LIME'S RESPONSE TOTHE OUR'S

SECOND CONSULTATION DOCUMENT

ON

'COST MODEL FOR MOBILE

TERMINATION RATES'

June 29, 2012

I. Introduction

1. LIME welcomes the opportunity presented by the OUR to respond to its Second Consultation Document on 'Cost Model For Mobile Termination Rates' and in particular the proposal to permit a glide path to implementing a single pure LRIC-based mobile termination rate. The implementation of pure LRIC rates is essential to fostering a level playing field, and creating sustainable competition between Public Voice Carriers in Jamaica. Circumstances where there is market failure, such as those evidenced by Digicel's super-dominance in the Jamaican market, call for the imposition of pure LRIC cost based rates.

2. LIME supports the OUR's decision to implement an interim MTR having regard to "the fragile state of competition which now exists in the mobile sector."[1] The urgency of this action also applies to the implementation of a pure LRIC cost-based rate as soon as it becomes available.

3. There is absolutely no benefit to competition or consumer welfare from delaying this action by way of a glide path. To the contrary, any delay in the implementation of a rate based on the outcome of the model exacerbates and prolongs the inappropriate transfer of resources from consumers and Digicel's competitors to Digicel, given that it is a net receiver of interconnection revenues.

II. Pure LRIC mobile termination rates will promote competition and increase consumer welfare

4. Jamaica finds itself today in an untenable situation. Competition in the domestic mobile market is fragile and is not sustainable in its current form. There is market failure. The first step to creating a sustainable and level competitive playing field is to immediately reduce the varying above cost mobile termination rates to a single pure LRIC cost based MTR, irrespective of the origination of the call.

5. Digicel has entrenched its dominance of the Jamaican market by acquiring Claro, one of its two smaller rivals, and today controls upwards of 85% of the market for mobile subscribers in Jamaica. This acquisition, the OUR reports, resulted in a substantial increase in Herfindahl

[1] OUR Interim Mobile Termination Rate Determination Notice, June 4, 2012, ¶3.3.

Hirschman index (HHI) measure of market concentration of over 2,000 points, from 5,104 to 7,223.[2] In no other liberalized market in the Caribbean is the market this lopsided.[3] To put these figures into context, antitrust guidelines in the U.S. conclude that mergers resulting in concentration greater than 2,500, and increase HHI by more than 200 points, are presumed likely to enhance market power[4]. The U.S. Federal Communications Commission recently moved to block the proposed merger of Verizon and T-Mobile, which would have resulted in a relatively much lower post-merger HHI of 3,448.[5]

6. Above-cost termination rates are especially detrimental where, as in Jamaica, a single operator controls the market. This is because anti-competitive distortions such as cross-subsidization, ring fencing, and inflated retail rates undermine true competition and harm consumers.

7. As explained by the European Commission (EC) staff in its industry report accompanying the EC's pure-LRIC recommendation:

> *"[A]bove-cost termination rates charged by incumbent operators (which have a larger subscriber base and thus are often net receivers of call termination traffic) magnify the financial disadvantages arising from their smaller scale and associated traffic imbalances vis-à-vis the incumbent operators…Where regulated off-net termination rates are set above an efficient level of cost, this can have negative competitive implications in the presence of asymmetric traffic flows between operators, in particular for the ability of smaller operators to match the on-net offers of their larger competitors.[6]"*

8. In Jamaica, domestic termination traffic flows between LIME and Digicel are extremely asymmetric. This has resulted in a net payment from LIME to Digicel of approximately US$### thousand ***per day*** (or approximately US$### million per month). Therefore, every day that the termination rate remains above its pure LRIC level is another day that Digicel is

[2] OUR Interim Mobile Termination Rate Determination Notice, June 4, 2012, ¶3.1 and Table 1.

[3] See, also, LIME's Reply Comments to the OUR's Consultative Document on "Cost Model for Mobile Termination Rates," April 17, 2012, ¶93 ("Absence of regulatory action on mobile call origination and termination has contributed directly to Jamaica joining an unenviable league of countries, numbering about two dozen, with a mobile operator enjoying super-dominance in a liberalized market.").

[4] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, issued August 19, 2010, p. 19.

[5] Federal Communications Commission, Staff Analysis and Findings, WT Docket No. 11-65, undated draft, ¶44.

[6] "Implications for Industry, Competition and Consumers," Commission Staff Working Document accompanying the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, May 7, 2009, p. 13. Likewise, similar concerns are identified in the OUR Second Consultation Document, June 15, 2012, ¶3.8.

subsidized by LIME. In order to restore a level playing field and sustainable competition, this adverse outcome must end immediately as soon as a pure LRIC MTR is determined by the Cost Model.

III. There is no benefit to competition or consumer welfare from delaying the implementation of pure LRIC-based mobile termination rates

9. The OUR's glide path proposal envisions a two-step process. In step one, once the OUR completes its construction of a pure LRIC model, it will adjust the MTR immediately from the interim rate of $5 to the total LRIC rate, and then in the second step, the OUR will adopt a gradual, phased reduction of the MTR to the pure LRIC rate, by way of a "glide path."

10. From a practical standpoint, it is not clear how the OUR can implement this proposed two-step glide path, given that the pure LRIC model it intends to build may not identify total LRIC rates. As indicated in its *Second Consultation Document,* the OUR does not intend to allocate common costs, which is a necessary step to calculating total LRIC rates. In particular, the OUR states the following:

    > "With the move to pure LRIC, there is no longer any need to choose between these methods of allocating common costs. This is due to the fact that with the pure LRIC approach, the calculated MTR only considers avoidable costs with all common costs being allocated to other services.[7]"

    If, in fact, there is no need to choose between methods of allocating common costs, then the OUR is unlikely to have a well-defined total LRIC rate to implement in stage one. Thus this approach should be avoided. The fact is that the Telecoms Act (Amended 2012) provides that pure LRIC rates should be implemented and this is exactly what needs to be done.

11. There is no benefit to competition or consumer welfare from delaying the implementation of a pure LRIC-based MTR by way of a glide path. Delay in bringing the mobile termination rate down to the appropriate level of avoidable cost should not be entertained. This action is critical to remedying the market failure which is now evident in the mobile market. Until a pure LRIC MTR is implemented in the market, the anti-competitive distortions recognized by the OUR,

[7] OUR Second Consultation Document, June 15, 2012, ¶3.11.

will continue to harm competition.

IV. Conclusion

12. In light of the seriousness of the present dilemma—a dilemma more extreme than what is found in the overwhelming majority of mobile markets around the world—LIME is of the strong view that it is appropriate, and in fact necessary, to immediately reduce termination rates to their lowest sustainable levels, which are levels consistent with the pure LRIC approach. Strong action must be forthcoming from the OUR in order to effectively address the present distortions to competition. The closer the MTR is set to the incremental cost, the more likely it is that these competitive distortions will be eradicated. There can be no disputing that the current market conditions demand that a pure LRIC cost-based MTR be implemented as soon as it becomes available.

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