RESPONSE

REVIEW OF INTERCONNECTION RATES CONSULTATION

TURKS AND CAICOS ISLANDS TELECOMMUNICATIONS COMMISSION

By email to: **consultations@tcitelecommission.tc**
10 March 2014

I. Introduction

1. Cable and Wireless (TCI) Limited, trading as LIME ("**LIME**") is pleased to provide the following comments in response to the Commission's consultation document titled "Review of Interconnection Rates" (the "**Consultation**" or the "**Consultation Document**") published 10 February 2014.

2. LIME expressly states that failure to address any issue raised in this Consultation Document does not necessarily signify its agreement in whole or in part with the Commission's position. LIME reserves the right to comment on any issue raised in the Consultation at a later date.

II. Preliminary Comments

3. Many of the issues debated by stakeholders and resolved by the Commission in the 2010-2011 Mobile Termination Rate Review proceeding ("**2010-11 MTR Proceeding**")[1] are relevant, and in fact central, to this proceeding. LIME is encouraged by the Commission's explicit acknowledgement of these similarities in the Consultation Document. LIME is in agreement with most of the proposals in the Consultation Document which draw upon the legal and regulatory approaches and analytical methodologies adopted in the 2010-11 MTR Proceeding. Certain of these issues which LIME believes have the most bearing on this proceeding are the following:

i. The *Telecommunications Ordinance 2004* (the "**Ordinance**") and the *Interconnection and Access to Telecommunications Facilities Regulations 2005* (the "**Regulations**"), as drafted, do not permit the Commission to intervene in rate setting between operators who have an agreement between them, in the absence of a dispute.[2] Therefore, the Commission's only alternative in keeping with the Ordinance and Regulations is to

[1] Initiated by TCI Telecommunications Commission, Public Notice 2010-7, "Review of Mobile Termination Rate", 19 July 2010, and by Public Notice 2010-7.1, "Second Review of Mobile Termination Rate", 10 November 2010.

[2] See, for example, Cable and Wireless (TCI) Limited, "Comments on Review of Mobile Termination Rate", 30 August 2010, at paragraphs 4 and 32.

seek amendment of the MTR by means of an exercise of the Minister's powers under the Ordinance to establish the Regulations.

ii. The Regulations are clear in their requirement that interconnection rates must recover a proportion of common costs.[3] According to Section 15 (2) (d) of the Regulations:

> 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.

and:

iii. The Commission must take care and extreme caution to ensure its benchmark methodology is applied accurately. For instance, it is important that each benchmark rate be derived from a costing methodology that is not inconsistent with the Regulations. Any benchmark found to be inconsistent with the Regulations must be eliminated from the sample. Furthermore, it is certainly not appropriate to set interconnection rates for the Turks and Caicos Islands based on an unweighted average of rates applied in other countries, or to take arbitrarily the four lowest of these rates (calling them "best practice") and use the average to set the interconnection rate. These crude benchmarking methods inappropriately ignore the vast differences among countries and markets, and make no attempt to normalize the rates to ensure "like" is being compared to "like".[4]

4. In its MTR Decision published January 24, 2011,[5] the Commission acknowledged and in LIME's view appropriately addressed each issue.

5. LIME notes that the Commission has proposed a similar approach to address these issues in this proceeding, namely:

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3 Ibid, paragraph 5

4 Ibid, paragraph 31.

5 Turks and Caicos Islands Telecommunications Commission, Telecommunications Decision 2011 – 2, "*Decision on the Mobile Termination Rate Review*", 24 January 2011 (the "**MTR Decision**").

i. Proposing rates that include a proportionate return for fixed and common costs;
ii. Normalising the benchmark rates for comparability to Turks and Caicos;
iii. Amendment of the termination rates through the exercise of the Minister's powers under the Ordinance; and
iv. Phasing-in of new rates over a three (3) year period.

III. The Commission's Questions

Question 1: Please comment on the Commission's proposed legal basis and procedure for implementing any revisions to the maximum allowable interconnection rates under review.

6. This question seeks to address the jurisdiction of the Commission. LIME's position on this issue is unchanged from that presented by the company in the 2010-11MTR Proceeding. As LIME stated in its written comments in that proceeding, the Ordinance and Regulations as presently drafted do not permit the Commission to intervene in rate setting between operators who have an agreement between them, in the absence of a dispute. The recourse open to the Commission in keeping with the Ordinance and Regulations is to seek amendment of the termination rates by means of an exercise of the Minister's powers under the Ordinance to establish the Regulations.

7. The Commission invoked this remedy in its MTR Decision, and subsequent to that decision the Commission issued a recommendation to Government to amend section 19(2) of the Regulations to reflect the MTR maximum rate adopted in its MTR Decision. The Commission has indicated it plans to follow the same legally-sound approach in this Consultation. LIME is in agreement with the Commission in regard to its proposed approach to this issue, namely, to recommend appropriate changes to the Regulations.

Question 2: Please comment on the Commission's proposal to recommend to the Government that the Interconnection Regulations be amended so that all fixed carriers are presumed to be dominant with respect to termination on their respective fixed network. If you disagree with the proposal, provide supporting rationale.

8. In the Consultation Document, the Commission concludes that "the same factors that warrant a dominance designation in the case of mobile wholesale voice telephony services equally apply to fixed wholesale voice telephony services." Accordingly, since all mobile operators in the Turks & Caicos Islands are classified as dominant in the market for call termination on their own mobile networks, LIME believes it follows that all fixed operators must also be deemed dominant in the market for call termination on their own fixed networks. LIME agrees with the Commission's recommendation to amend the Regulations so that all fixed carriers in the Turks & Caicos Islands are presumed to be dominant with respect to fixed termination services

Question 3: Please comment on the Commission's policy considerations and regulatory proposals emanating from Decision 2011-2 in relation to the present review of MTR, FTR and transit rate levels, including:

(i) the principle that interconnection rates should, as best as possible, reflect LRIC plus a contribution to fixed and common costs;

(ii) lower interconnection rates should result in end-user benefits;

(iii) reliance on benchmarking for the purpose of setting maximum allowable interconnection rates;

(iv) reliance on the principle of rate symmetry for interconnection rates; and

(v) phasing in any reductions in the maximum allowable interconnection rate found to be necessary and appropriate.

Where alternative proposals are offered in relation to any one of these issues, please provide supporting evidence and rationale in each case.

9. As outlined in its preliminary comments above, LIME supports the principles espoused by the Commission. LIME had originally proposed in its 2010 submissions[6] that the Commission should conduct a long-run incremental cost ("**LRIC**") study. LIME continues to endorse this approach. Nevertheless, without prejudice to its proposal, LIME was satisfied that the rates derived from the benchmarks used by the Commission were reasonable, given that the Commission had normalized the benchmark sample to make it more comparable to TCI. This was reflected in the Commission's MTR Decision. Accordingly LIME is willing to support the Commission's decision to use the benchmark methodology in this proceeding to set the Mobile Termination Rates, the Fixed Termination Rates and the Transit Rates, provided the benchmark samples used are normalized to make them more comparable to TCI.

10. Consistent with its responses to the earlier consultation on setting Mobile Termination Rates, LIME continues to support LRIC rates that include a contribution to common and fixed costs; rate symmetry; and phasing –in of rate reductions.

Question 4: Please comment on whether the observed downward trend in MTRs in the Caribbean region and Europe are consistent with the view that average MTRs in those regions are moving closer to the underlying costs of terminating calls on mobile networks (based on the latest available mobile network technologies). If not, explain why not. In responding to this question, please provide supporting rationale, fully explaining all data sources, assumptions and calculations as may be necessary.

11. LIME believes the Regulations are clear in the costs to be recovered from interconnection rates. Section 14 (4) states that rates are cost-oriented so long as they do not exceed stand-alone cost and are not lower than long-run average incremental cost. Section 15 (2) (d) goes on to indicate that the costing methodology selected must include three distinct cost components:

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6 See Cable and Wireless (TCI) Limited, "*Comments on Review of Mobile Termination Rate*", 30 August 2012, at paragraph 5; Cable and Wireless (TCI) Limited, "*Reply Comments on Review of Mobile Termination Rate*", 17 September 2010, at paragraphs 11-12; and Cable and Wireless (TCI) Limited, "Response to Second Review of Mobile Termination Rate", 7 December 2010, at paragraph 3.

> [1] a reasonable rate of return for that carrier or service provider on the capital employed, [2] all attributable operating expenses [and] depreciation and [3] a proportionate contribution toward such carrier's or service provider's fixed and common costs.

12. LIME believes these conditions must be met in establishing an appropriate benchmark sample. In particular, any benchmark interconnection rate derived from a costing methodology that does not recover these three cost components—(1) a return on capital, (2) incremental operating costs/depreciation, and (3) fixed/common costs—must not be included in the benchmark sample, as the result would be an interconnection rate that is not cost-oriented as defined by the Regulations and that is consequently unlawful in Turks and Caicos. Accordingly, LIME recommends the benchmark samples exclude Guadeloupe & Martinique, St. Barthelemy & St. Martin, and Jamaica from the MTR benchmark sample, and Guadeloupe & Martinique, and St. Barthelemy & St. Martin from the FTR and Transit rate samples.[7] The interconnection rates in these countries are based on a "pure LRIC" costing methodology that excludes any cost recovery for fixed and common costs and are thus contrary to the cost recovery requirements in the Regulations.

13. Based on these adjustments, the appropriate MTR benchmark sample would include Anguilla, Aruba, BVI, Cayman, Dominica, Dominican Republic, Grenada, St. Kitts, St. Lucia, St. Vincent, and Trinidad & Tobago. LIME agrees that the downward trends in MTRs in these relevant benchmark countries are reflective of rates moving closer to the underlying costs of call termination.

Question 5: Please comment on whether the observed downward trend in FTRs in the Caribbean region and Europe are consistent with the view that average FTRs in those regions are moving closer to the underlying costs of terminating calls on fixed networks (based on the latest available fixed network technologies). If not, explain why not. In addition, please provide supporting rationale, including any additional FTR benchmarking information that may be available that is of relevance to this

[7] Please note that Table A1 incorrectly identifies the Cayman Islands as Pure LRIC and Jamaica as LRIC+. The MTR costing methods in Cayman and Jamaica are LRIC+ and Pure LRIC, respectively and the FTR and Transit rate costing methods in Jamaica are FAC.

Consultation, fully explaining all data sources, assumptions and calculations as may be necessary.

14. As explained in our response to Question 4, LIME recommends the benchmark FTR and Transit rate samples exclude Guadeloupe & Martinique, and St. Barthelemy & St. Martin. Based on these adjustments, the appropriate FTR and Transit rate benchmark samples would include Anguilla, Aruba, BVI, Cayman, Dominica, Dominican Republic, Grenada, Jamaica, St. Kitts, St. Lucia, St. Vincent, and Trinidad & Tobago. LIME believes that the trends in FTRs and Transit rates in these relevant benchmark countries are correlated to the trends in fixed network costs.

15. FTRs are already at or near cost-based levels; that is, policies in most jurisdictions worldwide for establishing FTRs have not deviated significantly from an adherence to cost orientation. The shallow slope of the FTR benchmark lines in Figures 4 and 5 of the Consultation Document are consistent with this conclusion.

Question 6: Please comment on whether the observed level and trends in transit rates in the Caribbean region and Europe are consistent with the view that average transit rates are moving closer to the underlying costs of transiting call traffic over a fixed network. If not, explain why not. In responding to this question, please provide supporting rationale, including any additional transit rate benchmarking information that may be available that is of relevance to this Consultation, fully explaining all data sources, assumptions and calculations as may be necessary.

16. LIME believes that the trend in the benchmark Transit rates is correlated to the trend in fixed transit costs. As with the FTR, the transit rate is already set at a cost-based level, which is consistent with the relatively flat slope of the benchmark Transit rate line. In the Consultation the Commission states that '*...the average transit rate has remained relatively stable over the period April 2009 to January 2014, ranging between $0.0072 and $0.0079. The refitted trendline projection suggests that the average transit rate will likely remain in this range as of March 2017*'. [8] This would suggest that transit rates are already very close to the underlying cost of transit.

[8] Pg.23 Consultation Document

Question 7: Please comment on whether there is any significant difference in the cost of terminating calls on a fixed or mobile network in TCI depending on whether the call originates domestically or internationally. If so, provide supporting evidence including detailed network diagrams as necessary. In addition, please comment on whether there are any other grounds to support differential domestic and international call termination rates, which supporting rationale, data and examples as necessary.

17. The international call market is mature and very competitive and as such is a market ripe for forbearance. Accordingly LIME recommends that the Commission forbear from regulating termination rates for all international incoming calls, irrespective of the network on which the call terminates.

18. LIME asks the Commission to contemplate the following:

i. there is no reason to regulate this service as it is already subject to various constraining pressures. The current low rates for international termination are the product of a dynamic which combines external intervention (primarily through the FCC benchmark order) and increase in competition among international carriers. There is no longer any possibility of termination rates, absent Commission intervention, going in any direction but down.

ii. in addition to international market pressures, the existence of arbitrage will ensure that international termination rates remain reasonable.

iii. reduction in the termination rate charged to foreign carriers does little, if anything to lower retail rates abroad. There will be little stimulative benefit from the Commission intervening to push rates down, and therefore little if any benefit to call recipients in Turks & Caicos.

iv. the more significant effect will be the harm caused through depressing voice revenues for telecommunications service providers in Turks and Caicos and others through negative knock-on effects.

19. In summary, market mechanisms exist to keep international termination rates reasonable and there are no grounds for reduced welfare loss to consumers in Turks & Caicos The Commission should therefore forebear from regulating termination rates for international originated traffic.

20. LIME believes that the power to forebear from regulating such termination rates lies within the exclusive discretion of the Commission which is entitled to exercise that discretion based on sound policy objectives. Whereas the regulation of termination rates for domestic originated traffic is in the best interests of the domestic market, regulation of international originated termination rates is not. There is no overriding policy or market related need to regulate termination rates for international originated traffic, particularly since no domestic operator is exposed to competitive harm or prejudice where the rates are different. On the other hand, permitting a higher rate for international originated traffic is beneficial to Turks & Caicos.

Question 8: Please comment on of the Commission's All Sample and Cost-Based MTR Proposals, including which of the two proposals is preferable, and explain why. 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.

21. LIME has two objections with the Commission's proposed approach to establishing a new MTR. Firstly, as described in our response to Question 4, LIME believes that certain benchmark rates contravene the Regulations and thus must be eliminated from the benchmark samples. Secondly, the approach that the Commission is proposing to establish new MTRs is similar to its initial flawed proposal in the 2010-11 MTR Proceeding where the Commission sought to establish an MTR based on the lowest benchmark rates which it arbitrarily classified as "best practice." The service providers, including LIME, disputed that the lowest rates were indeed best practice, and the Commission moved away from this approach in 2011. LIME proposes that using an All Sample Average that excludes all inappropriate benchmark observations is statistically robust and, if a subsample is used, then it should be the highest sampled rates to reflect TCI's lower economies of scale and riskier operating environment.

Question 9: Please comment on of the Commission's FTR Proposal. To the extent parties believe an alternative FTR proposal would be more appropriate, please describe any such proposals in detail and include supporting rationale and data as may be relevant.

Question 10: Please comment on of the Commission's Transit Rate Proposal. To the extent parties believe an alternative LTR and/or TSR proposal(s) would be more appropriate, please describe any such proposals in detail and include supporting rationale and data as may be relevant.

22. Consistent with our proposal on the MTR, LIME believes an All Sample Average that excludes all inappropriate benchmark observations should be used to set the maximum allowable FTR and Transit rate. Using an All Sample Average is statistically robust and if a subsample is used, then it should be the highest sampled rates to reflect TCI's lower economies of scale and riskier operating environment.

Question 11: Please comment on of the Commission's International FTR and MTR Proposals, including which of the two international MTR proposals is preferable to the other, and explaining why. To the extent parties believe an alternative international FTR and/or MTR proposals would be more appropriate, please describe any such proposals in detail and include supporting rationale and data as may be relevant.

23. The Commission states '*Similarly in this case, the Commission considers that Cost-Based International MTR Proposal to be preferable to the alternative*.' [9] LIME disagrees. Please see LIME's response to questions 8, 9 and 10. LIME proposes that using an All Sample Average is statistically robust and if a subsample is used, then it should be the highest sampled rates to reflect TCI's lower economies of scale and riskier operating environment.

Question 12: Please provide comments on the Commission's Proposed Recommendation to Government and the associated Directive, along with

[9] Pg. 35 Consultation Document

supporting rationale for any proposed changes to either the Recommendation or Directive.

24. LIME has no objection to the structure of the Proposed Recommendation to the Government and the associated Directive. It is based on the same template that was used in the Commission's Decision of January 2011. Note however that there is an error at paragraph six (6) of the Proposed Recommendation which LIME has highlighted '*Whereas the Commission has determined that the maximum allowed International Mobile Termination rate should be reduced from its current level of US0.1375 per minute to* ***US$0.0100****.per minute as of April 1, 2014….*' It would seem to LIME that the rate is intended to be US$0.10.

Question 13: Please provide comments on the Commission's preliminary view that with the Proposed Recommendation to Government there would be no additional requirement to amend Digicel's Licence to bring into effect any changes to the FTR maxima resulting from this proceeding. If you disagree, provide the supporting rationale and explain which specific provisions in Digicel's Licence would have to be modified in your opinion.

25. LIME does not agree that the Proposed Recommendation to Government would obviate an amendment to Digicel's Licence. The Recommendation would ensure Digicel's compliance with the new FTR maxima arising from this proceeding but it would not resolve the fundamental issue that all similarly-situated licences must contain similar licence terms. Since Digicel is dominant on its fixed network for call termination, just like LIME is dominant on its fixed network for call termination, Digicel's Licence must be modified to include the dominance designation. In the alternative the Commission could remove the dominance designation from LIME's Operating Licence.

26. Sections 16, 17 and 18 of the Ordinance establish a transparent process for the Commission to make a finding of dominance in respect of operators and networks or services, and to modify the applicable licences accordingly. It is clear that the publication of proposed changes to persons with similar licences is intended to foster transparency and promote non-discrimination in terms and conditions of similarly situated licenses. LIME

recommends that the Commission uses this consultation as a tool to achieve the objectives of clauses 16, 17 and 18.

Question 14: Please provide comments on the proposed flow through of any approved MTR changes to LIME's retail FTM call rates, the planned timing of the next interconnection rate review, and any other matters relevant to the Commission's review of the interconnection rates in TCI.

27. LIME objects to the statement in the Consultation Document that "[g]iven the FTM rate remains subject to price cap regulation, LIME will be required to reduce the FTM rate cap in lock-step with any reductions in the maximum allowable MTR as a result of this regulatory proceeding." LIME objects to this statement on the grounds that no such flow-through requirement exists in the current retail price regulations. The Commission published its Decision 2013-3, "*Fixed Service Price Regulation Review Decision*", on March 27, 2013 (the "**Fixed Prices Decision**") which established the current retail rate framework for LIME's fixed retail services. In that Fixed Prices Decision the Commission stated that *"LIME must continue to provide a stand-alone (basic) fixed calling service* ***at prices no higher than the current rate of*** *15¢/minute for fixed-to-fixed calls and* ***(as of 31 March 2013) 30.75¢/minute for fixed-to-mobile calls****"*[10] (emphasis added). The Fixed Prices Decision does not state that any further reductions in MTR will flow through to the FTM rate, but rather caps the FTM rate. The Commission errs, therefore, in stating in the Consultation Document that there is a regulator-mandated flow-through requirement, whereby LIME is *"required to reduce the FTM rate cap in lock-step with any reductions in the maximum allowable MTR as a result of this regulatory proceeding.*"[11]

28. Notwithstanding that the Commission cannot mandate the quantum or timing of reductions in FTM rates in this proceeding, recent experience demonstrates that lower MTRs should result in lower prices for customers as competition drives prices down. Indeed, the Commission's own evidence, as set out in Table 2 at page 14 of the Consultation Document, shows that LIME decreased prices by up to 55% following the MTR rate reductions, even in the absence of a mandated flow-through requirement on mobile rates.

[10] Pg. 1 Fixed Prices Decision
[11] Pg. 41 Consultation Document

This is incontrovertible evidence that the market is working and therefore any intervention on the part of the Commission is unnecessary and potentially harmful to competition.

29. LIME agrees with the Commission that there should be a review of interconnection rates in late 2016.

Question 15: Please comment on the proposed Updated Benchmarking Sample and benchmark interconnection rate average calculation methodology. If alternative proposals are made, provide supporting rationale, and data and references where necessary.

30. As set out in its Preliminary Comments at Section 2 of this response, LIME had agreed with the Commission's benchmarking methodology because the Commission had normalized the sample to more accurately reflect the realities in Turks and Caicos. The benchmarking sample has been updated by the addition of Jamaica but as the Commission has reiterated throughout the Consultation Document the methodology remains the same as that applied in the 2010 proceeding on MTRs. In this regard LIME has indicated in its response to questions 4 and 5 that the benchmark interconnection rates based on a "pure LRIC" costing methodology must be excluded from the samples because they do not conform to the Regulations which require cost recovery for fixed and common costs. LIME also proposes use of the Cost Based Sample Average to determine MTRs rather than the All Sample Average. LIME responds more fully on this matter in its responses to questions 8, 9, 10 and 11.

IV. Closing Remarks

31. Kindly send any communication in relation to this Consultation to:

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