

## **Comments on AT&T Corp.'s response to OUR's Document on the "Assessment of Dominance in Mobile Call Termination"**

### **Introduction**

Moscel Jamaica Limited ("Digicel") welcomes this opportunity to respond to comments from the other respondent to the OUR's document entitled "Assessment of Dominance in Mobile Call Termination – Supplementary Consultative Document". Digicel has also taken the opportunity to comment on relevant public statements that have been made by the JCTA since the deadline for responses and about the surprising lack of response from C&W.

### **Summary**

Digicel understands that AT&T Corp. ("AT&T") is an operator which is functionally separate from AT&T Wireless and has limited investment at best in Jamaica. Its response should be considered in that light. AT&T's motivation is clearly about benefiting its business abroad and not about the interests of Jamaican consumers or the Jamaican telecommunications sector.

***AT&T's retail rates for calling Jamaica are around 25 times the cost of termination,*** and termination charges in Jamaica are actually, or close to, the lowest in the world. Consequently AT&T has no justification whatsoever for lobbying for lower termination rates in Jamaica.

AT&T's attached paper on mobile termination costs is irrelevant. In the absence of an extremely complex modeling exercise for individual operators international benchmarks are the only way to make some kind of reasonable assessment about the reasonableness of termination rates. Benchmarks show just how low Jamaican mobile termination rates are by international standards.

Digicel believes that AT&T's response serves to illustrate just how unreasonable its lobbying can be. AT&T's response, especially in the light of its international retail pricing behaviour, should be taken as an indication that it does not have a credible policy with respect to international termination rates.

### ***AT&T is Only Looking to benefit its Operations Overseas***

AT&T makes it clear from the outset that it is not interested in the welfare of Jamaican consumers or the Jamaican telecommunications sector. AT&T states:

*“AT&T provides a large volume of telecommunications services to Jamaica and has an interest in this proceeding because excessive mobile termination charges in Jamaica have a very negative impact on AT&T’s customers who make calls to Jamaica.”*

More frankly put, AT&T makes a lot of money out of bringing calls into Jamaica and it wishes to maximize the margin between the massive retail charges of several US dollars per minute it charges its own customers for calls to Jamaica by reducing the miniscule in comparison termination charges it has to pay to Jamaican operators. Indeed the stupendous level of AT&T’s retail charges (detailed below) to its own customers for calling Jamaica makes one wonder how it can be acting in their interests. Digicel believes that the FCC would consider AT&T’s excessive retail charges to be an indication of market failure in the USA. The OUR can confirm this in discussions with the FCC. It would be very interesting to note what the result would be if the FCC were to carry out a cost analysis of AT&T’s retail margin.

### ***The OUR’s Duties***

As the OUR knows, its prime duty is to promote and protect the interests of the Jamaican public. Therefore, while it is interesting to note that AT&T has asked the OUR to take into account the welfare of consumers in another jurisdiction, the OUR’s duty is to look after Jamaican interests. If AT&T had tried to argue that high international termination rates had a negative impact on Jamaican customers who received these calls then this argument might at least have been worth considering. However, even if AT&T had taken this approach it would face serious credibility issues given (a) the extremely low level of international termination rates in Jamaica and (b) the extremely high retail rates charged to its customers for calling Jamaica.

### ***AT&T’s Extortionate Retail Rates for Calling Jamaica***

Digicel looked at AT&T’s web site to determine how much AT&T customers have to pay to call Jamaica. The most straightforward and transparent charges relate to AT&T’s International Direct Dialed Basic Service. Digicel notes that AT&T has chosen to bury these prices deep into its web site behind multiple links. It appears that AT&T does not want to draw attention to them.

The service is explained at:

<http://www.serviceguide.att.com/ACS/ext/doc/Intl%20Basic%20DDD%20%2D%20guide%2Edoc>

Base prices can be seen at:

<http://www.serviceguide.att.com/ACS/ext/od.cfm?OID=863&menu=102>

To these must be added a “mobile termination surcharge” (among other charges) details of which can be seen via links on the explanatory page (see the first link above). It

should also be borne in mind that AT&T customers will have to pay for access to a fixed line before they can make any calls. Digicel approximates that the prices for calling Jamaica using AT&T are therefore in the order of \$3.50 per minute. Roughly speaking therefore ***AT&T's retail charges to Jamaica are 25 times, or 2,500% of, the cost of termination in Jamaica.*** This illustrates that AT&T can have no justification at all for lobbying for lower termination rates in Jamaica when it is depressing traffic volumes into the island through its remarkably high retail charges. It even seems possible that AT&T is using high international retail rates to Jamaica to subsidise calls to other countries and/or local and national calls within the United States. If AT&T is really concerned about the price paid by its customers, it clearly needs to start by reducing its retail margins.

Digicel in its submission has, of course, already highlighted how well Jamaica compares with other jurisdictions when it comes to mobile termination. This clearly highlights that the costs of international mobile termination in Jamaica are extremely low by international standards. It is also worth noting that the benchmark set by the FCC for calls to Jamaica is substantially higher than Digicel's current rates.

Digicel is aware that AT&T has some international calling plans on offer. However, without having full details of all AT&T calling volumes under those plans and all additional price inputs it is not possible to say what rates are effectively being charged to customers under them.

### ***AT&T's Submission on Termination Costs***

Firstly, we note that AT&T's analysis is not based on costs at all but on a mistaken assumption that it is reasonable to proxy mobile termination costs based on halving the mobile on-net retail price. This is in spite of it saying that a LRIC approach is the only way to assess costs.

AT&T submitted what it claimed to be a reasonable analysis of what cost based termination rates would be for a range of countries. AT&T stated the following:

*"AT&T's own recent cost ceiling study...shows that cost-orientated rates for incoming international calls terminating on mobile networks in Jamaica, including international transport and gateway switching, are no higher than US\$0.0465."*

Digicel submits that this is an incredible assertion. Cost modeling is an extremely complex process that requires highly detailed information with respect to an operator's network; its capex and opex programs; topology of the country in question; cost of capital; the extent to which economies of scale are or are not effective etc. The vast majority of all this information is only privy to the operator in question and would take a lengthy period of time to collate and assess for modeling purposes. In the absence of such information, which is obviously confidential to Digicel, it is generally accepted that international benchmarking provides a good guide as to whether or not termination rates are reasonable. As adequately displayed in Digicel's submission, Jamaica has mobile termination rates among the lowest in the world. Consequently, the figure quoted by AT&T would appear to be self-serving propaganda. If any weight were given to that figure it could only have detrimental effects on Jamaican telecommunications providers and customers and would help AT&T to make even higher margins on calls to Jamaica.

It is also worth noting that AT&T's views on mobile termination rates may be skewed somewhat by the fact that, as noted by Franklin Brown of the OUR at a recent conference in Suriname, its former affiliate AT&T Wireless had to pay a mobile licence fee of just J\$2.31 per head of population, while Digicel had to pay 800% (J\$18.27) more for the same privilege.

### ***AT&T's Views on Recent OUR Actions in the Realm of Settlement Rates***

AT&T states:

*"In particular, AT&T again urges OUR not to proceed with the proposed minimum charge for international calls terminating on mobile networks in Jamaica."*

Digicel again notes AT&T's heavy focus on international termination only. This clearly signals where AT&T's main concern in the Jamaican mobile market lies i.e. on traffic it is sending into Jamaica. Digicel would urge the OUR to take this into account as part of its function to act in the public interest. Operators that have invested heavily in infrastructure in Jamaica are the ones that are providing jobs, paying taxes and boosting GDP for the country. What will cheaper international termination rates mean for the Jamaican people? Simply that revenues that should be flowing into Jamaica would be transferred to AT&T, thus undermining investment and innovation in Jamaican telecommunications. As already demonstrated, lower mobile termination rates would simply enable AT&T to earn even higher margins than it is already doing. Doing the right thing in the Jamaican public interest is therefore very much an open and shut case.

AT&T also states that the minimum settlement rate for international calls to mobile networks of US\$0.169 proposed by the OUR previously "far exceeds market-based rates for this traffic". We can only assume that AT&T is trying to pull the wool over the eyes of the OUR as AT&T knows that its statement is not true. Illegal bypass operators are the only ones which could provide significantly cheaper rates.

### ***Efficient Investment***

AT&T also states that:

*"Excessive mobile termination charges foster inefficient investment"*

If AT&T really believed mobile termination charges in Jamaica were excessive, which is tantamount of course to an abuse of dominance, it should have sought redress under Jamaican competition law. It has not done so because it knows that its arguments have no merit. AT&T's unsupported statement can easily be countered by saying that underpriced mobile termination will foster inefficient investment by transferring revenues to where they can provide less benefit.

### ***AT&T's Reference to the USTR***

Digicel believe it has adequately dealt with the relevance of the views and 'objectivity' of the USTR in its own submission on the consultation. The USTR is following, as can be expected, a partisan trade policy line to benefit US companies. Its views should therefore have no weight in the case before the OUR.

## ***AT&T's Views on the OUR's Methodology***

AT&T states that:

*“OUR properly analysed the Relevant Market and the Need for Requirements that MNOs provide cost based rates”*

Digicel finds it ironic that AT&T can be satisfied that the market definition has been carried out properly given its views in other jurisdictions. For example we refer to the Connecticut Department of Public Utility Control's Procedural Order outlining its approach to implementing the provisions of the Federal Communications Commission's Triennial Review Order<sup>1</sup> in Connecticut. As a part of that proceeding SNET's Expedited Petition for Clarification and Reconsideration about the aspect of the Procedural Order addressing the market definition drew a response from AT&T in which AT&T appear to be fully cognizant of the importance of data collection in the market definition process<sup>2</sup>.

## ***JCTA Public Comments***

Although the JCTA has not officially responded to the OUR consultation on the issue of mobile termination it is very clear that they have been lobbying the OUR intensely in this regard and have made very public statements with respect to this issue. Digicel propose to respond to some of those public remarks made by the JCTA in the national press. It is clear from the an article in *The Observer* on May 19<sup>th</sup> 2004 that the JCTA's main concern is opening up a sufficient margin between international settlement rates and international mobile termination rates to allow it to compete with larger operators. The reality is however that the margin between settlement rates and mobile termination rates is unlikely ever to be much more than 1.5 US cents (the OUR has of course suggested that the margin could be much lower), regardless of the termination charge. If the margin were forced higher than this based on regulatory intervention we think that it would amount to protectionism and be anti-competitive. It would encourage inefficient market entry and enable any existing inefficient operators to survive. The OUR is already aware from the information that it has at its disposal that Digicel is not engaging in any form of margin squeeze.

In the same article Digicel note that JCTA has been accredited with commenting that *“Digicel, as the pesky upstart, was making similar complaints about Cable & Wireless in the early stages of the deregulation of Jamaica's telecoms sector”*. Digicel wishes to categorically state that it has never asked the OUR to introduce any anti-competitive measures that would allow it to operate in a field of protectionism. In the event that such measures were ever introduced, Digicel would believe it to be a matter for instant referral to the FTC.

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<sup>1</sup> The Triennial Review dealt with FCC policies on unbundled network elements and the circumstances under which incumbent local exchange carriers must make parts of their networks available to requesting carriers on an unbundled basis

<sup>2</sup> For details see -

<http://www.uks.com/resource%20center/telecom/nov4%20post%20snet%20files%20petition%20for%20clarification.htm>

We also note that the JCTA has lamented the fact that prevailing market situation *“is not putting consumers in a position to take advantage of services offered”*. It is unclear to Digicel to which “consumers” the JCTA are referring. As far as Digicel is aware none of the JCTA members have customers in Jamaica, unlike infrastructure investors such as Digicel, Cable & Wireless and Oceanic. We assume that the consumers being referred to are probably the large fixed line operators from the USA. If so Digicel believe it has already adequately dealt with the case for such operators.

### ***C&WJ’s Lack of Response***

We think that it is very notable that Cable and Wireless Jamaica (“C&WJ”) has not responded to the OUR on such a key matter (although we understand that it has decided to respond to the responses that have been submitted). Digicel would invite the OUR to consider the reasons for C&W’s behaviour, the motivations which underlay C&WJ’s previous representations on mobile termination, and the consequences that this may have had in terms of C&WJ’s behaviour in the market place, especially at the start of mobile market liberalization. We would also like the OUR to consider what this may have meant in terms of the actions it may have been encouraged to take in response to C&WJ’s lobbying on this matter.