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FAIR TRADING COMMISSION
Served by: H. McWright
Date: 13/01/12
Time: 4:20pm
Place: _____
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 and Order of the Fair Trading Commission dated the 12th December 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

NOTICE OF MOTION

NOTICE OF MOTION FOR REVIEW AND VARIATION

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 and Order of the Fair Trading Commission dated the 12th December on Long Run Incremental Cost (LRIC) Guidelines for implementation by Cable and Wireless (Barbados) Limited.

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DIGICEL (BARBADOS) LIMITED

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FAIR TRADING COMMISSION

RESPONDENT

TAKE NOTICE THAT the Fair Trading Commission will be moved ON THE DAY OF 2012, 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 and Order of the Respondent dated 12 December 2011 on the Long Run Incremental Cost (LRIC) Guidelines for Implementation by Cable and Wireless (Barbados) Limited 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 and Order of the Respondent dated 12 December 2011 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:
 - (a) That the Applicant be provided with all relevant documents and/or materials provided to the Respondent as part of the LRIC process being undertaken by the Respondent and which were considered by the Respondent as part of the decision making process leading to the Decision; such documents and materials to include, although not to be strictly limited to, the following specific documents and materials as referenced in the Decision itself:
 - (i) The Enhanced Allocation Model Cost Model as submitted to the Respondent by Cable and Wireless (Barbados) Limited;

- (ii) The Report on The Enhanced Allocation Model Cost Model as submitted to the Respondent by Cable and Wireless (Barbados) Limited as received by the Respondent in or about May 2011
 - (iii) All other documents and materials as provided to the Respondent and/or in the possession of the Respondent relating to the Enhanced Allocation Model Cost Model as submitted to the Respondent by Cable and Wireless (Barbados) Limited and/or otherwise.
- (b) That the Applicant be made fully aware of all germane and relevant information as provided to the Respondent as part of the said LRIC process to date up to the date of the Decision, where such information was considered by the Respondent as part of the decision making process.
- (c) An Order that the Respondent shall conduct a full and proper separate consultation process in respect of the Weighted Average Cost of Capital (WACC) assumptions to be used for the fixed and mobile network LRIC models and that the Applicant be provided with a full opportunity to involve itself in that separate WACC consultation process.
- (d) An Order that Respondent shall ensure that there shall be separate processes for determining the appropriate WACC for both Cable and Wireless (Barbados) Limited's separate fixed line and mobile networks and that these separate processes be properly identified as part of the WACC consultation process as sought by the Applicant in paragraph 2(c) above.

- (e) An Order that the Respondent require Cable and Wireless (Barbados) Limited to fully and properly model its fixed access network as part of the overall LRIC process.
- (f) An Order that the Respondent vary its decision to base the LRIC model on current technologies in the marketplace.
- (g) An Order that the Respondent will fully and properly consider the impact of progressive technologies in the telecommunications industry in Barbados as part of the overall LRIC process and that the LRIC process adopted by the Respondent shall fully include and take account of dynamic efficiencies and progressive technologies in the telecommunications sector.
- (h) An Order that the Respondent adopt a five year modeling period for the LRIC process and that the outputs of the LRIC process be produced for each of those five years.
- (i) An Order that the Respondent vary its decision and reject the adoption of the instantaneous build assumptions as referenced in paragraph 46 of the Decision.
- (j) An Order that the Respondent shall conduct a full and proper separate consultation process in respect of the instantaneous build assumptions to be used for the fixed and mobile network LRIC models and that the Applicant be provided with a full opportunity to involve itself in that consultation process.
- (k) An Order that the Respondent provide the Applicant with full details and specifics of the Respondent's decision to employ tilted annuity to estimate capital costs and to provide the Applicant

with full details and specifics of how it responds to employ tilted annuity as part of the LRIC process.

- (l) An Order that the Respondent shall conduct a full and proper separate consultation process in respect of the tilted annuity basis to be used for the fixed and mobile network LRIC models and that the Applicant be provided with a full opportunity to involve itself in that consultation process.
 - (m) An Order that the Respondent vary its decision in respect of shared costs between different networks and in particular the decision in respect of international network sharing and reject the notion that assets outside of Barbados have any relevance to the LRIC cost modeling process.
3. An Order that the Applicant be provided with all relevant documents and materials provided to the Respondent on an on-going basis as part of the LRIC process being undertaken by the Respondent as and from the date hereof to the conclusion of the said LRIC process by the Respondent.
 - 4, An Order that the Applicant be permitted to fully involve itself in the LRIC process being undertaken by the Respondent and to be made fully aware of all germane and relevant information provided to the Respondent on an on-going basis as part of the said LRIC process, at every stage of that process up to the conclusion of the said LRIC process by the Respondent.
 5. An Order staying the Decision and Order 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.

6. An Order restraining the Respondent from taking any further action in relation to the Decision and Order 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 and Order of 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 provide the Applicant with the details and specifics of the Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited.
 - b. Failed to provide the Applicant with a copy of the report on the Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited which report was received by the Respondent in May 2011.
 - c. Failed to Disclose to the Applicant that the Respondent had undertaken and completed a review of an Enhanced Allocation Model Cost Model in conjunction with Cable and Wireless (Barbados) Limited.
 - d. Failed to provide the Applicant with copies of documents and materials submitted to the Respondent by Cable and Wireless (Barbados) Limited which documents and materials were relevant and germane to the decision making process.
 - e. Failed to provide the Applicant with an opportunity to comment upon or respond to submissions made to the Respondent by Cable and Wireless (Barbados) Limited where such submissions were relevant and germane to the decision making process.

- f. Failed to provide the Applicant with a fair opportunity to correct or contradict or challenge any relevant statement or submission made, prejudicial to its interests and/or comment or material put forward by C&W and other materials which the Respondent acted upon in arriving at its Decision, but which had not been previously disclosed to the Applicant by the Respondent.
2. In failing to provide the Applicant with all documents, information and materials relating to the LRIC process on an on-going basis, the Respondent will be acting in breach of the rules of natural justice in that the Respondent was and is under a duty to act judiciously, in an open and transparent manner, in a non-discriminatory way and in accordance with the principles of natural justice.
3. In failing to conduct separate consultation processes in respect of:
 - (a) Weighted Average Cost of Capital ("WACC")
 - (b) Instantaneous Build Assumption
 - (c) Tilted Annuity to estimate capital costs

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 an open and transparent manner, in a non-discriminatory way and in accordance with the principles of natural justice and in failing to provide the Applicant with an opportunity to engage in separate consultation processes would subject the Applicant to hardship and prejudice.

4. As regards the remaining matters as set out in this Notice of Motion herein as supported by the Affidavit of Helga McIntyre as sworn herein on 13 January, 2012, 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 decisions based on factual errors as well as decisions which are contrary to international best practice and which cause improper hardship and prejudice to the Applicant.

DATED THE 13TH DAY OF JANUARY 2012

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;

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BETWEEN

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DIGICEL (BARBADOS) LIMITED

APPLICANT

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FAIR TRADING COMMISSION

RESPONDENT

Affidavit of Helga McIntyre

I, HELGA MCINTYRE of the Courtyard, Hastings in the parish of Christ Church, Barbados, MAKE OATH and say as follows: -

I. Introduction

1. I am the Legal and Regulatory Director of the Digicel Group's Eastern Caribbean operations and entities, which includes the Applicant. I have held this position since in or about June 2009. I am authorized to swear this affidavit on behalf of the Applicant in support of the reliefs sought in the Notice of Motion for Review as submitted herein by the Applicant on 13 January 2012.
2. Save where otherwise stated, I make this Affidavit from facts and matters within my own knowledge. Where the information comes from my own knowledge, it is true, and where I have relied on information supplied by others, I believe that information to be true and accurate.
3. I would refer the Respondent to the paginated bundle of documents now produced and shown to me marked "HMCI-1". I shall refer throughout this Affidavit to relevant documents (and/or extracts of documents) contained in "HMCI-1" by referencing the page number of "HMCI-1" at which the relevant document appears or begins.
4. The Applicant is incorporated in Barbados and is and has been at all material times properly licensed by the Government of Barbados to provide voice, data and international Telecommunications.
5. The Respondent is a statutory body established under the Fair Trading Commission Act CAP 326B ("the FTCA") with its principal place of business located at Manor Lodge, Lodge Hill, St. Michael. It is a body corporate within Section 21 of the Interpretation Act of the Laws of Barbados and its functions are, *inter alia*, to exercise its regulatory and other functions in respect of telecommunications in accordance with, *inter alia*, the

FTCA and to enforce any laws, including the Fair Competition Act, relating to the promotion and maintenance of fair competition.

6. By virtue of Section 36 of the FTCA, the Respondent has jurisdiction on any application by any party, or on its own motion, to review, vary or rescind any decision given by it. In instances where such a review is engaged upon by the Respondent, this review process is prescribed by the Utilities Regulation (Procedural) Rules, 2003 and the Utilities Regulation (Procedural) (Amendment) Rules, 2009 ("the Rules").

II. Background to Decision of 12 December 2011

7. On 14 December 2011, the Respondent furnished a copy of a Decision and Order dated 12 December 2011 to the Applicant under cover of e-mail. This Decision and Order (referred to as a Final Decision) was entitled "*Long Run Incremental Cost (LRIC) Guidelines for Implementation by Cable and Wireless Barbados Limited*" ("the Decision"). The Decision was issued by the Respondent following a consultative process in which the Applicant filed submissions with the Respondent in July 2011. A copy of the Decision is set out at **HMCI-1 Pages 1 to 42**. The history of the consultative process leading to the publication of the Decision is well known to the Respondent and is set out in summary at Parts One and Two of the Decision itself.
8. By letter dated 21 December 2011, the Respondent confirmed in writing to the Applicant that it had no objection to the Applicant filing a Notice of Motion for Review of the Decision on or before 13 January 2012. A copy of the Respondent's letter dated 21 December 2011 can be found at **HMCI-1 Page 43**. This Affidavit is sworn in support of the Applicant's request for a Review and Variation of the Decision in the terms as set out in the Notice of Motion for Review as filed herein by the Applicant and is sworn within the statutory framework as set out above and pursuant to the Rules.

9. The grounds and basis for this Review and Variation Request by the Applicant are as set out in **Part III** of this Affidavit, which the Applicant has sought to present to the Respondent as cogently and succinctly as possible. Given the technical nature of the matters which the Applicant seeks to put in issue, the Applicant expects that it will be provided with the appropriate opportunity to provide such written and/or oral submissions as may be required to provide the Applicant with the fullest opportunity to engage with the Respondent in the context of this request for a Review and Variation of the Decision pursuant to the Rules. The Applicant understands that pursuant to the Rules the onus rests with the Applicant to prove its case. However, the Applicant expects that the Respondent shall extend the Applicant the appropriate fulsome opportunity to so prove its case.

10. The Applicant notes specifically the Respondent's own statement in a previous Decision involving the Applicant that its discretion pursuant to Section 36 of the FTCA is exercised with a view to ensuring that there is consistency and predictability in the Respondent's decision making process. The Applicant of course supports this position as espoused by the Respondent regarding its discretion pursuant to Section 36, but believes that the Decision has offended the requirements of consistency and predictability in the Respondent's decision making process and thus ought to be reconsidered and varied in accordance with Section 36 of the FTCA and the Rules.

III. Applicant's Request for Review and Variation of the Decision

11. The Applicant is presently physically and contractually interconnected with Cable and Wireless (Barbados) Limited ("C&W"). The contractual interconnection relationship sets out, *inter alia*, the tariffs which are received from, and paid to C&W for the mutual provision of interconnection services as between the Parties to the Interconnection Agreement. The Applicant and C&W have been physically interconnected since 2004. The history of this interconnection relationship is well known to the Respondent.

Interconnection revenue and interconnection expenditure are very significant elements of the Applicant's financial position in any given trading period. It is beyond argument that the Applicant is a party with a clear and direct interest in any procedure or process which impacts or potentially impacts on the terms and conditions of its interconnection relationship with C&W. This is particularly the case in terms of interconnection rates and any process which has the potential to affected interconnection rates. As such, the terms of the Decision potentially have a direct and significant impact on the Applicant's commercial activities. The Applicant therefore has a clear *locus standii* to seek a review of the Decision by the Respondent. The Applicant does not expect that any party (least of all the Respondent) would seek to gainsay this basic and irrefutable proposition.

A. *Applicant's access to submissions made and materials provided to the Respondent germane to the Decision making process*

12. The Applicant provided the Respondent with comments on the consultation issued by the Respondent on 27 May 2011 ("the Consultation Document") which preceded the publication of the Decision on 14 December 2011. Those comments were provided to the Respondent by the Applicant in July 2011. At no time prior to the issuing of the Decision was the Applicant provided with any other materials as provided to the Respondent in response to the consultation process by any other party. In particular, the Applicant was not provided with copies of any materials or submissions made to the Respondent by C&W. It was only on receipt of the Decision on 14 December 2011 that it was definitively confirmed to the Applicant that C&W had in fact made submissions to the Respondent; which submissions were manifestly germane to the decision making process. The Applicant was deprived of an opportunity to review and comment upon those submissions and accordingly believes that it was deprived of proper participation in the decision making process.

13. The Applicant understands and accepts that the review process as set down in the Rules is not a vehicle for the Applicant to re-argue submissions made previously in the overall proceeding simply because the Applicant does not agree with the substantive decision reached. However, this is not the case in the present situation. In many instances, the Applicant is addressing substantive propositions being advanced by the Respondent for the very first time. The fact of the matter is that the Applicant was not provided with the proper opportunity to review all relevant materials and thus made its submissions during the course of the consultative process at least partially on the blind. Accordingly, the Applicant simply did not have an opportunity to address the Respondent properly on all relevant matters and issues during the decision making process. That the Applicant is only now in a position to address many relevant issues at the decision making stage as distinct from the decision making stage is no fault of the Applicant, but rather arises as a result of infirmities in the actual decision making process; most notably a lack of openness and transparency in the decision making process and the LRIC process generally. In essence, it is only with the publication of the Decision that the Respondent has "shown its hand" to the Applicant on many relevant issues.

14. The Applicant would have welcomed and expected an opportunity to review all other relevant materials provided to the Respondent relating to the decision making process and to be provided with a proper opportunity to make submissions to the Respondent in relation to same such that those submissions could have been considered by the Respondent as part of the decision making process. That the Applicant was so deprived of such an opportunity has manifestly caused hardship and prejudice to the Applicant. It is the Applicant's position that the Decision making process as evidenced by the substance of the Decision identifies a situation whereby the Applicant was not afforded the required opportunity and information to properly engage in the consultation process leading to the Decision itself.

B. Enhanced Allocation Model Cost Model

15. More particularly, the Applicant was not provided with a copy of the Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited. Further, the Applicant was not provided with a copy of a report on the said Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited, which report was received by the Respondent in May 2011. This report was received two months prior to the filing of the Applicant's response to the Respondent in July 2011. Indeed, the first that the Applicant learned of the Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited was when the Applicant received the Decision of the Respondent on 14 December 2011.
16. The Enhanced Allocation Model Cost Model submitted to the Respondent by Cable and Wireless (Barbados) Limited; the report as received by the Respondent in respect of same dated May 2011 and all ancillary and related materials pertaining to the said Enhanced Allocation Model Cost Model were clearly germane and relevant to the decision making process, but these were not disclosed to the Applicant; nor was the Applicant made aware of the contacts which were on-going as between the Respondent and C&W in this regard. The Applicant was very much kept in the dark in respect of all aspects of this (apparently critical) Enhanced Allocation Model Cost Model. The Applicant is somewhat taken aback by the apparently clandestine and surreptitious nature of the interactions as between the Respondent and C&W in this process; which interactions are only now being made known to the Applicant in the context of the Decision.
17. It is clearly the case that the Applicant had a clear and definable interest in all materials relating to the Enhanced Allocation Model Cost Model as referred to in the Decision and would have welcomed and expected an opportunity to review all relevant material

(including the report dated May 2011) and to be provided with a proper opportunity to make submissions to the Respondent in relation to same such that those submissions could have been considered by the Respondent as part of the decision making process and the overall LRIC process generally. In essence, the Respondent arrived at its Decision oblivious to the views of the Applicant given that the Applicant itself was oblivious to very much of what was taking place during the decision making process. This is some distance removed from what the Applicant would expect in what is ostensibly an open and transparent consultative process subject to the principles of natural justice and fairness of procedure.

C. *Overall Absence of Transparency*

18. In its submissions addressed to the Respondent in July 2011, the Applicant raised serious concerns about the overall level of transparency within the LRIC modeling process. These concerns relate both to the lack of transparency exhibited to date in this process, but also in terms of the evident lack of transparency or evident lack of disposition on the part of the Respondent towards transparency as the process moves forward. The Applicant's concerns in this regard were addressed at pages 7 to 11 of the Decision.
19. These concerns on the part of the Applicant have not been allayed, but rather have been seriously exacerbated, by the substance of the Decision. It appears that the vast majority of the submissions and suggestions as made by the Applicant in relation to transparency have not been adopted by the Respondent. Rather, what the process set out as being adopted by the Respondent appears to involve is a bilateral process involving C&W and the Respondent (assisted by external consultants), with the Applicant being very much on the outside trying to look in. This effective exclusion of the Applicant from the LRIC process is encapsulated by the Respondent's statement at paragraph 27 of the Decision that:

"...the Commission does not foresee publishing the LRIC modeling tool or any underlying data given that the information is commercially sensitive..."

20. It appears to the Applicant that this reliance by the Respondent on commercial sensitivity concerns throughout the Decision is effectively being used in a blanket fashion to exclude the Applicant from playing any meaningful part in the development of the LRIC model. These concerns are further exacerbated by the Respondent's confirmation at paragraph 29 of the Decision that whilst the Applicant shall not be involved in reviewing or considering any material submitted by C&W, C&W will be provided with an opportunity to comment on any proposed revision to the LRIC model where such revisions are based on materials provided by the Applicant. This stark dichotomy of treatment as between the Applicant and C&W is of grave concern to the Applicant. The Applicant is most concerned at the apparent discriminatory effect of the process being undertaken by the Respondent; which discrimination is wholly contrary to the rules of natural justice and fairness of procedure. The Decision of the Respondent is very much characterized as establishing one set of rules for C&W and another set of rules for the Applicant.

21. At paragraphs 23 and 24 of the Decision, the Respondent addresses the provision of model specifications by C&W to the Respondent in accordance with the principles set out in the Decision itself. It does not appear to be envisaged that the Applicant shall play any role or have any visibility in terms of this critical interaction as between the Respondent and C&W. It would seem that the development of the actual LRIC model shall be achieved without any real involvement of the Applicant. This lack of transparency and discriminatory exclusion of the Applicant from this critical and fundamental stage of this process (and indeed generally) is of grave concern to the Applicant.

D. *Weighted Average Cost of Capital (WACC) assumptions*

22. The Applicant submitted to the Respondent in July 2011 that the Respondent ought to conduct a separate consultation on the WACC assumptions to be used in the fixed and mobile models being developed by the Respondent. The Applicant made this submission on the basis that WACC is an absolutely critical and fundamental input into any cost model. The conducting of such a stand-alone WACC consultation in the context of any LRIC type process is consistent with international best practice and is wholly in accordance with the experience that the Applicant has in the international regulatory scene. The confirmation by the Respondent that it shall not conduct a stand-alone WACC consultation is of real concern to the Applicant.
23. This rejection by the Respondent of a consultation process in respect of the WACC (which rejection is the subject of a specific review request herein by the Applicant) is addressed at paragraph 33 of the Decision. The Applicant has already made it abundantly clear to the Respondent that it is strenuously opposed to the necessity or desirability of undertaking such an arduous and unnecessary process such as LRIC for a small Island state such as Barbados. It appears that the Respondent has rejected this general over-arching submission as made by the Applicant. It is of grave concern to the Applicant that following this rejection by the Respondent of the general position advanced by the Applicant, the Respondent appears determined to proceed in a manner that will fast-track or improperly expedite what are critical aspects of the LRIC process for what would appear to be nothing more than for the sake of convenience or desire to reach a pre-determined conclusion. The Applicant does not consider it an appropriate answer for the Respondent to simply state that it "*does not believe that consultation on WACC will be required as the WACC estimate will be reviewed by the Commission*". Simply because something is reviewed by the Respondent does not fulfill the

Respondent's obligations to the Applicant (and indeed generally) in relation to transparency and accountability.

24. It is common cause that WACC is one of the key inputs into any LRIC process. In addition to the foregoing, it would be wholly inappropriate and contrary to international best practice to have the same WACC for the fixed network as the mobile network. WACC is an operator specific variable, not an industry specific input and the constituents of a WACC for C&W in Barbados are something that ought to be consulted on as part of a proper standalone consultation process given the potentially significant impact this figure will have on future interconnect rates and ultimately revenue flows between operators. The process for determining the appropriate WACC/WACCs for fixed and mobile networks as outlined by the Respondent is completely arbitrary and in contravention of the Respondent's obligations under the statutory framework applicable.

25. The Applicant ought not to be deprived of an opportunity to properly and substantively address the Respondent in terms of WACC in the context of the LRIC process. The Applicant believes that its right to natural justice, fairness of procedure, transparency and non-discrimination can only be vindicated through a properly conducted standalone consultation regarding WACC.

E. *Individual / Specific aspects of the Decision where Applicant seeks a review ("Ten Questions")*

26. At the last sub-section of Part III of the Decision, the Respondent has set out what it describes as "*Responses to Specific Consultation Questions*". At this sub-section of its Decision, the Respondent sets out a list of ten questions that were addressed to interested parties as part of the afore-mentioned consultation process. It also sets out

what appears to be a summary of responses to this list of ten questions received during the consultation process by interested parties; most notably responses received from C&W and the Applicant. Finally, the Respondent has set out (in bold type-face for apparent ease of identification) the Respondent's position in respect of each of these matters. These positions as set out by the Respondent appear to constitute what are essentially individual elements of the overall Decision. The Applicant's position in respect of these matters (or individual elements of the Decision) arrived at in the Decision is set out below.

Question 1- Do you agree with the proposed definition of 'total service' increments for the TSLRIC model?

27. As was clear from the Applicant's response to the consultation as provided in July 2011, it is not necessarily opposed to the TSLRIC definition. However, given the complete lack of transparency in the overall process that is now being proposed by the Respondent and given the ample scope for C&W to engage in significant cost misallocation during the process, the Applicant believes that the Respondent must necessarily reconsider and vary its position on not requiring C&W to properly model its fixed access network which will provide a greater level of transparency to the Respondent and the interested parties in order to mitigate, to some degree at least, C&W's ability to engage in cost misallocating. The Applicant ought to require C&W to properly model its fixed access network so as to impose some level of discipline on C&W in terms of cost misallocation.
28. However the Applicant's overall position is that in the absence of fully separated regulatory accounting procedures being adopted and imposed on C&W, the potential for significant cost misallocation in this process on the part of C&W remains a serious issue and concern for the Applicant. Notwithstanding this, the Respondent ought certainly to reconsider and vary its incumbent friendly position on not requiring C&W to

properly model its fixed access network which will provide a greater level of transparency to the Respondent.

Question 2- Do you agree with the proposed approach of using a bottom-up approach to derive network cost estimates and a top-down approach for operating and common costs?

29. It was the Applicant's understanding and belief given how the question itself was framed by the Respondent that a pure LRIC approach was being ruled out by the Respondent. As is clear from the Applicant's responses to the Respondent, the Applicant is plainly opposed to the adoption of a pure LRIC process. The Applicant is most concerned with the approach as set out by the Respondent in the Decision which seems to run contrary to the framing of the question itself. This position adopted by the Respondent is one of several examples of where the Decision has offended the requirements of consistency and predictability in the Respondent's decision making process and ought to be reconsidered and varied in accordance with Section 36 of the FTCA and the Rules.

30. At paragraph 41 of the Decision, the Respondent has essentially refused to consider the impact of progressive technologies as part of the LRIC modeling process. This wholly irrational and unreasonable refusal runs contrary to the reasons outlined at paragraph 8 (b) of the Decision as to why a LRIC approach was being adopted in the first place wherein the Respondent stated that it will

"...send economic signals to promote forward-looking investment decisions..."

There is an inherent inconsistency and irrationality of approach between this statement at paragraph 8 (b) of the Decision and this refusal at paragraph 41 to consider

progressive technologies as part of the LRIC model. In essence, the Respondent has presented a *fait accompli* in relation to consideration of legacy technologies as against new technologies in the LRIC model. It is the Applicant's position that the reality of network evolution in the coming years for both fixed and mobile networks is as outlined by the European Union Regulators group, BEREC who state at *BEREC WG 2 – Technical Framework for Digital Delivery – Open Access, Interoperability and Connectivity, July 13th, 2011*.

“The future NGA (next generation) landscape will continue to be multi-carrier, multi-technology environment leading to a “patchwork-network”.

A copy of BEREC WG 2 – Technical Framework for Digital Delivery – Open Access, Interoperability and Connectivity, July 13th, 2011 can be found at **HMCI-1 Pages 44 to 75**.

31. It is the Applicant's belief based on its experience in the development of telecommunications worldwide that there has not been, nor will there be, any instantaneous metamorphosis of networks from legacy to NGN or from 2G to 3G to LTE. Networks are and will be as described by BEREC i.e. a patchwork – network utilizing numerous different technologies. That this reality is not convenient for the purposes of a LRIC modeling process is not reason enough to blithely ignore it. There is no such thing in such an environment as one economically efficient price for a service where numerous different types of services are provided over these “patchwork-networks”. The Applicant believes that convenience must not be allowed to trump principles of economic efficiency or indeed market realities. As such the model should neither be entirely legacy based nor future technology based, but it must enshrine the principles of dynamic efficiency and must be flexible enough to explore numerous patchwork-network scenarios based on achieving the best outcome for Barbadian consumers and investors.

32. The Applicant would note that in its consultation paper dated 27 May 2011, the Respondent stated that:

“Implicit in the TSLRIC definition is that prices should reflect efficient forward looking costs i.e. the costs of delivering services using the most efficient technology for meeting current and future demand” [page 7]

This statement recognizes that as demand for data and other innovative services increases, the technology in the future networks will evolve (albeit not instantaneously). As the Respondent has adopted a TSLRIC approach, the implications for the associated network evolution cannot be ignored. Voice services will continue to be a subset of the total service offering but may be required to carry a much higher burden of costs relative to other services like data (this is currently the case and likely to continue to be the case for some time in more advanced markets like Western Europe today).

33. A report by A.T. Kearney produced in 2010 outlined that a major rejuvenation of the traditional fixed and mobile business models would be required to sustain investment in new technology if voice revenues were to continue to decline. A copy of that Report is set out at **HMCI-1 Pages 76 to 131**. As Barbados is not in position, given its relative size globally, to implement or affect those necessary changes (as these require the buy-in of major international operators and internet content providers), Barbados is faced with the choice of continuing to foster and encourage investment in technology from voice revenues or it will hit a road block on innovation and technological development. This would cause Barbados to seriously lag behind developments elsewhere in the world. The static technology assumptions being proposed by the Respondent in its Decision therefore run contrary to the principles of dynamic efficiency and ignores the market reality that data service development (and associated costs) will need to be accounted for at least to some extent on the voice side of the overall cost equation.

34. In its Decision the Respondent states that, to date voice over LTE ("VoLTE") has not been standardized. However, both AT&T and Verizon (who have successfully tested the service), in the USA, plan to deliver VoLTE in the 2012 calendar year. A copy of a press release issued on behalf of Verizon entitled "*Ericsson, Verizon Wireless and Samsung Demonstrate Voice Over LTE*" is set out at **HMcl-1 Pages 132 to 133**. By the time this unnecessary and arduous LRIC process is completed in Barbados, VoLTE could be common place and if the model is not robust enough to account for such developments it will constitute an enormous waste of time and resources as it will not reflect anything close to the underlying market realities.

Question 3 Do you agree with the proposed four-year modeling period of the TSTLRIC model with the outputs produced for each of the four years?

35. The Applicant had submitted to the Respondent that it ought to use a five (5) year model. The Respondent will be aware that the Interconnection Agreement that was originally signed between the Applicant and C&W was expressly deemed to be for a five year period. The Interconnection Agreement which replaced that original Interconnection Agreement and which presently binds the Applicant and C&W is also expressly deemed to be for a five year period. This five year period is generally consistent with all other Interconnection Agreements which the Digicel Group of companies has entered into in the Caribbean Region. The Applicant's position remains that a five year period is the most appropriate in terms of the production of outputs and that the adoption of a four year period by the Respondent is fraught with practical difficulty.

36. The Applicant is deeply troubled by the Respondent's reference to "*instantaneous build*" assumptions as found at paragraph 46 of the Decision. The proposed approach suggests a model not just based on theory as opposed to practice, but is actually based on fantasy. Once assets are deployed in year one of the model, they cannot be removed in

year 2 simply because demand falls – initial investments must be fully recovered through whatever costing procedure is employed.

37. The Applicant strongly believes that this is a matter of fundamental and critical importance in the context of this overall LRIC process and ought not to be the subject of a form of ad-hoc decision being made by the Respondent in this fashion. The Applicant's position is that this matter ought to form the subject of a separate stand-alone consultative process in which the Applicant (and other interested parties) are provided with an opportunity to properly understand the Respondent's proposals in this regard and provide substantive responses in respect of same. This is particularly the case given that the consultation documents provided to date by the Respondent did not expressly reference this issue. The Applicant is very much opposed to the Respondent (inadvertently or otherwise) essentially making it up as it moves along.

Question 5 What are your views on the technology assumptions proposed for the hypothetical fixed and mobile network operators?

38. In the first instance, the Applicant would highlight the fact that according to footnote 4 of the consultation document, the Respondent erroneously proceeds on the assumption that "both operators" (a reference to C & W and the Applicant") use 1900 MHz spectrum. This is factually incorrect. The Applicant also operates on 1800 MHz spectrum. In fact, there is a considerable discrepancy between C&W and the Applicant in terms of spectrum allocations and usage in Barbados.
39. The position taken by the Respondent in relation to this issue ignores the principles of economic efficiency, particularly in terms of the need to remain dynamically efficient. The Respondent has ignored the representations of both the Applicant and Caritel in relation to this matter and simply endorsed C&W's position as presented in the so-

called "LRIC model framework". This is all the more troubling given that the Applicant has not been provided with access to the LRIC model framework.

40. The Applicant would refer the Respondent to the request for a reconsideration as set out in terms of Question 2 above and would urge the Respondent, in particular, to reconsider the position adopted in respect of this Question 5 and seek to ensure that any LRIC model that may be developed must be developed in such a way so that it is robust enough to consider numerous types of "patchwork-network" topologies based on various demand profiles for services within the total service offering.
41. The Respondent itself in its published guidelines state at paragraph 97 (by way of example):

"...the Commission is of the view that the LRIC models shall reflect the current technologies in Barbados ..."

However, notwithstanding this position taken in the guidelines by the Respondent, it does seem clear from the consultation document that the Respondent regards current technologies in Barbados to only encompass up to a 2.5G network as proposed by C&W. Both the Applicant and C&W currently operate a 3G/HSPA+ network in addition to the Applicant's 2G network offered over 1800MHz and C&W's 2G network. The Respondent is thus already essentially out of date in terms of how it seeks to proceed. It would seem clearly illogical and irrational therefore for the Respondent to simultaneously endorse a LRIC model as proposed by C&W in the "framework" document and guidelines that purport to reflect current technologies. Again, this may be convenient for the Respondent and/or C&W, but convenience does not make it a proper and judicious exercise of discretion. The position being advanced at this juncture by the Respondent is patently flawed in this fundamental regard and the Applicant believes it to be wholly unreasonable and/or irrational.

Question 6 - Do you agree that the TSLRIC model should be on a scorched-node approach?

42. The Applicant agreed with this approach as is clear from the response to the consultation document. However, the Applicant is concerned with the position as set out by the Respondent in the Decision wherein the Respondent states at paragraph 57:

“The commission believes that the comments on mobile network nodes are well founded and has included existing base station sites as nodes for the purposes of defining scorched nodes” (The Applicant’s emphasis added).

43. It is entirely unclear to the Applicant where the Respondent has included existing base station sites as nodes. This is yet another example of the huge disadvantage and prejudice suffered by the Applicant in terms of this process, which disadvantage and prejudice is founded to quite a significant extent in the lack of transparency in this process generally and the exclusion of the Applicant from the various stages of the process generally. The Applicant feels very much that it is being forced to engage in this process with a blindfold on and with its hands tied behind its back. This is not at all in keeping with a supposedly open and transparent consultative process.

Question 7 Do you agree with the proposed use of a tilted annuity to estimate capital costs?

44. The Applicant submitted that the Respondent ought to employ straight line depreciation. Having considered the position enunciated by the Respondent, the Applicant is concerned with the manifest lack of specifics and detail put forward by the Respondent in support of its position to choose tilted annuity. It appears to the

Applicant that this is yet another critical matter which the Respondent is content to leave in the hands of C&W.

45. The Applicant believes that the Respondent's adopted prescribed method for cost recovery based on the standard titled annuity depreciation ("**STAD**") formula is wholly deficient in terms of detail and how this will be practically applied. There is no guidance whatsoever on whether opening, closing or average net book value of assets will be used for example. There is no guidance on the treatment of staggered capital investment where new assets are deployed or used to replace old assets during the financial year.
46. Crucially, the Respondent's guidance document is silent on the treatment of inflationary benefits/deflationary losses in the context of recouping initial investment in application of the **STAD**. As is apparent from the Respondent's guidelines, the Respondent anticipates a model and "tilt" premised on declining telecommunications equipment prices (although no evidence has been adduced at this time that prices are continuing to trend downward). As such, provision must be made for loss of value in equipment where capital costs have already been incurred in previous periods – otherwise by definition operators cannot recover initial investment contrary to principles of economic efficiency and international regulatory best practice and will be at a disadvantage vis-à-vis any new entrants in the market.
47. The Respondent has failed to consult properly on these matters, including WACC (and the Applicant would expect a different WACC for fixed and mobile networks), which will form a crucial input to calculate the Net Present Value in assessing cost recovery. Capital cost recovery and a return on deployed capital are among the most crucial aspects of any LRIC model/process. The Applicant would strongly urge the Respondent to reconsider its decision not to adequately consult on issues pertaining to WACC and depreciation. In order to make a substantive and informed response on application of

the tilted annuity approach the Applicant would require that the Respondent would publish examples of how it would propose it be applied and seek industry input into the appropriateness or otherwise of the proposed approach.

48. As it currently stands C&W can easily exploit the huge latitude afforded to it by the Respondent's Decision and approach generally in applying the methodology that best meets its commercial objectives. The Applicant believes that it is wholly insufficient for third parties to be provided with a generic formula on the depreciation methodology when the application of the formula is open to interpretation and C&W is left to its own devices to determine what is the most appropriate approach for them to take while possibly still complying with, as yet, very loose LRIC guidelines provided by the Respondent. Such an approach exposes the Applicant to, at least, the very serious risk of prejudice and hardship at the hands of its competitor.
49. Leading Management Consultants Bureau Van Dijk produced a comprehensive paper on how inappropriate application of depreciation methodologies like tilted annuity can lead to outcomes contrary to economic efficiency. The paper entitled "*Evaluating Economic Depreciation Methodologies for the Telecom Sector*" is set out at **HMCI-1 Pages 134 to 164**.

Question 8 Do you agree with the proposed approach to operating costs?

50. The Applicant notes that the Respondent has refused to adopt the submissions from Caritel and from the Applicant in terms of technology that ought to be considered in the mobile network modeling process. The Respondent has opted instead for a 2.5G mobile network (again as per C&W's desire). It is difficult to ascertain how operating costs in the model will account for "*...increased efficiency resulting from the use of more modern technology...*" as stated previously by the Respondent at page 23 of consultation. The

Applicant would seriously question how efficiency gains are expected to be derived based on a constraint of static technology.

Question 9 What are your views on the proposed approach to shared costs between different networks?

51. The Applicant is strongly of the view that the Respondent has strayed significantly beyond its jurisdiction in relation to its determination on this matter and requests that it reconsiders and varies its position. The Applicant outlined why it was inappropriate to consider shared costs between networks, in particular intra-country sharing of costs in the submission provided in response to the consultation document. The Respondent's contradictory and irrational positioning as between invoking the concept of the hypothetical operator and simultaneously abandoning it in favour of real world actualities seems always to be driven by an underlying desire to push costs in a particular direction. For example the Respondent notes at paragraph 66 of its Decision:

"...Given that both mobile operators have similar footprints in the region, it is unclear how the assumption of international network sharing would discriminate against either operator..."

In so maintaining, the Respondent displays an eagerness to not just to abandon its commitment to a hypothetical bottom-up approach for network elements, but makes the extraordinary leap in assuming that because both the Applicant and C&W operate across the region that (a) their networks must be similar and (b) their intra-jurisdictional networking arrangements and synergies must be similar. Notwithstanding, C&W is a fixed and mobile operator throughout the Caribbean (by comparison to the Applicant a mobile only operator) and that C&W is one of the largest international carriers in the world (by comparison to the Applicant having no international network), it is wholly

unclear why the Respondent would see this as any way relevant to developing a hypothetical cost model for Barbados. The Respondent has proceeded in this critical matter on the basis of significant factual errors.

52. In addition in taking this irrational and contradictory position, the Respondent is effectively making regulatory decisions that have implications for countries outside Barbados and thus are manifestly beyond the Respondent's jurisdiction and remit. If the Respondent is seeking to make the setting of domestic interconnect rates in Barbados somehow contingent on assets (network elements) outside Barbados then for all intents and purposes the Respondent is attempting to regulate assets and businesses situated and operating outside Barbados. By way of analogy, it would simply be unthinkable that Ofcom in the UK would require an operator in the UK, through regulatory dictate, to derive benefit from assets owned by another company in France. It would be equally absurd for it to claim a company was not operating efficiently if it could not derive such benefit. The Applicant has little doubt but that the Respondent would, quite rightly, jealously protect its own jurisdiction from interference from outside bodies or authorities. The converse ought to be true.

53. Furthermore, the Respondent's decision as outlined at paragraph 67 of the Decision i.e. to maintain its view that shared costs between fixed and mobile networks needs to be accounted for in the context of stand-alone models for fixed and mobile networks, is completely unsubstantiated and devoid of accountability. The Applicant raised numerous valid economic reasons why this ought not to be done yet the Respondent's only response to this matter is as follows [paragraph 67]:

"...Concerning sharing of network assets within Barbados, the Commission remains of the view that any existing network sharing needs to be accounted for in the LRIC models..."

54. The Applicant believes (and is so advised by Counsel) that fairness of procedure and natural justice necessarily dictates that the issues it has raised be properly considered and if the Respondent continues to maintain its view as expressed in paragraph 67, that the reasons for that decision and view are clearly outlined, in particular in the context of assuming why a hypothetical operator should have both a fixed and mobile network and the associated economies of scope. This is the minimum requirement of an open and transparent process.
55. The Applicant is most concerned that the Respondent has sought to avoid discussion on this point in particular in the context of the LRIC process generally. This evident propensity on the part of the Respondent to avoid discussion on critical elements of the approach being adopted by the Respondent leads the Applicant to the conclusion that the Decision is fundamentally flawed in a number of material respects and does not accord with international best practice and with the minimum standards that the Applicant would expect to apply in this process. It appears to the Applicant that agreement as between C&W and the Respondent appears to be the only factor in these matters.

Question 10 What are your views on the general reporting requirements for the TSLRIC?

56. The Applicant would once again note its serious concern and opposition to the lack of transparency in this Decision and process generally which, once again, is evident in the Respondent's position as adopted in respect of this specific issue wherein the Respondent states *"The Commission wishes to reiterate that the LRIC models will not be made public and review will be undertaken by the Commission"*.

F. *Miscellaneous aspects of the Decision where Applicant seeks a review (“Separate to the Ten Questions”)*

57. At Part III Section E of this Affidavit, the Applicant addresses the Respondent’s stated position in respect of the ten specific questions; which positions clearly form part of the overall Decision arrived at by the Respondent. On review of the Decision, it is clear to the Applicant that there are constituent elements of the Decision which fall outside the scope of the ten specific questions (or at least which are addressed in the Decision outside of the sections dealing with the ten specific questions). This has made the Applicant’s task somewhat more difficult in an overall sense in that in some respects it is addressing elements of the Decision which it has not previously addressed the Respondent in its submissions filed to date. However, it is obvious to the Applicant now, on receipt of the Decision, that the Applicant is required to address certain points made or positions now adopted by the Respondent in its Decision. These points are addressed below by reference to the paragraph number in which they appear in the Respondent’s Decision. The Applicant is also requesting that the Respondent reconsider these individual points as part of the wider Request for Reconsideration and Variation which is grounded upon this Affidavit.

Paragraph 5

58. The Applicant is most concerned at the statement by the Respondent at Paragraph 5 that *“it makes sense economically, especially as competition develops, for competing operators to use each other’s core network for transit purposes”*. The Respondent appears to ignore the fact that the investments in the network, including the core network are sunk. These costs must be recovered regardless of the whether the assets are used or not. Any suggestion or position being foisted on the Applicant pursuant to this approach such that it ought somehow not have invested in its core network but

rather ought to have transited on C&W's network is simply irrational and/or unreasonable.

59. The Applicant believes that this concept as outlined in paragraph 5 and referenced above constitutes an affront to facilities based competition and innovation. The dearth of investment in network facilities in Europe has led to serious concerns at the EU Commission level that more needs to be done to attract facilities based investment in telecommunications or it will seriously impact on European growth prospects.
60. If this is the policy that Barbados as a whole was originally espousing, then Barbados would never have liberalised the market in the first place. Investment and innovation by operators often take different paths. For instance, the Applicant had GSM networks long before C&W got rid of TDMA. Forcing a company to use the core network of another could seriously impact on developments and innovation in IP based services due to the market moving only at the pace of the transit provider. Telecommunications providers such as the Applicant must be relied on to make economically prudent decisions for itself. That does not necessarily mean that they must use the least cost transiting option if choosing that option is detrimental to their business in other respects, thereby raising costs or retarding innovation.

Paragraph 6

61. The Applicant does not believe that there is any valid excuse for not providing the Applicant with full sight of volumes assumed in the model if they are based on a "hypothetical" operator. The Applicant does not understand how such hypothetical numbers could be confidential. The Applicant ought to be provided with full access to these volumes assumed in the model and would include this as part of the Applicant's overarching request for reconsideration and variation of the Decision as it relates to transparency in the LRIC process moving forward.

Paragraph 8

62. One of the stated reasons for the Respondent implementing LRIC is to “*send economic signals to promote forward-looking investment decisions*”. However the Respondent has itself ruled out the possibility of incorporating forward looking investment decisions by ruling out the consideration of 3G/4G/LTE technology in the model. It is widely acknowledged in the industry that this is the future of mobile telecommunications, yet one of the key reasons outlined by the Respondent for imposition of the LRIC process i.e. to promote forward-looking investment decisions, has not just been negated, but completely eliminated by ignoring market realities in the flawed approach adopted.

Paragraphs 23 & 24

63. These paragraphs of the Decision seem to confirm that the wider market, including the Applicant, is to be completely excluded from what reads essentially like a closed bilateral consultation process between C&W and the Respondent. This wider issue is addressed elsewhere in this Affidavit. The Applicant’s belief is that the process as now outlined in the Decision does not meet the Respondent’s own stated requirement to consult with the industry. The commission states at paragraph 23:

“The Commission is of the view that as a first step after the LRIC guidelines have been published, C&W must provide the Commission with proposed model specifications consistent with the guidelines”

It was the belief of the Applicant, based on international best practice, that the model specifications would be dictated to C&W following a full and proper consultation with the industry. The process as outlined by the Respondent essentially affords C&W an extraordinary latitude to develop a model based on specifications that generates commercially advantageous outcomes that may still be consistent with what are, as yet,

66. The Applicant would strongly dispute that there is “...*only limited potential*...” (itself an admission that there is potential) for cost misallocation. The very reason incumbent providers throughout the world are required to undertake regulatory separated accounting is because of the very strong incentives to misallocate costs to their own commercial advantage and to the detriment of its competitors. Not only are most incumbents required to undertake such initiatives in most European countries, they are also required to publish such accounts consistent with transparency obligations imposed on dominant operators. The scope for cost misallocation is significant even if C&W were only a provider of fixed line services. The scope for such misallocation (particularly where network elements/labour resources are shared) where it provides fixed and mobile services increases significantly. This is a matter of very grave concern to the Applicant; particularly when coupled with the Applicant’s effective exclusion from what is essentially a bilateral process between the Respondent and C&W. The Applicant would strongly urge to remain live and conscious to the commercial realities of this process.
67. Further, such risks are compounded by the Respondent’s decision to relieve C&W of the responsibility to properly model the fixed access network in detail (as evident from Paragraph 36 of the Decision). Affording such latitude to C&W, coupled with a complete lack of transparency in the process as envisaged by the Respondent is therefore a recipe for disaster for the industry and an opportunity to gain significant commercial advantage for C&W. The Applicant believes that the creation of this opportunity lies at the heart of C&W’s urgings on the Respondent to proceed with a LRIC process. The effective acquiescence by the Respondent with the commercial imperatives of C&W creates an improper hardship and prejudice on the Applicant.
68. In March 2011, in the UK, the Regulatory Body published the entire LRIC excel cost model used to derive mobile termination rates for certain operators in the UK on its website and it was made available (and remains available) for general download. A copy

of the introductory page to this published excel model is set out at **HMCI-1 Pages 165-166**. The process as envisaged by the Respondent in its Decision falls lamentably short in terms of protecting against discrimination and the improper imposition of significantly prejudicial measures on the Applicant.


IV Conclusion

69. The matters as set out herein are of very considerable significance to the Applicant's business and have the potential to adversely impact on the Applicant's financial well-being in a very material way. In the first instance and given the seriousness and complexity of the issues arising, the Applicant believes that the Respondent ought to allow a full review and reconsideration process relating to the Decision in accordance with the applicable regulatory framework. The Applicant is fully prepared to engage promptly and effectively with the Respondent in terms of its required role in this full review process of the Decision referenced herein.

70. In the second instance, the Applicant believes that the Respondent ought to vary the terms of the Decision in the manner as set out in the Notice of Motion filed herein and addressed herein this supporting Affidavit.

71. The Applicant would therefore humbly pray for the reliefs sought in the terms of the Notice of Motion as filed herein.

SWORN in the city of Bridgetown, Barbados)
On the 13th day of January 2012)
before me:)



Helga McIntyre



ERITH SMALL
JUSTICE OF THE PEACE
Justice of the Peace / Notary Public/ Attorney –at-law

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 and Order of the Fair Trading Commission dated the 12th December on Long Run Incremental Cost (LRIC) Guidelines for implementation by Cable and Wireless (Barbados) Limited.

BETWEEN

DIGICEL (BARBADOS) LIMITED

APPLICANT

- AND -

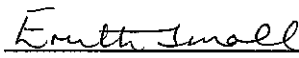
FAIR TRADING COMMISSION

RESPONDENT

Exhibit HMcl -1 to Affidavit of Helga McIntyre



Helga McIntyre


ERITH SMALL
JUSTICE OF THE PEACE

Justice of the Peace / Notary Public / Attorney at Law