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Mr. Archbold
Managing Director
Information and Communications
Technology Authority
PO Box 2502 GT
Grand Cayman

Dear Mr. Archbold:

Re: Application by TeleCayman Limited, dated 2 August 2006, Requesting that the ICTA Conduct an Investigation into an Agreement between C&W, Digicel and Wireless Ventures Cayman Islands, dated 23 July 2004 (Agreement)

I. Introduction

These Reply comments are submitted on behalf of TeleCayman Limited (TeleCayman) in connection with the above-referenced matter.

TeleCayman is in receipt of Answers to its 2 August 2006 Application from Digicel Cayman Limited (Digicel) and Cable and Wireless (Cayman Islands) Limited (C&W), dated 14 August 2006 and 5 September 2006, respectively. In accordance with the procedures established by the General Counsel of the Information and Communications Technology Authority (Authority) on 21 August 2006, the following constitutes the Reply of TeleCayman to these Answers. Failure on the part of TeleCayman to address a specific argument or issue raised by the C&W and Digicel in their Answers should not be construed as agreement with or acceptance of such arguments or answers where to do so would be contrary to the interests of TeleCayman.

In their Answers, each of C&W and Digicel have clarified something which was not readily apparent to TeleCayman on the face of the Agreement that was entered into by these two parties on 23 July 2004, namely that the Agreement only applies to mobile traffic that is exchanged between the parties to the Agreement. While this clarification is of considerable assistance to the dispute at hand, TeleCayman has recommended in these Reply comments that the Authority should make this point clear in its ruling on TeleCayman's 2 August 2006 Application in the event that it decides to give positive approval to the Agreement.

If, on the other hand, the Authority decides that the Agreement is broader in its scope and that it should be applied to the fixed wireless telecommunications traffic of service providers that were **not** a party to the Agreement (such as TeleCayman), then TeleCayman agrees with the submissions set out at pages 9 to 12 of C&W's Answer that the mobile termination rate (MTR) set out in the Agreement is unreasonable and that the Authority should, at a bare minimum, ensure that no fixed wireless or wireline provider (including C&W) pays more than CI\$0.0864 per minute to terminate calls on the mobile networks of Digicel and C&W. This would ensure that all fixed wireline and fixed wireless operators are treated in the same manner with respect to the termination of their traffic on the mobile networks of C&W and Digicel.

II. Scope of the Agreement

In its Application of 2 August 2006, TeleCayman raised concerns regarding paragraph 5 of the Agreement between C&W, Digicel and Wireless Ventures Cayman Island Limited (MVCIL). Specifically, TeleCayman noted that paragraph 5 of the Agreement contains language which suggests that the Agreement not only establishes the termination rate that will be charged by the parties when a mobile telephone call originates on the mobile network of one party and terminates on the mobile network of another party, it also appears to establish the rate that the parties will charge to terminate other types of traffic, including traffic that originates on the fixed wireless network of TeleCayman and terminates on the mobile wireless networks of C&W, Digicel and WVCIL. For example, paragraph 5 of the Agreement provides, in relevant part, as follows:

For the avoidance of doubt, it is agreed and proposed that from the date of execution of this Agreement until the completion of the transition of the PLMN Terminating Access rate to FLLRIC, there should be only one mobile termination rate that applies as between the Parties, as specified herein, which will apply to **all calls delivered by any of the Parties to the mobile network of any of the others**, and in accordance with all Cayman Islands telecommunications regulations.¹

In their Answers to TeleCayman's 2 August 2006 Application, both C&W and Digicel deny that this paragraph applies to anything other than calls that originate on the mobile network of one party to the Agreement and terminate on the mobile network of another party to the Agreement. Digicel states in its Answer, for example, that the Agreement "only relates to the rates charged by the parties to each other" and that "[T]here is **no agreement or understanding as to what the parties will charge TeleCayman**".²

Although C&W is somewhat less direct in its Answer, it states that the parties to the Agreement "were entitled to negotiate the MTR that they would charge among themselves" and it

¹ Agreement between C&W, Digicel and WVCIL, dated 24 July 2004, paragraph 5, emphasis added.

² Answer of Digicel, 14 August 2006, page 2, emphasis added.

acknowledges that different termination rates apply when C&W, for example, terminates on its mobile network traffic that originates on the fixed wireless network of TeleCayman.³

TeleCayman accepts these Answers and, indeed, takes no issue with the regulatory principle that the same termination rate should be applied when the parties to the Agreement use their mobile networks to terminate mobile calls that originate on the mobile networks of any other mobile operator in the Cayman Islands.

However, the language contained in paragraph 5 of the subject Agreement does not say this. As noted above, the Agreement could be construed as extending to other types of interconnection arrangements, such as arrangements not involving mobile-to-mobile interconnection. And if this were the case, the Agreement would lead to several anti-competitive effects. First, it would be tantamount to the fixing of a price to a third party. Second, it would result in the fixing of a price to a third party that, at least under the current interconnection regime, is in "dissimilar" circumstances to those which exist between the parties to the Agreement, a practice which is contrary to subsection 36(2)(d) of the Law.

Finally, it would condone a highly unjust and unreasonable negotiating practice, namely the imposition of terms and conditions of service on a service provider that was not a party to the Agreement. TeleCayman notes in this regard that it was not invited to participate in the discussions and negotiations which led to the Agreement between C&W, Digicel and WVCIL. Had it been a participant in those discussions, it would have insisted that the Agreement be limited solely to traffic that originates on the domestic mobile network of one party and terminates on the domestic mobile network of another party. Given that TeleCayman had no opportunity to voice these concerns at the time the Agreement was negotiated, it would be patently unfair to allow the three parties to this Agreement to impose a rate on a third party that does not deliver originating mobile traffic to them.

Accordingly, for the avoidance of doubt, TeleCayman submits that the Authority should issue a declaratory order when it rules on TeleCayman's 2 August 2006 Application which confirms that the termination rate established in the Agreement only applies to mobile traffic that originates and terminates on the mobile networks of the parties to the Agreement. In addition, and in order to achieve further clarity, the Authority should exercise its powers under subsection 47(2) of the Law by directing the parties to modify paragraph 5 of the Agreement in order to make it absolutely clear that the termination rate established in the Agreement only applies to mobile traffic that originates and terminates on the mobile networks of the parties to the Agreement.

II. Comments of C&W Regarding Other Types of Traffic Termination Arrangements

In its 5 September 2006 Answer, C&W observes that, at the present time, there are different MTRs that apply to different types of services and service providers.⁴ Although C&W continues to defend the Agreement that it has entered into with Digicel and WVCIL, it also appears to

³ Answer of C&W, 5 September 2006, page 8.

⁴ Answer of C&W, 5 September 2006, beginning at page 9.

contradict itself by arguing that the MTR of CI\$0.1845 per minute that it is set out in the Agreement is “unreasonable” and should be reduced to CI\$0.0864 per minute.

As indicated above, it is TeleCayman’s understanding that the Agreement entered into by C&W, Digicel and WVCIL applies only to mobile traffic that is exchanged between the parties to the Agreement. Indeed, C&W has noted in its Answer in this proceeding that a separate rate applies to traffic that originates on the fixed wireless network of TeleCayman and terminates on the mobile wireless network of C&W.⁵ However, if C&W is suggesting that this is not the case, namely that the Agreement that it has entered into with Digicel and WVCIL actually applies to the fixed wireless telecommunications traffic of service providers that were not a party to the Agreement, then TeleCayman agrees with C&W’s observation that the mobile termination rate (MTR) set out in the Agreement is unreasonable.

TeleCayman notes in this regard that had it been a party to the negotiations that led to this Agreement, it would never have agreed to an MTR of CI\$0.1845 per minute. Indeed, as indicated in TeleCayman’s 2 August 2006 Application, when TeleCayman hands off an incoming international call to the mobile networks of C&W mobile or Digicel, it is only charged a rate of \$0.0864 per minute. Given the significant disparity between this rate and the rate that is set out in the Agreement between C&W, Digicel and WVCIL, it should be clear why TeleCayman would not have agreed to an MTR of CI\$0.1845 per minute for the termination of its domestic fixed wireless calls. Since TeleCayman uses identical facilities to hand off both types of traffic to C&W and Digicel, it would be illogical, unreasonable and indeed discriminatory to apply different MTRs to this non-mobile originating traffic.

Interestingly, neither C&W nor Digicel have argued in this proceeding that the CI\$0.1845 per minute is a cost-oriented rate. In fact, C&W’s Answer of 5 September 2006 suggests that this rate is arbitrary and bears no relationship at all to actual underlying costs. It is also interesting to note that neither of these parties have argued in this proceeding that the \$0.0864 per minute rate that they charge for incoming international calls is below cost or that it is not a cost-oriented rate. Indeed, both companies have readily accepted this rate. The Law stipulates that interconnection rates must be cost-oriented. TeleCayman submits to the Authority that the principle of cost orientation in the legislation is far more supportive of the \$0.0864 rate than a rate which is 115% higher.

Perhaps this is why C&W is itself troubled by the CI\$0.1845 rate set out in the Agreement. The question, therefore, is how should this problem be solved?

In the view of TeleCayman, there are two possible solutions to this problem. First, C&W could enter into a separate agreement with Digicel for the termination of C&W’s fixed wireline traffic on Digicel’s mobile wireless network which establishes a rate of \$0.0864 per minute for the termination of this traffic.

⁵ Answer of C&W, 5 September 2006, page 8.

Alternatively, the Agreement between C&W, Digicel and WVCIL could be expanded to include non-mobile originating traffic and the MTR for this traffic could be set at CI\$0.0864 per minute as proposed by C&W in its 5 September 2006 Answer and as proposed by TeleCayman in its Application of 2 August 2006.

One way or the other, TeleCayman submits that in no instance should the MTR that is currently set out in the Agreement between C&W, Digicel and WVCIL be applied to the non-mobile originating traffic of TeleCayman. As indicated above, TeleCayman was not a party to that Agreement, and it would be discriminatory and, indeed, contrary to section 36 of the Law to apply that rate to traffic originating from TeleCayman's fixed wireless network.

III. Conclusion

For all of the foregoing reasons, TeleCayman respectfully submits that the Authority should issue a declaratory order when it rules on TeleCayman's 2 August 2006 Application that confirms that the termination rate established in the Agreement only applies to mobile traffic that originates and terminates on the mobile networks of the parties to the Agreement. In addition, and in order to achieve greater clarity, the Authority should exercise its powers under subsection 47(2) of the Law by directing the parties to modify paragraph 5 of the Agreement in order to make it absolutely clear that the termination rate established in the Agreement only applies to mobile traffic that originates and terminates on the mobile networks of the parties to the Agreement.

In the alternative, and without prejudice to the foregoing, TeleCayman respectfully submits that if the Authority decides that the Agreement is broader in its scope and should be applied to the fixed wireless telecommunications traffic of service providers that were not a party to the Agreement, then TeleCayman respectfully submits that the Authority should, at a bare minimum, ensure that no fixed wireless or wireline provider pays more than CI\$0.0864 per minute to terminate calls on the mobile networks of Digicel and C&W. This would ensure that all fixed wireline and fixed wireless operators are treated in the same manner with respect to the termination of their traffic on the mobile networks of C&W and Digicel.

Yours very truly,

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cc. Rudy B. Ebanks – C&W
J.D. Buckley – Digicel
J. Hamill - WestTel