# Public Utilities Commission of Anguilla

## Telecom Decision PUC 2012-101

The Valley, Anguilla – 22 March 2012

In the matter of a review of interconnection between LIME (Anguilla) Limited (LIME) and the following operators: Caribbean Cable Communications (CCC); Weblinks Limited (Weblinks); and Wireless Ventures Anguilla Limited (WVA) (Digicel)

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

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

5. Wireless Ventures (Anguilla) Limited (Digicel) is a licensed public telecommunications network operator and mobile service provider with a license granted on 5 November 2004.

6. The current interconnection prices were approved by Commission Decision 2010-101, 12 March 2010, and as recommended in Decision 2008-101, 28 March 2008 and as amended by the 'Third Variation Agreement' and the revised Tariff schedule (Version 4.) of the Interconnection Agreements between the respective parties.

## Current Interconnection Prices

7. The current interconnection prices as approved by Decisions 2008-101 and 2010-101 are as follows:

**Table 1: Current Interconnection Prices Per Minute**

| Service | EC cents | US cents |
|---|---|---|
| a. PSTN Term. Service | 4.5 | 1.67 |
| b. Mobile Term. Service | 30.0 | 11.1 |
| c. Mobile Term. Service - Transit Portion | 1.8 | 0.67 |
| d. Incoming International to PSTN Term. Service | 4.5 | 1.67 |
| e. Incoming International to Mobile Term. Service | 30.0 | 11.1 |
| f. Incoming International to Mobile Term. Service – Transit | 1.8 | 0.67 |
| g. Special Access Services –access to 999 & 911 | 3.0 | 1.11 |
| h. PSTN Transit – PSTN Transit Service | 1.8 | 0.67 |

### The Proceeding

8. In **Telecom Decision PUC 2008-101,** paragraph 101, the Commission undertook to review interconnection rates on or before 1 July 2012. 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. ….'*

### Notice and Responses

9. A Public Notice for this proceeding was published in the Gazette, Volume 38, No. 9, 15 April 2011, and reads, in part, as follows:

   *'Sections 3(d), 3(l), 7(1) (d), 17 (2) (c) and 20(3) of **the Act** and sections 14.1, and 14.5 of Lime's and Digicel's **license** provide a framework within which to review and consider revisions to the current interconnection rates.***

   *In particular, given the provisions in Section 7(1) (d) and 17 (2) (c) of **the Act** and/or Sections 14.1 and 14.5 of Lime's and Digicel's **license** and the current or proposed level of prices for Lime's AllTalk service and Digicel's unlimited local and flat rate Caribbean calling plans,….'*

10. In response to the public notice and the invitation to file comments, LIME, Weblinks and Digicel filed initial submissions with the Commission.

11. Reply comments were filed by LIME, Digicel and Weblinks. The Commission extends their appreciation to those parties that participated in this proceeding.

# II Public Notice – Submissions and Replies

## Digicel's Submission

### Substantive Matters

12. In the section of Digicel's comments entitled 'Overall Comments on Substantive Matters', the following submission is made:
    *'There is no dominance in mobile call origination in Anguilla and therefore operators are, generally speaking, entitled to price structure their retail services at any level desired within the inherent constraints and disciplines imposed by the competitive market place.'*[1]

13. In terms of the appropriateness of the current level of interconnection prices, Digicel made the following submission:

[1] Digicel Submission, 6 June 2011, page 4.

*'Interconnection rates with respect to fixed and mobile termination in Anguilla are roughly in line with rates elsewhere in the region. Digicel provided information in this respect to the Commission by email at the end of last year. The averages of the rates that Digicel provided at that time in response to the Commission's queries about rates for specific countries were over 12 US cents for mobile termination, and about 1.9 US cents for fixed termination. Moreover these rates included countries where cost models have been implemented. Given this background, there is no obvious issue with fixed and mobile termination rates in Anguilla. The trend in interconnection rates seems to be downwards currently, but there is no cause for alarm based on the current rates.*
*Furthermore, since interconnection rates are already within the regional range….'*[2]
(Emphasis added)

14. In the conclusion of the section on 'Substantive Matters', Digicel makes the following submission:
*'Perhaps the Commission is suggesting 1/ that LIME's and Digicel's retail call packages may only be sustainable if the operators take money from interconnection services to support them; or 2/ network costs are far lower than is suggested by the level of termination rates; or 3/ that if on-net prices are cheaper this represents some undesirable state of affairs that can be rectified by lower interconnection rates. Again we are left guessing as to what the Commission's argument or suggestion might be.'*[3] (Emphasis added)

## Public Notice Options

## Option (a)

15. In terms of the Public Notice and option (a), interconnection prices to be reduced from fifty to seventy-five percent, Digicel submits that such a price shock would 'destablise' the market and may have 'highly unanticipated effects'.[4]

## Mobile Termination Price

16. In terms of the mobile termination price and the relationship with retail prices, Digicel comments, in part, as follows:
*'In order to consider drawing any inferences about appropriate interconnection rates based on the retail prices of packages containing large bundles of minutes then, as a minimum, the following would have to be analysed:*
*1/ the actual take up of the packages and the level of use of the minute bundles by those who did take them up. The expectation and practice might be that only a small proportion of subscribers would take out the packages at all and, of these only a small proportion would make use of all minutes, and that the packages would be unsustainable if the case were otherwise. Indeed, only a few per cent of Digicel's customer base has taken out the packages;*
*2/ the packages would have to remain in the market place for a substantial period of time and transition from the status of being promotions to being de facto price offers. In the short term*

[2] Ibid, pages 4 & 5.
[3] Ibid, page 5.
[4] Ibid, page 5.

*operators can, and should normally be allowed to, make losses from offers as a part of the competitive dynamic in attempts to win market share.*
*3/ the overall recovery of costs across all network minutes from all retail and interconnect revenues must be considered over time – since no mobile operator is dominant in mobile origination they should be free to price retail services as they see fit and be free to run a loss on promotions if they wish.*
*4/ the level of on-going investment in the network to allow for extra capacity as opposed to simply maintaining existing capacity. It is not possible simply to infer that if interconnection prices are already set at one level and if overall traffic increases that unit termination costs have gone down. This is because it may have taken substantial new investments to make those levels of traffic possible. Digicel has in fact been investing substantial amounts over the last few years to increase capacity. In order to use a regulatory approach that enables us to take account properly of factors such as traffic and investment it would be necessary to build a cost model but that approach would take years to implement. That is why benchmarks must be used: de facto they take a holistic approach and do take account of the factors mentioned.*[5] (Emphasis added)

### Fixed Termination Price

17. Digicel proposes that the price for fixed termination be determined by a benchmarking exercise and comments as follows:
*'Again, if the Commission has concerns about fixed termination rates a benchmarking approach is the way forward.'*[6]

### Transit Price

18. On the matter of the price of transit service, Digicel comments, in part, as follows:
*'The interconnection situation in Anguilla is unusual in that LIME's mobile switch for Anguilla is located in the British Virgin Islands.*
*Thus Digicel traffic bound for LIME mobile customers in Anguilla diverts to the BVI and then returns to Anguilla.*
*However this does not entitle LIME to charge more to provide transit between customers within Anguilla.'*[7]

19. Digicel comments as follows on the matter of setting the transit price when the domestic mobile switch is not located in the local area:
*'LIME uses its mobile switch in the BVI to serve Anguilla in order to save LIME money. It cannot then force Digicel to pay for LIME's cost saving. If LIME was permitted to charge other networks more in order to save LIME money then in turn the saving that LIME makes for its Anguilla business from using a switch in the BVI would have to be passed on to other operators. What this would result in is a relatively high transit rate and an asymmetric mobile termination rate with LIME's being lower as it is using a mobile switch in the BVI to reduce its network costs.*
*In practice what we believe makes more sense is simply to limit LIME's transit charge at most to the miniscule cost that would be incurred if LIME's mobile switch were located next*

[5] Ibid, pages 5 & 6.
[6] Ibid, page 7.
[7] Ibid. page 6.

*to its fixed switch in Anguilla. This will make it possible to benchmark the transit rate (if any is allowed). Going down any other route would require a very complex, and international cost modeling exercise which might run in to difficulties in terms of regulation and obtaining information about a network that serves Anguilla but is partially located abroad.'*[8]

20. Digicel describes two examples for setting the transit price by using a benchmark based on existing prices for interconnected, co-located switches and describes these as follows:
*'Assuming that the charge must be based on co-located switches, the closest analogue to LIME's transit/link service that we have available to obtain is the price of intra building circuit rental charges for 2 MB/s circuits from BT*[9] *in the UK which is £92.88 per year. So the cost for 1.5 of these circuits (which is the capacity we have between us and LIME's mobile switch for Anguilla) divided by the traffic volumes flowing from Digicel to LIME mobile would be about US$0.000075 or US$0.0075 cents per minute. The closest example we have from the Caribbean (but even this represents a cost for transporting traffic between a fixed and a mobile switch separated by several kilometres) is the transit/link rate determined by the regulator in Trinidad and Tobago which determined it to be about 0.06 US cents per minute*[10]*. Although in the latter case this was based on an alleged cost model output from the incumbent which was not verified by the regulator.'*[11]

## Option (b) - Two Year Migration Path for Converging Mobile and Fixed Termination Prices

21. The comments from Digicel on 'Option 2' read, in part, as follows:
*'Digicel does not see how there can be any justification for this convergence of prices in principle or at this time.*
*Price models that have been used in the Caribbean for example in countries regulated by ECTEL, as well as all regional benchmarks, continue to show very significant differences in the costs of running fixed as opposed to mobile networks with the latter remaining several times more expensive.'*
*Moreover it is highly unlikely that the cost of termination on fixed and mobile networks will ever converge to exactly the same level. These two types of networks utilise different technologies and therefore there will always be cost differences.'*[12]

22. Digicel conclude their comments on the converged option as follows:
*'While <u>mobile and fixed termination rates may have become closer over the past few years there is no reasonable prospect of convergence within two years in our opinion</u> as that would, based on regional benchmarks, require mobile network costs to fall in the region of 40% or more per annum from their current levels.'*[13] (Emphasis added)

[8] Ibid, page 6.
[9] https://www.btwholesale.com/pages/cmsjsps/service_and_support/service_support_hub/online_pricing_hub/cpl_hub/cpl_pricing_hub/cpl_browsable_sections/cpl_browsable_sectionb_2.jsp (refer to customer sited interconnect)
[10] http://www.tatt.org.tt/RegulatoryFramework/RegulatoryDecisions.aspx, March 7 2008 Decision, page 58
[11] Op. cit. Digicel, pages 6 & 7.
[12] Ibid, page 7.
[13] Ibid. page 7.

### Option (c) – Migration Path to Sender Keeps All Interconnection Arrangements

23. Digicel's comments on the 'Sender Keeps All' option read, in part, as follows:
*'We are sure that the vast majority if not all consumers would be opposed to an RPP environment. A 2003 report[14] showed that at least 27 countries had moved from RPP to CPP environments by that time. None had moved from CPP to RPP. Perhaps the reason for this is simply that people prefer to take the decision themselves about whether they have to pay for something and do not like others' views about the value of the call, and the cost, being imposed on them.'*[15]

24. Digicel further comments on the reasons they reject the 'Sender Keep All' option and submit as follows:
*'We think that any move to a Sender Keeps All system would therefore be in conflict with a desire for universal service and would discriminate against poorer individuals in society. This is even more so in countries such as Anguilla where universal service is in fact provided via the mobile networks and not via the fixed network, as in the US and Europe.*
*We believe that it is economically inefficient to adopt a system of receiving party pays for reasons mentioned above.'*[16]

### Option (d) - IP-Based Interconnection sharing the Cost of a Two Way Facility

25. On the option related to the conversion to an IP-based interconnection arrangement, Digicel comments, in part, as follows:
*'It is very well established regulatory best practice worldwide that regulation should be technology neutral. Regulators should not get in to the business of picking technologies or winning technologies. Technological development is far too dynamic to be managed by a centralised bureaucracy and by people who are not involved in the day to day business of the market place. Regulators' role here should be confined to things such as allowing for adequate safeguards for consumers.'*[17]

### Option (e) - Combination of One or More of the Above Options

26. In terms of combining one or more of the options, Digicel comments as follows:
*'As indicated there is currently no basis to choose any of the above options.'*[18]

### Option (f) - No Reduction in Interconnection Prices

27. Digicel supported the option of 'no reduction in interconnection prices' and commented as follows:

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[14] Stefan Zehle, "CPP Benchmark Report", Coleago Consulting Ltd, 23 February 2003,21 of these countries are from Central and South America and the Caribbean; the remaining six in chronological order are Czech Republic, Mongolia, Cambodia, Romania, Pakistan and India.
[15] Op. cit., Digicel, page 8.
[16] Ibid, page 8.
[17] Ibid, page 9.
[18] Ibid, page 9.

*'There should be no change in interconnection prices based on any of the above factors. Rather, if the Commission wishes to look at the subject of interconnection rates, a benchmarking exercise is the way forward.'*[19]

## LIME's Submission

### Legislative Framework

28. Lime submits that the legislative framework for reviewing interconnection prices should include the Interconnection and Access to Facilities Regulations and comments as follows:
*'Relevant Legislation*
*10.LIME is somewhat surprised that, when reviewing the legislative framework for the proceeding, the Commission did not reference section 17 of the Interconnection and Access to Facilities Regulations, 2004 (the 'Regulations').*
***'Rate offerings***
*17. Every dominant operator or service provider shall, at a minimum and as otherwise required by the Commission, offer to third parties unbundled, cost-oriented rates for terminating domestic and international calls on its domestic network, which network includes the elements listed in paragraphs (a)-(c) of section 16.' [emphasis added]*
*11. LIME submits that the Commission must take this into account when making a determination in this proceeding.''*[20]

### Reciprocity

29. Lime comments as follows on the subject of reciprocity:

*'For the avoidance of doubt, LIME reiterates its support for reciprocal rates, and notes that the matter of reciprocity was already considered (and determined) in public proceedings in 2005 and 2007, and LIME does not believe that circumstances have changed since then such that this determination needs to be reviewed.'*[21]

### Telecom Decision 2008-101

30. In making reference to Commission Decision 2008-101, Lime submits the following comments:
*'13. In responding to the Commission, LIME makes reference to Telecom Decision 2008-101(the 'Decision'). From that Decision it is clear that the Commission's interest is in termination and transit rates which as closely as possibly reflect cost-oriented rates.*
*14. Similarly LIME's understanding is that all the options presented by the Commission in this Public Notice are intended to achieve a cost-oriented rate. By presenting options, it is evident that the Commission does not believe that there is only one route to achieving cost-oriented rates and by considering that the existing prices could subsist, the Commission has recognized that the existing rates could well be cost-oriented.'*[22]

[19] Ibid, page 10.
[20] LIME submission, 6 June 2011, pages 6 & 7.
[21] Ibid, page 7.
[22] Ibid, page 8.

### Regional Interconnection Prices

31. LIME makes reference to interconnection prices (EC$) in the 'Eastern Caribbean' and compares those prices with the current prices in Anguilla. The following is presented on page 9 of LIME's submission:

| | **Table 2: Domestic Termination Rates (EC$)** | | |
|---|---|---|---|
| **Countries** | **Fixed** | **Mobile** | **Transit** |
| Anguilla | 0.0450 | 0.3000 | 0.0180 |
| Dominica | 0.0586 | 0.2580 | 0.0307 |
| Grenada | 0.0407 | 0.2510 | 0.0206 |
| St. Kitts | 0.0261 | 0.2817 | 0.0296 |
| St. Lucia | 0.0350 | 0.2240 | 0.0180 |
| St. Vincent | 0.0380 | 0.2410 | 0.0180 |
| | | | |
| OECS Average | 0.0397 | 0.2511 | 0.0234 |

32. LIME comments as follows on the comparison between the prices in Anguilla and those in the 'ECTEL' countries:
*'16. This comparison demonstrates that the rates in Anguilla already compare favourably with the ECTEL rates which were arrived at using a LRIC model. As the Commission is aware, using a LRIC approach is industry best practice and produces rates which are cost-oriented.'*[23]

33. LIME submits further support for employing the 'ECTEL' prices as a suitable benchmark with the following comment:
*'19. As a general rule, LIME is concerned that 'benchmarking' rates would result in cost-oriented rates, as required by the Regulations, only with great difficulty, due to the need to adjust the foreign rates to account for geographic, economic and demographic factors. However, as LIME suggested in its 13 July 2007 comments to the Commission, the use of the rates generated by the ECTEL LRIC models as benchmarks might be appropriate, as the rates would be cost-oriented in accordance with the Regulations, and as the process would impose a reasonable and proportionate burden on operators and the regulator in line with international best practice. LIME also notes that using the rates of Eastern Caribbean as the benchmarks presents far less challenge than using countries in other geographies given that Anguilla is in the same geography and uses the same currency as the countries in the Eastern Caribbean.'*[24]

34. On the matter of how to apply the 'ECTEL' prices as a benchmark for Anguilla, LIME submits the following proposal:
*'20. Using the rates in the Eastern Caribbean would most closely satisfy the Commission's concerns, as expressed in the Public Notice, because the rates are efficient since a LRIC*

[23] Ibid, page 9.
[24] Ibid, page 10.

*model was used, the network topography is similar and the variations in the exchange rates are similar. LIME therefore proposes that there is an empirical basis for the rates in Anguilla to be no lower than the fixed termination rate, mobile termination rate and transit rate in the Eastern Caribbean. That said, LIME submits that, if the Commission applies the ECTEL benchmarks, it must use them as a whole, and not pick and choose the rates that it prefers. "Cherry picking" rates would be an inappropriate application of benchmarking, and a misuse of a LRIC model.*[25]

## Public Notice Options

35. LIME comments as follows with respect to Options A and B:
*'21. Further this demonstrates that there is no basis for the consideration of option a., which is a reduction in the order of fifty to seventy-five per cent in the current level of the above-mentioned interconnection prices at or before year-end 2011'. LIME also submits that it is premature for the Commission to consider option b., which is a two-year migration path for the convergence of the mobile and fixed termination prices by lowering the current mobile rate to the level of the current fixed rate by year-end 2013'. While LIME is aware that some European regulators are considering this convergence, and while there are some indications from the now almost eight-year long proceeding conducted by the Information and Communications Technology Authority in the Cayman Islands on its "forward-looking long-run incremental cost" model that this might indeed be appropriate,*[26] *LIME submits that the Commission would need to conduct its own cost modeling exercise in order to be sure that cost-oriented fixed and mobile termination rates in Anguilla do indeed "converge". It is certainly premature to conclude it on the basis of benchmarked rates.'* [27]

36. In response to Options C and D, LIME comments as follows:
*'22. The other options proposed by the Commission of 'Sender keeps all' and IP interconnection are respectively a function of traffic balance and the progression of technology. These approaches are not a function of rates per se although rates are likely to be affected. In the case of 'Sender keeps all', it is LIME's experience that these arrangements are concluded only on a commercial (not regulated) basis, and that they are applied only where traffic exchanged between interconnecting parties is balanced. As soon as traffic is not balanced, one party is necessarily subsidizing the other.'*[28]

37. LIME's concluding comment on the level of interconnection prices in Anguilla reads as follows:
*'23. In any event, the benchmarks from the Eastern Caribbean demonstrate that the fixed termination rate, mobile termination rate and transit rate in Anguilla should be no lower than the rates in the Eastern Caribbean.'*[29]

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[25] Ibid, pages 10 & 11.
[26] See for example, the 13 December 2010 "Fixed module" and "Mobile 3G module" posted at http://www.icta.ky/da_fllric3.php, which suggest that the fixed termination service costs is KYD 0.022 per minute and the mobile termination service cost is KYD 0.0259 per minute. It should be noted, though, that the Cayman Islands proceeding has not yet concluded.
[27] Op. cit., LIME, page 11.
[28] Ibid, page 12.
[29] Ibid, page 12.

## Weblinks' Submission

### Public Notice Options

38. Weblinks submits the following comment with respect to Option A:
*'With regard to Option (a), Weblinks strongly supports and urges an immediate reduction of the interconnection Mobile Termination Rate to the maximum possible extent. Based on Weblinks' justification for this position as explained below, Weblinks contends that:*
*(i) The reduction should be no less than 75%; and*
*(ii) The reduction should be implemented immediately. The existing unfairly high mobile termination rates should not be allowed to continue in effect, and should not remain until year-end 2011.'*[30]

39. In response to Option B, Weblinks comments as follows:
*'With regard to Option (b), Weblinks strongly supports and urges the implementation of a migration path for the convergence of mobile and fixed termination rates by lowering the mobile termination rate to the level of the current fixed rate. Weblinks feels that this should be achieved in much less than two years, but in any case by no later than year-end 2013. Weblinks' justification for this position is explained below.'*[31]

40. With respect to Option C (Sender Keeps All) Weblinks submits the following comment:
*'With regard to Option (c), a three-year migration to a sender-keeps-all interconnection arrangement, Weblinks feels that this has wide ramifications far beyond the existing concerns about the present excessively high termination price levels, and could have serious negative unintended consequences. For example, it would very likely have the effect of reducing overall inpayments into Anguilla from external countries, damaging Anguilla's economy. Weblinks has no firm position on this option at this time, and wishes to consider the matter further.'*[32]

41. In terms of Option D (IP-based Interconnection), Weblinks supports this approach and comments as follows:
*'With regard to Option (d), Weblinks contends that such an approach is highly desirable and strongly supports the implementation of such an IP interconnection facility. Weblinks' justification for this position is explained below.'*[33]

42. In response to Option E, a combination of Options A, B, C and/or D, Weblinks submits the following comment:
*'With regard to* <u>*Option (d)*, (should read Option e)</u> *choice of a combination of one or more of the other options, Weblinks strongly supports Options (a), (b), and (d) as posited immediately above.'*[34] (Emphasis added)

[30] Weblinks submission, 6 June 2011, page 2.
[31] Ibid, page 2.
[32] Ibid, page 2.
[33] Ibid, page 2.
[34] Ibid, page 2.

43. Weblinks comments as follows with respect to Option f:
*'With regard to Option (f), Weblinks considers that it is not an option to do nothing at this time in the face of the egregiously unfairly high mobile termination rate currently in force.'*[35]

## Interconnection Prices & Domestic - Regional Calling Plans

44. In support of a reduction on mobile termination prices, Weblinks makes the following comment:
*'Reduction of Termination Rates*
*It is very clear and undeniable that LIME and Digicel are, and have been for an extended period of time now (more than two years in some cases), offering mobile local and regional calling services and plans to their subscribers at rates as low as under 3 EC cents per minute on a mainstream basis. These rates apply to calls traversing LIME's and Digicel's respective networks end-to-end, both locally and across the Caribbean. Yet these operators respectively have argued that access to just half of their local mobile networks, to terminate calls incoming from other operators, justifies a terminating price of 30 EC cents per minute on a cost basis.'*[36]

45. Commenting on the effective level of retail prices associated with LIME's 'AllTalk' service plan, Weblinks submits the following:
*'**Assessment of LIME and Digicel Calling Plan Effective Retail Prices***
*LIME aggressively promoted an AllTalk plan offering 6,000 minutes for a flat fee of EC$175 per month, which equates to a retail price of 2.92 EC cents per minute if a customer uses all the minutes. LIME has argued that the effective retail price per minute is much higher than 2.92 EC cents as the average customer will not use all 6,000 minutes. However, to the best of Weblinks' knowledge LIME has not yet provided convincing evidence to support this contention. From Weblinks' own research, many LIME AllTalk customers in Anguilla used up all 6,000 minutes well before the expiry of the month.*
*Even if the average monthly usage is only 3,000 minutes, that still equates to only 5.83 EC cents per minute. At an average usage of 2,000 minutes the effective retail price is 8.75 EC cents per minute, at 1,500 minutes the effective retail price is only 11.67 EC cents per minute, and at an average usage of just 1,000 minutes the effective retail price is still a relatively very low 17.5 EC cents per minute.'*[37]

46. Weblinks makes reference to Digicel's calling plan and makes the following submission:
*'The effective retail price is even lower with Digicel's unlimited local and Caribbean calling plans. At EC$99 per month for unlimited calling, an average usage of just 750 minutes per month equates to an effective retail price per minute of 13.2 EC cents per minute. Digicel's effective retail price per minute would be as low as LIME's lowest effective retail price of 2.92 EC cents per minute at just 3,390 minutes average monthly usage.'*[38]

47. The broader regional impact of calling plans offered by LIME and Digicel is raised in the following comments by Weblinks:

[35] Ibid, page 2.
[36] Ibid, page 3.
[37] Ibid, page 3.
[38] Ibid, page 4.

*'LIME and Digicel customers in Anguilla who do not subscribe to these AllTalk and unlimited packages still benefit directly from subscription to these packages by other LIME and Digicel subscribers respectively both in Anguilla and elsewhere in the Caribbean. For example, a LIME mobile or fixed subscriber in Anguilla having a close friend who lives in, say, St. Lucia, and who subscribes to the LIME AllTalk package, can receive up to 6,000 minutes of calls from the St. Lucian friend under that friend's AllTalk package even though the Anguilla party does not subscribe to the AllTalk package.'*[39]

48. In terms of relating the current mobile termination price of EC$0.30 per minute with the attributed revenue per minute from regional calling plans, Weblinks comments as follows:

*'At the maximum 6,000 minutes of usage LIME collects only 2.25 EC cents per minute out of which to pay the termination fee due to the Anguilla end of the LIME mobile or fixed network. If LIME is only collecting 2.25 EC cents per minute on these calls, with what is LIME paying the 30 EC cents per minute termination due to its Anguilla Mobile network or the 4.5 EC cents per minute due to its Anguilla Fixed network?'*[40]

49. In summarizing their comments on the comparison between retail and wholesale prices, Weblinks submits the following comments:

*'Obviously if a network claims that its cost basis is such that a payment of 30 EC cents per minute just about covers the cost of operation for half of its local network plus a reasonable rate of return, it would not be a viable proposition for that network to employ a mainstream long-term marketing approach to retail minutes to its own customers at prices that are an order magnitude less than 30 EC cents per minute for calls that traverse the entire network (and not just the local network, but the entire Caribbean network potentially involving multiple switches and hundreds of miles of submarine and microwave transmission facilities). Yet this is precisely what is being claimed and done by LIME and Digicel, for more than two years in some cases. To picture it simply:*

| ***Price charged to an outside party to access HALF of the network*** | ***Price charged to own customers: to access ALL of network:*** |
|---|---|
| *30 EC cents/minute* | *2.92 – 18 EC cents/minute'*[41] |

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50. In terms of their preference for the Options presented in the Public Notice, Weblinks submits the following comment:

*Based on LIME's and Digicel's effective retail pricing at 2.92 – 18 EC cents per minute for profitable end-to end usage of their respective networks, profitably priced termination rates for access to half their networks should be lower than half of this range, i.e. less than 1.46 – 9 EC cents per minute.*
*This falls within Option (a) of the Notice, i.e. the reduction of the mobile termination price by up to 75% which would reduce the mobile terminating rate to 7.5 EC cents per minute.*
*This also facilitates Option (b) of the Notice, i.e. to converge the mobile and fixed termination rates by reducing the mobile rate to the current level of the fixed rate by year-end 2013. The*

[39] Ibid, page 4.
[40] Ibid, page 4.
[41] Ibid, page 5.

*mid-point of profitably priced mobile termination rates lower than the 1.46 – 9 EC cents per minute range derived from LIME's and Digicel's retail marketing would be less than 4.5 EC cents per minute. Since the current fixed termination rate is 4.5 EC cents per minute, it should be relatively straightforward to reduce the mobile termination rate from a level of 7.5 EC'*[42]

## Reply Comments – Digicel, LIME and Weblinks

### Digicel's Reply

51. On the matter of regional calling plans and minutes of use, Digicel replies as follows:
*'Digicel agrees that, as LIME appears to be indicating, only actual traffic volumes are a potentially relevant consideration in this matter. If traffic does not exist it does not have any impact on costs. If traffic does increase due to the plans it may or may not increase network costs: if traffic increased at peak hours it would require network investment to accommodate it. Even then, if an attempt is being made to go down this route for assessing network costs, the volumes would only be helpful when combined with a large number of other factors including the number of customers on the plans, overall traffic volumes in the market, and investment in additional capacity, and as a part of a full cost modelling exercise.'*[43]

52. In response to Weblink's submission as to when Digicel introduced their regional calling plans, Digicel comments as follows:
*'We note in passing that it is not true to state, as Weblinks does, that Digicel's pre-paid packages have been in place for two years. Digicel's packages have been in place for only a few weeks; and in fact the pre-paid packages were launched as a defence against LIME's "All Talk" plan only a week or so prior to this investigation being launched'*[44]

53. Digicel comments as follows on Weblinks' submission regarding the 'evidence' on the cost of mobile termination:
*'Weblinks makes the sweeping statement that there is "no evidence" to support a 30 EC cents per minute termination rate. However there is plenty of evidence from benchmarking (cost models and otherwise) to show that termination rates in Anguilla are typical and reasonable for the region.'*

54. In response to LIME's initial comments, Digicel replies regarding the requirement that termination prices be cost oriented:
*'We agree with LIME that the Commission has to bear in mind section 17 of the Interconnection and Access to Facilities Regulations, 2004 which requires rates to be cost oriented.'*[45]

55. In terms of the ECTEL costing model and in the case where a single mobile switch serves more than one country, Digicel comments as follows:
*'But we disagree with LIME's suggestion that the rates in ECTEL are best practice, although we can agree that rates should certainly not be lower than those in ECTEL countries. This is*

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[42] Ibid, pages 7 & 8.
[43] Digicel Reply comments, 6 July 2011, page 4.
[44] Ibid, page 4.
[45] Ibid, page 5.

*because, inter alia, the cost model used in ECTEL countries only provided for the cost of one mobile switch to cover all five countries. Moreover that switch is not situated in any of those countries but is situated in Barbados and is also serving Barbados.'*[46]

56. In terms of LIME's proposal to use the ECTEL costing results as a benchmark for setting Anguilla interconnection prices, Digicel comments as follows:
*'What the ECTEL cost model does prove however is that even a below cost output from a detailed costing analysis still produces termination rate figures that are not significantly different from those in Anguilla. This simply underlines that there is nothing to be greatly concerned about in terms of the rates that are in the market.'*[47]

## LIME's Reply

57. In terms of LIME's reply to Digicel's submission, LIME comments as follows:

*'LIME agrees with Digicel's position on several issues under consideration in the Public Notice. In particular, LIME agrees with Digicel that there should be no change to the interconnection rates in Anguilla because the fixed and mobile termination rates in Anguilla are already reasonable and within the range of cost-oriented rates applied in the Caribbean region.'*[48]

58. In response, LIME also expresses agreement with Digicel's position that Options (b), (c), and (d) are not acceptable and that the only acceptable option is for no change in the current interconnection prices, that is, Option (f).[49]

59. In terms of the 'transit price', LIME expresses disagreement with Digicel's position on the matter and comments as follows:
*'5. LIME disagrees with Digicel on the matter of the treatment of transit rates. Digicel contends that LIME charges more for transit in Anguilla because the mobile switch that serves Anguilla is located in BVI. Digicel proposes that the regulator should set a rate for transit which assumes that LIME's mobile switch is located next to the fixed switch in Anguilla.'*[50]

60. LIME provides the following explanation for the method employed for determine the transit price in Anguilla:
*'6. Digicel's contention that LIME charges more for transit, because the mobile switch that serves Anguilla is in BVI, is incorrect. LIME's cost model for Anguilla presumes that all switches are on- island. As such the transit rate covers only the cost of transiting LIME's PSTN network in Anguilla, and does not include a component based on the location of the mobile switch.*
*7. Also LIME notes that the Transit rate currently applicable in Anguilla is equal to that set in St. Lucia and St. Vincent, and below that applied in the other ECTEL countries.* *<u>It</u>*

[46] Ibid, page 5.
[47] Ibid, page 5.
[48] LIME Reply comments, page 1.
[49] Ibid, pages 1 & 2.
[50] Ibid, page 3.

*should be noted that those five Transit rates (in the ECTEL countries) were set using a LRIC cost model and as such Digicel, in Anguilla, is at no disadvantage.*[51]

61. In response to Weblinks' submission that interconnection prices should be reduced, Option (a), LIME replies as follows:

> *'8. LIME has provided evidence that both the fixed and mobile termination rates in Anguilla are within the range of equivalent cost-oriented rates applied in the Caribbean. However, without providing any supporting evidence, Weblinks supports the options for drastic reduction of the termination rates proposed by the Commission.*
> *9. LIME asserts that, in the absence of supporting evidence, the Commission ought to discount, if not disregard, Weblinks support for the options to reduce termination rates. The Commission must base its decisions on more than mere speculation.'*[52]

62. LIME provides the following response to Weblink's submission regarding the 'cost' of termination in Anguilla:

> *'12. On the basis of its own assessment of LIME's "cost", Weblinks is proposing the reduction of interconnection rates. This remedy however is not supported by empirical evidence of termination rates in the Caribbean, which shows that the termination rates in Anguilla are within Caribbean benchmark.*
> *13. In this regard, LIME quotes from page 5 of Digicel's response, which is instructive as to a way forward:*
>
> > *Furthermore, since interconnection rates are already within the regional range, if the Commission finds anything odd about the retail packages (we do not know exactly what the issue is however since, as indicated, no explanation has been provided), then the Commission should consider how anything could be amiss given that interconnection rates are already within a reasonable range. On the face of things there is limited if any need for concern with respect to termination rates, and consequently it is difficult to envisage that they are doing much if any harm to the market place in terms of some form of possible adverse feed through in to retail rates.'*[53]

## Weblinks' Reply

63. In reply, Weblinks comments as follows on the compensatory nature of the domestic-regional calling packages being offered and provided by LIME and Digicel:

> *'7.It is very instructive to note that neither LIME nor Digicel claim that offering these call packages is driving them into loss-making positions or bankruptcy, neither at any point in these proceedings nor elsewhere to the best of Weblinks' knowledge.'*[54]

64. Weblinks comments as follows with respect to both the viability of Digicel's calling plans and on Digicel's submission on the matter of LIME's 'AllTalk' calling plans:

[51] Ibid, page 3.
[52] Ibid, page 4.
[53] Ibid, page 5.
[54] Weblinks Reply comments, 12 July 201, page 2.

*8 .Further, Digicel's own statements challenge any argument that these very low price packages are causing loss-making situations to develop at Digicel or LIME. In its Comments, under the sub-heading "LIME's AllTalk Plans" in its Introduction, Digicel states:*

> *As a consequence, LIME has benefitted from a competitive advantage for over two (2) years. This will inevitably have resulted in Digicel's customer base being smaller that would otherwise have been the case, and a consequential reduction in Digicel's revenues which in turn has weakened our ability to compete and maintain our business in Anguilla. Digicel had no choice but to defensively launch our local and Caribbean plans … in an attempt to limit the damage that had already been done to our business.*

*9. By implication, Digicel is here saying two things that it is critically important to note:*

(i) *That LIME's very low priced packages enabled LIME to expand their customer base and increase their revenues.*

(ii) *That introducing similar (or even lower-priced) packages was Digicel's best way of repairing their loss of market share and revenues.*

*Nowhere in these arguments and statements is there any claim that Digicel could not afford to match LIME's low-priced packages because that would take the cost of calls below Digicel's cost of operating their network, nor is any financial data provided by Digicel to evidence any such claim. And that is the crux of the Commission's review of termination rates: it is clear that these operators consider that they can financially sustain offering these low retail rates on a wide and heavily marketed scale, without moving into an area where their financial viability would be threatened. And if that is the case, then their termination costs must necessarily be much lower than they have been indicating.'*[55]

65. With respect to LIME's proposal to employ the ECTEL interconnection prices as benchmarks for prices in Anguilla, Weblinks comments, in part, as follows:

*'40 ….. If the Commission were to accept benchmarking against ECTEL countries and set Anguilla's termination rates in line with ECTEL's termination rates on that basis, then LIME would have achieved a coup and succeeded in indirectly shepherding the Commission into accepting LIME's LRIC methodology, and further, would have done so without having submitted any of its ECTEL LRIC data to the Commission (as far as Weblinks is aware).'*
*41. Clearly it would be highly dangerous to the public interest for the Commission to base any terminating pricing decision in Anguilla on LRIC data submitted to another jurisdiction, designed for the specific nature of that jurisdiction, and which the Commission has never seen.'*[56]

66. In response to Digicel's comments on the use of benchmarks, Weblinks comments, in part, as follows:

*'65. While Digicel argues strenuously in favour of benchmarking, stating that "… That is why benchmarks must be used: de facto they take a holistic approach and do*

[55] Ibid, page 2.
[56] Ibid, page 8.

*take account of the factors mentioned", they fail to make any benchmarking references to sharp cuts in mobile termination rates in Europe, including cuts of 80 - 85% ordered by the regulator in the UK, and to the trend in Europe towards convergence of fixed and mobile termination rates. And since benchmarking is so important in Digicel's estimation, based on what benchmarks are the regulators in the UK and the rest of the European Union deciding to order such drastic reductions in termination prices? Are not the drastic actions of the UK and other European Union regulators unprecedented in those countries and, generally speaking, do the new rates not depart dramatically from any previously touted benchmarks?*

*66.And do not the new, dramatically lowered mobile termination rates in the UK and elsewhere in Europe themselves form a benchmark? Does this new benchmark in Europe not count, in Digicel's opinion'?*[57]

[57] Ibid, pages 12 & 13.

# III Commission Analysis and Findings

## Framework for the Current Review

67. Since setting the initial interconnection prices in 2005 (Decision 2005-102), the Commission has conducted one overall interconnection price review proceeding. The initial review was undertaken in 2007 and resulted in Decisions 2007-102 and 2008-101.

68. The Commission notes their comments in Decision 2005-102 regarding the setting of the initial level for mobile termination:

*'31. With respect to the setting of the mobile termination rate, the Commission must consider not only cost evidence but also the existing retail prices of the incumbent, C&W, as noted in Decision 2005-101 at paragraph 183 that reads as follows:*

> *'Considering C&W's current retail rates for mobile calling as well as the recommended rates in the October 2004 and the May 2005 RIO's, the Commission recommends <u>a maximum mobile termination charge of 40 EC cents per minute</u>. A rate that is approximately at the mid-point between C&W's October 2004 RIO rate of 26.9 EC cents and the rate of 55 EC cents in the April 2005 RIO. The recommended rate also falls within the range of C&W's costing results cited at page 12 of the May 2005 Cost Submission.'*

69. In this current review, interested persons were invited to comment on the following options listed in the public notice:

(a) a reduction in the order of <u>fifty to seventy-five percent</u> in the current level of the above-mentioned interconnection prices at or before year-end 2011; or
(b) a two-year migration path for the <u>convergence of the mobile and fixed termination prices</u> by lowering the current mobile rate to the level of the current fixed rate by year-end 2013; or
(c) a three-year migration path to <u>a 'sender-keeps-all'</u> interconnection arrangement by year-end 2014; or
(d) the adoption of an <u>IP-based interconnection arrangement</u> with the cost of a high-speed, two-way interconnection facility equally shared; or
(e) a <u>combination of one or more of the above options</u> over a two or three-year migration path or
(f) <u>no reduction</u> in the current level of interconnection prices.

## Legislative Framework

70. The public notice for this proceeding reads, in part, as follows:

*'Sections 3(d), 3(l), 7(1) (d), 17 (2) (c) and 20(3) of **the Act** and sections 14.1, and 14.5 of Lime's and Digicel's **license** provide a framework within which to review and consider revisions to the current interconnection rates.'*

71. In response to the public notice. LIME comments on the matter of the legislative framework as follows:

*'Relevant Legislation*
*10.LIME is somewhat surprised that, when reviewing the legislative framework for the proceeding, the Commission did not reference section 17 of the Interconnection and Access to Facilities Regulations, 2004 (the 'Regulations').*

> ***'Rate offerings***
> *17. Every dominant operator or service provider shall, at a minimum and as otherwise required by the Commission, offer to third parties unbundled, cost-oriented rates for terminating domestic and international calls on its domestic network, which network includes the elements listed in paragraphs (a)-(c) of section 16.' [emphasis added]*

*11. LIME submits that the Commission must take this into account when making a determination in this proceeding.'*[58]

72. In reply comments Digicel supports LIME's submission regarding section 17 of the Interconnection and Access to Facilities Regulations (2004) (IAF Regulations) and makes the following submission on the matter:
*'We agree with LIME that the Commission has to bear in mind section 17 of the Interconnection and Access to Facilities Regulations, 2004 which requires rates to be cost oriented'*[59].

73. The Commission concurs with LIME and Digicel regarding the inclusion of section 17 of the IAF Regulations in the legislative framework for reviewing interconnection prices and would add that an interconnection review framework includes all the provisions in the IAF Regulations and any other relevant provisions in the Act, the regulations and the Telecommunications Code.

74. The Commission notes that the term 'cost-oriented' employed in section 13 of the IAF Regulations is defined as follows in section 13 (4):
*'(4)For purposes of these Regulations, charges are "cost-oriented" if the operator's or service provider's charges for interconnection do not exceed the stand-alone cost of providing the service and are not lower than the long-run average incremental costs of providing the service, where –*

> *(a) "stand-alone cost" means the cost of providing a service independently of providing any other service or services; and*
>
> *(b) "long-run average incremental costs" means <u>the costs incurred by providing a service in addition to other service or services already provided</u>.'* (Emphasis added)

75. The Commission notes that the 'floor' for cost-oriented rates is defined as the 'long run average incremental cost'.

76. The use of a LRIC 'plus'(+) costing methodology would therefore not produce a result that represents the cost 'floor' as described in section 13(4) (b).

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[58] Op. cit. LIME, 6 June 2012, pages 6 & 7.
[59] Op. cit. Digicel Reply, 6 July 2012, page 5.

77. In their initial response to the public notice Digicel requested a 'fully documented explanation' from the Commission regarding an 'alleged link' between the pricing of retail packages and interconnection rates.[60]

78. In addition to the 'costing' criteria set out in the IAF Regulations, there is a further criteria for considering interconnection prices which is described in both section 17(2) (c) of the Act and also in section 6(2) of the IAF Regulations.

79. In the public notice for this proceeding reference is made to section 17(2) (c) of the Act which reads as follows:
*'(c) provide the elements of interconnection, to other operators and service providers, in a manner that 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 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)

80. Section 6 (1) and (2) of the IAF Regulations read as follows:
***'Non-discrimination obligation***
*6. (1) Every operator and service provider must offer to provide and provide interconnection, and the elements thereof, to other operators and service providers on a non-discriminatory basis, including with respect to charges and quality of service.*
*(2) At a minimum, the obligation set forth in subsection (1) requires that interconnection and the elements thereof be provided in a manner that 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 affiliate or to any other party to which interconnection is offered or provided.'*

81. Based on s. 17(2) (c) of the Act and s. 6(2) of the IAF Regulations, in the provision of interconnection, a service provider must do so in a 'non-discriminatory' manner and provide interconnection 'at least equal in rates' to that provided by the service provider to their own business units.

82. Section 17(2) (c) of the Act and s. 6(2) of the IAF Regulations provide a link between interconnection rates and retail prices. As a result, retail prices must be at a level which exceeds the wholesale rate. And, generally speaking, a retail price should be two times the wholesale rate in order to recover both the termination and the origination cost.

83. These provisions in the Act and the IAF Regulations are intended to avoid anti-competitive practices such as a vertical price squeeze.[61]

[60] Op. cit. Digicel, page 4.
[61] infoDev-ITU, ITU-ICT Regulatory Toolkit, section 2.3.3.

84. The matter of international wholesale prices and international settlements and the requirement for non-discriminatory treatment similar to the domestic requirement is included as a provision in the telecommunications license issued to each Anguilla service provider.

85. Section 14 of the Digicel's license reads, in part, as follows:
*'14. NON-DISCRIMINATION AND FAIR TRADING*
*14.1 The Licensed Networks shall be operated, and the Licensed Services shall be provided, by the Licensee on an arm's length commercial basis with respect to the Licensee and any and all of the bodies corporate with which it is affiliated. This Clause 14 shall not prevent the Licensee from negotiating favorable accounting and settlement rates for public telephone services with any body corporate with which it is affiliated in any other jurisdiction, for the benefit of users in Anguilla, provided that, Licensee must make wholesale rates based on such favorable rates available to other providers of telecommunications services in Anguilla on a non-discriminatory basis.'* (Emphasis added)

86. As noted in the above provision and in the case of domestic-regional calling plans, any *'favorable accounting and settlement rates'* to support such services must also be offered to other service providers.

87. Section 3 (d) and (l) of The Telecommunications Act R.S.A. c. T6 (the Act) describe certain Commission responsibilities regarding ensuring fair competition and the investigation of conduct that may be in contravention of the Act and read as follows:
*'Functions of the Commission*
***3.*** *Subject to the provisions of this Act, the Commission shall—*
*(d) be responsible, where required, for the economic regulation of licensees and authorisation holders and for ensuring fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services;*
*(l) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of a person as will enable it to determine whether and to what extent any person is engaging in conduct in contravention of this Act;'* (emphasis added)

88. Section 7 (1) (d) of **the Act** also makes reference to the prohibition of anti-competitive pricing and practices such as cross-subsidisation and reads as follows:
***'Obligations of licensees***
***7****. (1) Every operator or service provider shall—*
*(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices 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)

## Domestic-Regional Calling Plans

89. A number of Commission proceedings have occurred during the past few years which addressed certain domestic-regional calling plans and complaints related to these calling plans being offered by either LIME and/or Digicel. Plans such as ‘Talk is Cheap’, ‘Free Talk’, ‘AllTalk’ and ‘LIME Talk’ have, at any one time, been offered during the past three years.

90. Two of these proceedings were Digicel’s complaint dated 21 November 2008 related to LIME’s ‘Talk is Cheap’ (AllTalk @ EC$ 135. for 6000 minutes) calling plan and more recently, LIME’s complaint dated 15 April 2011 related to certain Digicel unlimited and Caribbean talk plans.

91. LIME’s ‘Talk is Cheap’ plan was renamed ‘AllTalk’ and LIME informed the Commission by way of a letter dated 29 January 2009 that the company intended to extend the ‘promotional’ AllTalk plan and instead of ending the promotion on 3 February 2009 the promotion would be extended to 3 March 2009. Subsequently, LIME informed the Commission that the ‘AllTalk’ promotion would become a permanent offering effective 3 March 2009.

92. In response to Digicel’s complaint of 21 November 2008 related to LIME’s ‘AllTalk’ service, the Commission directed LIME to discontinue the service and commented as follows in Decision 2009-101:

*“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;’*

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

***‘Obligations of licensees***

*(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;’*

*35.And having regard to **Section 12.10.2 of the Company’s license** which reads as follows:*

*'12.10.2 Notwithstanding Clause 12.10.1, the Commission may suspend the effectiveness of any prices if it finds that they are not fair or unreasonable, or discriminate unduly among similarly situated persons, or are otherwise in violation of this Licence, the Telecommunications Code, the Regulations or the Act.'*

*36. The Commission hereby directs C&W to immediately suspend the service offering 'AllTalk' as it is in breach of **s. 17(2) (c) and s.7 (l) (c) and (d) of the Act**."* (Emphasis added)

93. In response to Decision 2009-101, LIME filed a request dated 20 March 2009 with the Commission to review and rescind Decision 2009-101.

94. In reviewing Decision 2009-101, the Commission invited comments from interested persons and received several submissions, including one from Digicel. In Decision 2009-102, the Commission made reference to certain comments received from Digicel and commented, in part, as follows:

*'54. In reply comments Digicel, Lime's competitor in the mobile market, also supported the Commission's findings in Decision 2009-101 and made the following comment:*

*"Finally, Digicel respectfully submits that the applicant (Lime) has not shown in its application of March 20, 2009 that an error in law or in fact has led to that determination by the Commission."*[62]

*55. The Commission's main finding and conclusion in Decision 2009-101 is based on the application of s.17 (2) (c) of the Telecommunications Act and this finding is supported by Digicel's observation in reply comments that there is no error in law or fact in the Commission's determination setout in Decision 2009-101.*

*56. Digicel also noted in their reply comments that the use of 500 minutes in the Commission's example in Decision 2009-101 was not the proper test and made the following submission on this matter:*

*"Imputation tests that are based on far few(er) minutes than the maximum would not be the correct test; it would potentially enable C&W to operate an effectively anticompetitive strategy with impunity."*

*57. The Commission concurs with Digicel's position that a 'test' employing less than the maximum number of minutes advertised as available from a plan may understate the full extent of the potential damage done by a competitor if the competitor is charging some of their own customers less than they are charging Digicel to terminate calls on their mobile or fixed networks.'*

95. The Commission made the following concluding comments as a result of the review of Decision 2009-101:

*'74. Permitting companies to employ dramatically different charges for the same network function thereby providing substantially lower prices for 'on-net' calls and much higher prices for 'off-net' calls may foster the development of increasingly segregated mobile as well as fixed networks with customers being compelled to subscribe to two or more networks in order to minimize their monthly calling costs.*

*75. Such an outcome is not what was envisaged when (the) market was liberalized in 2004 having regard to the provisions in the Act and the related regulations.*

[62] Digicel's letter to the Commission dated 1 April 2009, page 4.

*76. In addition, in terms of a breach of **s.7 (1) (c)**,'not discriminate unduly among similarly situated users', the discriminatory application of mobile or fixed termination charges is not only with respect to the customers of Digicel and Caribbean Cable but also with respect to Lime's own customers. Those who subscribe to Lime's other mobile or fixed calling plans and pay retail per minute charges that reflect termination charges substantially above those paid by AllTalk customers are also harmed by such practices.*

*77.In light of the above, the Commission having reviewed Lime's submission of 20 March 2009 and their final reply comments dated 6 April 2009 as well as the other submissions received by the Commission in this proceeding, the Commission finds that there was no substantial doubt as to the correctness of the Commission's determinations in **Decision 2009-101**.*

*78. Accordingly, Lime's application to the Commission to rescind **Decision 2009-101** is hereby denied.'*[63]

96. In addition to directing LIME to cease offering their 'AllTalk' service, the Commission also advised Digicel by way of a letter dated 28 April 2009 to cease offering their 'FreeTalk' service.

97. Subsequently, by way of a letter dated 12 November 2009, LIME advised the Commission that the company intended to re-launch their 'AllTalk' service at a price of EC$175.00 per month for 6000 minutes.

98. Some seven months later, by way of a letter to the Commission dated 25 June 2010, LIME advised the Commission it intended to introduce a new 'AllTalk' plan at a lower price and with fewer minutes. The Commission advised the company by way of a letter dated 20 July 2010 to defer the introduction of the 'new' AllTalk' plan having regarding to Decisions 2009-101 and 102, however, LIME was permitted to continue to offer their existing EC$ 175.00 'AllTalk' service.

99. A further complaint, this time by LIME, regarding Digicel's 'Unlimited Local and Caribbean Talk' plans was filed with the Commission by way of a letter from LIME dated 15 April 2011. Following a review of LIME's complaint and Digicel's response dated 10 May 2011, the Commission advised both parties by way of a letter dated 29 August 2011 that LIME's complaint was dismissed and that both LIME and Digicel could offer their unlimited calling plans. The letter read, in part, as follows:

*'The Commission notes that LIME currently offers a fixed-price calling plan marketed as 'LIME Talk' (Prepaid, 3000 minutes @EC$99.00) (see Anguillian, 24 June 2011, page 7) which is similar to some of Digicel's fixed-price plans i.e. Digicel 300 plus which is also priced at EC$99.00.*

*Given the abundance of regional calling plans being offered by both LIME and Digicel both in Anguilla and throughout the region and in order to provide all service providers with an equal opportunity to introduce new offerings to consumers, the Commission hereby removes the restrictions on LIME's proposed AllTalk offerings and dismisses LIME's complaint regarding Digicel's Unlimited local and Caribbean Talk plans.*

[63] Telecom Decision PUC 2009-102, 28 April 2009, page 14.

100. Regarding the existence of regional calling plans and the potential implications for service providers in Anguilla if they are denied the opportunity to offer such plans, the Commission notes Weblinks comments on the potential impact:
*''LIME and Digicel customers in Anguilla who do not subscribe to these AllTalk and unlimited packages still benefit directly from subscription to these packages by other LIME and Digicel subscribers respectively both in Anguilla and elsewhere in the Caribbean. For example, a LIME mobile or fixed subscriber in Anguilla having a close friend who lives in, say, St. Lucia, and who subscribes to the LIME AllTalk package, can receive up to 6,000 minutes of calls from the St. Lucian friend under that friend's AllTalk package even though the Anguilla party does not subscribe to the AllTalk package.'*[64]

101. The Commission concluded their letter of 29 August 2011 to LIME and Digicel as follows:
*'In order to ensure compliance with certain sections of the Telecommunications Act such as sections 7(1)(c),(d) and 17(2)(c) and also sections 14, 16 and 17 of the Interconnection and Access to Facilities Regulations as well as sections 14.1, 14.2 and section 1.3 of Annex A of the licenses granted to all Anguilla service providers, the Commission is in the process of reviewing current interconnection prices (see Public Notice in the Gazette dated 15 April and the Commission's letter of the 20 April 2011) and will consider whether and to what extent current interconnection prices should be adjusted in order to comply with the relevant provisions in the Act and in the regulations as well as those in the licenses of the service providers.'*

102. As noted above, a parallel proceeding to this review of Interconnection Prices was initiated as a result of a complaint from LIME dated 15 April 2011. The complaint was related to Digicel's regional calling plans. The result of that proceeding was that LIME's complaint was dismissed and both LIME and Digicel were advised that their calling plans could continue to be offered.

103. The Commission notes that not only did LIME 're-launch' their 'AllTalk' service in November 2009 but Digicel also reported offering six different fixed-price calling plans in 2009. For example, one such plan marketed under the name 'Select' (*Local Digicel, Regional Digicel, Local Fixed & Mobile Lines; 20 SMS to local other mobile and unlimited SMS to 1 Digicel Number*) offered 150 minutes for EC$ 69.00 per month. Another plan, 'Unlimited'(*Unlimited to Local Digicel, Regional Digicel and Local Fixed Lines; Unlimited local SMS, Data & Email; 60 Free Minutes to Other Local Mobile)* offered 2000 minutes for EC$ 299.00 per month.[65]

104. The above review of the chronology of events related to the introduction, related complaints and current offerings of certain domestic and regional calling plans by both Digicel and LIME is presented, in part, in response to Digicel's comments in their submission dated 6 June 2011 which read, in part, as follows:

*'We were advised or we understand that, in breach of the Commission's Decision of 10th March 2009, LIME had continued to offer its AllTalk service to its existing customers. As a*

[64] Op. cit. Weblinks submission, 6 June 2012, page 4.
[65] Digicel Annual filing with the Commission dated 9 June 2010.

*consequence, LIME has benefited from a competitive advantage for over two (2) years. This will inevitably have resulted in Digicel's customer base being smaller than would otherwise have been the case, and a consequential reduction in Digicel's revenues which in turn has weakened our ability to compete and maintain our business in Anguilla.*
*Digicel had no choice but to defensively launch our local and Caribbean plans on 8th April 2011; in an attempt to limit the damage that had already been done to our business.'*[66]

105. While LIME did re-launch their 'AllTalk plan in November 2009 which is priced at EC$ 175.00 with 6000 minutes compared to the original AllTalk plan priced at EC$ 135.00 for 6000 minutes, Digicel also launched a number of regional-calling plans during 2009 and 2010 and in April 2011 launched a further set of new 'local and Caribbean' calling plans.

106. As noted above, the Commission in their letter to LIME of 25 June 2011 in response to LIME's proposal to re-price their AllTalk plan, directed LIME to refrain from re-launching their 'original AllTalk plan (EC$135) and to continue to offer their EC$175 AllTalk plan which was introduced in November 2009.

107. Notwithstanding LIME's statement in their letter of 22 July 2011 on *'maintaining the original AllTalk plan'*, based on LIME's filings with the Commission dated 11 June 2010 and 23 June 2011, LIME offered the EC$ 175.00 for 6000 minutes AllTalk package from 2009 through to 2012 as reflected on LIME's (Anguilla) website as of 8 March 2012.

108. The Commission notes the following comments submitted by Weblinks on the matter of calling plans:
***'Assessment of LIME and Digicel Calling Plan Effective Retail Prices***
*LIME aggressively promoted an AllTalk plan offering 6,000 minutes for a flat fee of EC$175 per month, which equates to a retail price of 2.92 EC cents per minute if a customer uses all the minutes. LIME has argued that the effective retail price per minute is much higher than 2.92 EC cents as the average customer will not use all 6,000 minutes. However, to the best of Weblinks' knowledge LIME has not yet provided convincing evidence to support this contention. From Weblinks' own research, many LIME AllTalk customers in Anguilla used up all 6,000 minutes well before the expiry of the month.*
*Even if the average monthly usage is only 3,000 minutes, that still equates to only 5.83 EC cents per minute. At an average usage of 2,000 minutes the effective retail price is 8.75 EC cents per minute, at 1,500 minutes the effective retail price is only 11.67 EC cents per minute, and at an average usage of just 1,000 minutes the effective retail price is still a relatively very low 17.5 EC cents per minute.'* [67]

109. In terms of Digicel's calling plans, Weblinks made the following comments:
*'The effective retail price is even lower with Digicel's unlimited local and Caribbean calling plans. At EC$99 per month for unlimited calling, an average usage of just 750 minutes per month equates to an effective retail price per minute of 13.2 EC cents per minute. Digicel's*

[66] Digicel Submission dated 6 June 2011, page 3.
[67] Weblinks' submission, 6 June 2011, page 3.

*effective retail price per minute would be as low as LIME's lowest effective retail price of 2.92 EC cents per minute at just 3,390 minutes average monthly usage.'*[68]

110. In Digicel's submission of 6 June 2011, the matter of a link between certain retail prices and wholesale (interconnection prices/rates) was raised. Digicel's comments read, in part, as follows:

*'We also wish to add at this juncture that Digicel would have expected some explanation to be provided by the Commission as the basis of any pricing investigation which attempts to justify an alleged link between retail plans and interconnection prices in Anguilla. However no explanation has been provided.'*[69]

111. The matter of a link between retail and wholesale (interconnection) prices was raised in the Commission's 2007-08 interconnection review proceeding in the context of a submission by Digicel on the matter of two-sided markets. Digicel commented as follows:

*'Digicel believes that it is inappropriate to assume that Digicel's on-net retail prices can be assumed to act as the outer bounds of Digicel's origination and termination costs. Mobile networks are two-sided markets and as such wholesale interconnection and retail prices are interrelated.*

*This means, the literature suggests, that it is, unfortunately perhaps, simply not possible to infer anything about a network's costs by looking at pricing on either side of the market. Specifically, it is not possible to infer that a network's wholesale price must be below its retail prices.'"*[70] (Emphasis added)

112. Notwithstanding what the literature may suggest, s. 17(2)(c ) of the Act and s. 6(2) of the IAF Regulations do provide such a link between a service provider's retail and wholesale prices and based on those provisions, the wholesale price must not exceed the retail price (see also paragraphs 77 to 83).

113. In the 2007-08 proceeding, the Commission commented on the matter of the interrelationship between retail and wholesale prices 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.*

*62. Some guidance on this matter is set out in the* ***Telecom Act*** *section 17(2) (c) and relates to the pricing of wholesale services involving an interconnection arrangement and reads as follows:*

> *'(c) provide the elements of interconnection, to other operators and service providers, in a manner that 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 with which it is affiliated or to any other party to which the operator or service provider provides*

[68] Ibid, page 4.

[69] Op. cit., Digicel 6 June 2011, page 4.

[70] Digicel's Response, 25 January 2008, page 4.

> <u>interconnection</u> *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)

*63. With the existence of a monopoly on mobile termination on their networks, mobile service providers have the means to employ anti-competitive or predatory pricing practices given the 'two-side' nature of mobile markets.*

*64. While the equitable distribution of cost recovery in a multi-segmented market is a complex challenge, the **Telecom Act** provides general guidance on such matters with respect to the impact on competition. Section 7(1) (d) of the **Telecom Act** reads as follows:*

> *'(d)(License* Operators *should)… not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices 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;'*

*65. The Commission supports the notion that a fully effective marketplace is the best mechanism for setting and maintaining prices at an efficient level, however, when the relationship between prices for the same service appear to be materially inconsistent, the Commission has the responsibility of raising the matter for review whether such markets are single or multi-sided, given the requirements of s.7(1)(d), s.17(2)(c), s.20(2)(c) and s.20(3) of the **Telecom Act.**[71]*

114. In terms of the two-sided nature of call termination markets, the EU Commission commented as follows in their recommendation on fixed and mobile termination rates:

*'(15) … Recognising the two-sided nature of call termination markets with costs being driven by two sides, not all related costs need to be recovered via the regulated wholesale termination charge. However, for the purposes of this Recommendation, all of the avoidable costs of providing the wholesale call termination service can be recovered via the wholesale charge, i.e. all of those costs which increase in response to an increase in wholesale termination traffic.'*[72]

115. A recent report from the OECD commented as follows on the relationship between retail calling and the termination rate:

*'There also appears to be a relationship between the number of minutes called on mobile networks and the termination rate. The United States has by far the lowest mobile wireless termination rates in the OECD area and much greater average use of mobile telephony.'*[73]

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[71] Telecom Decision PUC 2008-101, 28 March 2008.
[72] The Commission of The European Communities, '*Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU'* (Official Journal of the European Union -2009/396/EC), 7 May 2009, paragraph 15.
[73] OECD (2012), 'Developments in Mobile Termination', *OECD Digital Economy Papers*, No. 193, OECD, page 4.

## Benchmarking

116. One approach for complying with an interconnection 'benchmark', having regarding to section 17(2)(c) of the Act, section 6(2) of the IAF Regulations and section 14.1 of a company's license, is to treat the interconnection customer in the same manner as the retail customer.

117. For example, if the price for 6000 minutes per month is EC$175.00 for a retail customer and which covers both the origination and termination of a call, the same price could be offered to a wholesale customer with an allowance of 12,000 minutes per month as they only consume 'terminating' minutes.

118. Such an arrangement would also simplify the monthly billing for interconnection as the 12,000 minute allowance need only be deducted from the 'net' minutes exchanged between the companies. If the net minutes were in excess of 12,000 minutes i.e. 20,000 minutes, the company with the net deficit would pay for a second 'bundle' of 12,000 minutes, an additional EC$ 175.00.

119. In the 2007-08 review of interconnection prices, another example of an interconnection benchmark was referred to by LIME in the following submission:
*'3. C&W Anguilla submits that the Commission has effectively applied a benchmarking methodology in the Decision. However, unlike the Digicel proposal, the reference rates applied by the Commission were mobile "on-net" retail rates from Anguilla, not wholesale interconnection rates from other countries. A methodology that refers to Anguilla-sourced data is not less reasonable than one that refers to foreign data of dubious relevance to the national situation.'*[74]

120. In LIME's initial response to the Public Notice for this proceeding, reference is made to Commission Decision 2008-101 and the subject of benchmarks, LIME's comments read, in part, as follows:
*'17. In paragraph 30 of the Telecom Decision 2008-101, the Commission embraces the '.benefits of benchmarking studies for gauging the appropriate level for MTRs... .' At paragraph 55 the Commission states that 'The use of benchmarking studies to gauge the appropriateness of present and proposed MTRs as well as FTRs is, as previously noted, a viable alternative to a full costing study having regard to the time and effort required to develop a suitable costing methodology and produce useable results'.'*[75]

121. Digicel comments on the use of benchmarking in their initial response to the Public Notice and submit as follows:
*'There should be no change in interconnection prices based on any of the above factors. Rather, if the Commission wishes to look at the subject of interconnection rates, a benchmarking exercise is the way forward.'*[76]

[74] LIME Reply, 25 February 2008, page 2.
[75] LIME submission, 6 June 2011, pages 9 and 10.
[76] Op. cit., Digicel, 6 June 2011, page 10.

122. On the use of benchmarking, Weblinks comments, in part, as follows:

'**<u>Argument Against Benchmarking</u>**

*26. Both LIME and Digicel make much of comparing Anguilla's termination prices with those regionally and argue that Anguilla's interconnection rates are within the regional range. This is an unworkable recipe for things staying the same: since everyone is within the regional range, then the rates must stay so forever; who moves first to go outside the range'* [77]

123. In the absence of acceptable costing results and having regard to the time and costs associated with developing, applying and verifying such costing methods, the Commission concurs with the general position taken by LIME and Digicel on the applicability of benchmarking and re-affirms the comments in the 2008 decision which read, in part, as follows:

*'44. However, even with these recognized constraints, the use of price benchmarking is a <u>useful tool for comparing mobile and fixed termination prices in different jurisdictions</u>.*

*45. The following comments on benchmarking are contained in the InfoDev Toolkit[78]:*

*'Benchmarking has <u>two main purposes in interconnection pricing</u>. In situations where detailed cost models can be estimated, benchmarking can be used as <u>a common sense check on the results of the modeling</u>. Alternatively, <u>benchmarking can be used directly to set interconnection prices</u>.'*[79] (Emphasis Added)

## Selecting Suitable Benchmarks

124. LIME proposes the use of a set of benchmarks derived from the application of a LRIC 'plus' cost model applied in the five ECTEL countries and commented as follows in their initial submission in this proceeding:

*'19. …….However, as LIME suggested in its 13 July 2007 comments to the Commission, the use of the rates generated by the ECTEL LRIC models as benchmarks might be appropriate, as the rates would be cost-oriented in accordance with the Regulations, and as the process would impose a reasonable and proportionate burden on operators and the regulator in line with international best practice. LIME also notes that using the rates of Eastern Caribbean as the benchmarks presents far less challenge than using countries in other geographies given that Anguilla is in the same geography and uses the same currency as the countries in the Eastern Caribbean.'*[80]

125. LIME further comments on the applicability of the ECTEL rates as follows:

*'20. Using the rates in the Eastern Caribbean would most closely satisfy the Commission's concerns, as expressed in the Public Notice, because the rates are efficient since a LRIC model was used, the network topography is similar and the variations in the exchange rates are similar. LIME therefore proposes that there is an empirical basis for the rates in Anguilla to be no lower than the fixed termination rate, mobile termination rate and transit rate in the*

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[77] Weblinks Reply Comments, paragraph 26.

[78] <u>ICT Regulation Toolkit</u> <u>Module 2. Competition and Price Regulation, 3.3.4 Benchmarking Interconnection Rates</u>

[79] Anguilla PUC Decision 2008-101, 28 March 2008, page 10.

[80] LIME submission, 6 June 2011, page 10.

*Eastern Caribbean. That said, LIME submits that, if the Commission applies the ECTEL benchmarks, it must use them as a whole, and not pick and choose the rates that it prefers. "Cherry picking" rates would be an inappropriate application of benchmarking, and a misuse of a LRIC model.'*

126. Notwithstanding certain reservations on the applicability of LIME's proposed benchmarks, the Commission commends LIME for taking the initiative and filing a set of benchmarks in response to the Public Notice.

127. Based on LIME's proposed benchmarks and employing the 'average' amount as the reference mark, the current fixed termination price in Anguilla should be reduced from EC$ 0.045 to 0.040 (0.0397 rounded) and the mobile price reduced from EC$ 0.30 to 0.25 (0.2511 rounded) while the price of transit should increase from EC$ 0.0180 to 0.0234.

128. LIME makes a number of references to benchmark rates in 'the Eastern Caribbean', the Commission notes that VI and a number of other 'regional' economies such as St. Martin and Guadeloupe are included in the geographic region of the 'Eastern Caribbean', however rates for these economies were not included in the proposed benchmarks.

129. In terms of regional benchmarks, a recent consultation in the VI (Virgin Islands), where LIME's mobile switch serving Anguilla is located, commented as follows on a set of twenty-one regional benchmarks including the five ECTEL countries:
*'The TRC notes that the VI MTR of $0.05 is below the average MTR of $0.088 for the selected countries. The TRC also notes that in its recent consultation10, Arcep has proposed an MTR of US$0.033 for 2012 based on the cost model using the European Commission's recommended pure LRIC methodology with a view to reducing rates below US$0.03 in 2013 which would take the MTRs in French Guiana, Guadeloupe and Martinique to below the level of the MTR in the VI.'*[81]

130. Digicel suggests that the Commission should give consideration to all regional benchmarks and comments as follows:
'*'Weblinks makes the sweeping statement that there is "no evidence" to support a 30 EC cents per minute termination rate. However there is plenty of evidence from benchmarking (cost models and otherwise) to show that termination rates in Anguilla are typical and reasonable for the region.'*[82]

131. The Commission concurs with Digicel that there is *'plenty of evidence'* from '*benchmarking (cost models and otherwise')* for the region as noted in the VI report and the updated Digicel benchmarks for the Caribbean (Table 3) and that such evidence should be considered when developing benchmarks for Anguilla.

[81] 'Consultation on The Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks: Part II: Assessment of Regulatory Remedies', Telecommunications Regulatory Commission Virgin Islands, page 13.
[82] Op. cit. Digicel Reply Comments, page 4.

132. In this connection the Commission notes Digicel's contribution to Caribbean benchmarks for Anguilla in their submission of January 2008 during the previous interconnection review.

133. In the benchmarking study filed by Digcel which was related to the setting of benchmarks in Trinidad and Tobago, the Commission notes the following comments:

*'We have constructed a benchmark of EU mobile termination rates as carefully as possible so as to provide a proxy for Digicel's cost-based mobile termination in Trinidad & Tobago. As with any benchmarking, this exercise is necessarily inexact, but we can say with confidence that a cost-based mobile termination rate for Digicel would be in the range 10.86-15.33 US cents per minute (67.83-97.01 T&T cents per minute) with our base case benchmark estimate of 13.67 US cents per minute or 86.48 T&T cents per minute.'*[83]

134. A comparison of Digicel's Caribbean benchmarks from 2007 to the more recent MTRs in the same countries is presented below in Table 3.

**Table 3: Digicel's Caribbean Benchmarks (Updated)**

| Country | MTR (EUR cents) | MTR (USD cents)[84] | OECD (MTR)(1-12-2011)[85] (US cents) | Difference (US cents) |
|---|---|---|---|---|
| Hungary | 10.06 | 13.76 | 6.34 | 7.42 |
| Czech Republic | 10.46 | 14.31 | 6.25 | 8.06 |
| Slovenia | 17.33 | 23.70 | 5.81 | 17.89 |
| France | 8.16 | 11.17 | 2.84 | 8.33 |
| Cyprus | 3.10 | 4.24 | N. A. | - |
| Greece | 11.17 | 15.27 | 7.03 | 16.57 |
| Spain | 10.77 | 14.73 | 5.68 | 9.05 |
| UK | 8.91 | 12.19 | 4.29 | 7.90 |
| **Benchmark** | **10.00** | **13.67**[86] | **5.46**[87] | **8.22** |

135. The Commission notes the following comments in Digicel's Ovum report regarding the suitable of the proposed benchmarks for the Caribbean;

*'There is a high degree of commonality between the mobile networks of the EU and the mobile networks in T&T. All these networks use the GSM standard, the networks are constructed using the same or similar design rules, and the major network components are purchased on world markets (and thus have similar costs regardless of the country of*

[83] David Rogerson et aI. *'A benchmark for cost-based mobile termination in Trinidad & Tobago -A Report for Digicel',* Ovum Consulting, 24 August 2007, page 8.
[84] Ibid, Figure 3.1 Ovum- A report for Digicel 24 August 2007, page 7.
[85] OECD (2012), "Developments in Mobile Termination", *OECD Digital Economy Papers*, No. 193, OECD Publishing - http://dx.doi.org/10.1787/5k9f97dxnd9r-en , page 29.
[86] The rate in the MRT benchmark of cost-based mobile termination rates is 1 Euro = 1.367 USD as calculated from the data provided – Ovum Study dated 24 August 2007.
[87] The exchange rate for the OECD mobile termination rate is 1 Euro = 1.4207 USD as shown on page 29.

*deployment). Cost-based rates for mobile termination in the EU are therefore likely to be similar to those in T&T.*
*Cost differences that do exist between mobile termination in EU member states and in T&T can be minimised by careful selection of the benchmark countries from the EU. For instance, in this report we have selected the benchmark countries on the basis of similarities in GDP per head, mobile teledensity,* <u>*population, population density, urbanisation*</u> *and average salary levels. These factors have been chosen to match the criteria established by the International Telecommunications Union (ITU) in its toolkit for establishing cost-based interconnection rates.*[88 ,89](Emphasis added)

136. With respect to population size, population density, country size and numbers of mobile customers, BVI is the most comparable country to Anguilla in the Eastern Caribbean. As previously noted LIME's mobile switch in BVI also serves Anguilla.

137. The Commission notes the following comment by Digicel regarding the location of LIME's mobile switch serving the ECTEL countries:

*'….the cost model used in ECTEL countries only provided for the cost of one mobile switch to cover all five countries. Moreover that switch is not situated in any of those countries but is situated in Barbados and is also serving Barbados.'*[90]

138. In terms of 'adjustments' required when employing benchmarks LIME submits the following comments:

*'19. As a general rule, LIME is concerned that 'benchmarking' rates would result in cost-oriented rates, as required by the Regulations, only with great difficulty, due to the* <u>*need to adjust the foreign rates to account for geographic, economic and demographic factors.*</u>[91](Emphasis added)

139. In terms of the 'demographic' factors, the Commission notes the similarity between the VI and Anguilla with respect to both population size and density and also, as previously mentioned, the similarity with respect to the sharing of the mobile switch which serves Anguilla but is located in VI whereas, according to Digicel, LIME's ECTEL mobile switch is located in Barbados.

140. In terms of selecting appropriate benchmarks, LIME made the following comments in the 2007-08 interconnection review proceeding:
*'C&W Anguilla submits that the Commission has effectively applied a benchmarking methodology in the Decision. However, unlike the Digicel proposal, the reference rates applied by the Commission were mobile "on-net" retail rates from Anguilla, not wholesale interconnection rates from other countries.* <u>*A methodology that refers to Anguilla-sourced data is not less reasonable than one that refers to foreign data of dubious relevance to the national situation.'*</u>[92](Emphasis added)

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[88] http://icttoolkit.infodev.org/en/Section.2149.html
[89] Op. cit., Digicel – Ovum Consulting, 24 August 2007, pages 3 & 4.
[90] Op. cit., Digicel Reply comments, page 5.
[91] LIME submission, 6 June 2011, page 10.
[92] Op. cit., LIME Reply, 25 February 2008, page 2.

141. The Commission concurs with Digicel and LIME that employing a suitable benchmark that is representative of the Anguilla telecommunications infrastructure is a pragmatic approach to setting the level of interconnection prices.

142. In terms of criteria for selecting suitable benchmarks, LIME comments as follows in their submission of 6 June 2011:

> *18. At paragraph 56* (of Telecom Decision 2008-101) *the Commission states the characteristics of a valid benchmark, stating that 'A suitable benchmark should reflect as much as possible the 'efficient' level of cost to provide the related termination service in the national environment in which it is provided. Incongruent networks due to significant differences in network topology or irrelevant comparisons due to wide variations in exchange rates should be avoided when selecting a suitable benchmark'.'*[93] (Emphasis added)

143. As noted in the above comments by LIME, the Commission identified several criteria for identifying suitable benchmarks such as that they should '*reflect as much as possible the 'efficient' level of cost to provide the related termination service in the national environment in which it is provided…'* and also a '*similar network topology'*. These are two basic criteria – efficient level of cost in a similar national environment with a similar network topology - which could be employed to identify suitable benchmarks for Anguilla.

144. The Commission notes the previously mentioned similarities between the VI and Anguilla with respect to population size and density and the sharing of a mobile switch and that both LIME and Digicel are currently providing mobile termination in the VI at 5 US cents per minute.

145. In terms of 'the efficient level of cost' criteria, the use of a pure LRIC costing methodology as adopted by the European Community and Ofcom in the U.K is an appropriate measurement having regard to the Commission's mandate to 'promote efficiency' as set out in the IAF Regulations as follows:

*'**Functions of the Commission***

*4. (1) The Commission shall, consistent with the Act and these Regulations, encourage and, where appropriate, ensure, the adequacy of interconnection between public telecommunications networks and public telecommunications services in such a way as to –*

*(a) promote efficiency;*

*(b) promote sustainable competition;*

*(c) giving maximum benefit to end users; and*

*(d) ensuring that operators and service providers are compensated for providing interconnection services.'* (Emphasis added)

[93] LIME submission, 6 June 2011, pages 9 and 10.

**Developments in the E. U. and the U. K.**

146. The matter of employing a LRIC or a LRIC+ costing methodology was addressed by the European Commission (May 2009)[94] and by Ofcom in the U.K. (March 2011)[95].

147. The EC statement of May 2009 commented, in part, as follows:
*'(13) Taking account of the particular characteristics of call termination markets, the costs of termination services should be calculated on the basis of forward-looking long-run incremental costs (LRIC). .....*
*....The further termination rates move away from incremental cost, the greater the competitive distortions between fixed and mobile markets and/or between operators and asymmetric market shares and traffic flows. Therefore, it is justified to apply a pure LRIC approach whereby the relevant increment is the wholesale call termination service and which includes only avoidable costs.'*[96]

148. The Ofcom statement of 15 March 2011 reads, in part, as follows:
*'1.9 In our second consultation (published on 1 April 2010) we explained why, having considered the options, and in light of the responses received we thought that capping MTRs, based on some measure of cost, would lead to better outcomes for consumers than alternative approaches. We proposed that we cap MTRs based on the incremental cost of terminating a call (i.e. pure LRIC) and set maximum charges reaching a level set to pure LRIC over four years.'*
*1.10 This proposal was a change from previous MCT charge controls, under which MTRs have been set using LRIC+. The change in the way we assess cost makes a significant difference to the expected flows of funds between interconnecting providers: on the basis of charges set using pure LRIC, MTRs would, by 2015, be less than half of the charges calculated on a LRIC+ basis. We considered that adopting pure LRIC would* be *more likely to promote efficiency, sustainable competition and would confer the greatest possible benefit on consumers.'*[97](Emphasis added)

149. Based on the adoption of a pure LRIC costing methodology, Ofcom estimates a reduction in the mobile termination price in the U.K. from 2010/11 to 2014/15 of approximately 83% (4.18 to 0.69 pence per minute), a similar reduction in the MTR in Anguilla would reduce the MTR to approximately EC$ 0.05 per minute.[98]

150. This level of MTR (EC$ 0.05 – about US$ 0.0185) would be similar to that proposed by the regulator (ARCEP of France) employing a pure LRIC approach for several Caribbean economies (Guadeloupe and Martinique) and also proposed a MTR below US$ 0.03 by 2013 as noted in the Virgin Island TRC report (see paragraph 129 above).

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[94] The Commission of The European Communities, '*Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU'* (Official Journal of the European Union -2009/396/EC), 7 May 2009.
[95] *'Ofcom Wholesale mobile voice call termination Statement (Non Confidential version)'*15 March 2011.
[96] Op. cit. European Commission Recommendation, paragraph 13, 7 May 2009.
[97] Op. cit. Ofcom, Executive Summary, page 2.
[98] Ibid, Ofcom, Executive Summary, page 3.

151. The above reference to developments in Europe and the adoption of a 'pure' LRIC costing methodology raises the question of whether benchmarks using a pure LRIC methodology would be more consistent with the requirements in the Interconnection Regulations to use the 'average long run average incremental cost' as specified in the **Telecommunications Interconnection and Access to Facilities Regulations R.R.A. c. T6-4 (IAF Regulations)** and which defines the incremental cost to be *'the costs incurred by providing a service in addition to other service or services already provided.'* This description is more congruent with a pure 'LRIC' costing methodology and not to a 'LRIC plus' methodology.

## LIME's LRIC Cost Model for Anguilla

152. In the initial 2005 interconnection proceeding, LIME (C&W) submitted a costing study which appears to describe a pure LRIC approach. The following comments were submitted by LIME in describing the resulting 'floor' cost for the overall costing range:

> *'For the LRIC floor, we exclude all subscriber driven cost, support costs and overhead. We also increase the FAC volumes by the amount competitors are forecasted to terminate on the C&W Network. This figure works out to be #x.xxx# EC$.*
> *Thus, the PLMN termination access charge in the Agreement of .55 EC$ falls between the stand-alone and LRIC of #x.xx# and #o.xx# EC$ respectively'*[99]

153. The resulting LRIC cost floor for the MTR in LIME's 2005 Cost Model result for Anguilla is substantially lower than the 'OECS' (ECTEL) average of 0.2511 EC$ reflected in LIME's proposed benchmarks in this proceeding (see Table 2, page 8) and, as to be expected, is much closer to the range of results produced when a pure LRIC costing methodology is employed as for example in Table 3, page 32 (OECD 2011).

154. As noted above, Ofcom in the U.K. describes the impact of adopting a pure LRIC approach on mobile termination prices to be as follows:

> *'...MTRs would, by 2015, be <u>less than half of the charges calculated</u> on a LRIC+ basis. We considered that adopting pure LRIC would be more likely to promote efficiency, sustainable competition and would confer the greatest possible benefit on consumers.'*[100]
> (Emphasis added)

155. Applying a similar adjustment to the current OECS (ECTEL) average MTR of EC 25.11 cents would result in a rate of 12.56 EC cents or 4.65 US cents by 2015.

[99] C&W Cost Submission (Abridged Version) – 19 May 2005, page 12.
[100] Op cit. Ofcom, Executive Summary, page 3.

## Mobile Termination Rate

156. Given the previous cost results filed by LIME in the 2005 interconnection proceeding; the 2011 level of Digicel's Caribbean benchmarks (Table 3); and the current MTR in VI as well as the provisions in s. 17(2)(c ) of the Act and those in s. 4(1), 6(1) and (2) and 13 (4)(b) of the IAF Regulations and having regarding to the current level of prices for certain domestic-regional calling packages offered by both Digicel and LIME, the current MTR level of EC 30 cents is neither fair nor reasonable.

157. Having regard to the above-mentioned factors and in order to maintain a reasonable glide-path relevant to developments in other jurisdictions that employ a pure LRIC approach, the Commission recommends that a reasonable level for the MTR in Anguilla would be EC$ 0.20 in 2012 and EC$0.10 in 2014.

158. The Commission considers the recommended MTR rates to be fair and reasonable having regard to the above findings and analysis. Section 20(3) of the Telecom Act provides a reference point for such decisions and reads as follows:

*'(3) A service provider shall <u>provide rates that are fair and reasonable</u> and <u>shall not discriminate</u> unduly among similarly situated persons, including the service provider and any body corporate with which it is affiliated.'*(Emphasis added)

## Fixed Termination Rate

159. The Commission notes the following comments related to the FTR submitted by LIME's in their 2005 cost study:

*'These adjustments produce a termination cost of ### EC$. We freely admit that a proper cost-volume analysis of service provision might result in a LRIC below this figure. However, this approach gives us a conservative proxy for the bottom end of our sought-after range. Thus, the PSTN terminating service charge in the Agreement of ### EC$ falls between the stand-alone and the LRIC of ### and ### EC$ respectively.'*[101]

160. The Commission notes the following comments submitted by Digicel regarding the MTR/FTR ratio:

*'Certainly fixed and mobile costs are getting closer together but absolute convergence in terms of a situation where the fixed and mobile costs are exactly the same seems unlikely.'*[102]

161. The current FTR of 4.5 EC cents is slightly below the lower end of LIME's 'sought-after range' in the 2005 Anguilla cost study. However, having regard to the '*conservative proxy'* for the bottom end of the range and the proposed adjustments in the MTR, a reduction in the price from 4.5 EC cents per minute to 4.0 in 2012 and 3.0 in 2014, is not unreasonable.

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[101] Cable & Wireless (West Indies) Limited, Cost Submission, Cingular/C&W Interconnection Agreement, 19 May 2005 (Abridged Version), page 10.
[102] Op. cit. Digicel, 6 June 2011, page 7.

## Transit Rate

162. Digicel's proposal for setting a revised transit price provides two examples, one from the UK and another from Trinidad and Tobago. Digicel comments as follows:

*'Assuming that the charge must be based on co-located switches, the closest analogue to LIME's transit/link service that we have available to obtain is the price of intra building circuit rental charges for 2 MB/s circuits from BT*[103] *in the UK which is £92.88 per year. So the cost for 1.5 of these circuits (which is the capacity we have between us and LIME's mobile switch for Anguilla) divided by the traffic volumes flowing from Digicel to LIME mobile would be about US$0.000075 or US$0.0075 cents per minute. The closest example we have from the Caribbean (but even this represents a cost for transporting traffic between a fixed and a mobile switch separated by several kilometres) is the transit/link rate determined by the regulator in Trinidad and Tobago which determined it to be about 0.06 US cents per minute*[104]*. Although in the latter case this was based on an alleged cost model output from the incumbent which was not verified by the regulator.*[105]

163. Digicel's example from the UK employs a retail price for intra building circuit rentals whereas the Caribbean example is the price set by the regulator in Trinidad and Tobago which was 0.06 US cents. The Commission notes the UK example provided by Digicel employs a retail price to determine the wholesale (interconnection) price.

164. In response, LIME replies on the matter of the transit price, in part, as follows;

*'5. LIME disagrees with Digicel on the matter of the treatment of transit rates. Digicel contends that LIME charges more for transit in Anguilla because the mobile switch that serves Anguilla is located in BVI. Digicel proposes that the regulator should set a rate for transit which assumes that LIME's mobile switch is located next to the fixed switch in Anguilla.*

*6. Digicel's contention that LIME charges more for transit, because the mobile switch that serves Anguilla is in BVI, is incorrect. LIME's cost model for Anguilla presumes that all switches are on-island. As such the transit rate covers only the cost of transiting LIME's PSTN network in Anguilla, and does not include a component based on the location of the mobile switch.'*[106] (Emphasis added)

165. The Commission notes LIME's reference to *'LIME's cost model for Anguilla'*, however, based on LIME's submission in this proceeding, their proposal is to employ benchmarks based on a LRIC 'plus' cost model employed in the ECTEL economies and not the pure LRIC cost model employed to set rates in some other Eastern Caribbean economies such as Guadeloupe and Martinique or the pure LRIC model employed by LIME in their 2005 Anguilla cost study.

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103 https://www.btwholesale.com/pages/cmsjsps/service_and_support/service_support_hub/online_pricing_hub/cpl_hub/cpl_pricing_hub/cpl_browsable_sections/cpl_browsable_sectionb_2.jsp (refer to customer sited interconnect)

104 http://www.tatt.org.tt/RegulatoryFramework/RegulatoryDecisions.aspx, March 7, 2008 Decision, page 58

105 Op.cit. Digicel, 6 June 2011, pages 6 & 7.

106 Lime reply, 7 July 2012, page 3.

166. The benchmarks proposed by LIME have an average transit price of 2.34 EC cents (US cents 0.86) compared to the Trinidad and Tobago benchmark proposed by Digicel of 0.06 US cents. The current transit price in Anguilla is 1.8 EC cents (0.67 US cents).

167. In order to provide a glide-path to lower and more efficient transit prices, the Commission proposes a reduction to 1.0 EC cents (0.37 US cents) in 2012 and a further reduction to 0.5 EC cents (0.19 US cents) in 2014.

## Summary of Findings

168. The Commission notes the similarity between section 4(1) of the IAF Regulations and the comments in the Ofcom statement regarding the adoption of a pure LRIC approach. The Ofcom comments read as follows:

*'1.13*
*In this statement, we set out our decision to adopt a charge control for the four national MCPs based on pure LRIC. In deciding to adopt pure LRIC, we have taken the approach we consider will best:*
*1.13.1 promote efficiency;*
*1.13.2 promote sustainable competition in the retail mobile market in the UK; and*
*1.13.3 confer the greatest possible benefits on end-users of public electronic communication services.*[107] (Emphasis added)

169. Section 4(1) of the IAF Regulations reads as follows:

*'Functions of the Commission*
*4. (1) The Commission shall, consistent with the Act and these Regulations, encourage and, where appropriate, ensure, the adequacy of interconnection between public telecommunications networks and public telecommunications services in such a way as to –*

*(a) promote efficiency;*

*(b) promote sustainable competition;*

*(c) giving maximum benefit to end users; and*

*(d) ensuring that operators and service providers are compensated for providing interconnection services.'* (Emphasis added)

170. The Commission finds that given the provision to 'promote efficiency' and the glide-path for interconnection prices in Anguilla from 2005 to 2011 as well as the requirement that such prices be cost-based which includes a pure LRIC cost result as part of the cost-based range, the most suitable benchmarks for identifying the lower end of the range are those based on a pure LRIC costing methodology.

171. Therefore, having regard to the above analysis and findings and pursuant to s. 17(2) (c) of the Act and s. 4(1), 6(1) and (2) and 13 (4) (b) of the IAF Regulations, the following recommended prices are deemed to be fair and reasonable.

[107] Op. cit. Ofcom Statement, Executive Summary, page 3.

### Recommended Interconnection Rates

172. The Commission recommends the following changes in the level of interconnection rates:

**Table 3: Proposed Interconnection Rates Per Minute**

| Service | Current Price | | Price Effective 1 September 2012 | | Price Effective 1 September 2014 | |
|---|---|---|---|---|---|---|
| | EC cents | US cents[108] | EC cents | US cents | EC cents | US cents |
| a. PSTN Term. Service | 4.5 | 1.67 | 4.0 | 1.48 | 3.0 | 1.11 |
| b. Mobile Term. Service | 30.0 | 11.1 | 20.0 | 7.40 | 10.0 | 3.70 |
| c. Mobile Term. Service - Transit Portion | 1.8 | 0.67 | 1.0 | 0.37 | 0.5 | 0.19 |
| d. Incoming International to PSTN Term. Service | 4.5 | 1.67 | 4.0 | 1.48 | 3.0 | 1.11 |
| e. Incoming International to Mobile Term. Service | 30.0 | 11.1 | 20.0 | 7.40 | 10.0 | 3.70 |
| f. Incoming International to Mobile Term. Service – Transit Portion | 1.8 | 0.67 | 1.0 | 0.37 | 0.5 | 0.19 |
| g. Special Access Services –access to 999 & 911 | 3.0 | 1.11 | 2.50 | 0.93 | 2.0 | 0.74 |
| h. PSTN Transit – PSTN Transit Service | 1.8 | 0.67 | 1.0 | 0.37 | 0.5 | 0.19 |

## IV Directions on Procedure

173. The following directions on procedure are issued pursuant to s17 (2) (h) of **the Act**, s4 (2) (d) of the **IAF Regulations 2004,** and s31 (b) of the **Telecommunications Administrative Procedures Regulations.**

174. Further comments on the matter of interconnection prices, this decision, including the recommended interconnection prices, and any other relevant matters may be filed by interested parties including C&W, Weblinks, WVA Ltd. and CCC on or before 30 April 2012. Reply comments are due on or before 30 May 2012.

[108] Based on an exchange rate of EC$ 2.7 per US$ 1.00.

175. Initial submissions and/or reply comments may be filed with the Commission via email with a copy provided to each of the licensed service providers.

Issued by the Commission at the Valley, Anguilla on this 22th day of March 2012

William Withers

Executive Chairman, Public Utilities Commission