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Final Determination

Prices and Access for Southern Cross Capacity and Network

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Promoting Competition in the Fiji Markets

1.0 Introduction

- 1.1** Information and knowledge have served as the cornerstone of survival, innovation, development, economic opportunity, and power throughout the history of human kind. Those with access have always had a competitive advantage over others for education, health, and economic growth and those without access have lagged behind.
- 1.2** As we move from the agricultural to industrial to the information era, access to information becomes more prevalent, a basic right and means to poverty reduction. With the rapid technological developments of recent decades, the means of accessing information and its sheer volume have not only spread faster and more broadly, but also have grown larger and more complex. And those without access will continue to fall behind the curve – creating an even wider digital divide which ultimately contributes to economic inequality and poverty.
- 1.3** Access to information and the Internet has already become a utility in most developed countries and there is no other easier means to make it available to the public in developing nations than through broadband networks. Such networks have become the foundational infrastructure for providing access to information and linking citizens with the world of knowledge in education, health, safety, agriculture, and the environment.
- 1.4** Internet has become a key priority in recent times, and there is a belief that its transformative power as an enabler for economic and social growth makes it an essential tool for empowering people, creating an environment that nurtures the technological and service innovation, and triggering positive change in business processes as well as in society as a whole.
- 1.5** Island nations and its peoples have a greater disadvantage when it comes to poverty reduction and access to information due to the isolated and dispersed nature of their geographical location. On the other hand, the Pacific islands are also blessed with pockets of lands and population where the deployment of any infrastructure, including broadband becomes more convenient. Broadband networks can play a larger role in such countries by leap-frogging development, making information access ubiquitous and a human right, shrinking the inequality gap, reducing poverty, and creating a safer environment for its citizens.
- 1.6** Building a knowledge base of understanding through individual cases, aligned with the local culture and policies, will enhance our overall understanding of how to best serve the needs of small island markets towards bridging the knowledge divide and cultivating an environment for equal opportunity for all.

- 1.7** Increased adoption and use of broadband in the next decade and beyond will be driven by the extent to which broadband-supported services and applications are not only made available to, but are also relevant and affordable for consumers. And while the benefits of broadband-enabled future are manifest, the broadband revolution has raised up new issues and challenges.
- 1.8** Regulation has been a prominent feature of the ICT sector for many years. In particular, when telecommunication networks that had been constructed and operated by state-controlled monopolies were privatized, or the provision of telecommunication services was liberalized, regulation assumed a key role in promoting competition and protecting end users.
- 1.9** Regulatory controls are aimed at ensuring that control of network infrastructure that could not readily be replicated could not be exploited to the detriment of end users, either by foreclosing competition in other parts of the value chain or by charging excessive prices to final customers.
- 1.10** Fiji's National broadband policy was released in October 2011 where various implementation paths are being considered to support supply and demand elements. The specifics of Fiji, including its geography and demographics frame the technology and market scenarios. The bottom line of the policy emphasizes how Fiji can assemble the will and resources to best deliver the benefits of broadband to a population are a globally relevant discussion.
- 1.11** The factors that matter in terms of how broadband will be implemented and introduced in a way that allows usage to grow are well known: a conducive environment consists of coordinated policy, appropriate technology that is matched to the context of a market, readiness broadly defined, in government, the population and business and lastly rates charged for the provision of services.
- 1.12** The availability of high quality, affordable broadband services in Fiji is essential to facilitate innovation, economic growth and development, and social and cultural inclusion. The level of ICT penetration within a country depends on a number of factors and one of the most important factors is Fiji's connectivity to the global economy. Contemporary, Fiji is connected to the global economy via the Southern Cross Cable.
- 1.13** This Determination has been compiled to review the existing determination for Price and Access for Southern Cross Capacity and Network ("SCCN") in the backdrop of changes in the local market structure and international pricing.

2.0 Background

2.1 On 04 March 2010, the Commission undertook a study to examine if Fiji International Telecommunications Limited (FINTEL) had Substantial Market Power (SMP) in relation to control of the Landing Station where Southern Cross Cable (SSCL) lands. The study concluded on 14 April 2010 and found out that FINTEL had SMP in relation to its control of the Landing Station which was a bottleneck for Fiji's ICT sector.

2.2 The Commission concluded that such SMP over the Landing Station could be detrimental for the country as demonstrated by prevailing high bandwidth price offered to operators obtaining bandwidth from FINTEL.

2.3 The Commission having exhausted its review of the bandwidth cost structure and pricing models with key reference points to the SCCL's Capacity acquisition costs for the Bandwidth products and other suppliers marketing the same, made a ruling on 04 June 2010 that the price determination be scheduled for a staggered and glide path approach. The final glide path was triggered for a change in 01 July 2011 and the Commission stated that future reviews will depend on the market economies of scale.

2.4 The Commission believed that the new determination would be a catalyst for attraction of new types of businesses to Fiji's shores and the benefit would be passed to the end users via Internet service providers.

2.5 In the determination, the Commission noted that (Section 11):

"The Commission notes that the reduction of Bandwidth prices and the move towards a competitive market must ensure that benefits will pass on to the end user. The Commission requires that all internet providers register their retails prices with the Commission on a quarterly basis. The Commission further cautions the internet service providers that if it does not see retails rates falling in line with the fall in the wholesale rate, then it will have no option but to regulate retails prices as well".

2.6 The Commission has been monitoring the market since the determination on the wholesale bandwidth prices. With the reduction in the wholesale bandwidth charges, a well functioning (competitive market) should show symmetrical reduction in retail rates.

2.7 In recognition of changes in the market structure and noting that Commerce (Control of Prices of Interconnection Services Rates) Order 2012 has been extended for further three years, on 03 April

2013, the Commission wrote to the stakeholders to make a formal submission for the review of wholesale bandwidth charges.

2.8 Based on the submissions made and through the Commission's independent research, analysis and computation, the Commission has made this determination.

3.0 Legal Framework

3.1 Under Section 4(1) of CCD2010, "regulated industry" means-

- (a) an industry engaged in the supply of electricity, water, sewerage, post, broadcasting, telecommunications, ports or civil aviation services; or
- (b) Any other industry that is declared under Section 5 to be a regulated industry.

Thus, telecommunications is a regulated industry under the Commerce Commission Decree 2010 ("CCD2010").

3.2 The Commerce (Control of Prices of Interconnection Services Rates) Order 2012 empowers the Commission to control the prices or rates for the supply of Interconnection Services in all quantities and qualities, grades or classes for three (3) years until 24 October 2015.

3.3 The Commission is fully committed to fulfilling its functions and duties under the CCD2010 and the Telecommunications Promulgation 2008.

3.4 Furthermore, Section 3 of the Telecommunications Promulgation 2008 states:

"3. The objectives of this Promulgation are to provide a regulatory framework for telecommunications that promotes the long term interests of end users of telecommunications services, or of services provided by means of telecommunications services, and the efficiency and international competitiveness of the telecommunications industry in Fiji and, as consistently with that objective as is practicable

- (a) to provide rapid expansion of reliable and as affordable as possible telecommunications services on an equitable basis, with particular improvement in rural areas;*
- (b) to promote efficient investment and innovation in telecommunications networks and services;*
- (c) to provide fair competition among service providers and allowing market forces to operate; and*
- (d) to provide and promote appropriate consumer protection and other safeguards in relation to telecommunications services where market forces are insufficient".*

4.0 Importance of Access to Internet to Economic Development

- 4.1** Utility service has always been among the most heavily scrutinized factor in the site selection process. Locations are routinely eliminated due to issues pertaining to inadequate or lack of electricity, gas, water, and wastewater or telecommunications infrastructure.
- 4.2** Advances in technology have elevated the importance of Internet in economic development and site selection. The availability, quality, and competitiveness of broadband service have become and will continue to be a key issue for many locations. Moreover, studies have shown that the United States has a "broadband problem" that is impacting the country's competitiveness for new investment.
- 4.3** Broadband service connects businesses and individuals to the global marketplace. It has flattened the world by allowing businesses to communicate and collaborate in ways never before possible due to the increase in the amount of information that can be transferred at faster speeds and new software technology made possible by its bandwidth. While many dial-up plans charge for minutes used, broadband is always on and can be less expensive due to unlimited usage and in certain locations, competitive market. The difference in speed saves companies money when considering the increased productivity.
- 4.4** Nowadays people want to live where there is internet service. It improves the manner in which health care and many public services are delivered. Moreover, it has become an essential quality of life amenity for many as it opens new doors to entertainment and communication options like downloading or streaming movies and television shows directly to a computer or TV, accessing music through applications like iTunes, and video conferencing through applications like Skype or Facetime. Broadband allows for a more flexible lifestyle by providing greater access to education through distance learning programs or remote employment.
- 4.5** New business or existing business plan to expand where there is access to internet or/and availability of broadband. It is not a perk or special benefit. For communities, it is a critical piece of infrastructure for attracting new capital investment. Specifically, a company is likely to require a direct fiber connection and redundancy. As with electric service, the reliability of the service is heavily scrutinized to ensure the operation will not be placed offline (especially for information-intensive projects like data centers) or that the risk of being offline is minimal. The competitiveness of the service is also important. Locations with numerous providers have an advantage because competitiveness will drive up speeds and drive down cost.
- 4.6** Locations with inadequate connectivity are quickly passed over for projects requiring services of broadband. Communities lacking broadband infrastructure make the process of elimination easier

for investment decision-makers and influencers. That said, merely having broadband likely places a location on a level playing field with other communities. It will be the only reason a company selects a certain location.

4.7 Some communities do not stop at merely having broadband service. Many use publicly owned networks to their advantage by providing service to the private sector. In 2001, counties around the world began offering private businesses access to its municipally owned broadband networks. Moving on in 2005, countries around the world analyzed the impact and found that they nearly experienced a doubling in economic activity relative to their past experiences.

4.8 Various econometric analyses have demonstrated a positive correlation between broadband and economic growth, and its importance in the site selection process will not diminish. With public and private investments in broadband infrastructure still surging, communities lagging behind will be placed in an ever more competitive disadvantage. More importantly, domestic policy must address the nation's competitive broadband standing to ensure that future capital investment and job creation that should occur in the country.

5.0 Internet Market

5.1 The market structure consists of the following players engaged in the provision of internet services in Fiji:

- Unwired Fiji (Subsidiary of Digicel Fiji Limited);
- Fiji International Telecommunications Limited- Kidanet Fiji Limited/ Brands;
- Telecom Fiji Limited (Connect Brands/ Internet Service (Fiji) Limited);
- Vodafone Fiji Limited; and
- Digicel Fiji Limited.

6.0 Pricing and Computation Analysis Methodology

6.1 Highly competitive markets are characterized by intense price competition. Typically, these are markets where any numbers of competitors are capable of providing products or services that are more than good enough for their customers. It is not that there is not differentiation between suppliers it is just that the points of differentiation are not strong enough to justify a difference in price.

6.2 As a result, buyers have a tendency to focus on price as the ultimate criteria when choosing a supplier. Prices in these markets have a tendency to stagnate. They seldom go up over time and can quite often decrease if competitors are able to incorporate cost reductions through the adoption of new technology or other cost saving mechanisms.

- 6.3** Whatever happens to price, margins remain thin in most cases. Many managers in these markets believe there is little they can do about price or margins. That attitude has developed over the years because they continue to think about pricing in terms of raising prices. But there are many things you can do to improve margins even when you can't raise prices. And in these markets, that's where you have to focus.
- 6.4** It is important to approach these markets with a strategy in mind that fits the nature of the market and the competition. Pricing decisions are never easy and that is especially true in highly competitive markets.
- 6.5** The Commission's analysis and computation is based on the Weighted Average Cost of Capital (WACC) and the building block methodology. Return on Equity was called as using the following formula: $Re = Rf + B [Rm - Rf]$ where:
- Re => Return on Equity;
 - B => Beta Value;
 - Rm => Market Risk; and
 - Rf => Risk Free Asset
- 6.6** WACC represents the rate of compensation for an investment. The cost of capital for any particular business or project is the rate of return required by the providers of capital (both debt and equity) having regard to the risk characteristics inherent. Businesses which are able to earn returns greater than the cost of capital add value for investors. Conversely, businesses which, while may still be profitable, produce returns less than the cost of capital "destroy" investor value.
- 6.7** WACC is calculated using the following method: $WACC = E/V \times Re + Rd \times (1 - \text{Corporate tax rate}) \times D/V$ where:
- E/V => Equity Value Investment;
 - Re => Return on Equity;
 - Rd => Cost of Debt; and
 - D/V => Debt Value of Investment

7.0 Commission's Determination

- 7.1** The Commission after undertaking a detailed analysis of the submission from telecommunication stakeholders and its independent investigation, benchmarking and computations, has determined and fixed the following wholesale bandwidth rates as follows (representing 15 percent decrease respectively using glide path approach):

Table 2: Products and Price Determinations (F\$) per Meg of Bandwidth per Month

Product	Prior to 2010	Effective 01/07/2010	Effective 01/01/2011	Effective 01/07/2011	Current	Effective 01/01/2014	Effective 01/07/2014	Effective 01/01/2015
IP Transit (Australia)	832	600	540	420	420	357	303	258
IP Transit (USA)	1300	459	413	360	360	306	260	221
IP Transit - Premium	843	750	675	550	550	468	397	338
IP Transit Plus (Australia)	998	715	644	504	504	428	364	310
IP Transit Plus (USA)	1560	550	495	432	432	367	312	265
IP Transit Plus Premium	1012	900	810	710	710	604	513	436

7.2 The above determined prices are the maximum wholesale bandwidth charges and will remain the same and no new charges should be introduced unless authorized by the Commission.

7.3 The price determination recognizes that future price reviews are dependent on the market economy of scale and the Commission will undertake a further review in 12 months time.

7.4 Access to the Southern Cross Cable Network

7.4.1 The Commission is satisfied that access to the SCC network is appropriate and possible to promote competition and it has therefore decided that operators can have access to SCC network subject to normal commercial trading terms and conditions which are stated in this determination.

7.4.2 Access to the SCC network, for the purpose of this determination is defined that “any operator may choose to procure and purchase or lease capacity from SCCL or any other supplier of capacity on the SCC network subject to the normal commercial trading terms and conditions for FINTEL to facilitate the access requirement.

7.5 This access facilitation is subject to the operator having satisfied all the following requirements:

7.5.1 Landing Party Agreement (LPA) process for the landing of capacity;

7.5.2 Facilities interconnect technical protocol for co-ordination of access;

7.5.3 Commercial terms and conditions obliging FINTEL to provide:

7.5.3.1 All facilities interconnect services;

7.5.3.2 Ongoing operations and maintenance support required of the Landing Party; and

7.5.3.3 Co-locations services that provides for the sustainability of the access long term.

7.6 On application by a third party, FINTEL is obligated to facilitate access for the landing of an operator’s capacity and the delivery of this shall be within 6 weeks.

7.7 FINTEL shall undertake a project refurbishment and configuration to accommodate for Customers Co-location and facilitate access without compromising the LPA obligations.

7.8 Determination of Commercial Terms & Conditions

7.8.1 Co-ordination of Access Approval & landing of Capacity (One-Off-Charge): This is an one-off-charge and attracts a **15% of Capacity Acquisition Costs. That is 15% of the actual acquisition cost.** Where the operator chooses a lease only arrangement for bandwidth from SCC limited or another supplier of SCC network capacity, the charges shall be calculated as if the operator has purchased the same and shall attract a 15% one-off-charge.

For clarity purpose the acquisition cost is the cost or price at which the network or capacity has been purchased.

7.8.2 Facilities Interconnect service is an ongoing or recurring charge for the everyday operations and maintenance of the Operator's Landed Capacity and shall attract a monthly O&M cost component based on the overall maintenance costs for the facility. The Charge formula for this service shall be calculated based on the volume of capacity connected into the FINTEL cable station and interconnected to the system. **A determination for this shall attract a rate of \$4,000 per STM 1 per month.**

For clarity purpose: "Volume of Capacity connected" - is defined as the total number of networks or capacity landed and interconnected. Suppose if an operator has procured 10 STMs and has only interconnected 4 STMs out of 10 for usage; the charges will be calculated as $4 \times \$4,000 = \$16,000$ vep per month.

7.8.3 Co-location Service: Co-location charges are a normal commercial term and condition where Operators equipment are housed on the principal's property and shall attract charges for accommodation, utilities and overheads. Co-location rates remain same as per the Commission's final determination dated 06 September 2011.

7.8.4 The above fees and charges are effective from **01 January 2014.**

8.0 Ensuring Flow on Effects from this Determination

8.1 The Commission notes that the reduction of Bandwidth prices and the move towards a competitive market must ensure that benefits will pass on to the end user.

8.2 In making this determination, the Commission notes that:

“The Commission notes that the reduction of Bandwidth prices and the move towards a competitive market must ensure that benefits will pass on to the end user. The Commission requires that all internet providers register their retails prices with the Commission on a quarterly basis. The Commission further cautions the internet service providers that if it does not see retails rates falling in line with the fall in the wholesale rate, then it will have no option but to regulate retails prices as well”.

8.3 The reduction in the retail internet rates will also support the aims of the Government’s National Broadband Policy and long term national goals of strengthening ICTs Fiji. The reduction will also fulfills the Government’s intent of optimizing economic, health, education and commercial benefits from increased connectivity, accessibility and fast and more reliable internet services.

8.4 The Commission requires that all internet providers register their retails prices with the Commission on a quarterly basis.

8.5 The Commission further cautions the operators that if it does not see retails rates falling in line with the fall in the wholesale rate, then it will have no option but to regulate retails prices as well.


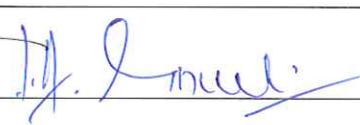
9.0 Impact of this Determination

9.1 This determination will make substantial contribution towards growth and development of Fiji’s Economy. It will:

- Increase ICT penetration in Fiji thus allowing for ease of access to education materials.
- It will open up new markets for the business sector.
- It will reduce costs of internet access to internet services for the education and business sector and thus contributing to reduction in units costs.

9.2 This determination will also be a catalyst for attraction of new types of businesses to Fiji’s shores. In particular, Fiji will now witness increased proliferation of Business Process Outsourcing (BPO) operations. Fiji has a number of BPO linked critical factors to its advantage such its close proximity to major markets like Australia and New Zealand, convenient time zone, relatively high literacy rates and endowment of English speaking workforce and good connectivity to the rest of the world.

Commissioners:

	
Dr. Mahendra Reddy	Mr. Firoz Ghazali
Chairman	Commissioner
14 November 2013	14 November 2013

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