



2. LIME welcomes the opportunity to respond to Digicel's Motion, the substance of which is the LIME Consolidated Reference Interconnection Offer (hereinafter referred to as "the RIO").

**Affidavit of Helga McIntyre**

3. LIME takes no issue with paragraphs 1-9 of Affidavit of Helga McIntyre dated March 16, 2010.
4. As regards paragraph 10, LIME wishes to clarify that the decision by the Commission that a consolidated RIO ought to be presented was based on the fact that the telecommunications sector was now fully liberalized. The sector had therefore arrived at the appropriate stage for the consolidated RIO to be presented.
5. As regards paragraph 11, LIME was in fact declared dominant on 24 April, 2003 in S.I. 2003 No. 75, but that this document was revoked by S.I. 2005 No. 101 on 4 August, 2005, in which the declaration of dominance in respect of LIME's fixed line services was maintained.
6. LIME takes no issue with paragraphs 12, 13 and 14 of the Affidavit.
7. As regards paragraph 15, that prior to the 19 June 2009 industry meeting, the Commission indicated that it would take into consideration the written submissions of the parties and the presentations to be made at the meeting. The parties having been given the opportunity to comment on all aspects of the draft, the Commission proceeded to arrive at its decision, and in so doing to direct certain changes to the draft.
8. As regards paragraph 16, that the Commission, having determined following the consultation that certain changes ought to be made to the RIO, directed LIME accordingly, and that the mandated changes were therefore made by LIME as author of the RIO and submitted to the Commission for approval.
9. LIME takes no issue with paragraph 17.
10. As regards paragraph 18, that LIME is not best placed to comment on Digicel's alleged surprise, or on the Commission's correspondence with any party other than LIME save that the issue of rates and all other matters addressed in the draft RIO were fully vented during the consultation process up to and including the industry meeting and the subsequent closure of the consultation and issuance of the Decision.
11. As regards paragraphs 19 -21, that any direct communication between the Commission and Digicel during the period between June 19, 2009 and February 24, 2010 is outside of the knowledge of LIME and that LIME is therefore not in a position to comment on it, save that the *modus operandi* of regulators across the

Caribbean, and the legislation by which they are governed varies from territory to territory, and that the practices of regulators in other territories can only be of persuasive relevance to the extent that such practices are mandated by the relevant statute(s) and that those statutes contain provisions similar to the requirements in the Barbadian legislation.

12. As regards paragraph 22, that the Commission, having held a public consultation on the RIO, and having taken into account the input of all parties which chose to comment on the RIO, whether orally or in writing, has not failed in its obligation to comply with the principles of natural justice. Further, that the process as outlined in the Telecommunications Act for the approval of a RIO requires the Commission to "consult with the carrier providing the RIO and any other carriers likely to seek interconnection to that carrier's network", and to have regard to various listed matters prior to declaring its approval of the RIO. This was done.
13. As regards paragraph 23 and 24, that Digicel having been afforded the opportunity to comment on every aspect of the draft RIO, is seeking to impose an obligation on the Commission beyond the bounds of the relevant statutes.
14. As regards paragraphs 25-27, section 27(3) was in fact complied with. The draft RIO on which submissions were received and heard by the Commission included a Tariff Schedule on which all parties had the opportunity to comment.
15. As regards paragraph 27, LIME disagrees with Digicel's interpretation of subsection (b) of section 27(3), in that the implication that Digicel's interests and comments would be taken into account in the Commission's arrival at a decision, does not extend to an implication that having received the input of Digicel, the Commission would be obliged to seek further input, particularly having regard to the fact that Digicel's representations on the matters issue, including rates, was already received.
16. As regards paragraph 29, that the conditions in the market in Barbados are not solely determined by the terms and conditions of a single provider, that all other providers had ample opportunity to comment on the draft RIO, and that those comments were considered as required by the Commission. It cannot in those circumstances be said that only the view of one carrier was used as the basis for the Commission's decision.
17. As regards Digicel's recommendations as to process in paragraph 30, steps (a), (b), (c) and (f) were followed: the draft RIO and comments thereon from the industry were requested and received, there was a meeting of the industry to discuss the contents of that draft, and the Commission subsequently issued its final determination.

18. In respect of suggestion (d), all parties present were given the opportunity to present their views on the draft, and the Commission was able to and in fact did ask questions regarding the comments of the parties. At no point during the process does the draft RIO become the Commission's draft. The options of the Commission, as contemplated by section 27 of the legislation are to approve the RIO or to refuse to approve the RIO as is, in which case it is required to consult with the carrier who may then amend the RIO in accordance with the Commission's directives. The Commission is not required to "present... its draft of the RIO to the industry".
19. In respect of suggestion (e), as stated in paragraph 15 above, the Commission has no authority or requirement to present its own draft of the RIO at any point in the process as set out in the legislation and accordingly would not receive comments on any such draft.
20. In respect of paragraph 31, LIME reiterates its position that Digicel has misinterpreted the relevant provisions of the Telecommunications Act, that steps (d) and (e) are not required by the legislation, and that the Commission has not acted in breach of the law in this regard.

***Submissions Filed April 23, 2009***

21. For the most part, Digicel's further submissions are a reiteration of the Affidavit of Helga McIntyre dated March 16, 2010, to which LIME's responses have been made in paragraphs 1-17 hereof. LIME therefore proposes in this section of its response to deal only with issues not addressed in those paragraphs.
22. For the avoidance of doubt:
- LIME agrees that the approval process requires the Commission to consult carriers other than the author of the RIO
  - LIME agrees that the principles to which the Commission must have regard in approving or refusing a RIO are set out in the Telecommunications Act
  - LIME disputes Digicel's allegation that they were not consulted on all aspects of the RIO
  - LIME disputes Digicel's suggestion that each directive of the Commission with respect to the preparation of the final RIO is subject to fresh consultation
  - LIME disputes that the Commission failed to follow the appropriate procedure in the approval of the RIO
23. As regards paragraph 22 of the Submissions, having reviewed the draft RIO and industry comments on the proposed Tariffs, the Commission was within its powers to make a final determination as to rates, which it did, and directed LIME to amend the Tariff Schedule accordingly.

**Orders Requested by Digicel**

24. In light of the foregoing, LIME submits:

- (a) That the procedure outlined in the Affidavit of Helga McIntyre, and rephrased in the Submissions is not required by the Act and consequently, that the updating of the RIO in accordance with Commission directives does not require a fresh round of consultation, and accordingly THAT the application for an Order quashing the Decision ought to be refused; and  
  
THAT the application in the alternative for an Order that the Applicant must be a part of the process every step of the way and that all providers must be engaged every step of the way ought to be refused; and
- (b) THAT the Decision ought not to be stayed; and
- (c) THAT the Commission ought not to be restrained from taking any further action against Digicel in relation to the Decision.