COMMENTS ON RESPONSES TO

SECOND REVIEW OF MOBILE TERMINATION RATE

Landline | Internet | Mobile | Entertainment

By E-mail to: consultations@tcitelecommission.tc

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I Introduction

1. Cable and Wireless (TCI) Limited, trading as LIME ("**LIME**") is pleased to provide the following comments on the response by Digicel (TCI) Limited ("**Digicel**") to the Turks and Caicos Islands Telecommunication Commission's ("**TCITC**" / the "**Commission**") consultation document titled '*Second Review of Mobile Termination Rate*' (the "**Consultation Document**") and dated November 10, 2010.

2. LIME is not aware that Islandcom Telecommunications, Limited ("**Islandcom**") or indeed any other person, submitted comments. If they did, LIME reserves its rights to respond as necessary at a later date.

II. Comments on Digicel's Response

3. LIME is compelled to comment on some aspects of Digicel's response, though. It should be noted at the outset that LIME expressly states that failure to address any issue raised in Digicel's response document does not necessarily signify its agreement in whole or in part with any position taken on the matter by Digicel. LIME reserves the right to comment on any issue raised in Digicel's response at a later date.

Retail Rate Regulation

4. First, Digicel argues, with a certain amount of hyperbole, that LIME's retail fixed to mobile ("**FTM**") calling prices need to be reviewed, failing which there would be a "tipping of the market even more in favour of LIME". LIME submits that it is difficult to see how the market could be "tipped" or "tilted" in LIME's favour when all operators are subject to the same regulations, with the exception of retail rate regulations, which applies only to LIME .

5. Nor is there any support from the Commission that LIME's FTM rates are 'huge', or need to be reviewed at this time. Rather, in '*Decision on the Second Price Cap Regime*',[1] the Commission states the following:

> ***Price Control Basket #2*** *includes a single service: domestic fixed-to-mobile calling. The X-factor on this basket has been determined on a calculated basis using a forward-looking price cap model subject to the condition that the rate of return on C&W's Price Cap Services, collectively, is expected to equal the target rate of return established by the Commission, on average, over the Second Regime. The value of the X-factor calculated on this basis is* ***14.1%****.1 Relative to the going-in retail domestic fixed-to-mobile per minute call of 50¢, this X-factor and expected inflation have been translated into the follow set of maximum annual domestic fixed-to-mobile per minute call charges over the course of the Second Regime:*

Price Cap Year	**Maximum Fixed-to Mobile Calling Rate**
1. Effective as of the April 1, 2009	***46¢***
2. Effective as of April 1, 2010	***43¢***
3. Effective as of April 1, 2011	***40¢***
4. Effective as of April 1, 2012	***37¢***

[1] Telecommunications Decision 2009-4, Decision on the Second Price Cap Regime, February 18, 2009, pgs.ii and iii.

> *The above-noted fixed-to-mobile rate reductions in combination with the rate freezes applied to all other Price Cap Services results in a savings for consumers of roughly* ***$2.5 million in total*** *or just over* ***$600,000 per year****, on average, over the course of the Second Regime.'*

6. It is clear that as recently as 2009, the Commission delivered '*key*' benefits and continues to deliver '*key*' benefits to fixed line customers making FTM calls as can be seen from the schedule of reductions for FTM service. Now the Commission has turned its attention to reducing the Mobile Termination Rates (MTRs), which reductions will be automatically passed through to fixed line customers in lower rates.

7. The question of regulating retail prices in order to maximize benefits to consumers was comprehensively dealt with in 2009, and it would be unnecessary and inappropriate to review that decision now.

<u>Scope of Proceeding</u>

8. Digicel seeks to establish a relationship between MTRs and transit service and somehow to make the services seem inseparable. These are, however, two distinct, if connected, services, as transit facilitates mobile-to-mobile interconnection today. In the Interconnection Agreement between LIME and Digicel, both transit and termination are listed as separate services.

9. This issue was raised and argued in the first part of this proceeding. LIME notes that the Commission was clear on several occasions in the Consultation Document that the scope of this proceeding is limited to the MTR.

Fixed Origination

10. Digicel alleges, in hyperbolic terms,[2] that LIME enjoys a '..huge fixed origination retention..' and that '..the key way to benefit consumers of FTM is to reduce the extremely large fixed call origination retention…'

11. It is to be noted that the telecommunications regulatory regime in the Turks & Caicos Islands does not include the concept of a service called 'fixed origination retention' nor is there a tariff for such a service nor does Digicel or any LIME customer pay for such a service. In the Caribbean, this concept was implemented only in Jamaica, and played no small part in the significant mobile substitution and marginalization of the fixed network that took place there. LIME urges the Commission not to import such a concept from Jamaica into the Turks and Caicos Islands.

Other Matters

12. Digicel states that the MTR in the Virgin Islands was the result of "clever commercial maneuvering". LIME disagrees with this statement. LIME notes that at the time LIME's sister company in the Virgin Islands was the new entrant. The

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[2] See Digicel's *Response to Second Review of Mobile Termination Rate Consultation Document,* Comments on Paragraph 2.4, 7 December 2010.

incumbent mobile operator there had every commercial incentive to try to impose artificially high MTRs, as mobile was their only line of business into which LIME was seeking to enter. Notwithstanding this, the incumbent agreed to an MTR of US$ 0.05 for domestically-originated calls. That the incumbent accepted a price that they had no incentive or obligation to accept speaks volumes to the reasonableness of that price.

13. Digicel states that, in Trinidad and Tobago, "both sides submitted models during the dispute but both were rejected". LIME notes that the arbitration panel actually stated:

> The panel finds that the Panel Expert's evidence that TSTT's cost model is suitable for determining the mobile termination costs of an efficient operator in a steady state market is consistent with the evidence submitted by NERA and TSTT's claims. This evidence is also consistent with the Panel Expert's finding that Digicel's cost model, if used to calculate its unit cost of mobile termination operating at full capacity (i.e., "static efficiency"), actually produces a cost very close to TSTT's, even when using Digicel's higher cost of capital. The benchmark findings of the NZCC regarding average mobile termination costs are fairly closely aligned with these.
>
> Taking into account all of these factors, the panel finds that the cost of mobile termination of a typical efficient operator in Trinidad and Tobago in a steady state market is within a reasonable range comprised of TSTT's cost model result, the NZCC Report's 75th percentile and the Panel Expert's finding of Digicel's cost at static efficiency. …[3]

14. This is not the categorical rejection that Digicel is suggesting.

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[3] Decision of the Panel, *In the matter of arbitration between Digicel (Trinidad and Tobago) Limited v. Telecommunications Services of Trinidad and Tobago*, Decision 2/2006, 16 August 2006, at pages 52-53.

III. Closing Remarks

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

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