wireless (Cayman Islands) Limited (“**C&W**”) on 7 August 2007 to the Authority’s 10 July 2007 interrogatories (the “**Telcordia Round 3 Interrogatories**”). While C&W will address the merits of the disclosure requests below, we note first that Digicel’s request represents a blatant abuse of process deliberately designed to delay as long as possible a determination in this proceeding, in order to avoid as long as possible an MTR that will benefit the people of the Cayman Islands, and to get an extra “bite at the cherry” with additional comments outside of the public consultative framework outlined by the Authority.

C&W notes that, because the additional, inappropriate comments included by Digicel in its 28 September 2007 letter were not filed within the Authority’s public consultative framework and were not provided to all interested parties, as proper comments would have been, they cannot properly form part of the record of the proceeding and, under standard administrative law rules, the Authority is not entitled to consider them in arriving at a determination in the proceeding. C&W submits that the Authority must strike them from record. If Digicel considers that they in fact ought to form part of the

record of this proceeding, and ought to be reviewed and commented upon by all interested parties, Digicel can easily re-file them on the date to be specified by the Authority for the filing of comments.

As detailed below, the date of actual service of the Digicel disclosure request was 16 October 2007. The deadline for C&W's reply, therefore, is 26 October 2007.

Abuse of Process

While Digicel's letter is dated 28 September 2007, it was only addressed to the Authority, and C&W did not receive a copy until 16 October 2007. Digicel is well aware that Regulation 4(1)(g) requires the party requesting disclosure to serve a copy of the request on the party who filed the confidential information, because they followed the process set out in the Regulations when they made their first request for public disclosure on 25 July 2007. However, they chose not to do so this time. Instead, their actions ensured that the timely process set out in the Regulations could not be followed.

Further, Digicel chose to send a copy by email only to the email address of the undersigned only, without a "hard copy" follow-up in the post. In this particular situation, the undersigned was out of office at the time, and Digicel would have received the "out of office" notification generated by Microsoft Outlook informing correspondents of that fact and requesting them to redirect correspondence to a named individual acting in the undersigned's stead in the mean time. It should be noted that this named individual's email address was clearly specified in the out-of-office notification. However, Digicel chose not to redirect this letter as requested. Instead, they chose to send it to another individual within C&W who had been on sick leave for many months, and whom Digicel had no reason to believe was back at her duties. It is not at all clear to C&W that Digicel made any real effort during this process to comply with the spirit of the Regulations, namely, that confidentiality proceedings be concluded as expeditiously as possible.

In addition, even though C&W's responses to the Telcordia Round 3 Interrogatories were filed on 7 August 2007, Digicel chose not to file its disclosure request until 28 September 2007, the day after the Authority issued ICT Decision 2007-2 denying Digicel's request for reconsideration of the Authority's 16 August 2007 decision affirming the confidentiality of certain information in C&W's responses to interrogatories filed between 17 May 2007 and 8 June 2007. There is nothing in Digicel's 28 September 2007 letter that suggests Digicel needed seven and a half weeks in order to prepare the submission. Rather, Digicel chose to wait until it knew whether its reconsideration request was successful or not, and therefore whether they needed to file another request for disclosure in order to further delay the proceeding.

Finally, the points that Digicel make in no way rely on the use of or on the disclosure of information redacted in our confidential 7 August 2007 submission. The requests for disclosure are simply excuses to make comments that are irrelevant to the issue of whether or not the information redacted by C&W is confidential. They more properly

belong in the comment and reply comment rounds outlined by the Authority in its 10 July 2007 letter on procedures.

C&W submits that Digicel is employing a deliberate strategy of tying up the public consultation on the FLLRIC Costing Manual in continual procedural sidebars, thereby ensuring continuing delay in the consultation and a further deferral of the implementation of a FLLRIC cost model that is recognized by most parties to be in the best interests of the public and that was originally intended to be implemented by July 2005. This is an abuse of the Authority's process and C&W urges the Authority to put an end to this by responding to C&W's 17 October 2007 letter to the Authority proposing dates for the submission of comments and reply comments in this proceeding.

The Disclosure Requests

With respect to the disclosure requests themselves, C&W submits the Authority should set aside the Digicel requests, as either they do not involve information for which C&W claimed confidentiality or C&W's confidentiality claims are justified and provided for by the process outlined by the Authority.

C&W's claims for confidentiality were properly made within the framework established by the Regulations and, therefore, are valid. Regulation 3 in particular states that:

Any person who submits information to the Authority ("the submitting party") may request that such information be designated "confidential" by the Authority if -

- (a) the information is a trade secret;
- (b) the information is financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the submitting party and the information is not otherwise publicly available;
- (c) the information is subject to a claim of legal privilege; or
- (d) the disclosure of the information could reasonably be expected-
 - (i) to result in significant financial loss or gain to any person;
 - (ii) to prejudice significantly the competitive position of any person; or
 - (iii) to affect contractual or other liabilities of any person.

The information that C&W designated as confidential and that Digicel now seeks to publicly disclose meets one or more of these criteria.

Disclosure request from Paragraph 2.1.5

Digicel requests disclosure of the "SumOfVALUE", "LRIC Value", "Percentage" and "Details" values redacted in section 2.1.5 of C&W's 7 August 2007 response to the Telcordia Round 3 Interrogatories. Digicel attempts to justify this request on the basis that it suspects that C&W has made "insufficient effort... to allocate costs where indirect causation exists". Digicel's point appears to be that C&W has used equi-proportional mark-ups where costs might have been further attributed on the basis of indirect drivers. This request is inappropriate for a number of reasons.

Firstly, this information should not be disclosed as, in the cases of the “SumOfVALUE” and “LRIC Value”, they are actual retail costs that are treated consistently in a confidential manner by C&W and are not otherwise publicly available. Consequently, this information is properly considered confidential under the Regulations. In the case of the “Percentage” and “Details” information, these are results of a combination of the confidential retail costs and the results of the confidential FLLRIC model, the output of which is confidential and has been repeatedly determined as such by the Authority.

Secondly, the information, even if disclosed, would not assist Digicel in determining anything about whether costs should have or could have been further attributed. The “SumOfVALUE” and “LRIC Value” give absolute retail cost numbers which alone cannot be used to determine the extent or validity of the application of equi-proportional mark-up. “Percentage” is the actual percentage breakdown of fixed joint costs among the services in the service group increment specified. They follow directly from the absolute values of the BU LRIC results in the “Details” column of the subsequent table. Again, knowing these percentages and values cannot give a view as to the extent and validity of the equi-proportionate mark-ups.

Thirdly, after considering the whole of Digicel’s query on C&W’s response at Paragraph 2.1.5, it becomes clear that Digicel is commenting on a broader attribute of the model that goes far beyond the specific information they are requesting. Digicel wants to revisit a more basic issue of how costs were allocated in general. This is something that it should a) have dealt with in one of the previous interrogatory or comment rounds, i.e., in the spring and summer of 2006 as outlined in CD 2005-1 of 27 October 2005, or b) raise in the upcoming round of comments and reply comments as outlined in the Authority’s procedures letter of 10 July 2007. Making this point as part of a request for confidential information is both disingenuous and an abuse of process.

Disclosure request of Paragraph 2.2.1

Digicel requests “full disclosure” of the list of assets and their asset lives. It then lists a list of economic lifetimes apparently sourced from the consultancy WIK-Consult. This is another blatant abuse of the disclosure request process. Digicel is attempting to create the appearance of an issue where there is none.

The “list” of assets discussed at paragraph 2.2.1 of the responses to the Telcordia Round 3 Interrogatories is necessarily “substantially incomplete”, as alleged by Digicel, because the Authority did not request a complete list. The Authority posed questions relating to only two types of assets (NGN and DSLAM assets), questions which C&W fully answered. The information redacted in the responses at paragraph 2.2.1 relate to the names of, and C&W’s experience with, specific pieces of equipment used within C&W’s network, which is technical information that C&W treats consistently on a confidential basis and is not otherwise publicly available.

This should be sufficient basis to dismiss Digicel's request in this matter. However, to be of assistance to the Authority, we note that we did not redact the assets or asset lives used in the models, and that every asset used in both the public and the confidential models is explicitly linked back to its appropriate asset life.

Again, Digicel's intention behind the "disclosure" request is not that it needs information that was supposedly redacted. Digicel is using this request to make the point that it believes the asset lives are too low. However, it has made these points before and these comments are more properly made in the comments/reply comments phase of the FLLRIC Costing Manual proceeding (which Digicel has so effectively delayed through its various disclosure and reconsideration requests).

Disclosure request of Paragraph 2.2.2

Digicel asserts that the redacted information in paragraph 2.2.2 would provide interested parties with information that would allow them to gain further insight into whether C&W's approach to network management systems would "contaminate the depreciation issue with the efficiency or otherwise of C&W management decisions". However, the redacted information contained only the names of specific network management systems, which could not in any way speak to the issue of decision-making on the part of C&W. C&W requested confidential treatment of this information on the specific systems, as its disclosure may release to C&W's competitors technical information on the capabilities and limitations of the C&W network, which is information we treat consistently and appropriately as confidential and which is not otherwise publicly available.

However, again, it is hard not to suspect that Digicel's intention was something other than simply trying to gain sight of this confidential information. In fact, Digicel spends the bulk of this section of its submission discussing OAM costs. Whatever the validity of these comments, they are irrelevant to issues relating to the network management systems C&W has purchased, and they do not belong in a submission for disclosure of confidential information.

Disclosure request of Paragraph 2.2.3

In Digicel's final disclosure request, it asks that C&W reconcile its annuity formula with the proxy for economic depreciation, which account for changing asset values. This is not a disclosure request. Further, it is patently obvious from a reading of C&W's response to the interrogatory at paragraph 2.2.3 that C&W did not claim confidentiality over any part of the response. On this basis alone, Digicel's request should be dismissed.

Digicel apparently wants simply to argue that a different approach to economic depreciation should be used because Digicel asserts "traditional annuity depreciation will under-compensate rather than over-compensate the assets owner". Again, whatever the merits of this argument, which C&W does not admit or concede, this has nothing to do with confidential information that may or may not need to be disclosed. The FLLRIC process has had and will have sufficient opportunities for Digicel to make these

arguments. Digicel should not be allowed to create an opportunity to file comments via a spurious disclosure request.

Conclusion

For the above reasons, C&W requests that the Authority dismiss Digicel's so-called 28 September 2007 requests for disclosure, and asks that the Authority set new dates for the submission of comments and reply comments in the FLLRIC Costing Manual public consultation.

Yours faithfully,
Cable & Wireless (Cayman Islands) Ltd.

"Signed"

Rudy B. Ebanks
Chief Regulatory and Carrier Relations Officer

cc: Timothy Adam, Chief Executive C&W
Ian Tibbetts, Chief Operating Officer C&W
Frans Vandendries, Vice President Regulatory Affairs C&W
Erik Whitlock, Regional Vice President Regulatory Finance C&W
John Byrne, General Manager Digicel (Cayman)