CABLE AND WIRELESS (TCI) LIMITED, TRADING AS LIME

REPLY COMMENTS ON
REVIEW OF MOBILE TERMINATION RATE

Landline | Internet | Mobile | Entertainment

17 September 2010

I. INTRODUCTION

1. Cable and Wireless (TCI) Limited, trading as LIME ("**LIME**") is pleased to provide the following reply comments to the initial comments filed in this proceeding on mobile termination rates ("**MTRs**") by Islandcom Telecommunications, Ltd. ("**Islandcom**") and Digicel (TCI) Ltd. ("**Digicel**") on 30 August 2010 and 25 August 2010, respectively. The absence of a response to a specific comment made by either Digicel or Islandcom should not be considered agreement by LIME with the comment.

2. LIME has replied to Digicel's and Islandcom's responses to the Commission's questions in turn below.

II. RESPONSE TO QUESTION #1

Question #1: Please comment on whether the Commission has the authority to establish the maximum allowable level of the MTR that can be charged by licensed mobile operators in TCI on its own motion, without having received an interconnection dispute resolution request.

A. Digicel's response to Question #1 is irrelevant and outside the scope of the proceeding

3. It should be noted at the outset that the Commission's question was a jurisdictional query. It seeks input from intervenors regarding the Commission's authority to establish a price ceiling for the MTR. Instead, Digicel chose to argue that the Commission's concern with the MTR is "unreasonable" and "unfair." In particular, Digicel contends that it is "unreasonable to reduce the FTM termination rate unless the FTM retail price cap is dramatically reduced first." It then predicts doom, warning the Commission that if it acts on its intent to reform the MTR, then "[e]ven greater market distortions would result if the mobile termination rate was reduced without first making much larger cuts in the FTM retail rates."

4. Digicel's response is completely irrelevant to the Commission's question, is wrong economically, and is predicated on a tired argument that is outside of the scope of this proceeding. Digicel's response is irrelevant because it presents no view on the Commission's query, which is whether the Commission has authority under the laws and regulations in TCI to intervene and establish a cap on the MTR, outside of an interconnection dispute.

5. Digicel's assertion that reducing the MTR closer to cost will produce "[e]ven greater distortions," unless "much larger cuts" are made to the FTM retail rates is wrong economically because there is no harmful distortion or harm to consumers when the price of an input is reduced towards cost. To the contrary, bringing the MTR closer to cost, and bringing it more into alignment with the much lower rates charged to intermodal competitors (such as the FTR charged to Digicel for terminating calls to the fixed network), benefits consumers and competition and would promote the public interest, provided, of course, that the MTR does not fall below cost.

6. Digicel's suggestion that the FTM retail rates are immune from mandated reductions is wrong. The Second Price Cap Regime set out in Decision 2008-8[1] clearly imposes mandated price reductions in the FTM retail rates over the term of the Price Cap, and footnote 15 at page 17 of that determination sets out what the Commissions considers ought to be the impact of MTR reductions.

7. Further, it should be clear that the focus of this proceeding is the level of the MTR. All other matters, including the level of the FTM retail rates, are outside the scope of this proceeding. The fact that the Commission has already exhaustively investigated retail price regulation of fixed to mobile calling under the Second Price Cap Regime in TCI and has already instituted a mechanism to reduce LIME's FTM retail price over time merely underscores this point.

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[1] Telecommunications Decision 2008-8, "*Decision on the Second Price Cap Regime*", 18 February 2008.

B. Islandcom's response to Question #1 is based on a misinterpretation of the Ordinance

8. Islandcom contends that the Commission's authority to establish a price ceiling for the MTR "is clear on its face." However, Islandcom's response is somewhat unclear, citing Section 24 of the Telecommunications Ordinance (the "**Ordinance**"), and then quoting from Section 23 of the Ordinance, which Islandcom asserts explicitly supports the Commission's authority to regulate the MTR. Further, while Islandcom has quoted from subsection 23(2), any legislative provision needs to be read in context and the Ordinance should be read as a whole. This includes subsection 23(3), to which LIME directed the Commission in its 30 August 2010 comments, which excludes from Section 23 any interconnection arrangements agreed to by the parties. LIME submits, therefore, that the Ordinance does not grant the Commission the power to intervene in interconnection arrangements that the parties in question have in agreement between themselves.

III. RESPONSE TO QUESTION #2

Question #2: With the objective of promoting efficiency in mind, please comment on whether the MTR should be set at a level that is reflective of the marginal or incremental cost of mobile call termination. If not, explain what alternative cost basis should be considered, with supporting rationale.

A. LIME agrees with much of Digicel's response to Question #2, except for its advocacy of a benchmarking approach to estimating a cost-based MTR

9. LIME agrees with Digicel's assertion that the measurement of MTR cost "must be to let operators recover costs where these are efficiently incurred" and would include "as a minimum allowing for the recovery of fixed and common costs where, for example, LRIC assessments are undertaken." Similarly, LIME agrees with Digicel's opinion that the European Commission's decision to adopt a pure LRIC approach—an approach to measuring a cost-based MTR that does not allow for recovery of any common costs—is a "bad policy."

10. LIME disagrees with Digicel's recommendation that in the event of a failure of commercial negations to establish a reciprocal MTR the Commission should adopt a benchmarking approach, instead of constructing a LRIC cost model to measure MTR. Digicel presents two arguments for conducting a benchmarking exercise instead of constructing a cost model. Digicel's first argument is that constructing a cost model is more burdensome and costly than a benchmarking exercise. This assertion is unsubstantiated and unwarranted. As LIME set forth in its initial comments, significant cost and effort is required to construct an accurate benchmark. Not only must the benchmark rates being examined all be normalized for demographic, geographic, and economic factors, but they must also be adjusted to ensure that they conform to the particular set of cost-based pricing principles selected by the Commission. Therefore, the regulatory regimes and histories of each benchmark jurisdiction must be considered to uncover jurisdiction-specific differences and idiosyncrasies in the benchmark rates, and where necessary adjust each benchmark rate to ensure that they are being compared on a like-for-like basis.

11. Digicel also argues that a benchmark approach is preferred on the grounds that cost models inevitably produce an understatement of true cost. To support this assertion, Digicel states that there is a survivorship bias in how cost of capital is typically calculated in cost models. This bias, Digicel contends (in its answer to the next question, i.e., Question #3), results in "the inevitable understatement from cost models of true cost." LIME agrees that there are additional risk factors that must be taken into account when applying a cost of capital study to an operator in a small country, such as TCI. LIME disagrees, however, with Digicel's assertion that such risk factors cannot be adequately addressed in a LRIC cost model. Many telecommunications cost of capital studies in the Caribbean markets that the company is aware of already explicitly account for country risk and many studies (such as those for Barbados and Bahamas) also include an additional risk premium to account for small company risk, as well as country risk. Finally, with respect to the supposed survivorship bias in particular,

the sample of comparable firms employed in telecommunications cost of capital studies typically operate in markets with a limited number of players and with little or no history of bankruptcy. In this setting survivorship bias is unlikely to be a significant factor. Therefore, with regard to cost of capital, there is no basis for Digicel's assertion that a LRIC cost model inevitably understates true cost of an efficient operator.

IV. RESPONSE TO QUESTION #3

Question #3: With the objective of promoting sustainable competition in mind, please comment on whether the MTR should be set at a level that is reflective of the marginal or incremental cost of mobile call termination. If not, explain why not, with supporting rationale.

A. LIME agrees with Islandcom's recommendation to use LRIC pricing principles to set the MTR

12. Islandcom states in its response to Question #3 that it "recommends the use of LRIC as a means of setting MTRs… [and that] [u]sing LRIC pricing for interconnection would promote economic efficiency." LIME agrees with this recommendation, with the qualification that a LRIC-based MTR include a mark-up for the recovery of an efficient level of common costs, as described in LIME's initial comments in this proceeding.

V. RESPONSE TO QUESTION #4

Question #4: Please comment on whether the impact of reducing the MTR in TCI is likely to have a positive, negative or neutral effect on mobile and fixed end-users. To the extent possible, provide any supporting empirical available to support the views expressed in this respect.

A. Digicel's response to Question #4 states incorrectly that reducing the MTR will harm competition and consumers

13. Digicel restates the argument that "reducing the mobile termination rate without first significantly reducing fixed to mobile retail prices … will create an even greater imbalance" and adds that it will "send out the wrong investment signals to

operators, and most importantly hurt consumers in the long run." LIME reiterates this is a nonsensical assertion for all of the reasons set forth above in LIME's critique of Digicel's response to Question #1. Elementary economics dictates that reducing an above-cost price closer to cost does not harm economic efficiency, but to the contrary improves economic efficiency. When the price of an input is reduced toward cost it does not send out the wrong investment signals, but provides the right investment signals that improve allocative efficiency and benefit consumers in both the short and long run. Furthermore, even assuming (counterfactually) that reducing the MTR creates "greater imbalance," Digicel's suggestion that restoring balance somehow benefits consumers is specious. Consumers do care about the level of their payment, but are indifferent to the "balance," i.e., how their payment is distributed between LIME and Digicel. In other words, a lower rate for FTM calling provides an unambiguous benefit to consumers, but to which operator all or some of that payment goes does not have an impact on consumer welfare. Finally, it is worth noting that the alleged imbalance for LIME FTM calls to Digicel is less than the imbalance for Digicel MTF calls to LIME.

B. LIME concurs with Islandcom's conclusion in response to Question #4: a lower MTR will benefit telecommunications consumers in TCI

14. LIME agrees with Islandcom's conclusion "that a lower MTR will have a positive impact on all consumers of telecommunications services in TCI," again, provided that the MTR is not set below cost.

VI. RESPONSE TO QUESTION #5

Question #5: Please comment on the Commission's preliminary view that the most cost-effective, timely and proportionate approach to set the MTR is a detailed and comprehensive benchmarking study, rather than FDC or LRIC/LRAIC-based costing approaches. If parties consider that a benchmarking approach is not appropriate for setting the MTR, please describe their preferred alternative approach, with supporting rationale.

A. LIME shares Digicel's concern with designating the four lowest benchmark MTRs as "best practice" pricing, but does not agree with Digicel's recommendation to use a benchmark approach to estimate a cost-based MTR

15. Digicel indicates that "there is no basis for alleging, as the consultants appear to have done, without any supporting argumentation, that the four lowest prices of anything represent 'best practice' pricing." LIME concurs with this conclusion and expressed similar concerns in its initial comments.

16. LIME disagrees with Digicel's assertion that "a benchmarking exercise makes more sense…than attempting a detailed cost modeling exercise" and its suggestion that the former offers a less expensive and time consuming means of estimating a cost-based MTR. LIME articulated its concerns with applying a benchmark approach in its initial comments and in its critique above of Digicel's response to Question #2.

17. LIME notes Digicel's comments regarding the MTR applied in the British Virgin Islands ("**BVI**") and categorically rejects the unsubstantiated allegations. In particular, while Digicel makes a number of spurious comments about the supposed interests of a "combined fixed/mobile operator", like LIME, Digicel failed to bring to the Commission's attention the fact that the other operator allegedly "maneuvering" with LIME's affiliate was a mobile operator, as is Digicel in that market. Based on Digicel's position, such an operator would not have the same interests as a fixed/mobile operator, and would not have "maneuvered" with a fixed/mobile operator in order to set a below-cost MTR, as

alleged: a below-cost MTR would represent a direct financial loss to a mobile-only operator, which clearly would not be in that operator's interest. Digicel also did not bring to the Commission's attention the fact that the other operator was the incumbent mobile operator at the time of market liberalization, and was therefore in a better position to set the MTR at appropriate levels. The only conclusion that can be drawn from these facts is that neither operator considered that the agreed MTR was inappropriate or below cost.

B. LIME shares Islandcom's concern with a benchmark approach, but does not agree that a benchmark approach is the quickest and least costly method

18. In its response to Question #5, Islandcom articulates the following concerns with a benchmark approach:

> [T]he Commission should recognize [that benchmarking] is an imperfect tool. Unless the benchmarks chosen are truly comparable, e.g., similar in size of market, number of competitors, market penetration, competitors' state of technical development, socio-economic and income factors, the analysis will yield inaccurate and misleading results, perhaps grossly so.

19. LIME shares these concerns and expressed similar concerns in its initial comments in this proceeding. LIME, however, does not agree with Islandcom's conclusion that "the Commission is correct in assuming it is the quickest and least costly method of rate setting." As stated in its initial comments and in its criticism of Digicel's response to Question #2, LIME believes that there is significant cost and effort required to construct an accurate benchmark.

VII. RESPONSE TO QUESTION #6

Question #6: Please comment on whether the upper limit on the MTR should be set on a uniform or symmetric basis for all mobile operators. If not, explain why not, and also describe and justify the basis for differentiating rates among mobile network operators.

A. Digicel's arguments opposing LIME's transit fee are outside the scope of this proceeding and are based on a selective view of the facts

20. Digicel claims that LIME's transit rate in TCI is "a cleverly disguised top up to LIME's mobile termination charge," and concludes "[t]hus effectively there is an asymmetric mobile termination rate in the Turks and Caicos Islands in LIME's favour." Once again, Digicel's argument is not relevant and outside of the scope of this proceeding, and is based upon a select and distorted view of the facts.

21. First and foremost, LIME maintains that the transit service provided to Digicel is a genuine service and as such the applicable charges are appropriate. Transit service is a common service employed by interconnecting carriers throughout the Caribbean and beyond. It is a service provided to a carrier when it chooses not to connect directly to the terminating network, but to instead connect indirectly via an intermediary (transit) network. As such, the transit service provided to Digicel in TCI is not a bottleneck service, but is a voluntary service provided at Digicel's behest.

22. Second, just as LIME charges Digicel for transit service in TCI and elsewhere, Digicel too charges LIME for transit service in a number of jurisdictions outside of TCI. Therefore, there is no unjustified "asymmetry" in how Digicel and LIME charge each other to interconnect and terminate each other's traffic.

23. Finally, Digicel conjectures that LIME's fixed switch and mobile switch in the TCI are in close proximity to each other and from this concludes that "[t]he [transit] cost involved must therefore be tiny." However, what Digicel fails to indicate is that distance was not a relevant factor in determining the transit rate,

nor was distance a relevant factor in determining any of the other interconnection rates between Digicel and LIME in TCI.

B. LIME agrees with Islandcom's conclusion that symmetric rates the correct methodology for pricing mobile termination

24. In response to Question #6, Islandcom states that it "is of the opinion that symmetric rates for all mobile operators are the correct methodology for the Commission to employ." LIME agrees with this conclusion and stated the same in its initial comments in this proceeding.

VIII. RESPONSE TO QUESTION #7

Question #7: Please comment on whether reductions in the MTR in TCI should be implemented on a flash cut basis or phased-in over the course of a multi-year period. Please describe and justify any alternative glide path or transitional arrangements that Respondents may consider appropriate to the case at hand.

A. LIME agrees with Digicel's recommendation to make price declines coincident with the operators' April-March financial year

25. Similar to LIME's recommendations, Digicel recommends that if a reduction to the MTR is forthcoming, then it should coincide with the operators' fiscal year. LIME agrees with this recommendation by Digicel.

IX. RESPONSE TO QUESTION #8

Question #8: Please comment on whether the observed levels and downward trends in average or best practice MTRs in the Caribbean are generally indicative of the underlying costs of terminating mobile calls by mobile network operators in TCI. If not, explain why not. In responding to this question, please provide any additional benchmarking information that may be available that is of relevance to this Consultation (fully explaining all data sources, assumptions and calculations).

A. Digicel's alternative benchmark proposal based on six handpicked jurisdictions with the highest MTR is as arbitrary as the Commission's proposal based on the four jurisdictions with the lowest MTR

26. Digicel presented an alternative benchmark analysis in its response to Question #8. In so doing, Digicel added several countries (with relatively high MTRs), excluded other countries (with MTRs among the lowest), and nearly doubled the MTR for one of the remaining countries (with the lowest MTR).

27. Unfortunately, Digicel's analysis contains several methodological problems. The single parameter identified by Digicel when excluding a jurisdiction is population. Not surprisingly, the two jurisdictions excluded on this basis are also among the four jurisdictions with the lowest MTR. Digicel also adjusted the remaining two jurisdictions with the lowest MTR. It replaced the MTR in BVI with the previous, now obsolete and much higher, MTR, on the premise that the existing MTR in BVI is "not reliable" for the reasons set forth in its response to Question #5. Digicel then used its own calculation to increase the average MTR in Martinique and Guadeloupe. Finally, it averaged the MTR for the six jurisdictions in its sample with the highest MTR.

28. If anything, Digicel's myopic benchmark analysis highlights the difficulty of developing an accurate benchmark and the malleability of applying a cursory analysis such as Digicel's. Population may be an accurate basis for adjustment, but it is not and should not be the only control. Consideration must also be given to the myriad of other relevant factors, such as geography, demography,

economics, and regulatory policy differences among the benchmark jurisdictions. As a result, the benchmark MTRs produced from Digicel's alternative analysis are just as arbitrary and potentially misleading as those proposed in the Commission's consultation document.

X. RESPONSE TO QUESTION #9

Question 9: Please comment on of the Commission's preliminary MTR Proposal that would reduce the upper limit of the MTR in TCI to USD $0.09, USD $0.07 and USD $0.05 over the course of the next three years, starting in January of 2011. To the extent parties believe an alternative MTR proposal would be more appropriate, please describe any such proposals in detail and include supporting rationale and data as may be relevant.

A. Digicel's response to Question #9 is misleading and outside the scope of this proceeding

29. In its response, Digicel applied the alternative benchmark analysis presented in response to Question #8 and included several additional restrictions. First, it proposed freezing the fixed to mobile MTR (while proposing to reduce the mobile to mobile MTR); and, second, it proposed adding an additional restriction to LIME's FTM retail rate.

30. First and foremost, Digicel's comments are outside of the scope of this proceeding, and do not fully represent the facts. As we have noted earlier, the Commission is reviewing the level of MTRs, not of other rates, and commentary on fixed termination or transit rates is simply not germane.

31. In addition, while Digicel refers often to "fixed-to-mobile retention," this is a concept that has no place in a calling-party-pays regulatory environment. LIME notes that for a period of time following liberalization, Jamaica's regulator had applied a specific, regulated "fixed retention" figure in a calling party pays environment. This had disastrous results for that country, including the

marginalization of the fixed network and the re-monopolization by Digicel of the mobile market.

32. LIME also notes that Digicel refers to the Barbados regulator establishing "a 0 cents rates for FTM termination." This is highly misleading. At no time did Digicel mention that the Barbados market is not a calling party pays market. Mobile providers operate under receiving party pays convention in Barbados with respect to fixed-to-mobile calling and, therefore, recover their costs of call termination from their own retail mobile subscribers, not from the fixed network originating the call. This arrangement of a 0 cent MTR for FTM call termination would have no legitimate place in the TCI regulatory regime.

33. Ironically, Digicel uses this example of a lower (i.e. zero) MTR for FTM calls than for MTM calls, to justify their own proposal of a higher MTR for FTM calls than for MTM calls. This would serve only to preserve Digicel's revenue stream (that is, FTM call termination revenues resulting from an above-cost MTR) at the expense of consumers and competition. LIME submits there is no sound economic foundation to accept Digicel's proposal and that the same MTR should apply to all calls originating in TCI, whether from a fixed TCI network or a mobile TCI network.

34. LIME does agree with Digicel, though, that international to mobile call termination rates should continue to be commercially negotiated, irrespective of whether the Commission does in fact have the jurisdiction to set MTRs in the absence of a dispute among operators, and of whether the Commission chooses to regulate MTRs for domestically originated calls.

35. For the avoidance of doubt, the foregoing discussion should not be construed as LIME concurring with the Commission's proposal as set out in Question #9.

XI. RESPONSE TO QUESTION #10

Question 10: Please provide comments on the Commission's proposed Directive assuming on the Proposal or a modified version of the Proposal is adopted. Also, please provide any changes to the Directive parties consider appropriate based on the Proposal or, if applicable, Respondents' own MTR proposals.

A. LIME submits that the Commission does not have the power to to issue the Directive, absent a dispute between the parties

36. As note above, LIME submits the Ordinance does not give the Commission the power to override a pre-existing agreement between two interconnecting parties, absent a dispute between the parties.

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