Telecommunications Decision 2020 – 2

Decision on the
Third Review of Interconnection Rates

issued by the

Turks and Caicos Islands
Telecommunications Commission

on

October 13, 2020

CONTENTS

Summary

In this Decision, the Telecommunications Commission (the "Commission") has determined that the maximum allowable interconnection rates in the Turks and Caicos Islands ("TCI") will be reduced in a phased manner over the course of the next three years. The Commission expects that these reductions will result in consumer benefits over the course of the coming years, including in the form of lower retail calling prices.

The Commission initiated a public consultation process to review current domestic call interconnection rates in TCI – i.e., the domestic mobile termination rate ("MTR"), domestic fixed termination rate ("FTR") and transit service rates ("TR"). As shown in its Consultation Document issued in February of this year, the Commission found that current rates are high relative to those in other Caribbean jurisdictions and, as a consequence, that they are not properly cost oriented as required under the regulations that govern the telecommunications sector in TCI.

As in the case of its previous interconnection rates reviews conducted in 2011 and 2014, the Commission adopted a forward-looking benchmarking approach to determine fair and reasonable cost-oriented interconnection rate maxima based on comparable interconnection rate information for 12 other Caribbean jurisdictions. The approach includes benchmark sample normalization adjustments to take into account demographic, socio-economic and other environment differences between the benchmark jurisdictions and TCI. Based on the Commission's benchmarking analysis and considering the submissions of interested parties – Cable & Wireless (TCI) Ltd. ("Flow"), Digicel (TCI) Ltd. and Andrew's Communications Ltd. ("ACL") – the Commission has determined that the maximum allowable interconnection rates should be reduced starting April 1, 2021 as follows:

Proposed Final Interconnection Rate Maxima Determinations			
Date	**MTR**	**FTR**	**TR**
Current	\$0.0600	\$0.0170	\$0.0085
From April 1, 2021	\$0.0440	\$0.0120	\$0.0060
From April 1, 2022	\$0.0290	\$0.0080	\$0.0040
From April 1, 2023	\$0.0130	\$0.0030	\$0.0020

The Commission notes that under the price cap mechanism for regulated fixed-line services, reductions in the MTR must be flowed through simultaneously in the form equal reductions to Flow's fixed-to-mobile ("FTM") calling rate. Thus, consumers will directly benefit from reductions in Flow's FTM per minute call rate as a result of the above-noted MTR maxima reductions.

Immediately following the release of this Decision, the Commission will issue a Recommendation to Government requesting that modifications be made to section 19(2) of the Interconnection and Access to Telecommunications Facilities Regulations to implement the above-noted interconnection rate maxima determinations.

1 Introduction

1. In this Decision, the Telecommunications Commission (the "Commission") sets out its determinations on maximum allowable domestic call interconnection rate levels in the Turks and Caicos Islands ("TCI") as proposed with supporting rationale in its "Third Review of Interconnection Rates Consultation Document", issued February 24, 2020 (the "Consultation Document").

2. The interconnection rates under review in the public consultation process include the:

    i) domestic call mobile termination rate ("MTR"),[1]

    ii) domestic call fixed termination rate ("FTR"),[2] and

    iii) transit rate ("TR").[3]

3. The Consultation Document describes the Commission's updated forward-looking benchmarking approach used to review the reasonableness of the existing MTR, FTR and TR maxima set out in section 19 of the *Telecommunications (Interconnection and Access to Telecommunications Facilities) Regulations* (the "Interconnection Regulations"). This review constitutes the Commission's third review of interconnection rates in TCI. The benchmarking approach mirrors the approach previously adopted by the Commission in Telecommunications Decision 2011-2, *Decision on the Mobile Termination Rate Review*, issued January 24, 2011 ("Decision 2011-2") and Telecommunications Decision 2014-4, *Decision on the Review of Interconnection Rates*, issued June 20, 2014 ("Decision 2014-4") – i.e., the Commission's first and second review of interconnection rates in TCI. Based on the preliminary benchmarking analysis and results set out in the Consultation Document, the Commission put forward a set of proposals to phase-in further reductions to the maximum allowable levels for the MTR, FTR and TR (the "Proposals").

4. The Commission received responses ("Responses") to the Consultation Document from the following parties:

    i) Andrew's Communications Ltd. ("ACL"), dated May 13, 2020;

    ii) Digicel (TCI) Limited ("Digicel"), dated May 15, 2020; and

    iii) Cable and Wireless (TCI) Limited ("Flow"), dated May 15, 2020.

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[1] Referred to as the PLMN Terminating Access Services "Mobile Termination Part" under Part 2 of the Tariff Schedule associated with the parties' Interconnection Agreements.

[2] Referred to as PSTN Terminating Access Services "Usage Charges" under Part 2 of the Tariff Schedule associated with the parties' Interconnection Agreements.

[3] The TR covers two types of transit services: (i) the local transit rate ("LTR"), which is charged by Flow when transit over its fixed network is required to terminate calls to Flow's mobile subscribers and (ii) the transit service rate ("TSR"), which is charged to transit call traffic over a fixed network to a domestic third-party service provider's network. The first TR rate is referred to as the PLMN Terminating Access Services "Transit Part" under Part 2 of the Tariff Schedule associated with licensed operators' Interconnection Agreements. The second rate is referred to as PSTN Transit Services "Usage Charges" under Part 4 of the Tariff Schedule associated with licensed operators' Interconnection Agreements.

5. In its Response, ACL acknowledged receipt of the Consultation Document, but indicated that it had no comments to offer at the time. Digicel and Flow provided detailed Responses to the Consultation Document, which included comments on each of the Consultation Questions included in the Consultation Document. In addition, Digicel provided a Reply Response, dated June 1, 2020, in which it commented on Flow's Response.

6. In what follows, Section 2 reviews the parties' responses to the Consultation Questions included in the Consultation Document. In each case, the Commission provides a summary of parties' comments and its conclusions regarding their impact, if any, on the Commission's final interconnection rate maxima determinations (the "Determinations"). Section 3 addresses implementation matters including the Commission's recommendation to Government to amend the Interconnection Regulations to reflect its Determinations (the "Recommendation") and the corresponding procedural directive to licensed operators to give effect to the amended Interconnection Regulations (the "Directive").

2 Responses to the Consultation Questions

7. As noted, the Consultation Document included seven Consultation Questions. These questions covered a variety of topics including the underlying legal and regulatory basis for the current review of interconnection rates in TCI, the forward-looking benchmarking methodology relied on by the Commission to review existing and propose new MTR, FTR and TR maxima, the Commission's Proposals as well as implementation and other related administrative matters. In what follows, the Commission reviews parties' responses to and provides its conclusions on each of the Consultation Questions, including any impacts the responses have on the Commission's MTR, FTR and TR maxima Determinations.

2.1 Legal and Regulatory Framework

8. Section 2 of the Consultation Document summarizes the relevant legal and regulatory provisions relating to the Commission's authority to review and set on its own motion the maximum allowable level of interconnection rates in TCI. These provisions include policy directives under *Telecommunications Policy 2013* (the "Policy"), sections 23 and 25 of the *Telecommunications Ordinance 2009* (the "Ordinance") and sections 4, 14, 15 and 19 of the Interconnection Regulations. As also explained in Section 2 of the Consultation Document, these provisions support the use of the forward-looking benchmarking methodology relied on by the Commission to develop its Proposals in this third review of interconnection rates, which is consistent with the methodology used by the Commission in its two previous reviews that resulted in Decisions 2011-2 and 2014-4.

9. In this respect, Consultation Question #1 asked parties to provide any comments they may have on:

> **… matters related to legal and regulatory provisions relating to the establishment of interconnection rate maxima in TCI. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.1.1 Parties' Responses

10. In its Response, Digicel stated that in its view the use of benchmarking to set interconnection rates is fundamentally wrong and, moreover, unlawful. In this latter respect, Digicel cited a legal appeal in Ireland where the use of a benchmarking was questioned by the High Court of Ireland.

11. In addition, Digicel noted that section 25(4) of the Ordinance states that termination charges must be "cost-oriented" and "based upon costs of the licensee providing interconnection services". Digicel noted that a benchmarking approach by its nature relies on the costs calculated in respect of "other operators in other benchmark markets". Consequently, according to Digicel, benchmarking cannot yield a cost-oriented rate which is based on the costs of the licensee as set out in section 25(4) of the Ordinance and, therefore, Digicel considers the use of benchmarking by the Commission for interconnection rate setting purposes to be *ultra vires*.

12. In its Response, Flow acknowledged that the Commission has recourse to seek amendments of interconnection rates by issuing a recommendation to Government that interconnection rate maxima be modified in accordance with a Commission decision resulting from a public consultation. Flow added that this approach, including reliance on benchmarking for setting interconnection rate maxima, has been followed by the Commission in its previous interconnection rate reviews, and this same approach is being followed in the present case. Accordingly, Flow stated that it is not opposed to the use of this same approach once again in this case.

13. In addition, Flow noted that while it would prefer use of a long run incremental cost ("LRIC") modeling approach to set interconnection rates, it is "satisfied" that rates derived from a benchmarking approach can produce appropriate results if the sample is accurately specified and normalized to make it comparable to TCI. Subject to this qualification, Flow stated that it supports the Commission's use a benchmarking methodology in this proceeding to set the interconnection rates in TCI. Further in this regard, Flow stated that it supports LRIC-based rates that include a contribution to common and fixed costs (effectively "LRIC+"), rate symmetry and the phasing-in of rate reductions via a multi-year glidepath.

14. In its Reply Response, Digicel took issue with Flow's support of the use of benchmarking to set interconnection rates, reiterating its view such an approach is inconsistent with section 25(4) of the Ordinance and, in Digicel's view, unlawful. In addition, Digicel noted that Flow's support of benchmarking was dependent on the accuracy of the sample specification and normalization adjustments. In Digicel's view, these aspects of the Commission's benchmarking approach are deficient which, according to Digicel, suggests that Flow's support for a benchmarking approach in this case may not apply.

2.1.2 The Commission's Determinations

15. The Commission notes that the views expressed by Digicel and Flow regarding the legal and regulatory framework for the Commission's current review of interconnections rates in TCI and, more specifically, the proposed use of a benchmarking approach for setting the maximum allowed interconnection rate levels are diametrically opposed. Flow supports the approach used by the Commission to set interconnection rate maxima, including the use of benchmarking, whereas Digicel does not. Moreover, unlike Flow, Digicel considers the use of benchmarking as unlawful.

16. First, the Commission acknowledges Flow's general support for the legal and regulatory approach, including benchmarking, the Commission has proposed to use to reset the interconnection rate maxima. As also recognized by Flow, this approach is fully consistent with the two previous interconnection reviews conducted by the Commission.

17. On the other hand, the Commission considers that Digicel's claims that this approach is either wrong or in someway unlawful to be unfounded and mistaken. It appears that Digicel's position in this regard rests entirely on a narrow reading of section 25(4) of the Ordinance without regard to other directly related applicable provisions of the Interconnection Regulations. Section 14 of the Interconnection Regulations defines the concept of "cost-orientation". Importantly, Section 15 states that the Commission shall determine the methodology to be used for determining cost-orientation, and also provides

general guiding principles for the methodology used for setting interconnection rates (including, for instance, the requirement to incorporate a proportionate contribution to fixed and common costs). That said, neither the Ordinance nor the Interconnection Regulations specify any specific approach that must be used to set interconnection rates. As noted, the Interconnection Regulations explicitly leave that choice to the Commission.

18. Benchmarking is a common approach used to set regulated rates, including interconnection rates. The Commission has used this same approach for setting interconnection rate maxima in Decisions 2011-2 and 2014-4. In both cases, the Government accepted and approved the Commission's recommended interconnection rate maxima. Consequently, the Commission does not accept Digicel's argument that a benchmarking approach is inappropriate or, for that matter, unlawful for setting interconnections rates in TCI.

19. The Commission also notes that little if any context is provided by Digicel in its Response regarding the Irish High Court's views on benchmarking use in Ireland. In any event, the Commission considers that they carry no weight in TCI and, moreover, do not in any way overrule the TCI's Ordinance or Interconnection Regulations.

20. In its Reply Response, Digicel noted that Flow's support for a benchmarking approach is conditional on the reasonableness of the benchmarking sample specification and the associated normalization adjustments. Digicel asserts that these two conditions do not hold since Digicel considers the benchmarking sample and normalization adjustments to be flawed (as addressed further below) and, therefore, according to Digicel, Flow does not in fact support benchmarking.

21. The Commission does not accept Digicel's attempt to rewrite Flow's Response in this way. Flow did in fact take issue with certain aspects of the Commission's proposed benchmarking sample (which are addressed below); however, Flow did not claim it was either inaccurate or unreasonable from an overall perspective. Flow also raised no issues with the Commission's proposed normalization adjustments for demographic, socio-economic and other environmental differences between benchmark jurisdictions and TCI. Consequently, there is no reason to believe that Flow does not generally support a benchmarking approach for interconnection rate setting purposes as it stated in response to this Consultation Question.

22. Accordingly, the Commission continues to be of the view that a forward-looking benchmarking approach for setting interconnection rate maxima in TCI is appropriate and, moreover, fully consistent with the Ordinance and Interconnection Regulations, past practice in the two previous interconnections rates reviews by the Commission. Following past practice, the Commission will recommend that Government once again amend section 19 of the Interconnection Regulations to reflect the interconnection rate maxima Determinations set out in this Decision.

2.2 Proposed Benchmarking Sample

23. Section 3.1 of the Consultation Document describes the proposed Benchmarking Sample used for interconnection rate maxima setting purposes. It includes a description of the benchmarking sample section criteria and the benchmarking sample interconnection rate

data update process, including exchange rates assumptions. As well, Section 3.1 describes the rationale for the development of a sub-sample set of jurisdictions where cost-based rates are in effect (i.e., LRIC-based rates with or without a contribution for fixed and common costs – i.e., LRIC+ or Pure LRIC, respectively). Consequently, two calculated benchmark averages are considered in the analysis for each interconnection rate under review – the "All Sample" and "Cost-Based Sample" benchmark averages (which are based on up to 12 and 9 benchmarking sample jurisdictions in each case).

24. In this respect, Consultation Question #2 asked parties to comment on:

> **… on the Commission's proposed Benchmarking Sample selection criteria, the jurisdictions included in the proposed Benchmarking Sample, related measures used to establish an historical benchmarking sample time period as well as any other issues considered relevant to the establishment of a benchmarking sample. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.2.1 Parties' Responses

25. In its Response, Digicel took issue with the limitation of benchmarking sample jurisdictions to the Caribbean alone, though no other more geographically diverse countries were suggested by Digicel for inclusion in the sample. Digicel also noted that Jamaica and the Dominican Republic have larger populations and different topological and demographic characteristics relative to TCI and thereby seemingly, though not explicitly, suggesting that these two countries be removed form the sample. At the same time, while acknowledging that the Commission considered normalization adjustments for such differences, Digicel suggested that these adjustments were likely inadequate. Lastly, referring to benchmarking experience in Ireland cited its Response, Digicel noted that the Irish High Court considered a benchmarking sample of 7 jurisdictions to be too small to yield accurate outcomes. On this basis, Digicel suggested that the Commission's cost-based benchmarking sample, which includes nine jurisdictions, may also be too small.

26. For its part, Flow noted that section 15(2)(d) of the Interconnection Regulations indicates that the selected costing methodology must (i) include a reasonable rate of return on the capital employed, (ii) cover all attributable operating expenses and depreciation and (iii) include a proportionate contribution toward fixed and common costs. On this basis, Flow suggested that all "Pure LRIC" jurisdictions should be removed from the benchmarking sample (i.e., Guadeloupe & Martinique, St. Barthelemy & St. Martin and Jamaica) since a Pure LRIC costing approach excludes any contribution toward the recovery of fixed and common costs. In addition, Flow also objected to the Commission's addition of a seventh sample selection criterion based on "Vintage of the Regulatory Decision". Flow claimed that the length of time interconnection rates have been in place is not a legitimate basis for inclusion or exclusion from the benchmarking sample. Consequently, Flow suggested that Aruba, BVI and Trinidad & Tobago should not be excluded from the benchmarking sample as is the case under this sample selection criterion. Flow noted that the interconnection rates in these countries are based on an appropriate LRIC methodology and, despite their vintage, should be included in the benchmarking sample.

27. In its Reply Response, Digicel supported Flow's view that jurisdictions should not be excluded on the basis of the Vintage of the Regulatory Decision criterion as proposed in the Consultation Document.

2.2.2 The Commission's Determinations

28. Digicel's Response raise several issues. First, the Commission notes that its benchmarking sample selection criteria are specifically aimed at ensuring maximum comparability with TCI. This is why the benchmarking sample includes only island jurisdictions in the Caribbean. The Commission does not consider that jurisdictions from other regions of the world should or need be included in the sample. In any event, none was suggested by Digicel. Second, as recognized by Digicel, the Commission has previously conducted a comprehensive normalization analysis for the jurisdictions included in the benchmarking sample, which specifically considers factors such as population size and density. The Commission considers that the resulting normalization adjustment factors used in its benchmarking analysis adequately account for differences between benchmarking sample jurisdictions and TCI (including Jamaica and the Dominican Republic). In any case, no specific deficiencies were identified by Digicel in its Response. Third, the Commission considers that any reference to an Irish High Court opinion that includes comment on benchmarking sample size matters without any context is of limited if any value in the context of this proceeding. In any event, the Commission considers that a sample size of up to 12 jurisdictions (used for the All Sample Average) and up to 9 for the cost-based sub-sample jurisdictions does provide an adequate basis for setting interconnection rate maxima. Comparable sample sizes have been used by the Commission in its two previous of interconnection rate reviews.

29. The Commission does not agree with Flow's position that any jurisdiction with Pure LRIC interconnection rates should automatically be excluded from the benchmarking sample. As explained in the Consultation Document, the Commission's benchmarking approach is based on both the All Sample and Cost-Based Sample Averages. In the latter case, the Cost-Based Sample Average is based on jurisdictions with both Pure LRIC and LRIC+ interconnection rates in place, the vast majority of which are based on the latter costing approach (i.e., two thirds of the total). Taken together with the normalization adjustment factors, this approach ensures that a proportionate contribution to fixed and common costs is included since the proposed interconnection rate maxima are set above, not equal to, the Cost-Based Sample benchmark average. This approach is fully consistent with that adopted by the Commission in its two previous of interconnection rate reviews.

30. Lastly both Flow and, in its Reply Response, Digicel suggest that jurisdictions with interconnection rates set through regulatory decisions that are now more than ten years old should not be excluded from the benchmark sample. The Commission disagrees with this suggestion. Regional as well as international interconnection rates have declined steadily and dramatically over the last 10 to 20 years, reflecting the fact that costs of these services have plummeted over time. Interconnection rates derived from cost studies conducted well over ten years ago would overstate current costs, likely by a very wide margin. Inclusion of such out-dated observations would simply serve to inflate benchmark averages so that they were no longer reflective of current cost-oriented rate levels. The Commission therefore considers that the Vintage of the Regulatory Decision sample

jurisdiction selection criterion is necessary and appropriate and, consequently, rejects Flow and Digicel's proposal to eliminate it.

31. Accordingly, the Commission considers that no modifications to the Benchmarking Sample set out in the Consultation Document are warranted as a result of Digicel's or Flow's Responses.

2.3 Interconnection Trends since Decision 2014-4

32. As illustrated in Section 3.2 of the Consultation Document, over the last ten years, both All Sample and Cost-Based Sample benchmark interconnection rate averages have declined dramatically. In the Commission's view, these trends indicate that the current MTR, FTR and TR maxima in TCI are too high and should be reduced.

33. In this respect, Consultation Question #3 asked parties to comment on:

> **… the Commission's analysis of historical trends in MTRs, FTR and TRs, including the Commission's preliminary conclusion that the allowed maxima for all three of these interconnection rates should be reduced in TCI. Any alternative perspectives offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.3.1 Parties' Responses

34. In its Initial Response to this question, Digicel claimed that Vintage of the Regulatory Decision sample jurisdiction selection criterion contains elements of "pre-judgement". Digicel noted that comparators which were perfectly acceptable to the Commission in the previous reviews have been excluded because they have not changed their rates over the course of the last ten years or more. Digicel asserts that the Commission is consequently seeking only to include those comparators which bolster its position that the rates in the TCI should be reduced. According to Digicel, the fact that several comparators used in the previous review have not reduced their rates is an indicator that the downward trend in rates is neither as deep nor as fast as the Commission asserts.

35. For its part, Flow asserted that FTRs are already "at or near cost-based levels" since FTR policies in most jurisdictions worldwide have not deviated significantly from an adherence to cost orientation. Flow added that benchmark TRs are correlated with fixed transit costs and, consequently, it also asserted that TRs are also at or near cost-based levels which, Flow noted, is consistent with the relatively flat slope of the benchmark TR trendline in Figure 3 of the Commission's Consultation Document. While not explicitly stated in its Response, based on these assertions it appears that Flow considers that no reductions in the FTR or TR in TCI are necessary, contrary to the proposals in the Consultation Document.

36. In its Reply Response, Digicel noted that while Flow claimed that current the FTR and TR in TCI are "already at or near cost-based levels", Flow did not comment on the level of the current MTR. In this regard, Digicel suggested that the current MTR/FTR ratio in TCI is "not out of line" with MTR/FTR ratios in other markets which have cost-oriented rates. In Digicel's view, therefore, Flow's claim that the current FTR is at or near cost-

based levels would imply that the current MTR may also be at or near cost-oriented levels. In other words, Digicel suggested that Flow's claims in its Response support the view that no reductions in any interconnection rate maxima may be necessary in TCI.

2.3.2 The Commission's Determinations

37. In regard to Digicel's comments in its Initial Response, the Commission disagrees with its assertion that the use of Vintage of the Regulatory Decision benchmarking sample jurisdiction selection criterion is either inappropriate or involves any degree of pre-judgement. The Consultation Document clearly shows that interconnection rates and, by extension, interconnection costs have declined significantly over time in the Caribbean region. The same is true worldwide. Consequently, and as also explained above, the Commission considers reliance on out-dated and, as a result, clearly overstated costing studies from over ten years or more ago would be inappropriate and misguided for current interconnection benchmarking purposes.

38. In regard to Flow's Response, the Commission notes that while Flow offered some general observations on FTR and TR trends and levels, it provided no specific evidence to suggest that these rates are, in fact, currently "at or near cost-based levels" in TCI. Figures 2 and 3 in the Consultation Document clearly show that the current FTR and TR maxima in TCI are well above both the current All Sample and Cost-Based Sample benchmark averages for these two rates, which undermine Flow's claims. Flow appears to be suggesting that no reductions in the current allowed FTR and TR maxima are required but offered no evidence or plausible reasons in support.

39. In its Reply Response, Digicel attempted to extend Flow's unsubstantiated claim that the current FTR and TR maxima in TCI are already at or near cost-based levels to suggest that the same applies to the current MTR maxima as well. However, as just addressed, Flow provided no evidence that current allowed FTR and TR maxima are already at or near cost-based levels and, consequently, Digicel's attempt to extend Flow's unsubstantiated assertion to cover the MTR as well is equally baseless. In this case, Figure 1 in the Consultation Document clearly shows that the current allowed MTR maxima is well above comparable All Sample or Cost-Based Sample benchmark averages.

40. Accordingly, the Commission remains of the view that the current maxima for all three interconnection rates – the MTR, FTR and TR – are well above cost-oriented levels and , therefore, should be reduced as proposed in the Consultation Document.

2.4 Rate Maxima Determination Methodology

41. Section 4.1 of the Consultation Document sets out the Commission's forward-looking benchmarking methodology for setting interconnection rate maxima in TCI. It consists of six main elements: (i) determination of the Benchmarking Sample; (ii) calculation of benchmark averages (including All Sample and Cost-Based Sample Averages); (iii) development of benchmark average rate projections; (iv) determination of a glide/transition path; (v) incorporation of normalization adjustments; and (vi) determination of "end point" interconnection rate maxima.

42. In this respect, Consultation Question #4 asked Respondents to comment on:

> **… the Commission's proposed forward-looking benchmarking methodology for setting MTR, FTR and TR maxima. Any alternative methodological proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.4.1 Parties' Responses

43. In its Response, Digicel noted that section 15(2)(d) of the Interconnection Regulations requires that interconnections rates must be set to include a reasonable rate of return on capital employed, recover attributable operating expenditures and depreciation, and include a proportionate contribution to fixed and common costs. In this regard, Digicel questioned whether the Commission's proposed normalization and fixed and common cost contribution adjustments are adequate in the case of TCI, given differences between TCI and the comparator jurisdictions included in the Benchmarking Sample. Digicel cited a number of other specific cost factors that in considers could influence the level of interconnection costs in TCI relative to other benchmark jurisdictions such as (i) its current project to change its Home Network Indicator ("HNI") in TCI, (ii) the cost of regulation (which Digicel claims is higher in TCI compared to St. Vincent and the Grenadines); (iii) the cost of electricity (which Digicel claims higher in TCI compared to St. Lucia) and (iv) the fact that TCI has a smaller population compared to other jurisdictions included in the Benchmarking Sample (implying, according to Digicel, that the there is a smaller base over which to spread fixed costs in TCI). More generally, Digicel claimed that the Commission's proposed a normalization adjustments of 1.2% for the Cost-Based Average and 6.2% for the All Sample Average are inadequate and, as a result, it asserted that the Commission's benchmarking approach is unreliable and fatally flawed.

44. In its Response, Flow reiterated it concerns regarding the exclusion of several Caribbean jurisdictions based on the Vintage of the Regulation Decision benchmarking sample selection criterion. In its Reply Response, Digicel once again supported Flow in this regard.

2.4.2 The Commission's Determinations

45. The concerns raised by Digicel in response to this question relate to the comparability of TCI to the other jurisdictions in the Benchmarking Sample and, moreover, whether the Commission's normalization adjustments are sufficient to adequately capture differences that may exist between TCI and the benchmark jurisdictions. In this regard, the Commission notes that it conducted a set of comprehensive sensitivity and normalization analyses in previous interconnection rate reviews. In this regard, the Commission considered and assessed a range of demographic, socio-economic and other environmental differences between countries and their effect, if any, on relative interconnection rate levels. These differences or factors included population size, land area, population density, income measured as GDP per capita (in US dollars), the number mobile subscribers, mobile density, the number of mobile service providers (as a measure of competitiveness) and whether or not the MTR was set on the basis of a costing

approach of some form.[4] The results of these analyses provide robust evidence in support the Commission's view that its proposed normalization adjustments are reasonable and appropriate.

46. In contrast, Digicel has offered very limited and highly selective anecdotal evidence to suggest that interconnection service costs in TCI are not comparable to the other Caribbean jurisdictions included in the Benchmarking Sample. Digicel suggests that its HNI costs are in some way unique to TCI and that regulatory and electricity costs in TCI are higher than elsewhere based on a single uncited example in each case. No attempt is made to compare these or any other operating costs across all Benchmarking Sample jurisdictions. Consequently, the Commission considers that no meaningful conclusions on relative interconnection cost levels can be drawn from the anecdotal evidence included in Digicel's Response. In addition, as to the effects of population size on the benchmarking exercise, as noted, the Commission has already examined this issue. It found that population size and density have a very limited influence on interconnection rate levels in the region. Those effects, among others, are already incorporated in the Commission's normalization adjustments. Consequently, the Commission considers Digicel's claims that the benchmarking results in the Consultation Document are unreliable or fatally flawed to be without merit.

47. The Commission also notes that its reliance in the Consultation Document on both the All Sample and Cost-Based Sample benchmark averages for interconnection rate setting purposes provides additional assurance that interconnection rate maxima are at or above cost-oriented levels, including a contribution to fixed and common costs. For a strict cost orientation, the Commission could have relied solely on the Cost-Based Sample benchmark average to set interconnection rate maxima. By relying on both averages, it erred on the side of caution to ensure interconnection rate maxima in TCI satisfy the requirements under both the Ordinance and the Interconnection Regulations.

48. The Commission has already addressed Flow's as well as Digicel's comments on the use of the Vintage of the Regulation Decision benchmarking sample selection criterion. For the reasons provided above, the Commission disagrees with their views on this criterion and maintains its position that it is necessary and appropriate for benchmarking sample selection purposes.

49. Accordingly, the Commission concludes that the proposed forward-looking benchmarking approach used to set interconnection rate maxima in the Consultation Document is appropriate. It is fully consistent with the approach followed in the two previous interconnection rate reviews and the Commission considers that is should also be used once again for the present review.

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[4] See, for instance, *Second Review of Mobile Termination Rate Consultation Document*, issued by the Commission November 10, 2010, Annex C on Benchmark Sensitivities and Normalization.

2.5 Interconnection Rate Maxima Proposals

50. Sections 4.2 to 4.4 of the Consultation Document set out the Commission's MTR, FTR and TR maxima proposals, respectively, a summary of which is provided in Table 1.

Table 1: Summary of Current and Proposed Interconnection Rate Maxima set out in the Consultation Document

Date	**MTR**	**FTR**	**TR**
Current	$0.0600	$0.0170	$0.0085
From July 1, 2020	$0.0370	$0.0100	$0.0050
From April 1, 2021	$0.0250	$0.0065	$0.0035
From April 1, 2022	$0.0130	$0.0030	$0.0020

51. In this regard, Consultation Question #5 asked Respondents to comment on:

> **… the Commission's MTR, FTR and TR Proposals. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.5.1 Parties' Responses

52. In its Initial Response, Digicel reiterated that it believes the Commission's proposed benchmark-based interconnection rate maxima significantly underestimate the actual costs of providing interconnection services in TCI. In addition, Digicel stated that it also considers the proposed approach for setting interconnection rate maxima based on the midpoint of the All Sample and Cost-Based Sample benchmark averages to be inconsistent with the requirements of section 25(4) of the Ordinance, which stipulates that they should based on the costs of the licensee providing interconnection services. Otherwise, while Digicel supports the adoption of a "glidepath" to introduce any changes in interconnection rates, it considers the proposed step changes to be overly disruptive. It suggested that the glidepath be smoothed (i.e., distributing reductions more evenly) and, given the effects of the COVID-19 pandemic, also extended.

53. In its Response, Flow also suggested that in view of the significant economic harms caused by the COVID pandemic, the proposed glidepath for implementing new interconnection rates should be revised. While Flow indicated that it is not opposed to a three-step glidepath as proposed in the Consultation Document, Flow requested that the new interconnection rate maxima not be introduced until mid 2021.

2.5.2 The Commission's Determinations

54. The Commission has already addressed Digicel's comments on the benchmarking approach followed in the Consultation Document. As explained above, the Commission disagrees with Digicel's view that section 25(4) of the Ordinance restricts the Commission's use of benchmarking for setting interconnection rate maxima. In addition, the Commission does not agree that the benchmark averages used to set the proposed interconnection rate maxima in the Consultation Document underestimate interconnection costs (including a proportionate contribution to fixed and common costs) in TCI.

55. The Commission notes that both Flow and Digicel support the use of a glidepath approach to introducing new interconnection rate maxima resulting from this Decision. Both appear to support a three-step approach. Digicel suggested that the relative magnitude of the changes at each step should be smoothed, rather than front-end loaded as proposed in the Consultation Document. Both Flow and Digicel suggested the reductions be delayed or extended in view of the economic harm resulting from the COVID-19 pandemic.

56. The Commission concludes that the proposed "end points" for the MTR, FTR and TR maxima set out in the Consultation Document remain appropriate. No credible evidence or rationale was provided by either Digicel or Flow to alter the findings of the Commission's benchmarking analysis and findings presented in the Consultation Document.

57. However, based on the comments from Flow and Digicel noting the effects of the COVID-19 pandemic, the Commission agrees that the relevant glidepaths to the respective "end points" should be revised.

58. First, the Commission agrees that the start date for the glidepaths should be revised due to delays in the proceeding schedule, which in large part are attributable to the COVID-19 pandemic. Therefore, in keeping with Flow and Digicel's suggestions, the Commission considers that the first step in the glidepaths should start April 1, 2021 and the two subsequent steps should follow on April 1, 2022 and April 1, 2023.

59. One effect of this revision is a one-year deferral in the implementation of the proposed "end point" interconnection rate maxima, from April 2022 to April 2023. Given the downward trend in the All Sample and Cost-Based Sample benchmark averages, the Commission confirms that a newly calculated set of "end points" for April 2023 would generally be slightly lower than those proposed for April 2022. The Commission considered making such a determination to revise the "end points" but ultimately decided against it because the changes would have been relatively small, among other reasons. The Commission notes that the use of calculated April 2022 end points for April 2023 constitute a further margin of assurance that the end-point interconnection rate maxima are above cost (including a proportionate contribution to fixed and common costs).

60. Second, the Commission agrees with Digicel that the reductions in the MTR, FTR and TR maxima should be smoothed. Rather than, a three-step glidepath with reductions of reductions 50%, 25% and 25%, as proposed in the Consultation Document, the reductions will be introduced in roughly equal steps of one third (33.3%) each.

61. Table 2 sets out the Commissions Determinations on the reductions in the interconnection rate maxima it will recommend to Government for inclusion as amendments to the Interconnection Regulations.

Table 2: The Commission's Interconnection Rate Maxima Determinations to be recommended to Government

Date	MTR	FTR	TR
Current	$0.0600	$0.0170	$0.0085
From April 1, 2021	$0.0440	$0.0120	$0.0060
From April 1, 2022	$0.0290	$0.0080	$0.0040
From April 1, 2023	$0.0130	$0.0030	$0.0020

2.6 Proposed Recommendation and Directive

62. Section 5 of the Consultation Document sets out a proposed draft Recommendation that the Commission would submit to Government to amend Section 19(2) of the Interconnection Regulations to establish interconnection rate maxima in accordance with the Commission's Determinations in this Decision along with a proposed draft Directive that, once the Recommendation is enacted, it would issue to licensees to give effect to the Section 19(2) amendments.

63. In this regard, Consultation Question #6 asked parties to comment on:

> **… the Commission's proposed Recommendation to Government and Directive to operators. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.6.1 Parties' Responses

64. In its Initial Response, Digicel noted that the draft recommendation to Government states that interconnection "rates should be reduced in keeping with the objectives of the Telecommunications Ordinance and the Interconnection and Access to Telecommunications Facilities Regulations". Consistent with its previously noted comments on the Consultation Document, Digicel stated that it considers this statement to be factually incorrect given that the benchmarking methodology used by the Commission does not conform to the requirements of section 25(4) of the Ordinance. Digicel also noted that the implementation dates in the final Recommendation and Direction should be revised to take into account delays in the proceeding and revisions to the implementation and glidepath dates.

65. In its Response, Flow objected to the inclusion of reference to "international" calls in item (2)(b), on page 24 of the Consultation Document. Flow noted that this reference suggests that the new FTR maxima would be applied to both domestic and international call traffic termination. Flow offered a number of reasons why it believed the inclusion of the reference to "international" calls should be removed from the Recommendation.

66. In its Reply Response, Digital supported Flow's request that reference to "international calls" be removed from the Recommendation.

2.6.2 The Commission's Determinations

67. The Commission notes again that it disagrees with Digicel's view that section 25(4) of the Ordinance restricts the Commission from using a benchmarking approach for setting interconnection rate maxima, the reasons for which are already provided above. Consequently, contrary to Digicel's position, the Commission considers that its interconnection rate maxima Determinations set out in this Decision are in keeping with the Ordinance and the Interconnection Regulations as stated in the Recommendation.

68. In regard to Flow's Response, the Commission notes that reference to "international" calls in the proposed draft Recommendation was inadvertent. As is clear from the Consultation Document, there was no intent on the Commission's behalf to review

termination rates for international calls to either fixed or mobile customers in TCI at this time. Accordingly, reference to "international" calls has been removed from the Recommendation.

69. Upon further review, the Commission has made three additional non-substantive changes to the Recommendation. For the avoidance of doubt, the first revision stipulates that the currently effective interconnection rate maxima continue to apply in the period between the effective date of the amended Interconnection Regulations and the first step of the glidepath (i.e., April 1, 2021). The second revision involves the simplification of the Recommendation to include only the proposed revisions to the Section 19(2) of the Interconnection Regulations, thereby deleting unnecessary reference to the present version of that section of the Interconnection Regulations. Lastly, the effective dates of the three-step glidepath interconnection rate maxima reductions have been re-specified as starting "after March 31" rather than "as of April 1" 2012, 2022 and 2023. This change was made to be consistent with previous Commission Recommendations in this regard.

2.7 Price Cap Flow-Through and Timing of Next Review

70. Section 6.1 of the Consultation Document noted that under Telecommunications Decision 2019-4, *Flow's Regulated Fixed Services Review Decision*, issued July 29, 2019 ("Decision 2019-4"), Flow is required to "flow through" mandated MTR reductions on a simultaneous one-to-one basis to Flow's retail basic standalone domestic fixed-to-mobile ("FTM") per minute call price cap. An identical obligation applied in the Commission's previous price regulation and interconnection rate review decisions. The same obligation is proposed in the current case.

71. In addition, the Commission indicated in the Consultation Document that it expects the next interconnection rate review should take place, if deemed necessary, after the completion of the phase-in period for the interconnection rate maxima Determinations set out in this Decision.

72. In this regard, Consultation Question #7 asked parties to comment on:

> **… the Commission's proposed flow-through obligation and timing of the next interconnection rate review as well as any other issues relevant to this review. Any alternative proposals or suggestions offered by Respondents should include, as necessary, supporting rationale and evidence.**

2.7.1 Parties' Responses

73. In its Initial Response, Digicel indicated that proposed flow through reflects the process adopted following previous reviews and that it has no objection to this process being followed in respect of the current review.

74. For its part, Flow stated that, in its view, the Commission should not mandate the quantum or timing of reductions in FTM rates in this proceeding. It suggested that lower MTRs will naturally result in lower retail prices, as competition drives prices down. It added that there is a profusion of alternatives to voice telephony that obviate the need to regulate retail prices for any voice services, whether originated by mobile or fixed

customers. As a result, Flow considers that the Commission's proposal to impose an MTR flow-through requirement on Flow's FTM calling prices is unnecessary. According to Flow, where competitive alternatives exist, consumers are best served by market forces, not regulatory edict.

75. In its Reply Response, Digicel noted that where a designation of dominance exists, it follows that competition does not act as a constraint on pricing. Digicel added that to the extent that Flow is designated as dominant in the fixed retail market it would be appropriate that the Commission ensures that it addresses this lack of competition and mandates the flow through of MTR reductions so that fixed consumers can enjoy the benefits of lower FTM prices.

2.7.2 The Commission's Determinations

76. The Commission notes that in Telecommunications Decision 2019-4, *Flow's Regulated Fixed Review Decision*, issued July 29, 2019 ("Decision 2019-4"), it found that Flow holds a virtual monopoly in the fixed access and domestic calling markets.[5] As a consequence, the Commission concluded in that a price cap on Flow's residential and business standalone basic fixed access services as well as fixed-to-fixed and FTM call services remained necessary. Moreover, in Decision 2019-4, the Commission also concluded the MTR reduction flow-through mechanism first established in Decision 2011-2 and continued in Decision 2014-4 should continue to apply going forward.[6] Flow provided no new evidence as why the Commission's conclusions in Decision 2019-4 are no longer valid.

77. Digicel's support the continuation of the flow-through mechanism is also noted.

78. Accordingly, the Commission considers that the existing flow-through mechanism shall remain in place and apply in the case of the reductions in the MTR maxima resulting from this Decision.

79. More specifically, and in keeping with the MTR maxima Determination in this Decision, Flow will be required to reduce the price cap on its retail basic standalone domestic FTM service per minute price by the following amounts, effective as of the stipulated dates:

    i) As of April 1, 2021: **-1.6¢**

    ii) As of April 1, 2022: **-1.5¢**

    iii) As of April 1, 2023: **-1.6¢**

80. Consequently, in total, Flow's FTM price cap will be reduced by $0.0470 (or 4.7 cents) per minute by April 1, 2023 as a result of this Decision.

81. The Commission notes that Decision 2019-4 (page 23-24) requires that Flow file an annual Forbearance Compliance letter with the Commission by April 1st year each. Flow is required to demonstrate in that letter that it is in full compliance with all flow-through

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5 Decision 2019-4, page 13.

6 Decision 2019-4, page 16-17.

obligations established by the Commission, including those resulting from this Decision as shown above.

3 Implementation Measures

3.1 Recommendation to Government

82. As indicated in the Consultation Document, and in view of parties' Responses to the Consultation Document, the Commission intends to issue the following Recommendation to the Government (supported by all documents referenced therein) requesting that modifications be made to Section 19 of the Interconnection Regulations in order to implement the Commission's MTR, FTR and TR maxima Determinations in this Decision. The Commission intends to issue the Recommendation immediately following the release of this Decision.

83. The wording of the Recommendation in view of the Determinations in this Decision is as follows:[7]

> *Whereas the Turks and Caicos Islands ("TCI") Telecommunications Commission (the "Commission") has conducted a comprehensive examination and public consultation on voice telephony interconnection rate levels in TCI, specifically including the level of the Mobile Termination Rate ("MTR"), the Fixed Termination Rate ("FTR") and Transit Rates, and found that each of those rates should be reduced in keeping with the objectives of the Telecommunications Ordinance (the "Ordinance") and the Interconnection and Access to Telecommunications Facilities Regulations (the "Interconnection Regulations").*
>
> *Whereas the Commission has determined that the maximum allowed MTR be reduced to U.S. $0.0440 per minute as of April 1, 2021, U.S. $0.0290 per minute as of April 1, 2022, and U.S. $0.0130 per minute as of April 1, 2023.*
>
> *Whereas the Commission has determined that the maximum allowed FTR be reduced to U.S. $0.0120 per minute as of April 1, 2021, U.S. $0.0080 per minute as of April 1, 2022, and U.S. $0.0030 per minute as of April 1, 2023.*
>
> *Whereas the Commission has determined that the maximum allowed Transit Rates, specifically including the Local Transit Rate and Transit Service Rate, be reduced to U.S. $0.0060 per minute as of April 1, 2021, U.S. $0.0040 per minute as of April 1, 2022, and U.S. $0.0020 per minute as of April 1, 2023.*
>
> *Whereas the rationale and supporting evidence for these specific interconnection rate reductions is provided in the Commission's*

[7] As discussed above, the Commission has deleted the reference to "international" calls in item (2)(b) of the final Recommendation.

Telecommunications Decision 2020-2 dated October 13, 2020,which resulted from a written public consultation process the Commission conducted on the matter.

Whereas, the consultation was initiated by the "Third Review of Interconnection Rates Consultation Document" issued February 24, 2020. In response to same, the Commission received Responses from the licensed operators in TCI, Andrew's Communications Ltd. ("ACL") dated May 13, 2020, Cable & Wireless (TCI) Limited ("Flow") dated May 15, 2020 and Digicel (TCI) Limited ("Digicel") dated May 15, 2020. In addition, the Commission also received a Reply Response from Digicel dated June 1, 2020.

Therefore, the Commission recommends that Government amend the Interconnections Regulations, as soon as practical so that the first reduction in the interconnection rates can be implemented by April 1, 2021 or as soon as possible thereafter, by replacing the current Section 19(2) of the Interconnection Regulations, with the following:

> *Except as modified by the Commission, a carrier described in subsection (1) may not charge an interconnecting carrier or service provider:*
>
> *(a) a rate for terminating domestic voice telephone calls on such carrier's mobile telecommunications network that exceeds:*
>
> > *(i) U.S. $0.0600 per minute (adjusted pro rata for units of less than a minute) as of the effective date of these Regulations;*
> >
> > *(ii) U.S. $0.0440 per minute (adjusted pro rata for units of less than a minute) after March 31, 2021;*
> >
> > *(iii) U.S. $0.0290 per minute (adjusted pro rata for units of less than a minute) after March 31, 2022; and*
> >
> > *(iv) U.S. $0.0130 per minute (adjusted pro rata for units of less than a minute) after March 31, 2023.*
>
> *(b) a rate for terminating domestic voice telephone calls on such carrier's fixed telecommunications network that exceeds:*
>
> > *(i) U.S. $0.0170 per minute (adjusted pro rata for units of less than a minute) as of the effective date of these Regulations;*
> >
> > *(ii) U.S. $0.0120 per minute (adjusted pro rata for units of less than a minute) after March 31, 2021;*

(iii) U.S. $0.0080 per minute (adjusted pro rata for units of less than a minute) after March 31, 2022; and

(iv) U.S. $0.0030 per minute (adjusted pro rata for units of less than a minute) after March 31, 2023.

(c) an associated transit rate for conveying voice telephone calls on such carrier's fixed telecommunications network that exceeds:

(i) U.S. $0.0085 per minute (adjusted pro rata for units of less than a minute) as of the effective date of these Regulations;

(ii) U.S. $0.0060 per minute (adjusted pro rata for units of less than a minute) after March 31, 2021;

(iii) U.S. $0.0040 per minute (adjusted pro rata for units of less than a minute) after March 31, 2022; and

(iv) U.S. $0.0020 per minute (adjusted pro rata for units of less than a minute) after March 31, 2023.

3.2 Directive to Licensed Operators

84. Once this Recommendation is enacted by Government and the amended Interconnection Regulations come into force, the Commission will immediately issue the following Directive to Flow and Digicel:[8]

> *The Commission directs Cable & Wireless (TCI) Limited ("Flow"), and Digicel (TCI) Limited ("Digicel") to amend the Tariff Schedule in their respective interconnection agreements to reflect the interconnection rate maxima approved by the Government in the amended Interconnection Regulations. All applicable interconnection rate changes should be effective as of the dates stipulated in the amended Interconnection Regulations.*
>
> *Therefore, Flow and Digicel are hereby directed to file for approval by the Commission an amendment to the Tariff Schedule of their current interconnection agreements within 14 days of the date of this Directive.*

[8] If and when applicable, the same interconnection rate maxima would apply to interconnection services provided by ACL.