



PO Box 2502
Grand Cayman KY1-1104
CAYMAN ISLANDS
Tel: (345) 946-ICTA (4282)
Fax: (345) 945-8284
Web: www.icta.ky

Information & Communications Technology Authority

Our ref: ICTA/80/105/105-11

8 November 2007

Mr. John Byrne
Chief Executive Officer
Digicel Cayman Limited
PO Box 700
Grand Cayman KY1-1107

Mr. Rudy Ebanks
Chief Regulatory and Carrier Relations Officer
Cable and Wireless (Cayman Islands) Limited
PO Box 293
Grand Cayman KY1-1104

Dear Mr. Ebanks and Mr. Byrne,

**Re: FLLRIC (CD 2005-1) - C&W redactions in the 7 August 2007
interrogatory responses**

In a letter dated 28 September 2007, Digicel Cayman Limited ("Digicel") requested that the Information and Communications Technology Authority ("ICTA" or "Authority") order the public disclosure of certain information redacted by Cable and Wireless (Cayman Islands) Limited ("C&W") in its responses to third round ICTA interrogatories submitted on 7 August 2007. Digicel's letter asserted that the redacted information does not fulfil the definition of confidential information contained in the Information and Communications Technology Authority (Regulations), 2003 ("Confidentiality Regulations"), and/or that its disclosure is justified in the public interest.

C&W replied to Digicel's request on 26 October 2007 stating that the information Digicel is requesting be publicly disclosed is either not covered by C&W's confidentiality claims or is properly designated as confidential information under the Confidentiality Regulations. In its letter, C&W also submitted that Digicel's request represented a blatant abuse of the process deliberately designed to delay the proceeding.

Process

On 17 August 2007, ICTA staff inquired of Digicel whether it intended to make any disclosure requests related to C&W's 7 August 2007 responses to interrogatories. In that request to Digicel, ICTA staff identified that the timing of the comment and reply comment stages of this proceeding would be dependent on any such request. On 17 August 2007, Digicel responded that it would likely make a disclosure request related to C&W's 7 August 2007 interrogatory responses.

On 29 August 2007, having not received any disclosure request from Digicel, ICTA staff contacted Digicel and was informed that Digicel would try to have its disclosure request submitted by 7 September 2007.

On 10 September 2007, after again not having received any disclosure request from Digicel, ICTA staff contacted Digicel and was told that Digicel would file a disclosure request either by 14 September 2007 or early in the week beginning 17 September 2007.

On 21 September 2007, after still not having received any disclosure request from Digicel, the Authority wrote Digicel indicating that its delay in sending in the disclosure request was impeding the FLLRIC proceeding and instructing Digicel to file its request by no later than 28 September 2007.

On 21 September 2007, Digicel acknowledged receipt of the Authority's letter and indicated that it would ensure that it submitted the disclosure request by the deadline stipulated in the Authority's letter.

On 28 September 2007, the Authority received a hand-delivered copy of Digicel's disclosure request.

On 2 October 2007, the Authority requested that Digicel confirm that the disclosure request had been served on C&W as is required by paragraph 4(1)(g) of the Confidentiality Regulations. Digicel responded by sending a copy of an internal Digicel email from one Digicel employee to another requesting that the second Digicel employee send a copy to C&W.

On 15 October 2007, having received no reply from C&W to Digicel's disclosure request, Authority Staff requested that Digicel confirm the date when the document was served on C&W. In response to Authority Staff's request, Digicel provided a copy of its 16 October 2007 email that sent the disclosure request to C&W.

C&W's 26 October 2007 letter indicated that C&W received a copy of the disclosure request on 16 October 2007.

Authority Analysis of Procedural Issues

The Authority notes that, in a 4 January 2006 letter concerning the FLLRIC Cost Models, it requested that parties copy the members of the CD 2005-1 distribution list on all written submissions related to that proceeding, in order to ensure that all interested parties have a full record of the proceeding and are aware of other parties' submissions.

In addition, the Authority notes that paragraph 4(1)(g) of the Confidentiality Regulations requires that a request for public disclosure be served on the party claiming confidentiality.

The Authority is of the view that Digicel's disclosure request did not meet the procedural requirements set out in its 4 January 2006 letter. As noted above, Digicel did not copy the members of the CD 2005-1 distribution list when it filed its disclosure request on 28 September 2007, and waited several weeks to serve C&W. Furthermore, while paragraph 4(1)(g) of the Confidentiality Regulations does not specify a timeframe for the service of the disclosure request on the party making the confidentiality claim, the Authority considers that Digicel should reasonably have understood that such requests should be served at the same as they are filed with the Authority. Clearly Digicel's failure to do so, whilst implying to the Authority that it had been done, led to an unnecessary delay in the proceeding.

Therefore, in accordance with its residual power to control its procedure under subsection 9(1) of the ICTA Law, the Authority hereby makes the following changes and clarifications to the procedures for this proceeding:

- with immediate effect, any request for disclosure must be made within ten days of the date the redacted version is provided;
- such disclosure request (as well as any other submission in this proceeding) shall be sent to all members of the CD 2005-1 distribution list, including, without limitation, the party who claimed confidentiality; and
- a party making a disclosure request shall send a copy of this request to the members of the CD 2005-1 distribution list on the same date that the request is submitted to the Authority.

Authority Analysis of Disclosure Request and Determination

Paragraph 4(1)(f) of the Confidentiality Regulations requires any person who wants the public disclosure of a document, or a part thereof, in respect of which there has been a claim for confidentiality to file with the Authority a request setting out the reasons for the request. The Authority notes, with concern, that a significant portion of Digicel's letter, rather than providing the reasons for its disclosure request, instead consisted of arguments on the FLLRIC model and methodology. The Authority's determinations on each request for disclosure made by Digicel is set out below.

Paragraph 2.1.5

Under the heading "Paragraph 2.1.5", Digicel requested the disclosure of certain information but, instead of providing reasons for those disclosures, Digicel provided comments on a broad attribute of the model. The Authority is of the view that the comments provided in the second through sixth paragraphs under this heading do not provide any reasons for the requested disclosure and therefore should not form part of the record of this proceeding. Those paragraphs are stricken from the record.

As Digicel has not provided reasons for the requested disclosures, its request does not satisfy the requirements of the Confidentiality Regulations.

Nevertheless, the Authority has reviewed the information provided in confidence and, based on all the material before it, the Authority is satisfied that the specific direct harm likely to result from disclosure of this information outweighs the public interest in disclosure and therefore determines that C&W's confidentiality claims are justified.

Paragraph 2.2.1

Digicel's letter requested "full disclosure of a list of assets and their assets lives." In support of its request, Digicel provided lists of economic lifetimes for conveyance and access network asset classes sourced from Wissenschaftliches Institut für Kommunikationsdienste GmbH ("WIK").

The Authority is of the view that the comments provided in the second and third paragraphs (including the tables on pages 3 and 4) under this heading are not related to nor do they provide reasons for a request for disclosure and therefore should not form part of the record of this proceeding. Those paragraphs are stricken from the record.

As Digicel has not provided reasons for the requested disclosures, its request does not satisfy the requirements of the Confidentiality Requirements.

Additionally, as identified in C&W's letter, C&W did not claim confidentiality for the asset classes or asset lives used in the models.

Paragraph 2.2.2

Digicel requests the disclosure of the information on page 17 and provides some justification for its request in the second paragraph under this heading.

However, the Authority determines that the comments provided in the third through sixth paragraphs address the treatment of operation, administration and maintenance costs and are not related to the redacted information. Therefore, those paragraphs are stricken from the record.

Regarding the disclosure of the information on page 17, the Authority considers that any specific direct harm from disclosing information on specific software systems is not sufficient to outweigh the public interest in disclosure. Therefore, C&W is directed to disclose all the information shown in the paragraph 2.2.2 on page 17 as requested by Digicel.

Paragraph 2.2.3

Digicel requested that C&W reconcile its annuity formula with the proxy for economic depreciation.

C&W submitted that this request is not a disclosure request as in paragraph 2.2.3 of C&W's response to the interrogatory, C&W did not claim confidentiality for any part of its response.

The Authority agrees with C&W that Digicel's request is not a disclosure request and therefore, Digicel's request is denied.

In addition, in the Authority's view, no paragraphs in this section are related to a disclosure request. Therefore, the entire section is stricken from the record.

Further procedures for CD 2005-1

The Authority's letter regarding CD 2005-1 dated 26 January 2007 stated that, "[t]he Authority anticipates that ... parties will be provided the opportunity to file comments and reply comments near the end of the generation of the written record of this proceeding. The Authority will provide notice to the parties identified in the CD 2005-1 Distribution List of any further procedures." In accordance with that letter, the Authority identifies the following remaining process for the CD 2005-1 proceeding:

- by **16 November 2007**, C&W is to provide the above identified information under the "Paragraph 2.2.1" heading, on the public record and copy the interested party list for this proceeding;

- by **30 November 2007**, parties may file comments with the Authority and any comments filed should be copied to all other parties; and

- by **14 December 2007**, parties may file reply comments with the Authority to any comments filed pursuant to the above paragraph. Any reply comments should be copied to all other parties.

Yours sincerely,

[signed]

David A Archbold
Managing Director

cc: CD2005-1 distribution list