



CABLE & WIRELESS

Cable & Wireless
(Cayman Islands) Limited

P.O. Box 293
Grand Cayman KY1-1104
Cayman Islands, B.W.I.

www.cw.ky

Telephone +1 (345) 949-7800
Fax +1 (345) 949 7962

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10 April 2007

Mr. David Archbold,
Managing Director,
Information and Communication Technology Authority,
3rd Floor Alissta Towers,
P.O. Box 2502GT,
Grand Cayman. KY1-1104

Dear Mr. Archbold:

We understand that the Authority has interpreted Digicel's letter of 27 March 2007 as a request filed under Regulation 4f of the Information and Communications Technology Authority Confidentiality Regulations 2003 (the "Regulations") for disclosure of information claimed confidential by C&W for its 23 February 2007 submission to the Authority regarding the 26 January 2007 "Telcordia Interrogatories". This is our reply filed pursuant to Regulation 4g defending our requests for confidential treatment of that information. We believe the Authority should set aside the Digicel request as a) those claims are justified, b) that the information inadvertently disclosed remains commercially sensitive and therefore confidential, and c) despite its assertions, Digicel (nor any other interested party) is not prejudiced in relation to the FLLRIC proceeding as a result of those claims.

Valid Claims for confidentiality

C&W's claims for confidentiality were properly made and are valid. Regulation 3 states that:



Any person who submits information to the Authority (“the submitting party”) may request that such information be designated “confidential” by the Authority if -

- (a) the information is a trade secret;
- (b) the information is financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the submitting party and the information is not otherwise publicly available;
- (c) the information is subject to a claim of legal privilege; or
- (d) the disclosure of the information could reasonably be expected-
 - (i) to result in significant financial loss or gain to any person;
 - (ii) to prejudice significantly the competitive position of any person; or
 - (iii) to affect contractual or other liabilities of any person.

The information that C&W designated as confidential meets one or more of these criteria. There were three types of information for which C&W claimed confidentiality. Firstly, there were results from the confidential LRIC model itself. The claim for confidentiality for this information is valid, not only per provisions 3b and 3d of the Regulations, but also by virtue of the Authority’s procedural letters of 6 January and 8 February 2006, which provided for the removal of confidential information from the FLLRIC model while requiring that formulas and calculations are left intact. Secondly, there were specific actual costs incurred by C&W in the provision of services, which we consistently treat as confidential and is not publicly available and, when taken together with other information, could provide actual and potential competitors details of C&W’s cost structure. C&W’s competitors and potential competitors could use this information to respond more effectively to C&W’s marketing and pricing strategies and significantly impair C&W’s competitive position in the provision of these services. We note that in its 27 March 2007 letter, Digicel did not contest the confidentiality claims of these two types of information.

The third type of information, for which Digicel has disputed the validity of C&W’s confidentiality claim, concerns demand information. It should be noted that almost all of these claims relate to actual C&W demand numbers, or to numbers by which a reader could derive actual C&W demand numbers. C&W’s actual service demand information clearly satisfies the tests for confidential treatment in Regulations 3a, 3b and 3d. For the remaining two instances, i.e., with respect to on-net and off-net pricing and effects of VOIP specifically, irrespective of Digicel’s denigrations, we regard these as indications of our commercial strategy and market conditions, such that their disclosure would prejudice significantly our competitive position.

We also note that, per Regulation 4b, C&W properly claimed confidentiality by supplying the reasons for the claim and sufficient details as to the nature and extent of the harm that would be caused. In fact, most of our cover letter to our 23 February 2007 submission consisted of the confidentiality claim.



Finally, despite Digicel's insinuation that, because C&W had "failed to redact" the information, it has lost its "quality of being confidential". The fact is that the information remains commercially sensitive and its disclosure to C&W's competitors would prejudice C&W, and therefore should remain confidential.

Transparency in the FLLRIC proceeding

Digicel claims that, due to C&W's confidentiality claims in its submissions, the FLLRIC process "would have been severely prejudiced... by depriving the participants (except Cable & Wireless) of a fair hearing. Had this matter not come to Digicel's attention it could have resulted in a very significant underestimation of the true FLLRIC cost of mobile termination."

C&W rejects this assertion. Quite apart from the fact that its claims for confidentiality are valid, C&W is not the only party supplying inputs to this model. All interested parties are being afforded the opportunity to supply inputs into the model and justify them. In fact, on at least one occasion already--in its June 2, 2006 response to C&W interrogatories--Digicel has filed its own demand assumptions for inputs into the model on a confidential basis, just as C&W had. Further, Digicel acts as if their participation in this proceeding has ended. However, the Authority has stated in its 26 January 2007 letter to C&W that it "anticipates that further interrogatories will be required for this proceeding and that parties will be provided the opportunity to file comments and reply comments near the end of the generation of the written record of this proceeding."

Secondly, the Authority itself has hired experts to vet the entire model--inputs, model structure and outputs--and they have visibility of all the confidential information. C&W fully expects that, if C&W cannot make a case for appropriateness of its proposed inputs, the Authority will substitute them in favour of ones the Authority thinks more appropriate.

Thirdly, there is nothing inconsistent between the confidentiality claims C&W has made and the requirements for transparency in this proceeding. In those instances where the confidential information relating to C&W costs and actual demand figures would be revealed, the Authority and its experts must be the judge of the reasonableness of those figures. Making those judgments is certainly not right of those who could commercially benefit from those figures.

Digicel's Proposal will add more delay

In addition to disagreeing with Digicel's assertions that the information over which C&W claimed confidentiality should be disclosed and that the proceeding has been prejudiced, C&W strongly disagrees with Digicel's proposal on further process. Digicel's proposal adds a superfluous layer of review and will only delay the proceeding.



The Authority has already retained third party experts to verify the facts that Digicel is concerned about, and already has a process for dealing with the very issues that Digicel raises.

C&W submits, therefore, that the Authority should continue with the current process. If Digicel or other parties have any legitimate concerns over the inputs used in the model, they should take the opportunity provided in the current process to submit their own figures and fully justify them. The Authority and its experts will then be the arbiter of those figures. A process of interrogatories has already been established to assist the Authority in its determination on the final inputs, and the Authority will publish its justification for the inputs it chose in its determination.

We urge the Authority to reject Digicel's request for disclosure and proposed amendment of process.

In closing we wish to express our dismay at Digicel's unprofessional behaviour in this matter. Digicel was expressly requested by C&W to destroy the confidential materials and, after resisting C&W's request, expressly directed by the Authority to do so. Moreover, Digicel's staff had confirmed in an email that they had deleted the original email. However, quite to the contrary, they retained these documents (and are likely still retaining them) for analysis. This is not the sort of conduct that the Authority should allow or condone in its ICT licensees, which would be the case if the Digicel letter were not set aside.

Yours faithfully,
Cable & Wireless (Cayman Islands) Ltd.



Rudy B. Ebanks
Chief Regulatory and Carrier Relations Officer

c.c. Timothy Adam, Chief Executive C&W
Ian Tibbetts, Chief Operating Officer C&W
Frans Vandendries, Vice President Regulatory Affairs C&W
Erik Whitlock, Regional Vice President, Regulatory Affairs and Finance C&W
John D. Buckley, Chief Executive Officer, Digicel Cayman Limited

