



December 28, 2009

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Opposition to Request of Digicel (USA), Inc. for Access to Confidential Information,
*Petition for Protection from Whipsawing and Stop Settlement Payment Order on the
U.S. Tonga Route*, IB Docket No. 09-10

Dear Ms. Dortch:

MCI International Inc. (“Verizon”) opposes the request for confidential information filed on December 15, 2009 by Digicel (USA), Inc. (“Digicel”).¹ Granting Digicel’s request would be inconsistent with Commission policy regarding the treatment of confidential information, would afford insufficient protection to the highly confidential materials submitted and, with respect to Verizon’s materials, would not provide Digicel access to the information it seeks since Verizon has already stated that it does not terminate traffic to Digicel.

First, the information submitted by Verizon – and presumably by the other carriers who requested confidential treatment – is highly sensitive business information. The information includes commercially negotiated terms and rates between Verizon and other providers for the termination of traffic on the U.S.-Tonga route. As a result, this information includes both competitively sensitive cost information and competitively sensitive price information. Knowledge of this information would give companies competing for customers on the U.S.-Tonga route an anti-competitive advantage. Indeed, in this case, Verizon’s filing contains sensitive information about the costs and prices of Digicel’s competitors. The filing also provides sensitive information about the costs and prices of a direct competitor to Digicel’s affiliate, Digicel Tonga Ltd. Access to this information would plainly give Digicel an unfair competitive advantage. For this reason, the Commission has previously determined that commercial agreements of this sort are appropriately protected from disclosure.²

¹ Letter from Delbert D. Smith to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 09-10 (Dec. 15, 2009) (“Digicel Request”).

² See *International Settlements Policy Reform*, 19 FCC Rcd 5709, ¶ 50 n. 125 (2004).

Further, the Bureau has previously declined in this very proceeding to make such sensitive information available to competitors even under a protective order.³ Several months ago, AT&T requested access to confidential information filed by the Tonga Communications Corporation (“TCC”).⁴ The Bureau denied this request, finding that “the information provided by TCC is confidential commercial financial information and it is necessary for us to protect the confidentiality of this information.”⁵ The confidential commercial financial information submitted by Verizon must similarly be protected. While Digicel attempts to distinguish the Bureau’s prior action by arguing that the confidential information of a foreign carrier is somehow entitled to greater protection, the public interest does not support providing lesser protection to the equally sensitive commercial information of domestic carriers.

Additionally, Digicel’s asserted reason for needing access to the confidential information does not apply to the information submitted by Verizon. In its request, Digicel states that it was advised by Bureau staff that Digicel “has arrangements that appear to be subject to the restrictions specified in the Bureau’s order” because “information supplied in one or more of the responses by U.S. carriers to the Bureau’s request for information had identified Digicel USA as a carrier through which the responding carrier(s) sent traffic indirectly to Tonga for termination.”⁶ Digicel claims that “to respond in an informed and meaningful manner, it requires access to inspect the information submissions in question.”⁷ Yet, the public version of Verizon’s March 2, 2009 response to the Bureau’s February 18th information request plainly states that Verizon “did not have in 2008 or in 2009 a correspondent relationship with Digicel or any other carrier in Tonga [aside from TCC].” Further, that filing makes clear that Digicel is not a carrier through which Verizon sent traffic indirectly to Tonga for termination. Thus, there is no information relevant to Digicel’s inquiry in Verizon’s filing and accordingly no need for Digicel to inspect and respond to Verizon’s confidential information. In any event, Digicel’s access to this information is not necessary to determine whether it is subject to the Bureau’s June 15th and

³ See *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order, IB Docket No. 09-10, DA 09-1326 (June 15, 2009).

⁴ See Letter from James Talbot, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 09-10 (March 20, 2009).

⁵ *Id.* at ¶ 10.

⁶ Digicel Request at 2.

⁷ *Id.*

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November 16th stop payment orders⁸ – to the extent it is a U.S. carrier exchanging traffic to Digicel Tonga or to TCC, Digicel is bound by the orders just like any other U.S. carrier.

Verizon believes that agency precedent and public interest considerations require the denial of Digicel's request. Nevertheless, to the extent that the Bureau decides to grant Digicel access to Verizon's confidential information, any such access must be limited to outside counsel. Providing such a heightened level of protection is necessary to ensure that access to this information does not contribute to any carrier having an unfair competitive advantage. Limiting access to outside counsel would also be consistent with agency precedent in other cases where the Commission has determined that there is a need to provide access to very sensitive competitive information.⁹

⁸ *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325 (June 15, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Second Order and Request for Further Comment, IB Docket No. 09-10, DA 09-1325 (Nov. 16, 2009).

⁹ *See, e.g., AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, Order, 21 FCC Rcd 7282, 7282-83, ¶ 3 (WCB 2006); *AT&T/Centennial Second Protective Order* at ¶ 3; *SBC Commc 'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 8876, 8877, ¶ 4 (WCB 2005); *Verizon Commc 'ns Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 10,420, 10,421, ¶ 4 (WCB 2005).

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For the forgoing reasons, the Commission should deny Digicel's request to access Verizon's confidential information or, alternatively, limit such access to Digicel's outside counsel.

Respectfully submitted,



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