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www.lime.com

One Technology Square
19 Eastern Avenue
P.O. Box 293
Grand Cayman, KY1 - 1104
Cayman Islands.

P: +1 345 949 7800
F: +1 345 949 7646

Our ref: GRCR/15.19

30 September 2012

Mr. Alee Fa'amoe
Managing Director
Information and Communications Technology Authority
PO Box 2502
3rd Floor Alissta Towers
Grand Cayman, KY1-1104

Dear Mr. Fa'amoe,

**Re: LIME Comments – Public Consultation on FTR and Transit Rate (CD 2012-1)**

Cable and Wireless (Cayman Islands) Limited, trading as LIME, is pleased to submit the attached comments in the proceeding initiated by the above-noted Consultation Document CD 2012-1 published by the Authority on 4 September 2012. We look forward to reviewing the comments of other interested parties

Please do not hesitate to contact the undersigned if you should have any questions.

Yours faithfully,
Cable and Wireless (Cayman Islands) Limited, trading as LIME

Eugene Nolan
Acting Chief Executive Officer

c.c. Bill McCabe, Chief Executive Officer, LIME
David Cox, Head of Regulatory Affairs, LIME
Interested parties, CD 2012-1

**COMMENTS ON**

**PUBLIC CONSULTATION**
**ON**
**FTR AND TRANSIT RATE**
(Ref: CD 2012-1)


By E-mail to: consultations@icta.ky
**30 September 2014**

## I. Introduction

1. Cable and Wireless (Cayman Islands) Limited, trading as LIME ("**LIME**") is pleased to provide the following comments in the proceeding initiated by *Public Consultation on FTR and Transit Rate* (CD 2012-1) (the "**Consultation**") published by the Information and Communications Technology Authority (the "**Authority**") on 4 September 2012.

## II. Executive Summary

2. The Consultation is the culmination of two long and complex proceedings, one seeking to determine cost-oriented interconnection rates, and the other to resolve a dispute regarding interconnection rates.

3. However, despite engaging in extensive public consultation for more than a decade, the proceeding has resulted in a flawed and internally inconsistent FLLRIC model. Any fixed termination or transit rates based on this model would be inappropriate and contrary to the requirements of the *Information and Communication Technology Authority (Interconnection and Infrastructure Sharing) Regulations 2003* (the "**Interconnection Regulations**"). The dispute resolution process set out in Decision 2010-5, whether or not it may have originally been appropriate, is also now in breach of the Interconnection Regulations, and any decision to apply the rates retroactively to April 2010 would be unprecedented internationally and damaging both to the industry and to Cayman's international reputation.

4. LIME recommends that the Authority apply instead regulatory international best practice, and determine fixed termination and transit rates using the same cost model as it uses to set mobile termination rates as was the Authority's original stated intention, and apply these rates on a prospective, forward-looking basis.

5. Without prejudice to its views on the internal inconsistency of the FLLRIC model, LIME suggests a number of changes to the fixed module. None of these suggested changes significantly impact the cost basis of the fixed termination or transit service; however, the changes will improve the completeness of the model.

## III. History

6. Before addressing the issues raised by the Consultation, it is necessary to review how LIME, the Authority and the rest of the telecommunications industry in the Cayman Islands reached this point. This Consultation is in fact the culmination of two parallel and years-long processes.

7. First, the Consultation is the last step in the process of setting interconnection rates based on forward-looking long-run incremental costs ("**FLLRIC**"). This process began on 10 September 2003 when LIME filed its first proposals for FLLRIC principles and parameters in accordance with the Interconnection Regulations and as required by section 50 of Schedule 4 of the 10 July 2003 Liberalisation Agreement among LIME, the Cayman Islands Government and the Authority (reproduced in LIME's 10 July 2003 ICT Licence (the "**Licence**")). At the time, it was anticipated that the complete process would take some two (2) years.[1] After almost nine (9) years of intense development, three consultations, 465[2] interrogatories and countless pages of responses to those interrogatories, the Authority issued ICT Decision 2012-2, *Decision for the FLLRIC (Phase III) follow-up proceeding*, on 11 May 2012 ("**Decision 2012-2**"). However, while Decision 2012-2 determined a "final" FLLRIC model, it only set a FLLRIC-based mobile termination rate ("**MTR**").

8. LIME notes that, in addition to being the longest process conducted by the Authority, the process to determine a FLLRIC model and FLLRIC-based interconnection rates was also the most expensive. LIME has not tabulated all costs associated with this process, but notes that the cost involved in responding to the Authority's order to develop a 3G mobile module, i.e. only one small piece of the overall process, cost LIME some $127,000.[3] If one were to consider the costs incurred by LIME, the Authority, Digicel and others to hire external consultants and experts during the overall process, as well as the "internal" costs associated with having staff working on the Authority's interrogatories, responding to the Authority's consultation documents and (in the case of the Authority) drafting interrogatories and decisions, LIME estimates this process cost the industry[4] a figure well into the seven digits. For a process that was anticipated to take only a

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[1] See paragraph 50 of Schedule 4 of the Liberalisation Agreement, which contemplated approximately 12 months to develop the FLLRIC model and another year to implement.

[2] This only includes interrogatories posed by the Authority to LIME (i.e. not interrogatories posed by or to other parties), and does not count sub-interrogatories. The number would be significantly higher if multi-part questions were counted as separate questions.

[3] Even though LIME had sought competitive bids for the work, to ensure it was as reasonably priced as possible. The Authority will recall that it denied LIME the opportunity to recover some of those costs in Decision 2011-3, *Decision for the FLLRIC Implementation Consultation (CD 2009-1)*, 22 December 2011, even though the Authority had ordered the development of the 3G model.

[4] Given that licensees, and principally LIME, pay for the activities of the Authority via regulatory fees, the Authority's costs are in fact borne by licensees and not the Authority.

couple of years, the cost and time involved appears to have been completely disproportionate to the results obtained. It bears noting that aside from the tremendous regulatory burden on management time, it is money that might otherwise have been used to innovate in services, lower prices or invest in telecommunications networks to the long-term benefit of consumers in the Cayman Islands.

9. Second, the Consultation is the last step in resolving a dispute raised by Digicel Cayman Limited ("**Digicel**") regarding, among other matters, LIME's fixed termination and transit rates on 16 December 2009, itself in response to complaints by LIME about the improper nature of the MTR at the time and LIME's actions to correct that. The Authority will recall that the FTR and transit rates (which still apply today) are based on LIME's fully-allocated cost ("**FAC**") model, as permitted by the Interconnection Regulations, and are therefore "cost-oriented" as required by those Regulations, while at the time the MTR was set at a level well in excess of any measure of costs, whether FAC- or FLLRIC-based.

10. By letter dated 24 December 2009, the Authority determined that all interconnection rates were to be interim effective that date, pending a determination of the dispute. Later, in ICT Decision 2010-5, *Decision in Digicel Determination Request related to Digicel/LIME Interconnection Agreement Dispute* ("**Decision 2010-5**"), issued by the Authority on 29 April 2010, all rates were made final and then, even though a cost-based MTR had yet to be determined, only fixed termination and transit rates were again made interim, effective the date of Decision 2010-5.

11. While Decision 2012-2 finally determined a final FLLRIC model and determined the FLLIRC-based MTR, it did not set a FLLRIC-based FTR or transit rate. When LIME and Digicel could not settle their 2009 interconnection rates disputes, the Authority began the current proceeding to determine FLLRIC-based FTR and transit rates.

## IV. Concerns with the Outcome of this Consultation

12. LIME's concerns with this Consultation are three-fold. First, the proceeding has resulted in a flawed and internally inconsistent FLLRIC model. Any FTR or transit rates based on this model would be inappropriate and contrary to the requirements of the Interconnection Regulations.

13. Second, the dispute resolution process set out in Decision 2010-5, whether or not it may have originally been appropriate, is now in breach of the *Information and Communications Technology Authority (Dispute Resolution) Regulations 2003* (the "**Dispute Regulations**").

14. Third, a decision to apply the FTR and transit rates retroactively to the date of Decision 2010-5 would be unprecedented internationally and damaging to the country and to the industry.

15. LIME will address each of these concerns in turn below.

## V. Flawed FLLRIC Model

16. As noted above, the Liberalisation Agreement and the Licence set out an obligation and a process to develop a FLLRIC model to be used as a basis for setting interconnection rates. The Interconnection Regulations also speak to using a FLLRIC model for setting interconnection rates. Notably, in all cases, the Agreement, Licence and Regulations refer to a FLLRIC model in the singular. Consistent with the above objective, the process for developing a FLLRIC model was started on 10 November 2003. Most of the time since then has been spent constructing a single FLLRIC model (with fixed and mobile "modules"[5]) to determine the costs of interconnection services, again, consistent with the Agreement, Licence and Regulations.

17. The outcome of this years-long process was a single and, according to the Authority, "approved" and "final" FLLRIC model. For instance, in the Authority's penultimate decision in the "implementation" phase of the FLLRIC proceeding, the Authority ordered several changes to the fixed and mobile modules of the FLLRIC model and concluded once LIME had implemented these changes and the Authority had reviewed them "that it will then be able to approve a final FLLRIC model."[6] Consistent with that plan, five months after Decision 2011-3, the Authority issued Decision 2012-2, indicating (1) its satisfaction with the mandated changes to the model as implemented by LIME and (2) approval the FLLRIC model.

18. When this proceeding started (initiated by CD 2012-1), the Authority had a single, approved and final FLLRIC model, consistent with the Agreement, Licence and Interconnection Regulations. LIME quite reasonably anticipated that this would be the instrument used to review

[5] Of the 465 interrogatories noted earlier which were posed in the proceedings leading to Decision 2012-2, 189 focused on the fixed module, 226 focused on the two mobile modules (2G and 3G), and 50 addressed the "principles" to be applied in developing the overall model (i.e. both modules). In other words, the Authority had been focusing fairly evenly on the development and implementation of both modules in the FLLRIC model prior to the current proceeding (during which another 125 interrogatories on the fixed module were posed).

[6] See, for example, ICT Decision 2011-3, Decision for the FLLRIC Implementation Consultation, 22 December 2011 ("**Decision 2011-3**"), at paragraph 370.

and determine the costs of fixed termination and transit as, again, this would have been consistent with the Agreement, Licence and Interconnection Regulations.[7]

19. However, contrary to all legitimate expectations, and without any explanation or notice to interested parties, the Authority immediately set about making material changes to one part of the FLLRIC model. While the process followed by the Authority in the years leading up to Decision 2012-2 involved making changes to both the fixed and mobile modules of the FLLRIC model, the sixty-four interrogatories posed by the Authority on 17 February 2013 and the further sixty-one posed on 2 May 2014 have involved significant changes only to the fixed module. The changes, made in isolation and without considering the impact on the mobile module, have put the fixed module out of sync with the mobile module.

20. We also note that, despite this significant effort, the fixed module is not yet finalized and the Authority may well have further changes to be required of the module.

21. The end result is a model that uses two completely different sets of volume and demand data. The mobile module uses data from 2010 or earlier, whereas the fixed module uses data from 2014 or adjusted to proxy 2014 values. Further, the fixed module has undergone a set of technical changes in modelling assumptions that have not been applied to the mobile module.

22. This result is without precedent. While LIME is aware of jurisdictions using separate fixed network and mobile network cost models to determine fixed and mobile interconnection costs, respectively, LIME is not aware of any instance where a single model applies different and inconsistent inputs and assumptions to determine different rates.

23. Further, this result is not supported by the laws and regulations of the Cayman Islands. Use of this internally-inconsistent partially-revised FLLRIC model to determine FTR and transit rates would be in breach of the Interconnection Regulations, which require implementation of interconnection rates based on a single FLLRIC model. That model must also be internally consistent and based on a common set of data and assumptions.

24. If the Authority plans to implement fixed interconnection prices based on a revised FLLRIC model, then it must be consistent and use a cohesive, unified model that applies the same process and procedures for determining the MTR as are used to determine the FTR and transit rate. In other words, both fixed interconnection costs and mobile interconnection costs should

[7] In fact, the Authority's own statements in support this view that the same model would be used to determine the FTR and transit rates as well as the MTR. See, for example, paragraphs 96 and 111 of Decision 2010-5.

be determined from the fixed and mobile modules, respectively, of the same FLLRIC model using equivalent assumptions and constructs, and inputs of the same vintage.

25. It follows from this that the Authority must not use the partially-revised FLLRIC model coming out of this proceeding to implement interconnection prices because the rates produced from the fixed module are based on inputs and calculations inconsistent with those used in the mobile module.

## VI. Flawed Dispute Resolution Process

26. As noted above, this consultation CD 2012-2 is in part the culmination of a dispute determination request filed by Digicel on 16 December 2009. The Dispute Regulations impose strict timeframes on the parties involved in the dispute and, quite appropriately, Regulation 11 in particular (reproduced below) requires the Authority to act "expeditiously".

> 11. In determining a dispute, the Authority shall act expeditiously, and in doing so may have regard to-
>
> (a) the subject matter of the dispute;
> (b) the need to inquire into and investigate the dispute;
> (c) the objectives and functions of the Authority; and
> (d) all matters affecting the merits, and fair settlement of the dispute.
>
> [*emphasis added*]

27. LIME notes in particular that the obligation imposed on the Authority to act expeditiously is mandatory ("shall") while the requirement to have regard to the various matters enumerated in paragraphs (a) through (d) is permissive ("may"). In other words, the need to act and resolve the dispute expeditiously takes precedence and cannot be limited by any other requirement.

28. This makes eminent public policy sense, as regulatory certainty is critical to all ICT licensees in the Cayman Islands. Having dispute determination requests unresolved for long periods of time materially impairs the ability of licensees to plan. Unresolved disputes involving rates, such as this one, also make it more difficult for licensees to determine whether they will make a reasonable return on their investment. Both of these negatively impact business cases and have a chilling effect on decisions to invest in the country.

29. By any definition of the word, it is impossible to say the Authority acted "expeditiously" in this case. While the Authority issued Decision 2010-5 approximately four and half months after Digicel filed its dispute determination request, it did not actually determine the dispute. Instead, the Authority deferred any decision until the FLLRIC modeling process was complete. The Authority compounded this problem by making the fixed and transit rates, but not the mobile termination rates, interim. LIME notes that the Authority applied this inconsistent treatment to fixed termination and transit rates, on the one hand and to mobile termination rates, on the other, even though none of the rates were based on a FLLRIC model and the Authority had no reason to believe any of the rates were not "cost-oriented" as defined by the Interconnection Regulations[8].

30. When the Authority issued Decision 2012-2 and finalised the FLLRIC model approximately 2 years later, it was still possible but already stretching the boundaries of credibility to say the Authority had been acting "expeditiously". While Decision 2012-2 established an MTR, it should be noted that, at that point, the MTR was no longer in dispute (having been "determined" and made final by Decision 2010-5). Decision 2012-2 did nothing to resolve the still-outstanding dispute involving fixed rates.

31. It was still possible in 2012 for the Authority to try to satisfy its duty to act expeditiously in determining disputes, as it had all the tools necessary to set final FTR and transit rates, namely, an approved and final FLLRIC model. Unfortunately, the Authority chose instead to undertake a time-consuming and expensive two-year process to revise and update the fixed module of the FLLRIC model.

32. Today, almost 5 years after Digicel first filed its dispute determination request, it is impossible for the Authority or indeed any parties to argue successfully that the Authority has satisfied its duty to determine this dispute "expeditiously". LIME submits that the Authority is therefore in breach of the Dispute Regulations.

[8] The Authority knew from July 2003 and subsequent correspondence with LIME that the FTR and the transit rates were based on the output of the FAC model, and therefore "cost-oriented" per Regulation 10(2) of the Interconnection Regulations, and the Authority specifically determined at paragraph 54 of Decision 2010-5 that "[b]ased on the submission received by the Authority, it has no reason to believe that the CI$0.08965/min MTR agreed to by the parties is not cost-oriented and hence contrary to the ICTA Law or the Regulations or the relevant licences."

## VII. Flawed Application of Retroactivity

33. A regulatory strategy of making existing rates interim and applying new rates retroactively can be effective in some circumstances. LIME submits, however, that these circumstances do not exist in this case as the period of retroactivity has been far too long and as the alternative "new" rates were not known at the outset of the period of retroactivity. In the absence of these preconditions, retroactive application of rates is unfair and harmful to operators and the market.

34. FTR and transit rates have experienced two periods of "retroactivity". In 2009, the Authority made all interconnection rates interim pending a determination of the various disputes between LIME and Digicel. On 7 January 2010, Digicel requested that the Authority reverse or "clarify" this decision, on several grounds, including that LIME and Digicel already had agreements that addressed the application of new rates and that retroactive application of new rates would be harmful to consumers. The latter set of arguments filed by Digicel is reproduced below:

> "Digicel further contends that such a ruling in relation to retroactivity is/would be unreasonable given the financial impact it would have on retail customers and the licensees.
>
> The Authority seems not to have considered the real financial impact of the Decision. Neither Digicel nor C&W would have a method of deciding what adjustments should be made to their retail rates prior to ICTA's final determination and the New ICA. Records to enable adjustments to be applied retroactively to December 27th 2009 are not records which can inform Digicel or C&W in setting its retail rates as of the date of the decision. In the case, as the Authority has determined, that the MTR should be carried forward at 0.1845CI$ per minute, C&W is not expected to make and can make no adjustments in its retail rates in anticipation of a lower rate to be determined or agreed subsequently (whether 0.8965CI$ immediately or reached pursuant to a glidepath as Digicel requests). At the time of the New ICA, whether by agreement or determination, any deviation from the interim rates set by the Authority will be to the detriment of Digicel since it is a certainty that the MTR will not increase and as such Digicel will be required to make adjustment payments to C&W which might be huge depending on what rate the Authority finally determines and it must necessarily come from Digicel's profits on one hand, and become a windfall to C&W on the other. One party – Digicel - will be unfairly penalized and the other - C&W, unjustly enriched. Nor will the customers see any benefit from this decision (which only can favor C&W where the Decision neglects to force C&W to

> disgorge any of the windfall to the customer). At the end of the day, the financial dislocation to Digicel cannot be supported by any letter or spirit of the Law.
>
> In summary, Digicel's seeks the Authority's reconsideration and/or clarification (as appropriate, depending upon what paragraph 3 of the Decision was intended to convey) to the effect that, as and when the New ICA takes effect, it will not have a retroactive effect."[9]

35. In its 11 January 2010 reply comments, LIME argued that there was no reason to change the FTR or transit rates at that time, strongly supported the need for an expeditious ruling on the matter, and noted that an absence of retroactive application of new cost-oriented MTRs was necessary to ensure Digicel had the appropriate incentive not to delay the process.

36. After receipt of extensive reply comments by Digicel on 22 January 2010, the Authority issued Decision 2010-1,[10] which denied *inter alia* Digicel's request to reverse the "retroactivity" ruling. The Authority subsequently issued Decision 2010-5 in April 2010 which, as noted earlier, made all of these interim rates "final".

37. Notwithstanding this, the Authority proceeded in that same Decision 2010-5 to make the FTR and transit rates "interim" once again, but not the MTR, even though as noted earlier, all three rates would be determined in the future by the FLLRIC model and the Authority had no reason to believe any of the rates were contrary to the Interconnection Regulation.

38. On 13 May 2010, Digicel applied for a reconsideration of Decision 2010-5, among other reasons because the Authority had not determined the dispute on fixed termination and transit rates and the decision to wait until some future proceeding was too uncertain. The Authority subsequently denied that reconsideration request. At the time, LIME supported as being reasonable the Authority's Decision 2010-5 to make these rates interim pending finalisation of the FLLRIC model and a further proceeding on the rates.[11] However, at the time, LIME also reasonably anticipated a reasonably speedy conclusion of the FLLRIC model development process as it had already been underway for almost seven (7) years. LIME did not anticipate the further two year process before the FLLRIC model was approved and finalized, or the additional two-

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[9] Digicel letter to the Authority, "Reconsideration request of ICTA Interim Decision December 24th 2009 – Digicel/LIME Interconnection Agreement Resolution", 7 January 2009, page 7.

[10] ICT Decision 2010-1, *Decision on Digicel's application to reconsider the 24 December 2009 ICTA determination on interim interconnection rates*, 3 February 2010.

[11] *LIME Comments On Digicel Request For Reconsideration – ICT Decision 2010-5*, 28 May 2010, at paragraph 20.

year-and-counting process and radical revision of the FLLRIC model immediately after its approval and finalization in 2012.

39. This significant delay since the issuance of Decision 2010-5 has introduced unacceptable levels of regulatory uncertainty. For more than four (4) years now, the relevant FTR and transit rate have been unknown to any parties in the Cayman Islands. This materially impairs the ability of a person to plan or to determine the return on a potential investment in telecommunications services or network in the Cayman Islands. While a company might have been able to absorb the uncertainty and financial shock over a short period of time measured in months, the present delay in reaching a determination on FTRs and transit rates is unacceptably long. LIME notes that the effect of this regulatory uncertainty is to discourage foreign investment in the Cayman Islands, whether in telecommunications or other sectors.

40. A review of regulatory practices in other countries also suggests that the proposal to apply the new rates retroactively is unprecedented and inconsistent with international best practice. Notwithstanding the fact that retroactive application of interconnection rates is in itself extremely rare and widely avoided by regulatory authorities, in the majority of cases reviewed where regulatory authorities did impose a level of retroactivity[12], the period during which the relevant interconnection rates were interim was short, i.e. no more than a few months. In no case was the interim period as long as four years making Cayman a significant outlier to best practice.

41. Further, in these other cases, the final rate or at least the range of potential rates was known, that is, the rates were made interim while the regulator addressed disputes and complaints arising out of a determination on rates, and affected operators could plan their financial affairs accordingly. In our present case, the final rate is in fact still unknown. In fact, it is still not known whether the final FLLRIC rate will be higher or lower than the current FAC rate. It is impossible for an operator to plan or provide for an unknown impact flowing from a decision to impose an unknown set of rates. Potential investors considering entry into the Cayman market would likely be discouraged from committing risky investments in such a regulatory environment.

[12] See for example Ofcom, Final determination and statement, *Dispute between Cable & Wireless and T-Mobile about mobile termination rates*, 20 May 2009, the then-CCK's Determination No 2 on *Interconnection Rates for Fixed and Mobile Telecommunications Networks; Infrastructure Sharing and Co-location; Broadband Interconnection Services*, 16 August 2010 and subsequent Addendum No. 3 of 27 November 2012. The longest "interim" period was in the case of Digicel (Trinidad and Tobago) Limited v. Telecommunications Services Of Trinidad And Tobago Limited, *Report And Decision Of The Arbitration Panel*, 7 March 2008, but even in that case the retroactive period was much less than in the current case, and the range of potential rates was known at the outset and parties could have planned for all eventualities.

42. In short, the Authority's own past practices do not favour retroactive application of rate decisions. International best practice can support the use of interim rates, but only in circumstances where the period of uncertainty is short and the final outcome is more or less known. Any other approach creates unacceptable levels of regulatory uncertainty and defeats any efforts by companies to plan for the potential financial impact. Decisions by regulatory authorities to deviate from best practice in this manner discourage decisions by commercial enterprises to invest in the country.

## VIII. Solutions

43. The Authority is faced, therefore, with a flawed FLLRIC model, a flawed dispute resolution process and a harmful "retroactive" process. It is, however, possible for the Authority to issue determinations at this point in time that would put all parties in the position they would have been in, had the above flaws and errors not occurred.

44. First, the Authority should determine not to apply any new FTR or transit rates retroactively. Rather, the current "interim" rates should be made final, and should continue to apply as such until such time as new FTR and transit rates are determined, which would in turn apply on a forward-looking basis only.

45. This would reverse the harmful effects of the inappropriate determinations in Decision 2010-5. In addition, no parties would be harmed by this decision, as all parties in the market and all parties considering entry into the market would already have made interconnection payments and done their business planning on the basis of the current FTR and transit rates.

46. There is precedent for this approach, specifically the approach applied by the Authority in early 2010, where the Authority refused in February of that year to modify its decision on retroactivity, but then determined in April of the same year to make all interim rates final. Nothing precludes the Authority from making the same determinations now, and in fact all the evidence suggests the Authority should do the same now.

47. Further, international best practice requires regulators to adopt consistent approaches to matters subject to the same circumstances. In the case at hand, the MTR, the FTR and transit rate were all in the same circumstances in 2010: they were included in the same interconnection agreement, the Authority had no reason to believe they were not lawful, and all three were subject to unknown degrees of revision following finalisation of the FLLRIC model. Given that the Authority chose in 2010 not to make the MTR of the time "interim" pending finalisation of the

FLLRIC model, the Authority must now apply the same approach and not require retroactive adjustments of the FTR and transit rates, as if they had not been made interim in 2010.

48. Second, the Authority should apply the FLLRIC model as approved by Decision 2012-2 to determine FTR and transit rates. This would ensure the use of a consistent and coherent cost model to set all interconnection rates in this market. Further, this is the model that would have been used, had the Authority followed the process in Decision 2010-5 and conducted in "a follow-up proceeding after the FLLRIC model is approved". In the circumstances, and to assist licensees in planning for the upcoming fiscal year, LIME recommends that these new rates be applied prospectively from 1 April 2015.

49. Third, in the event that the Authority considers that the FLLRIC model should in fact be updated to reflect more current volumes and more current design assumptions than included in the 2012 approved FLLRIC model, then the Authority should review and update both modules of the FLLRIC model at the same time. LIME notes that the FLLRIC model that was approved in 2012 was designed with a three-year forward-looking time horizon. It is therefore not unreasonable to review it to ensure it remains forward-looking. However, as noted above and for the avoidance of any doubt, the Authority must take care to review the entire FLLRIC model on a holistic basis and to apply any new MTR, FTR and transit rates that might flow from that review, on the same date and on a prospective basis only.

## IX. Comments on the Fixed Module Itself

50. Without prejudice to our views expressed above regarding the internal inconsistency within the FLLRIC model, we have a number of suggested changes to the fixed module. It is important to highlight that none of these proposed changes significantly impact the cost basis of the FTR or fixed transit service. We make these suggestions for the achievement of completeness of the model, not because they alter the results in any material or consequential way.

51. The changes are as follows:

a. In the MG Calculations sheet, cells H8:104, parentheses are missing in the first term, e.g., the formula in H8 begins =(ROUNDUP('MG Calculations'!B8+C8/10,0… It should begin =(ROUNDUP(('MG Calculations'!B8+C8)/10,0

b. In the Cost Assumptions sheet, cells C256 and C257 should be modified to reflect the year of the invoice, i.e., J257 and K257 should include the time adjustment formulae

and cells C256 and C257 should include the time adjustment from K256 and K257 respectively.

c. Also, consistent with our response to Interrogatory 20, the figure in cell C256 should read 7,906*K256, not 9,756.

d. In the "TX Equipment Dimensions" sheet H40:H44, tribs are STM-1 capacity and should be dimensioned in the same manner as the ADMs. The formula should mirror those in I40:I44.

e. In the "Core Fibre Costs" sheet, the 12 pair UG variant is missing in the Summary of Dimensions, Unit costs and Costs sections. It should be added. Cells N9 and O9 must be revised to correctly pick up the 12 pair UG variant.

f. In the "TX Equipment Dimensions" sheet, the international BH Capacity formula in C141 should be revised. First, in the "Demand Calculations" sheet, a column should be added at I71 to I125, and inbound incoming traffic types should be indicated with a "1". Then, in the "TX Equipment Dimensions" sheet, cell C141 should be revised to read =SUMPRODUCT('Demand Calculations'!H71:H125,'Demand Calculations'!I71:I125)/'Technical Assumptions'!C38*2

g. There is still material that as a result of recent changes are no longer needed, e.g. ADSL network element, Rows 193-209 in the "Demand calculations" sheet and Rows 262-277 in the "Cost Assumptions" sheet.

## X. Closing Remarks

70. Kindly send any communication in relation to this consultation to:


| **Frans Vandendries** | **David Cox** |
|---|---|
| frans.vandendries@lime.com | david.cox@lime.com |
| +1 345 916 0831 (M) | +1 758 485 7500 (M) |
| +1 345 747 3644 (O) | +1 758-453-9484 (O) |

**END DOCUMENT**