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Information & Communications Technology Authority

17 May 2012

Mr. Chris Hayman  
Chief Executive Officer  
Digicel Cayman Limited  
PO Box 700  
Grand Cayman KY1-1107

Dear Mr. Hayman,

**Re: ICT Decision 2011-3 follow-up proceeding disclosure request**

This is in reply to Digicel's statement in its letter dated 30 April 2012 (received by the Authority via email and hard copy on 1 May 2012), that Digicel is of the view that the issues raised in its letter dated 29 March 2012 (received by the Authority on 30 March 2012) pertaining to what Digicel claims were certain principles adopted by the Authority in previous FLLRIC decisions and perceived conflicts with the ICTA Law must be "dealt with via a full response to Digicel in direct reply to [its] letter."

The Authority notes that Digicel characterized the content of its 29 March 2012 letter as being "comments on LIME's FLLRIC model, MTR and other information filed by LIME in response to the Authority's decision on 22 December 2011." Therefore, although it was filed two days after the due date for comments, that letter appears to be Digicel's comments filed in response to the Authority's direction in its 8 March 2012 letter to the parties involved in the ICT Decision 2011-3 follow-up proceeding ("the follow-up proceeding") that parties other than LIME may, by 28 March 2012, provide written comments on the FLLRIC model, proposed MTR rates, and other information filed by LIME pursuant to paragraph 365 of ICT Decision 2011-3.

As general background, you may find the following helpful in understanding the process the Authority uses for its proceedings. The Authority follows a structured process in its proceedings whereby parties may make submissions for the record in accordance with the procedures stipulated by the Authority and then, after the close of the record, the Authority reviews and deliberates on the record of the proceeding and issues a decision.

If submissions for the record of the proceeding are filed in accordance with the procedures stipulated by the Authority and, to the extent the Authority considers that the submissions of the parties are relevant and address issues that are within the scope of the proceeding, the submissions would be taken into account by the Authority in reaching its decision. To the extent deemed appropriate by the Authority, such comments would be addressed in the Authority's determination.

In the Authority's view, parties should follow the procedures stipulated by the Authority as that would enable interested parties an equal opportunity to make representations to the Authority and ensure efficient regulatory procedures by requiring parties to make full and complete submissions in a fair manner.

In regards to this particular proceeding, the Authority notes that the follow-up proceeding did not provide for further comments from parties after the close of the record and therefore notes that Digicel's letter dated 30 April 2012 was out of process. In addition, the Authority notes that Digicel's request for a direct reply to its 29 March 2012 letter is not consistent with the approach used by the Authority's.

The Authority has now issued ICT Decision 2012-2 and, while it is not required to respond to Digicel's comments as they were outside the scope of the follow-up proceeding (that is they were not related to the changes to the model pursuant to Decision 2011-3), the Authority provides the following general comments in an effort to address what may be a misunderstanding by Digicel.

The Authority considers that Digicel's suggestions in the paragraphs numbered "3", "5" and "6" of its 29 March 2012 letter that the demand estimates for four particular traffic elements should be changed is procedurally flawed. In the proceeding leading to ICT Decision 2011-3, the Authority conducted an extensive review of the total mobile demand information including demand for data traffic. In paragraph 273 of ICT Decision 2011-3, the Authority, while accepting the data demand estimate, found the estimate to be conservative. Digicel, in the paragraph numbered "5" of its 29 March 2012 letter says that one of the explanations of the alleged change in voice traffic is that data services that did not previously exist may have a negative effect on voice traffic. In addition to this comment being beyond the scope of the follow-up proceeding, more generally the Authority considers it would be improper to change voice traffic without also reviewing whether adjustments should be made to data traffic estimates.

On this same issue, Digicel in its letter dated 30 April 2012, argued that the Authority's determination in paragraph 119 of Decision 2008-2 that "When calculating the unit cost of individual services existing demand must be used in the denominator" precludes the use of demand data in the model which is substantially different from current data. Again, in addition to this comment being beyond the scope of the follow-up proceeding

and being submitted out of process, the Authority does not agree with Digicel's interpretation. In the FLLRIC context, given the time-consuming nature of the review of the demand data and related aspects of the FLLRIC model, the Authority has no expectation that the demand data used in the FLLRIC model would always be the most current. In response to the Authority's directions in ICT Decision 2008-2, LIME used demand data from an existing period and adjusted it, as directed by the Authority, to allow for growth as an estimate of forward looking demand that was reviewed in the proceeding leading to Decision 2011-3. In that decision, the Authority found LIME's estimate to be reasonable and there is no requirement that demand data be constantly adjusted to reflect the most current estimate.

In addition to Digicel's attempt to reargue the Authority's determination in ICT Decision 2011-3 regarding the appropriate demand to be used, Digicel in its 29 March 2012 letter also attempts, among other things, to reargue the Authority's disclosure determinations.

The Authority understands that Digicel does not agree with these and other Authority determinations but the Authority considers Digicel's attempt to reargue all these prior determinations as part of the follow-up proceeding to be beyond the scope of the proceeding and an abuse of process.

Digicel is encouraged, in any future proceedings, to comply with the procedures stipulated by the Authority.

Yours sincerely,

[signed]

Mark Connors  
Head of Economics and Regulation

cc: FLLIRIC distribution list