Public Utilities Commission of Anguilla
Telecom Decision PUC 2009-104

The Valley, Anguilla – 30 October 2009

In the matter of a revision to the effective date for an adjustment in the mobile termination price 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 (Digicel).

Table of Contents

I Background

Scope of Proceeding

1. The national regulatory framework provides for an 'integrated' public telecommunications service which requires that all public networks be interconnected. Section 5(1) of the **Telecommunications Interconnection and Access to Facilities Regulations R.R.A. c. T6-4 (IAF Regulations)** stipulates that every operator or service provider has a duty to interconnect with other service providers.

2. Cable & Wireless (West Indies) Limited (C&W, Lime) is a licensed public telecommunications network operator and fixed-line and mobile service provider in Anguilla. C&W is the incumbent operator and received a new license on 14 December 2004.

3. Weblinks Limited (Weblinks) is a licensed public telecommunications network operator and mobile service provider and received a license on 10 September 2004.

4. Wireless Ventures (Anguilla) Limited (WVA, Digicel, the Company) is a licensed public telecommunications network operator and mobile service provider with a license granted by the PUC on 5 November 2004.

5. Caribbean Cable Communications (CCC) is a licensed public telecommunications network operator and fixed-line service provider and received a license on 14 December 2004.

6. C&W's license, Annex 2, Section 1.3, states that for purposes of this **Licence**, the Licensee is dominant with respect to a number of telecommunications services in Anguilla including those described in section 1.3.3 as follows:

   'Services of terminating mobile telephone calls on Licensee's own mobile or fixed network….'

7. Digicel's license, Annex A, Section 1.2 reads as follows:

   '1.2 For purposes of this Licence, the Licensee is classified as dominant with respect to at least the following telecommunications services in Anguilla:

   1.2.1 Services of terminating mobile telephone calls on Licensee's own mobile or fixed network'.

8. The current interconnection agreement between C&W and Digicel was approved by Commission **Decision 2008-102,** 17 April 2008; the agreement between C&W and CCC was approved by **Decision 2008-103,** 17 April 2008 and the agreement between C&W and Weblinks was approved by **Decision 2008-104**, 17 April 2008.

The Proceeding

9. In **Telecom Decision PUC 2008-101** dated 21 March 2008**,** paragraph 96, the Commission approved the current and the proposed mobile termination prices.

Notice and Responses

10. The Commission's Public Notice for the current proceeding relates to the effective date for revisions to the interconnection prices and was published in the Gazette, Volume 36, No. 9, 17 July 2009, and reads, in part, as follows:

> *'Pursuant to section 5 of the **Telecommunications Administrative Procedures Regulations**, R.R.A. T6-1 and section 10(3) of the **Public Utilities Commission Act**, R.S.A. c. P175, notice is hereby given that Commission invites interested parties to file comments on the matter of a proposed revision to the current Interconnection Agreements between Cable & Wireless (Lime) and the following licensed service providers; Digicel, Caribbean Cable, and Weblinks. The proposed revision is to the mobile termination rate. This proceeding is related to the Commission's findings set out in **Telecom Decision2008-101** dated 28 March 2008 following a review of interconnection prices.*

11. In the public notice for this proceeding, the Commission described the current proposal to adjust the timing of the next mobile termination rate (MTR) adjustment as follows:

> *'In order <u>to adjust mobile termination rates to a more cost-oriented level in a more timely manner</u>, the Commission proposes to amend the effective date as setout in paragraph 14 of **Telecom Decision 2008-101** for the next adjustment in the mobile termination rate from 1 April 2010 to 1 November 2009. Therefore the present mobile termination rate of EC$ 0.35 would be adjusted to EC$ 0.30 effective 1 November 2009.'* (Emphasis added)

12. The current proceeding is directly related to a previous proceeding that commenced in June 2007 and which was described, in part, as follows:

> *'10. In compliance with paragraph 37 of **Decision 2005-102**, a Public Notice for the current proceeding was published in the Gazette, Volume 34, No. 8, 22 June 2007, and reads, in part, as follows:*
>
>> *"Pursuant to section 5 of the Telecommunications Administrative Procedures Regulations R.R.A. T6-1 notice is hereby given that (the)Commission invites interested parties to file comments on the matter of Interconnection prices (see Part 2 below). This proceeding is related to the Commission's undertaking to review interconnection prices in*

Telecom Decision PUC 2005-102, dated 22 November 2005, Section III (Directions on Procedure), paragraphs 36 to 38.'[1]

13. In response to the public notice of 17 July 2009 and the invitation to file comments, Lime and Digicel filed initial submissions dated 18 August 2009 with the Commission. Reply comments were filed by Digicel and Weblinks dated 1 September 2009.

II Public Notice – Submissions and Replies

Digicel's Submission

14. Digicel's initial submission dated 18 August 2009 stated that the Commission's proposal to revise the effective date for reducing the mobile termination price from 1 April 2010 to 1 November 2009 was *'not in the public interest'* and expressed the view that the Commission's proposal was '*defective in several important regards'*.

15. The submission reads, in part, as follows:

    'These four issues suggest that the PUC's proposals lack supporting information and are not analysis based. It is Digicel's respectful opinion that the PUC's proposals lack the level of care and deliberation of a reasonable regulator. Indeed in several crucial respects they are in conflict with good regulatory practice. In Digicel's view the PUC's proposals are not in the Public Interest'.

16. The 'first issue' raised by Digicel is related to the matter of whether the proposed mobile termination rate (MTR) of EC$ 0.30 is more cost-oriented than the current rate of EC$0.35.

17. The 'second issue' is described as the 'squeezing of the MTR' and the 'two-sided' market and the'waterbed' effect – an hypotheses that suggests decreases in the MTR give rise to increases in retail prices. The 'third issue' raised by Digicel which they considered to be related to the 'second issue' was that the PUC's proposal was 'anti-universal service'. The third issue is described, in part, as follows:

    '…*the PUC's proposals are anti*-universal *service as price tilting in two sided platform markets involving large network externalities (i.e. universal service) benefits, prevent those benefits from being lost. Looking at mobile termination as if it was a single- sided market, as the PUC seems to have done, will force mobile network operators (MNOs) and especially Digicel which is the primary service provider to lower income subscribers in Anguilla, to reverse, where it can, many*

[1] Telecom Decision PUC 2008-101, paragraph 10, page 3.

of the pro universal service investments it has made, and to impose losses on Digicel where we cannot.'[2]

18. The 'fourth issue' identified by Digicel in their submission of 18 August is described as follows:

'Fourthly, putting the issues relating to the level of the MTR to one side, the proposal to bring forward a previously announced reduction is in conflict with accepted good regulatory practice. Good regulatory practice requires that any imposed MTR reductions are committed to well in advance of the date they would come into effect and where the overall decline is substantial, to use a glide path of reductions. The rationale for this is based both on the incentive properties of regulatory incentive mechanisms and on the fact that MNOs need time in which to adjust existing contracts, prices and internal and previously efficient subsidy systems, given reductions in their MTR.'[3] (Emphasis added)

19. In support of issue one, Digicel states that the MTR in Anguilla '*is among the lowest in the Caribbean and indeed in the developing world.'*

20. In their submission on the level of the MTR, Digicel makes reference to MTR's in India and Bangladesh and describes why cost oriented termination rates in these countries are very low by international standards and are not suitable for inclusion in a benchmarking study for Samoa or for most other countries.

21. In addressing 'issue two', Digicel describes the relationship between wholesale and retail mobile prices and the concept of two-sided markets as well as the 'waterbed' effect which they describe as the negative relationship between mobile retail and wholesale prices.

22. In describing their view of the relationship between mobile wholesale and retail prices, Digicel makes reference to a study conducted in the United Kingdom. Their submission reads, in part, as follows:

'In Figure 1 we show a graph of the results reported by London-based academics Genakos and Valletti for the United Kingdom during this period. Using sophisticated econometric methods the authors' results showed that retail price rose as MNOs' MTRs declined; in other words, retail prices rose as MNOs were earning fewer termination subsidies with which to subsidise retail services.'[4] (Emphasis added)

---

[2] Digicel Submission 'Proposed Change in Effective date of Change in the Mobile Termination Rate', 18 August 2009, pages 3 and 4.
[3] Ibid, page 4.
[4] Ibid, page 7.

23. In Section 3.3 (Negative Relationship between the MTR and universal service), identified as 'issue three' in Digicel's submission, the Company provides a set of graphs depicting the 'diffusion curve' with and without subsidies.

24. In relating the 'diffusion curve' to the level of fixed-line penetration in Anguilla, Digicel makes the following statement –'*Fixed mainlines per 100 population in Anguilla is approximately 22, and in developed economies it lies between approximately 45 and 70 mainlines per 100.'*[5]

25. In Section 3.3.2 (*Network externalities in middle and lower income economies*), Digicel makes the following statement with respect in fixed network penetration and high income economies:

    'One crucial difference between high income economies and those that are not, is that in high income economies a high level of fixed network penetration existed prior to the arrival of mobile network operators (MNOs) – typically between about 93% and 99% of households already subscribed to the fixed network.'[6]

26. In summing up the Section 3.3.2, Digicel submits the following conclusions:

    'As fixed line penetration in middle and lower income economies remains relatively low; in Anguilla it is significantly less than in developed economies, (Footnote 16) the network externalities at stake as a ratio to the population, are very much larger than in developed economies. (Footnote 17) Economists describe this as a situation where the private benefits are very much lower than the public benefits. The gap is explained by the externalities. The situation is depicted in Figure 4. These facts imply that the socially optimal subsidies, both as a proportion of sector revenues and on a per customer basis, <u>will be very substantially higher in Anguilla than they need to be in high income countries</u>.'[7] (Emphasis added)

27. The company concludes section 3.3.3 (*Two-sided markets and externalities*) with the following statement:

    'The degree to which MNOs can internalise network externalities <u>through a surcharge on top of the MTR</u> will depend to a degree on the level of calls that come from the fixed network. <u>If fixed network penetration is much less than universal, as is the case in Anguilla</u>, MNOs will also need <u>to look elsewhere for additional cross-subsidy funding in order for the level of subsidies they provide</u>

[5] Ibid, Footnote 16, page 11.
[6] Ibid, page 10.
[7] Ibid, pages 11 and 12.

not to be less than the socially optimal level of subsidies. Roaming along with international services are the most obvious other sources.' [8] (Emphasis added)

28. On the matter of *'Price tilting and Universal Service in Anguilla'*, Section 3.4, the company makes the following observations:

'Greater tilting of prices (higher termination and lower retail prices (especially for handsets) provides for a higher telephone penetration rate, enabling beneficial network externalities to be captured.
The outcome of this price-tilting in practice is strongly pro universal service. High penetration rate MNOs like Digicel in Anguilla and all around the Caribbean, sell heavily subsidised mobile handsets and match this from time to time with very low-priced call services. [9]

29. Another matter raised by Digicel is identified as 'regulatory opportunism' and is described, in part, as follows:

'Where investments involve long-lived "sunk costs"(Footnote 25) such as characterises telecommunications, electricity, gas and water networks, regulators and government need to take care so that changes in law or regulation do not render those assets unprofitable, i.e. by the authorities changing the commercial or legal circumstances such that investments made before those changes are no longer commercially viable investments over the long term.(Footnotes 26 and 27) When decisions are made that have this effect, the authorities are often said to have behaved "opportunistically". Such decisions typically have the short-run effect of transferring investors' funds to end-users. This would happen, for example, if the X value in a "price inflation" minus X price cap was set at a level that the pricecapped firm could not in practice meet without also being unable to earn a fair return on capital invested.' [10] (Emphasis added)

30. As a 'stark' example of 'regulatory opportunism', Digicel makes reference to an example in Benin where the telecommunications regulator ruled that all four mobile operators must pay some EC$ 52 million in fees as a result of a rise in the price of a license.

31. Further comments by Digicel on 'regulatory opportunism' at the conclusion of Section 4.2 (Addressing Regulatory opportunism) read, in part, as follows:

'Introducing a glide path for the MTR is a policy intended to address the opportunistic aspect of MTR regulation. The rationale for a regulator adopting a glide path for MTRs is in keeping with the understanding that it is in the long term public interest that decisions by the Authorities should not be opportunistic or

[8] Ibid, pages 12 and 13.
[9] Ibid, page 13.
[10] Ibid. pages 15 and 16.

impose windfall losses (or gains) on firms and, more generally, should avoid causing abrupt adjustments in company profitability. (Footnote 28)'[11]

32. Digicel makes reference to historical information on the use of glide paths in the United Kingdom. The company notes that the initial glide path in the U.K. commenced in 2001 and extended to 2006.

33. In concluding their submission, Digicel submits that the Commission's proposal to amend the effective date is not in the public interest. The Company identifies 'several problems' with the Commission's proposal such as the issue of natural justice, economic theory on the relationship between retail and wholesale prices in the mobile sector and 'good regulatory practice'.

34. In the concluding section of their submission, Digicel submits the following comments with respect to good regulatory practice:

> *'Finally, good regulatory practice requires that commitments to a lower MTR (which we assume here to be to a new efficient level) need to be honoured and that ample warning of such is provided <u>to minimise windfall losses</u> being imposed on MNO and to avoid abrupt rises in retail prices for consumers. Digicel also notes that many of <u>the subsidised retail offerings</u> for which <u>cross-subsidies must be paid in future</u> were incurred some time ago. The <u>most important of these are handset subsidies</u>.'*[12] (Emphasis added)

Lime's Submission

35. Lime's submission dated 18 August 2009 supports the Commission proposed change in the effective date to reduce the mobile termination rate and reads, in part, as follows:

> *'LIME agrees with the Commission's proposal to reduce mobile termination rate ("**MTR**") on 1 November 2009, instead of 1 April 2009.*
> *LIME notes that the Commission's proposal involves accelerating by five months <u>a rate change that had already been determined early in 2008. In other words, the level to which the MTR would be reduced is not at issue, but only the timing</u>. In this regard, LIME agrees that an acceleration of that change in the rate would be reasonable.'*[13] *(Emphasis added)*

36. In terms of the level of the MTR, Lime comments as follows:

> *'MTRs have been declining towards cost around the world. While the level at which the MTR might be "cost-oriented" cannot be known with certainty in the*

[11] Ibid. page 16.
[12] Ibid. page 20.
[13] Lime's submission dated 18 August 2009, page 1.

absence of a cost study which takes into account the characteristics of the networks and services in the particular jurisdiction, LIME believes that lowering MTRs to a cost-oriented level is important enough that it is reasonable for the Commission to accelerate the process in advance of that study.'

Digicel's Reply Comments

37. In reply comments dated 1 September 2009, Digicel refers to Lime's (C&W's) submission and states as follows:

> *'Digicel notes that C&W /LIME supports the accelerated reduction in the mobile termination charge (MTC) in Anguilla. This is consistent with C&W/LIME's attempts over the last few years to have MTCs reduced all around the Caribbean.'*

38. Digicel further explains the potential impact of a reduced mobile termination rate for an integrated fixed-mobile operator and states, in part, as follows:

> *'In some jurisdictions a reduced MTC represents a windfall gain to C& W. This occurs because the lower MTC reduces the price paid by C&W to terminate calls on competitors' mobile networks.*
> *If the retail price of those calls to C&W's fixed subscribers is not also reduced one for one, then C& W has made very easy cash. This does not occur in jurisdictions that regulate the origination charge (sometimes called the "retention rate") e.g. in the EU, but this is not the case in most of the Caribbean and thus this reason alone makes lower MTCs a very attractive strategy for C&W/LlME.'*

39. Another issue raised by Digicel in their reply comments was Lime's reference to Limes LRIC cost model. Digicel's comments read, in part, as follows:

> *'Digicel refutes C&W's claim that its model has provided LRIC-based rates in the ECTEL region. In a recent submission to ECTEL Digicel pointed out in detail numerous errors and shortcomings in the highly abbreviated procedures surrounding the approval of the C&W model, and in the model itself.'*

40. In concluding their reply comments, Digicel makes the following submission:

> *'Digicel urges the PUC to pay little regard to C&W's claim that the regulated MTCs in the ECTEL region, these being determined by C&W's own model, are LRIC-based values.'*

Weblinks Reply Comments

41. Reply comments filed by Weblinks dated 1 September 2009 supported the proposed change in the effective date for reducing the MTR. Weblinks comments, in part, as follows:

'Weblinks strongly supports the proposed amendment of the effective date of reduction of the Mobile Termination Rate (MTR), from 35 EC cents per minute to 30 EC cents per minute, from 1 April 2010 to 1 November 2009. Accordingly, Weblinks chose not to file any submission on the basis that we did not object to the proposed amendment.'[14]

42. In commenting on pricing and two-sided markets, Weblinks makes the following comments:

'Secondly, the arguments supporting a two-sided market lead to major distortions in the market. For example: how can a network object to an MTR of 30 EC cents as being problematic, when it offers, on a permanent or semi-permanent basis, 30 minutes free on its own platform for every 3 minutes paid for? Clearly, if a retail tariff of around 50 EC cents per minute for three minutes, giving a total retail revenue of around EC$1.50, is sufficient to cover the network's costs for 33 minutes and also generate a reasonable rate of return, then an MTR of even as low as 30 EC cents per minute is orders of magnitude higher than the real costs of providing the service.'[15]

43. Weblinks submits that another example of a departure from cost-based pricing and describes it as follows:

'Similarly, if a network can on a permanent basis offer 6,000 minutes for EC$135 per month, which equates to 2.25 EC cents per minute for calls that use the entire network end-to-end, and generate a viable rate of return doing so (which one can reasonably assume since that network had to be forced by the PUC to cease that tariff), then it must be clear that the cost of carrying only half the call (incoming calls terminating on that network) must be even lower than the retail full-network charge of 2.25 EC cents per minute.
Both of the foregoing pricing approaches depart far from cost-based pricing, and are geared towards achieving precisely the sort of market dominance that the present Telecommunications Act came into being to terminate and to prevent from recurring.'[16]

44. The Weblinks' submission raises the matter of the two-sided market and 'off-net' calling with respect to mobile networks and comments as follows:

'The two-sided market approach has resulted in a trend where networks are standing as isolated islands and consumers have multiple phones, one from each network to communicate with other subscribers to that network. The goal of public telecommunications networks has traditionally been, and should continue to be, that one device can communicate effectively and efficiently with all other

[14] Weblinks submission, 1 September 2009, page 1.
[15] Ibid. page 1.
[16] Ibid. page 2.

devices on all other networks; not that one device can communicate cheaply with other devices on one network and another device is needed to communicate cheaply with devices on another network.'[17]

45. The submission from Weblinks comments on the comparison between retail and wholesale pricing and describes it as follows:

'Thirdly, while there may be some merit to the statement that no or limited data or analysis has been provided to support the proposal to bring forward the reduction of the MTR by six months, the justification is glaringly obvious from the pricing models of the networks themselves. As pointed out above, if a network can offer 33 minutes for the price of 3, or 6,000 minutes for the price of around 250 minutes using previously standard tariffing, then the long-run incremental cost (LRIC) clearly cannot be remotely anywhere near as high as 30 EC cents per minute – two-sided markets notwithstanding.'[18]

46. In reference to the UK market, Weblinks makes the following comments:

'Finally, there is an argument being made internationally and particularly in the UK, that the MTR should be at a level similar to that paid to fixed networks. In Weblinks' view this argument has strong merit, particularly since the overall costs of building and operating mobile networks are not particularly higher, if at all, than those of fixed networks.'[19]

47. In conclusion, Weblinks makes the following submission:

'The only real arguments being put forward against the amendment of the date of reduction of the MTR are the two-sided market argument and the questioning of the data on which the LRIC is derived. Ultimately, however, the clear requirement for cost-based pricing by the Telecommunications Act, and the glaringly obviousness that the MTR is way above the LRIC of providing the service, defeats these arguments.'[20]

[17] Ibid. page 2.
[18] Ibid. page 2.
[19] Ibid. page 2.
[20] Ibid. page 2-3.

III Commission Analysis and Findings

Digicel's four issues

48. Digicel submits that the four issues identified in their submission of 18 August 2009 suggest that the proposed change in the date for implementing a planned reduction in the MTR lack supporting information and are not analysis based.

49. The Company summarizes their position as follows:

> *'These four issues suggest that the PUC's proposals lack supporting information and are not analysis based. It is Digicel's respectful opinion that the PUC's proposals lack the level of care and deliberation of a reasonable regulator. Indeed in several crucial respects they are in conflict with good regulatory practice. In Digicel's view the PUC's proposals are not in the Public Interest.'*[21]

50. In addition, the Company classifies the four issues into two distinct groups. The first three issues are described as being related to the level of the MTR whereas the fourth issue is said to be related to regulatory practice. The Company describes the categorization of the four issues as follows:

> *'<u>Fourthly, putting the issues relating to the level of the MTR to one side</u>, the proposal to bring forward a previously announced reduction is in conflict with accepted good regulatory practice.'*[22] (Emphasis added)

51. The current proceeding was announced by way of a public notice in the Gazette dated 17 July 2009. The notice reads, in part, as follows:

> *'In <u>order to adjust mobile termination rates to a more cost-oriented level in a more timely manner</u>, the Commission proposes to amend the effective date as setout in paragraph 14 of **Telecom Decision 2008-101** for the next adjustment in the mobile termination rate from 1 April 2010 to 1 November 2009.'* (Emphasis added)

Issue One – MTR of EC$ 0.30

52. The matter of the current and proposed level of the MTR was addressed in a previous Commission proceeding which was announced by way of a public notice in the Gazette dated 22 June 2007 and was concluded with the release of Decision 2008-101 dated 28 March 2008. The initial reduction in the MTR was implemented effective 1 April 2008.

[21] Op. cit. Digicel, page 4.
[22] Op. cit. Digicel, page 4.

53. As noted in the Commission public notice for this proceeding, the current proceeding is unrelated to the level of the MTR but the effective date for reducing the MTR to EC$ 0.30, the level set by the Commission in Decision 2008-101 of 28 March 2008.

54. Following an extensive MTR review proceeding that commenced in June 2007 with the Commission's public notice dated 22 June 2007 and concluding with the release of Decision PUC 2008-101 dated 28 March 2009, the MTR was set to be reduced from EC$ 0.40 to EC$ 0.35 and a further reduction to EC$ 0.30. (see in particular paragraphs 85 to 141 of Decision 2008-101)

55. Pursuant to section 10(3) of the PUC Act, a person has the option of seeking a review of Decision PUC 2008-101.

56. In addition, a further option for reviewing the MTR rate is available pursuant to paragraph 101 of Decision PUC 2008. Paragraph 101 reads as follows:

> *'The Commission will commence a review of the prices for interconnection on or before 1 July, 2012 to determine whether the prices should be adjusted having regard to the operators' operating costs and traffic trends and the overall development of the market in terms of customer base and usage trends. <u>Licensed service providers may also initiate a review of the interconnection prices by filing either a benchmarking study and/or a costing methodology to support their position for any changes in the interconnection prices either before or during the Commission's next scheduled review</u>.'*

57. Digicel did not seek a review of Decision 2008-101 nor file a benchmarking study or a costing methodology to support their position for changes in either the present or proposed MTR price.

58. In their submission of 18 August, 2009, Lime confirms their agreement with the Commission's position that the current proceeding is not related to the level of the MTR as this was already established by way of Decision 2008-101. Lime's submission reads, in part, as follows:

> *'LIME notes that the Commission's proposal involves accelerating by five months <u>a rate change that had already been determined early in 2008. In other words, the level to which the MTR would be reduced is not at issue, but only the timing</u>. In this regard, LIME agrees that an acceleration of that change in the rate would be reasonable.'*[23] (Emphasis added)

59. However, a number of matters raised by Digicel's submission of 18 August 2009 in the context of the first three 'issues' need to be addressed in order to ensure the Company is sufficiently familiar with the position of the Commission on the issues raised as well as to correct the factual record in this proceeding.

[23] Lime's submission dated 18 August 2009, page 1.

60. Digicel states that the Commission provided 'no information or analysis to support' the finding that 30 EC cents is more cost oriented than 35 EC cents. As noted above, the Commission conducted a comprehensive review of interconnection prices, including the MTR, commencing with a public notice dated 22 June 2007 and concluding with Commission Decision 2008-101 dated 22 March 2008.

61. The 2007-08 review of the interconnection prices resulted in the current and proposed MTR prices being established.

62. Digicel actively participated in both phases of the above-mentioned proceeding by way of submitting direct evidence as well as reply comments.

63. The current proceeding relates to the effective date for reducing the current MTR of EC$ 0.35 to a level of EC$ 0.30, in particular, whether such an adjustment should be implemented effective 1 November 2009 instead of 1 April 2009. The public notice for this proceeding reads, in part, as follows:

> *''In order* <u>*to adjust mobile termination rates to a more cost-oriented level in a more timely manner*</u>*, the Commission proposes to amend the effective date as setout in paragraph 14 of* ***Telecom Decision 2008-101*** *for the next adjustment in the mobile termination rate from 1 April 2010 to 1 November 2009.* (Emphasis added)

64. As noted above (paragraphs 52 to 54), this proceeding relates to the timing of an adjustment in the previous approved MTR and not to the appropriate level for the MTR.

Issue Two - MTR and retail prices

65. The Company submits that the MTR and retail prices are negatively correlated and that such a relationship is a phenomenon of a two-sided market.

66. In conclusion, the Company submits that the Commission appears to assume that mobile termination is a single-sided market and state as follows:

> *'A single-sided market understanding of the concept of cost orientation will not provide an acceptable outcome for the public. The PUC appears to assume (incorrectly) that mobile termination is a single sided market.'*

67. The matter of two-sided markets was raised by Digicel in the 2007-08 interconnection price review proceeding and the Commission commented, in part, as follows:

> *'61. The Commission concurs with Digicel's view as presented in its submission of 25 January 2008 that 'wholesale interconnection and retail prices are*

*interrelated'. Given that a mobile company is dominant with respect the termination of calls on its network, the issue of setting mobile termination prices that are fair and reasonable having regard to the requirements of the **Telecommunications Act R.S.A. c. T-6**, (**Telecom Act**), raises additional complexity in the context of a two-sided market.*[24]

68. In addition, in the interconnection price review proceeding the Commission commented as follows on the evidence filed by Digicel entitled *'The Price Theory of Two-Sided Markets'*:

> *'71. In his December 2006 paper, Weyl provides a description of the dilemma for service providers, customers and regulators with respect to setting prices in a two-sided market environment and outlines it as follows:*
>
> > *'I find that competition, price controls and subsidies always reduce the price level, defined as the sum of prices on the two sides of the market. However, price controls and competition that are "unbalanced" may raise prices on one side of the market.'*[25]
>
> *72. Weyl identifies the potential for undesirable price increases on one side of a two-sided market in the case where price controls and competition are 'unbalanced'. In other words, a balance between some degree of price control as well as effective competition is required in a two-sided market to maintain a 'balance' between prices on both sides of a two-sided market.'*[26]

69. The Company's statement that the Commission '*appears to assume (incorrectly) that the mobile market is a single sided market'* misrepresents the Commission's position on the matter of two-sided markets and interconnection prices as setout in the interconnection review proceeding; namely, in Telecom Decision PUC 2008-101.

70. On the matter of whether the MTR and retail prices are negatively correlated in the context of the Anguilla market, thus far the empirical evidence is that there is no direct relationship between changes in the MTR and retail prices at least as far as the reduction in the MTR in April 2008 does not appear to have been reflected in either an increase or decrease in retail calling prices.

71. The issue identified by Weyl regarding the need for a balance between price controls and competition is somewhat related to the issue raised by Weblinks in their comments on examples of retail prices being materially incongruent with wholesale prices.

72. This issue was addressed in the procedure initiated by Digicel's complaint regarding Lime's 'AllTalk' service. The Commission commented as follows in the AllTalk decision:

---

[24] Telecom Decision PUC 2008-101, paragraph 61, page 13.
[25] E.G. Weyl, *'The Price Theory of Two-Sided Markets'*, December 2006, Abstract, page 1.
[26] Telecom Decision PUC 2008-101, paragraphs 71 and 72, page 15.

'33. Given the estimate of expected usage by C&W of some 500 minutes and the current interconnection rates of EC 0.35 for mobile and EC$ 0.05 for fixed termination, the Commission finds the Company is not in compliance with Section 17(2) (c) of the Act which reads, in part, as follows;

> *'2. In respect of the obligations pursuant to subsection (1), every operator or service provider shall— ………….*
>
> *……. (c) provide the elements of interconnection, to other operators and service providers, in a manner that <u>is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate</u> with which it is affiliated or to any other party to which the operator or service provider provides interconnection and without regard to the types of users to be served, or the types of services to be provided, by such other operator or service provider;' (Emphasis added)*

34. In addition, Section 7 (1) (c) and (d) read as follows:

'Obligations of licensees
7. (1) Every operator or service provider shall—……

> *…. (c) <u>not discriminate unduly among similarly situated users</u> and shall transmit all communications without discrimination, subject to section 53;*
>
> *(d) <u>not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices</u> and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission;' (Emphasis added)*[27]

73. In their submission Weblinks raises the matter of retail versus wholesale prices (two-sided markets) and makes reference to Digicel's service offering – 30 minutes free (on-net) in return for the payment of three minutes, and to Lime's 'AllTalk' service (6000 minutes for EC$ 135.00 per month.

[27] Telecom Decision PUC 2009-101, 10 March 2009, paragraphs 33 and 34, page 9.

74. The provisions in s.17 2c (call termination charges –internal and external) and s. 7 (1c) and (d) (non-discriminate or cross-subsidise unfairly without prior approval of the Commission), provide a framework for considering whether certain retail and wholesale prices are in compliance with the Act.

Issue Three – Universal Service

75. In Section 3.3 (Negative Relationship between the MTR and universal service) of Digicel's submission dated 18 August 2009, the Company submits that the PUC's proposal to reduce the MTR is anti-universal service.

76. The Commission notes that Digicel, in reaching their conclusions on network externalities and the application of the 'diffusion curves', underestimates the current fixed line penetration rate for Anguilla. Digicel's states the Anguilla fixed mainline penetration rate is 22 per 100 population whereas the actual rate for year-end 2008 was 40.6 based on data filed by the service providers.[28]

77. The Commission accepts the theoretical evidence with respect to network externalities submitted by Digicel. However, accurate empirical evidence needs to be employed when reaching conclusions regarding the state of development and the potential network externalities that exist in Anguilla.

Issue Four- Regulatory practice

78. Digicel submits the following comments on the matter of 'good regulatory practice':

> *''Finally, good regulatory practice requires that commitments to a lower MTR (which we assume here to be to a new efficient level) need to be honoured and that ample warning of such is provided to minimise windfall losses being imposed on MNO and to avoid abrupt rises in retail prices for consumers.*

79. The process related to the setting and adjusting of the MTR has been a continuous one since interconnection prices were initially established by way of **Telecom Decision PUC 2005-102** dated 22 November 2005.

80. The Commission initially established a timeline for reviewing interconnection prices in paragraph 37 of **Telecom Decision PUC 2005-102** which reads as follows:

> *'37. The Commission will review the prices for interconnection <u>within two years from the date of this decision to determine whether the prices should be adjusted</u> having regard to the experience of the operators in terms of operating costs,*

[28] See also Commission 2007 Annual Report, Table 6, page 26.

volume of minutes originating and terminating on their respective networks, and the overall development of the market in terms of customer base and usage. In

undertaking such a review the Commission will require all operators to provide data on costs and minutes as well as changes in customer base and trends in usage.' (Emphasis added)

81. The notice given in **Telecom Decision PUC 2005-102** was that the Commission would review interconnection prices on or before 22 November 2007. The Commission initiated such a review by way of a public notice published in the Gazette, Volume 34, No. 8, 22 June 2007, which reads, in part, as follows:

    "Pursuant to section 5 of the Telecommunications Administrative Procedures Regulations R.R.A. T6-1 notice is hereby given that (the)Commission invites interested parties to file comments on the matter of Interconnection prices (see Part 2 below). This proceeding is related to the Commission's undertaking to review interconnection prices in Telecom Decision PUC 2005-102, dated 22 November 2005, Section III (Directions on Procedure), paragraphs 36 to 38.

82. Subsequently the Commission issued **Telecom Decision 2008-101** dated 28 March 2008 which established the current and proposed interconnection prices. The current MTR price was effective 1 April 2008.

83. In terms of maintaining a continuous timeline for reviewing interconnection prices, Decision 2008-101 contains the following directions on procedure:

    '101. The Commission <u>will commence a review of the prices for interconnection on or before 1 July, 2012</u> to determine whether the prices should be adjusted having regard to the operators' operating costs and traffic trends and the overall development of the market in terms of customer base and usage trends. <u>Licensed service providers may also initiate a review of the interconnection prices by filing either a benchmarking study and/or a costing methodology to support their position for any changes in the interconnection prices either before or during the Commission's next scheduled review.</u>' (Emphasis added)

84. As in the initial decision to establish interconnection prices, the Commission established a timeline for reviewing interconnection prices and indicated that such a review would commence 'on or before 1 July 2012'. In addition, the Commission provided license service providers with the option of initiating a review of interconnection prices by filing either a benchmarking study and/or a costing methodology to support their position for amending interconnection prices.

85. The current proceeding is consistent with the established timeline for a review of interconnection prices 'on or before 1 July 2012'. The proposed amendment to the MTR is also consistent with the price previously established in Decision 2008-101. The only amendment is to the effective date for the next adjustment by advancing the date by some five months, from 1 April 2010 to 1 November 2009.

86. The interconnection price review process has been a continuous one since the initial interconnection prices were established pursuant to **Telecom Decision PUC 2005-102** dated 22 November 2005. The process followed in this phase of the review process is consistent with the requirements of section 10 of the **Public Utilities Commission Act**, R.S.A. c. P175, (PUC Act) and section 5 of the **Telecommunications Administrative Procedures Regulations**, R.R.A. T6-1.

87. The Commission considers the proposed change in the effective date for a revision to the MTR to be consistent with the provisions of the Telecom Act, the PUC Act and the Administrative Procedures Regulations and as such to be acceptable regulatory practice and in keeping with the requirements of natural justice.

MTR – Glide path adjustments

88. In section 4.3 of their submission of 18 August 2009, Digicel makes reference to Oftel's initial glide path established in 2001. This initial glide path over the period 2001 to 2006, some five years, proposed a reduction from 22.6 to 13.6 US cents, a reduction in the order of 40%. For Anguilla, the Commission established an initial glide path to move from a level of EC$0.40 established in 2005 (14.8 US cents) to a level of EC$0.30 (11.1 US cents) over a period of seven years, a reduction in the order of 25% over the seven year period.

89. Another example of more recent developments in glide paths and the continuous adjustment process is that from Ireland where the Commission for Communications Regulation in Dublin issued a recent 'Information Notice' dated 16 April 2009 entitled *'Further reductions in mobile termination charges by Vodafone, O2, and Meteor will benefit consumers'*. The notice reads, in part, as follows:

> *'There have been MTR reductions of 40% over the four year period to 2008 across the Member States of the European Union and the European Regulators Group (ERG) believes that there are likely to be similar reductions by 2012. A 40% reduction from the current position will imply average MTRs of circa 5.00 Euro cents across Member States by 2012. Based on the most recent ERG MTR snapshot, Ireland is out of line with the EU average MTR, based on the current MTR glidepath. Therefore Vodafone, O2 and Meteor have committed to further reduce their MTR's over the next three years.'*[29]

90. The Commission notes that ComReg initially introduced a 2 year glide path for the implementation of MTRs from 1 January 2006 until 31 December 2007. It subsequently set a glide path from 1 January 2008 which was intended to reduce the rate to a level of 7.77 EU cents by 1 January 2012. However, this glide path was

[29] ComReg 09/32, 16 April 2009, pages 2 and 3.

revised in 2009 with a new target rate of EU cents 5.0 to be reached by 1 October 2012.

91. In terms of proposed MTR levels in the EU, the French regulator, ARCEP, has estimated that an efficient mobile termination rates would be between 1.00 and 2.00 euro cents per minute.[30]

92. The sole adjustment to the Anguilla glide path has been to revise the effective date for the second adjustment by five months.

93. Assuming the level of EC 30 cents (approximately 11.1 US cents) remains effective into 2012, the MTR in Anguilla will be substantially higher than the EU target of 5 euro cents (approximately 7.5 US cents), the expected EU average by 2012.

Financial Impact

94. In approving the current and proposed interconnection prices, Decision 2008-101, the Commission commented as follows on the financial impact of the proposed changes in the MTR:

> *'94. In particular, the Commission requested that each operator provide an estimate of the financial impact on its company from the proposed changes in 2008 and also in 2010. The Commission notes that both C&W and CCC will realize a positive financial effect due to the proposed reduction in interconnection rates. The impact on Digicel is estimated to be marginally negative due to the decrease in the MTR and the nature of the traffic flows*.'

95. Based on evidence filed by Digicel during the 2007-08 interconnection price review process that established the current and proposed MTR prices, and as noted by the Commission in Decision 2008-101, the impact of the revisions to the MTR on Digicel's financial position and results will be minimal.

96. The Company comments as follows on the 'regulatory opportunism':

> *''Introducing a glide path for the MTR is a policy intended to address the opportunistic aspect of MTR regulation. The rationale for a regulator adopting a glide path for MTRs is in keeping with the understanding that it is in the long term public interest that decisions by the Authorities should not be opportunistic or impose windfall losses (or gains) on firms and, more generally, should avoid causing abrupt adjustments in company profitability. (Footnote 28)'*[31]

97. The Commission notes that based on the most recent financial results filed with the Commission by Digicel (year-end 31 March 2009), the Company's financial position

[30] Europa press release, reference 1P/09/710, 7 May 2009.
[31] Ibid. page 16.

and results reflect a steady improvement over the past few years. The Commission commends Digicel's management for their prudent financial governance.

Summary of Findings

98. The Commission finds that the adjustment in the MTR to EC$ 0.30 effective 30 November 2009, in order to achieve more cost-oriented mobile termination rates in a more timely manner, is consistent with the provisions of the **Telecommunications Act R.S.A. c. T-6**, (**Telecom Act**), the **Public Utilities Commission Act**, R.S.A. c. P175, the **IAF Regulations** and the **Telecommunications Administrative Procedures Regulations.**

99. The Commission notes that based on evidence filed in this proceeding and in the interconnection reviewing proceeding that resulted in **Decision 2008-101,** the proposed change in the MTR will not impose material windfall loses or gains or material reductions in the company's profits for either C&WS, Digicel, CCC or Weblinks.

IV Directions on Procedure

100. The following directions on procedure are issued pursuant to s. 17(2) (h) of the **Telecom Act**, s. 4(2) (d) of the **IAF Regulations,** and s. 31(a) of the **Telecommunications Administrative Procedures Regulations.**

101. The Commission directs C&W, Digicel, CCC and Weblinks to amend Part 2 of the Tariff Schedule in their respective domestic interconnection agreements to reflect a MTR of EC$ 0.30. This change is to be effective on 1 November 2009.

102. Therefore the parties to the current interconnection agreements are hereby directed to file for approval by the Commission an amendment to Part 2 of the Tariff Schedule of their current Interconnection Agreement that reflects an MTR of EC$ 0.30. The parties are directed to file the amended Tariff with the Commission on or before 23 November 2009.

103. As noted in Decision 2008-101, paragraph 101, the Commission will commence a review of the prices for interconnection on or before 1 July, 2012 to determine whether the prices should be adjusted having regard to the operators' operating costs and traffic trends and the overall development of the market in terms of customer base and usage trends. Licensed service providers may also initiate a review of the interconnection prices by filing either a benchmarking study and/or a costing methodology to support their position for any changes in the interconnection prices either before or during the Commission's next scheduled review.

Issued by the Commission at the Valley, Anguilla on this 30th day of October 2009

Executive Chairman, Public Utilities Commission