

CABLE AND WIRELESS (TCI) LIMITED, TRADING AS LIME
COMMENTS ON
REVIEW OF MOBILE TERMINATION RATE

30 August 2010
REDACTED VERSION

LIME

Landline | Internet | Mobile | Entertainment

1. Introduction

1. Cable and Wireless (TCI) Limited, trading as LIME (“**LIME**”) is pleased to provide the following comments in response to the Commission’s 19 July 2010 consultation document on the “Review of Mobile Termination Rate”. After some preliminary comments, LIME will address in turn below each of the Commission’s questions on the mobile termination rate (“**MTR**”) that should apply in the Turks and Caicos Islands.

2. The Commission’s Questions

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.

2. This question seeks to address the jurisdiction of the Commission. In responding, it is important to refer back to the documents that grant the Commission its powers and responsibilities. The most of important of these is the *Telecommunications Ordinance 2004* (the “**Ordinance**”), and in particular sections 4, 23 and 24.

- 4(1) The functions of the Commission are:
 - (c) to regulate telecommunications in the Islands in accordance with the policy guidelines published in the Gazette from time to time and in accordance with the principle of technology neutrality;...
 - (f) to promote the interests of consumers and to encourage licensees to operate efficiently;...
 - (m) to carry out such other functions as may be necessary for the purpose of discharging its functions under this ordinance

23(1) In the implementation of section 22, the Commission may issue instructions to the dominant licensee ...

- (a) to make its procedures for interconnection publicly available;
- (b) to make the terms, conditions and rates of either its standard interconnection agreement or its interconnection offer, publicly available; and
- (c) to provide interconnection –
 - (i) on non-discriminatory terms...
 - (ii) in a timely fashion... and
 - (iii) sufficiently unbundled...
- (g) in respect of rates for interconnection;...

23(2) The terms, conditions and rates referred to in subsection (1)

–

- (a) ...shall not be discriminatory and shall be at a quality no less favourable than those provided in relation to the dominant licensee's own and an affiliate's services;
- (b) shall be transparent and cost-oriented having regard to economic feasibility...

23(3) This section shall not apply to an interconnection agreement or arrangement that contains rates, terms or conditions which are different from those established by the Commission pursuant to this section:

Provided that all parties to such agreement or arrangement have agreed to be bound by the terms of such agreement or arrangement.

24(1) The Commission may on its own motion or at the request of an interested party instruct licensees involved in an interconnection dispute to refer the dispute to it.

(2) The Commission shall take such measures as it deems fit to resolve disputes referred to it under subsection (1) and may issue instructions about the interconnection terms which shall apply.

3. The provisions of the *Interconnection and Access to Telecommunications Facilities Regulations 2005* (the “**Regulations**”) are also relevant:

4 (1) The Commission shall, consistent with the Ordinance and these Regulations, encourage and, where appropriate, ensure the adequacy of interconnection between public telecommunications networks and public telecommunications services in such a way as to –

- (a) Promote efficiency;
- (b) Promote sustainable competition;
- (c) Give maximum benefit to end users; and
- (d) Provide that carriers and service providers are compensated for interconnection services.

(2) The Commission may, to the extent necessary to ensure end-to-end connectivity –

- (a) impose the obligations on carriers and service providers as set forth in these Regulations, including, in justified cases, the obligation to interconnect their networks;
- (b) establish technical or operational conditions to be met by carriers or service providers;
- (c) resolve disputes with respect to the establishment of interconnection agreements and... interpretation and implementation of such agreements; and
- (d) act on its own initiative or at the request of either of the parties involved in order to carry out the objectives of the Ordinance and ensure compliance with the Ordinance and these Regulations.

11 (2) A dispute... may include...

- (e) A failure by the parties to conclude promptly an interconnection agreement

4. While LIME recognizes that a regulator should be able to regulate the relevant industry, it can do so only within the scope granted to it by its enabling legislation without being *ultra vires* and exposing itself to judicial review. The Ordinance and Regulations as drafted, do not, in our opinion permit the Commission to intervene in rate setting between operators who have an agreement between them in the absence of a dispute. It therefore appears that the Commission's only alternative in keeping with the Ordinance and Regulations is, as mentioned in paragraph 2.6 of the Consultation document, to seek amendment of the MTR by means of an exercise of the Minister's powers under the Ordinance to establish the Regulations.

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.

5. LIME does not agree that an MTR “set [at] a level that is reflective of the marginal or incremental cost of mobile call termination,” but apparently excluding the recovery of an efficient level of common costs is the best way to promote an efficient outcome. LIME is of the belief that an efficient outcome is better achieved by setting the MTR equal to an efficient operator’s long-run incremental cost (“**LRIC**”), including a mark-up for the recovery of an efficient level of common costs.
6. Long run vs. short run and common costs. The telecommunications industry is characterized by economies of scale and scope. Therefore, a central concern is that an MTR which promotes the economically efficient use of infrastructure in the short run will also discourage efficient investment in infrastructure over the long run. In particular, an MTR based only on direct incremental costs, and excluding a mark-up for an efficient level of common costs, may not allow an efficient operator to recover all of its costs over the long run. It is therefore important that where LRIC is used as the basis for setting prices, a mark-up is allowed for the recovery of (an efficient level of) common costs. Regulators around the world have recognized this and included a mark-up on interconnection charges to recover a proportion of such costs.¹
7. Incremental vs. Marginal. The concept of incremental cost is similar, but not equal, to that of marginal cost. An increment is a finite quantity of a particular output, whereas the term marginal refers to the last unit of a particular output. In economic theory, prices based on marginal cost maximize economic surplus. However, given the substantial economies of scale and dynamic nature of

¹ See, for example, Federal Communications Commission, *First Report and Order*, FCC96-325, released August 8, 1996, ¶¶643-646; Ireland Office of the Director of Telecommunications Regulation (ODTR), *The Development of Long Run Incremental Costing for Interconnection*, March 1999, pp. 22-23; and Australian Competition and Consumer Commission (ACCC), *Access Pricing Principles – Telecommunications (a guide)*, 1997, pp. 39-41.

telecommunications networks, it is considered more appropriate and practical to analyze the costs of a pre-defined increment of output, and ensure the appropriate recovery of common costs. As articulated by Kahn (1988), “the practically achievable benchmark for efficient pricing is more likely to be a type of average long-run incremental cost, computed for a large, expected incremental block of sales, instead of [short-run marginal cost], estimated for a single additional sale.”²

8. Finally, LIME notes that the Regulations require that interconnection rates recover a proportion of common costs:

15 (2) (d) rates shall permit the recovery of a reasonable rate of return for that carrier or service provider on the capital employed, all attributable operating expenses, depreciation and a proportionate contribution toward such carrier’s or service provider’s fixed and common costs.

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.

9. LIME does not agree that an MTR “set [at] a level that is reflective of the marginal or incremental cost of mobile call termination,” but apparently excluding the recovery of an efficient level of common costs is the best way to promote sustainable competition. LIME is of the belief that sustainable competition is better served by setting the MTR equal to an efficient operator’s long-run incremental costs, including a mark-up for the recovery of an efficient level of common costs.
10. LIME believes that preventing the regulated operator from recovering an efficient level of common costs would not provide the right incentives for existing operators or new entrants to invest in, and maintain, their networks, which could

² Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions*, MIT Press (1988), Vol. I, p. 85.

be detrimental to competition and the ongoing viability of operators' networks. See, also, LIME's concerns articulated above in response to Question #2.

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.

11. LIME is of the belief that reducing interconnection rates towards cost will have a positive effect on mobile and fixed end-users for the following reasons:

- Reducing the MTR to a cost-based level will encourage a reduction in end user prices and thereby enhance the welfare of consumers of telecommunications services in TCI.
- Reducing the MTR will decrease the non-cost-based difference between MTR and FTR, and thereby improve the competitive neutrality between fixed and mobile wireless technologies in TCI.
- Reducing the MTR to a cost-based level will improve the efficiency of investment incentives in TCI.

12. In a related context, the U.S. Federal Communications Commission concluded that reducing the access fees (i.e. interconnection rates) paid by long-distance carriers would lead to reduced prices paid by consumers and result in "significant consumer benefits."³

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

³ Sixth Report And Order in CC Docket Nos. 96-262 and 94-1, Report And Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers: Low-Volume Long Distance Users; Federal-State Board on Universal Service*; before the Federal Communications Commission, FCC 00-193, (released May 31, 2000), ¶35.

setting the MTR, please describe their preferred alternative approach, with supporting rationale.

13. LIME recognizes the siren call of benchmarking, but urges the Commission not to apply that approach. First and foremost, there is no support within the Ordinance or the Regulations for using benchmarks to set interconnection rates. Second, the exercise necessary to ensure the benchmarks are appropriate and applicable to Turks & Caicos is itself quite involved and time-consuming.

14. Cost Orientation. The intent of the legislature, as expressed in the Ordinance, is clearly that the Commission should promote or establish cost-oriented interconnection rates. Section 25 of the Ordinance is replete with references to the “costs” of carriers. Subsection 25(4) could not be clearer:

25 (4) For calling party pays calls between networks, the terminating network shall receive a cost-oriented usage based rate based upon costs of the Licensee providing interconnection services.

15. Similarly, while subsections 23(1) and 23(2) do not apply here, as there is no dispute that would give the Commission jurisdiction, the legislature’s intent that interconnection rates be cost-oriented is also clear from those subsections. Finally, the Regulations require, at regulations 14(3) and 14(4), that interconnection be provided at rates that are cost-oriented, and even provide a definition of “cost-oriented”.

14 (3) Every dominant carrier and dominant service provider shall provide interconnection at rates that are cost-oriented and, where expressly authorized by the Commission, that may permit the recovery of the costs of providing access.

14 (4) For the purposes of these Regulations and for the purposes of sections 23 and 24 of the Ordinance, rates are “cost-oriented” if the carrier’s or service provider’s charges for interconnection do not exceed the stand-alone cost of providing the service and are not lower than the long-run incremental costs of providing the service, where –

- (a) “stand-alone cost” means the cost of providing a service independently of providing any other service or services; and
- (b) “long run average incremental costs” means the costs incurred by providing a service in addition or other service or services already provided.

16. At no time does the scheme established by the legislature mention setting interconnection rates using a benchmarking methodology. LIME submits that, if the Commission were to do so, it would be acting contrary to the intent of its enabling legislation.⁴
17. Benchmarking Exercises. As the Commission can appreciate, every telecommunications market has characteristics that make it distinct from other telecommunications markets. These can include factors such as population size, distribution, and density, network technologies, number of competitors, GDP, per capita income, average minutes of use per customer, etc. The existence of all of these factors means that it is not appropriate simply to apply in Turks & Caicos the rates charged in other jurisdictions.
18. In addition, it is necessary to review carefully what is being used as a benchmark. A set of prices that are not cost-oriented will not yield a cost-oriented price, regardless of how carefully the benchmarking exercise is conducted. In this regard, LIME submits that the rates applied in other countries are not always cost-oriented, even where nominally based on a costing methodology, as they may still be in a process of being adjusted towards costs.
19. Finally, a proper benchmarking exercise is extremely labour and time intensive in its own right. Not only do the rates being examined all need to be normalized for all of the demographic factors mentioned above, but they must also be adjusted to ensure that they conform with the particular set of cost-based pricing principles

⁴ This is not to say that interconnection rates ought to be based on the costs of each individual network operator or service provider.

selected by the Commission. Therefore, the regulatory regimes and histories of each benchmark jurisdiction must be examined in detail to uncover idiosyncrasies in the development of the benchmark rates, and where necessary adjusted to ensure that the rates are being compared on a like-for-like basis. This is not the “practical and cost-effective” approach that the Commission is hoping for.

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.

20. LIME agrees with the Commission that the MTRs charged by mobile operators in Turks & Caicos should be set on a uniform or symmetric basis, also referred to as “reciprocal”, for all mobile operators. LIME notes that this issue was extensively discussed in 2006, and LIME refers the Commission to applicable portions of the 10 May 2006 letter of its predecessor company to the Commission entitled “Status of Interconnection Negotiations between C&W and Digicel”. The policy considerations expressed therein would still be applicable today.
21. Briefly, as noted by the Commission, all mobile operators have similar costs. In Turks & Caicos in particular, none of the mobile operators can reasonably be said to be in the early stages of roll-out of their networks and services, as the “newest” of the three has been in operation since 2007. That is no longer a company in its “start-up” stage.
22. Reciprocal charges facilitate interconnection as they simplify the negotiation between the interconnecting parties to resolution of one set of charges rather than two. They reduce the burden on the regulator in resolving any disputes over charges as, under reciprocity, the regulator has to determine reasonableness of one set of rates, not a multiple. Common sense and economics also suggest it is appropriate that one price exists for the same service in a market. In this regard, LIME notes that non-reciprocal charges reward inefficiency, to the detriment of

carriers and consumers: a carrier has little incentive to operate its network more efficiently if it knows that other carriers will cover its (inefficient) costs.

23. The application of the principle of reciprocity in MTRs, in particular, reduces the opportunity and incentive for a network operator operating in only the mobile market to inflate termination rates. It therefore also reduces the ability of the mobile-only networks to artificially encourage fixed to mobile substitution. Because the price to a fixed subscriber of terminating calls to a mobile network is inflated (relative to the price mobile subscribers pay to terminate calls), fixed customers are incented to leave the fixed network in favour of mobile networks. The result is that mobile termination rates can be used to artificially skew the competitive environment and promote inefficiency, and thereby harm consumers. Given the significant social benefits of promoting broadband adoption in small island economies, policies which tend to artificially move customers off the fixed network should not be promoted. It should be noted that the Government appears to have already recognized the significant social harm caused by excessive mobile termination rates and has thus implemented a price cap on the level of the mobile termination rate by enacting section 19 of the Regulations.
24. From the consumer's perspective, there is also another benefit to applying the same mobile termination rate to all operators. It facilitates a simpler structure of retail tariffs for fixed calls to mobiles, which thereby improves transparency and reduces consumer confusion.
25. Furthermore, symmetric rates are common in regulatory practice, particularly in several Caribbean islands which have benefited by witnessing first hand the suboptimal outcomes produced by distortions to the interconnection process. For example, Interconnection Agreements in Barbados, the Cayman Islands and Anguilla all incorporate the principle of reciprocity. In addition, the principle of reciprocity has also been considered and approved by a number of regulatory agencies in the region. In Anguilla, for example, the Public Utilities Commission

explicitly endorsed the principle in Telecom Decision PUC 2005-2 which set the rates licensed operators were to charge each other for interconnection services.⁵ Reciprocity is included in each of the interconnection agreements approved by the NTRCs in the five ECTEL countries. The French regulator also prescribed the application of reciprocity as a means of ensuring new mobile entrants in the French Caribbean did not charge “excessive rates”,⁶ and described the benefits of reciprocity in some detail in a determination of a dispute between two fixed operators in France.⁷ Finally, in the Cayman Islands, the principle of reciprocity is set out in section 10(1)(c) of the *Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations*, and is a clear, binding obligation imposed upon all interconnecting licensees.

26. LIME submits that the principle of rate symmetry brings several advantages to all stakeholders (operators, customers, and regulators), and the company is pleased to see that the Commission is endorsing a sound pricing principle that has been applied to good effect in a number of other jurisdictions in the region.

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.

⁵ “In order to clarify the point raised by C&W in their submission of 2 November, paragraph 4, on the matter of reciprocity, the Commission in recommending the prices intended that they be applied on a reciprocal and uniform basis by all operators to an interconnection agreement.” Telecom Decision PUC 2005-102, *In the matter of prices to be included in interconnection agreements between Cable and Wireless (West Indies) Limited (C&W) and the following operators: Caribbean Cable Communications (CCC); Weblinks Limited (Weblinks); and Wireless Ventures Anguilla Limited (WVA Ltd.)*, 22 November 2005, at paragraph 11.

⁶ In a series of decisions issued on 1 February 2005, the then-Autorité de régulation des télécommunications (now called the ARCEP) considered the cost of providing mobile services in the French Antilles and determined that all the mobile operators there were charging “excessive rates” for terminating mobile calls. At the time, these rates varied from 0.25 to 0.37 euros per minute. The ARCEP decided to impose a specific set of rates on the largest operator, Orange Caraïbes, declining to a maximum of 0.1316 euros per minute in 2007, which itself was said to be above costs (Decision 05-112). The other operators were subject to an obligation not to charge “excessive rates”, and the ARCEP noted that “the Authority concluded in the resolution of dispute 03-703 of 5 June 2005 that the implementation of the concept of non-excessive prices could be effected by a certain form of reciprocity.” [LIME’s translation] (Decisions 05-115 through 05-117, at page 36, respectively).

⁷ Décision n° 03-703 de l’Autorité de régulation des télécommunications en date du 5 juin 2003 se prononçant sur un différend entre les sociétés France Télécom et UPC France, at pages 36-37.

Please describe and justify any alternative glide path or transitional arrangements that Respondents may consider appropriate to the case at hand.

27. LIME submits that the context in which the new MTR is developed is key in determining whether reductions ought to be implemented on a “flash-cut” or “phased-in” basis. If the Commission were to establish a proper cost-oriented MTR based on a LRIC or LRAIC costing methodology, LIME recommends that the price be implemented in a single stage. The Ordinance requires that interconnection prices be cost-oriented, and LIME does not see the value in delaying the implementation of lawful rates.
28. If, however, the Commission were to adopt a benchmarking approach for setting interconnection rates, LIME recommends that the changes be phased in over a period of some years. This would provide the Commission with the time to conduct a costing exercise and, if the benchmark rates are below cost, to limit the distortion that below-cost prices can bring to a market.
29. LIME requests, however, that the Commission give some consideration to ordering the implementation of any interconnection rate changes on the 1st of April in a given year. LIME’s financial year begins at that time, and LIME believes Digicel’s does as well, and using that date would greatly assist the company in its financial and budgetary planning exercises. LIME notes that the price cap regulation applicable to it is also based on an April 1st anniversary date.

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).

30. LIME submits that the downward trends in MTRs in the Caribbean are not indicative of the underlying costs of terminating mobile calls in TCI. At most, those trends represent the normalization of excessive rates and/or the incremental phasing in over time of cost-based rates in those countries which had allowed rates to be set well above cost in the first place. They do not, however, indicate that the underlying costs themselves are moving down in those countries, let alone indicate anything regarding cost trends in the Turks & Caicos. Further, as noted in response to Question #5, benchmarking exercises like this one do not yield valid results or useful information without labour and time intensive analysis to identify comparable benchmarks.

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.

31. LIME opposes the Commission's preliminary MTR Proposal because there is no evidence that the proposed rates are cost-oriented as required by the Ordinance and Regulations. It is certainly not appropriate to base rates for the Turks and Caicos Islands on an unweighted average of rates applied in other countries, or to take arbitrarily the four lowest prices (calling them "best practice" without any further or detailed analysis) and determine their average. The argument that the lowest sampled prices are somehow "best practice" prices is based on an unstated

premise and is in the company's opinion logically incoherent. The approach blindly ignores the vast differences among countries and markets, and makes no attempt to normalize the rates to ensure like is being compared to like.

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.

32. As noted in our response to question #1, LIME does not believe that the Ordinance grants the Commission the power to issue such a Directive at this time. LIME reserves the right to revisit this question, in the event that new Regulations are issued or that the Commission is requested to resolve an interconnection rate dispute.

Question 11: Please provide comments on the Commission's proposed future review of MTRs.

33. LIME has no particular comments with respect to the proposed future review of MTRs. As noted elsewhere in these comments, the key issue to be addressed is that MTRs are intended by the Ordinance to be cost-oriented. LIME could endorse a future review of MTRs, provided such review was designed to determine a cost-oriented MTR. LIME also requests that the Commission take into account the size of the TCI market, and ensure its regulatory procedures remain proportionate. A country the size of TCI might not have the resources to undertake frequent interconnection rate reviews.

Question 12: Please provide comments on any other issues relevant to the Commission's review of the MTR in TCI.

34. LIME recommends that the Commission only order changes, if at all, to the interconnection rate for the service known as "PLMN Terminating Access Service

in the Interconnection Agreements between LIME and Digicel and between LIME and Islandcom. Other rates ought to remain at their current levels.

35. ###.

36. ###.

37. ###.

38. LIME requests that the Commission hold the information in the preceding three paragraphs in confidence, pursuant to section 7 of the Ordinance and regulation 19 of the *Telecommunications (Administrative Procedure) Regulations*, and not disclose it to the public. Disclosure of this information could reasonably be expected to harm LIME's negotiations with overseas operators, by revealing LIME's negotiating strategy. This would enable them to respond more effectively to LIME's positions, which would be to LIME's specific financial and commercial detriment.

39. A redacted version will be prepared for the public record.

4. Conclusion

40. LIME looks forward to the Commission's favourable consideration and acceptance of its positions as articulated.

END DOCUMENT