

NOTICE OF MOTION FOR REVIEW AND VARIATION

FAIR TRADING COMMISSION
Served by: NADIA ALLEN
Date: 23rd April 2015
Time: 3:50
Place: Fair Trading Commission
Received by: [Signature]

IN THE MATTER of the Utilities Regulation Act CAP. 282 and the Fair Trading Commission Act, CAP. 326B and the Telecommunications Act, CAP. 282B of the Laws of Barbados;

IN THE MATTER of the Utilities Regulation (Procedural) Rules, 2003 and the Utilities Regulation (Procedural) (Amendment) Rules, 2009;

AND IN THE MATTER of a Decision of the Fair Trading Commission dated the 27th March 2015 on Long Run Incremental Cost (LRIC)

BETWEEN

DIGICEL (BARBADOS) LIMITED

APPLICANT

- AND -

FAIR TRADING COMMISSION

RESPONDENT

TAKE NOTICE THAT the Fair Trading Commission will be moved ON THE DAY OF 2015, OR as soon thereafter as an Attorney-at-Law can be heard on behalf of the Applicant **DIGICEL (BARBADOS) LIMITED** for the following reliefs: -

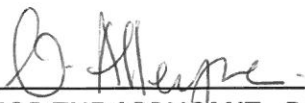
1. An Order that the Decision of the Respondent dated March 27th, 2015 on the Long Run Incremental Cost (LRIC) be reviewed by the Respondent pursuant to Section 36 of the Fair Trading Commission Act, CAP 326B and in accordance with the Utilities Regulation (Procedural) Rules, 2003 and the Utilities Regulation (Procedural) (Amendment Rules), 2009.

2. An Order that the Decision of the Respondent dated March 27th, 2015 on the Long Run Incremental Cost (LRIC) Guidelines for Implementation by Cable and Wireless (Barbados) Limited (“the Decision”) be varied by the Respondent pursuant to Section 36 of the Fair Trading Commission Act, CAP 326B and in accordance with the Utilities Regulation (Procedural) Rules, 2003 and the Utilities Regulation (Procedural) (Amendment Rules), 2009 in the following terms:
 1. An Order that the Respondent vary its decision and extend the glide path as referenced in the Decision.
 2. An Order staying the Decision of the Respondent and the LRIC process generally until final determination of all of the matters raised in this Notice of Motion or upon further determination of the matters raised as may be required.
 3. An Order restraining the Respondent from taking any further action in relation to the Decision and the LRIC process generally until final determination of this matter or upon further determination as may be required.

AND FURTHER TAKE NOTICE that the grounds of this request for review and variation are: -

1. That the Decision the Respondent was reached in breach of the rules of natural justice in that the Respondent was and is under a duty to act judiciously, in an open, transparent and non-discriminatory manner and in accordance with the principles of natural justice and that the Respondent failed to so act in that it:
 - (a) Failed to conduct the LRIC process in a transparent manner. That the costing exercise engaged in to date by the Respondent in tandem with C&W Barbados was prejudicial to the applicant.
 - (b) The Respondent has acted, and would be acting, in breach of the rules of natural justice in that the Respondent was and is under a duty to act judiciously, in accordance with the principles of natural justice and in failing to provide the Applicant with a reasonable time frame to adjust to the new rates would subject the Applicant to hardship and prejudice.
 - (c) As regards the remaining matters as set out in this Notice of Motion herein as supported by the Affidavit of Nadia Alleyne as sworn herein on 23rd April 2015, the Respondent was under a duty to conduct the decision making process in accordance with the principles of natural justice. The Respondent is also under a duty not to act irrationally and /or unreasonably. The Respondent has acted irrationally and unreasonably in making a decision which is contrary to best practice and which cause improper hardship and prejudice to the Applicant.

DATED THE 23rd DAY OF April 2015



COUNSEL FOR THE APPLICANT - DIGICEL (BARBADOS) LIMITED

IN THE MATTER of the Utilities Regulation Act CAP. 282 and the Fair Trading Commission Act, CAP. 326B and the Telecommunications Act, CAP. 282B of the Laws of Barbados;

IN THE MATTER of the Utilities Regulation (Procedural) Rules, 2003 and the Utilities Regulation (Procedural) (Amendment) Rules, 2009;

AND IN THE MATTER of a Decision of the Fair Trading Commission dated the 27th March on Long Run Incremental Cost (LRIC) Guidelines for implementation by Cable and Wireless (Barbados) Limited.

BETWEEN

DIGICEL (BARBADOS) LIMITED

APPLICANT

- AND -

FAIR TRADING COMMISSION

RESPONDENT

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