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TRR'S THIRD DETERMINATION OF APPROVED PRICING FOR SPECIFIC LEASED CAPACITY AMOUNTS SUPPLIED BY FCC TO PARTICULAR CUSTOMERS

I. INTRODUCTION

1. On 2 May 2017, TRR issued "TRR's Final Determination Concerning FCC's Requests For Approval Of Pricing For Several Sales of Leased Cable Capacity". This is referred to here as "TRR's First Price Approval Determination". It was accompanied by Order No. 2 of 2017, specifying the maximum approved pricing for the specified sales of leased capacity by FCC to Digicel, TVL and certain other customers. These are referred to here as "TRR's Prior Decisions".

2. On 2 May 2017, TRR issued a Second Price Approval Determination, in which TRR approved maximum prices for the supply of specified additional sales of capacity to two of FCC's customers.

3. FCC subsequently sought TRR's approval for pricing of capacity to a new customer, the Government of the Republic of Vanuatu (GoV). In particular, FCC sought approved pricing for:

   (i) The supply to GoV of [redacted] Mbps of capacity, under a [redacted] contract term, for which FCC proposed a price of [redacted]/Mbps/Month.

4. FCC's requests for TRR approval of pricing for these sales arise under TRR's Order No. 1 of 2017, (dated 15 February 2017), which states:

> "For a period of 12 months, prior to supplying, or agreeing to supply, further capacity on the ICL Cable, or agreeing to sell or transfer any rights to any capacity on the ICL Cable to ICL or any other party, Fidelity Communications Corporation ("FCC") shall first obtain the advance approval of TRR for the pricing and related terms of any such supply or transfer transaction, and in seeking such approval, shall provide substantiation that the price and other terms are cost-based, commercially reasonable, and not discriminatory, and that the transaction is not anti-competitive."

5. TRR's First and Second Price Approval Determinations included a cost-based pricing analysis and consideration of other relevant information and of comments provided by FCC and other interested parties.

6. In "TRR'S Decision On FCC's Request For Internal Review Of TRR's Order No. 2 Of 2017 And TRR's Final Determination Concerning FCC's Requests For Approval Of Pricing For Several Sales Of Leased Submarine Cable Capacity", issued on 4 July 2017. TRR considered all matters raised by FCC, and decided not to revoke or modify the maximum approved pricing in its Prior Decisions.

7. In making this Third Price Approval Determination, TRR relies on and incorporates TRR's analysis, in the above decisions, of FCC's costs, revenues and risks.

This information also is reflected in the maximum pricing previously approved by TRR in Order No. 2 of 2017. For example, TRR approved the following maximum price for a specific sale of leased capacity to Speedcast: $US[redacted]/Mbps/Month for [redacted] Mbps of capacity supplied under a [redacted] contract.

II. Summary of Analysis

8. The sale at issue in this Determination provides further evidence of growing demand for cable capacity in Vanuatu, as referred to in "TRR's First Price Approval Determination" and "TRR's Internal Review Decision."

9. With these additional sales, FCC now has leased over [redacted] of its IRU capacity. Especially as [redacted] of that IRU capacity was acquired less than two years ago, this indicates a fairly prompt uptake of capacity, and supports TRR's analysis and estimates so far of low or modest stranded capacity risks.

10. TRR also considers that, as this market still is in a relatively early stage of development, some conservatism continues to be warranted in relation to FCC's pricing, including as pricing levels and assumptions about its stranded and other costs.

11. For example, it is not appropriate for TRR to rely on "best case" assumptions for this market, so that if the outcomes are worse, the current pricing would put FCC in a loss or marginal position. Instead, TRR's approach at this stage has been to allow room in the current pricing for FCC to cover its costs and make returns, even though not all capacity is leased, and FCC's unit costs appear likely to decrease over time.

12. This approach also has regard to the flexibility that exists, in the future, as more sales are made, and if as expected unit costs decline, for prices to be adjusted accordingly.

13. For the limited purpose of this Determination, and based on the relevant analyses of TRR (as referred to above), TRR concludes as follows:

(i) TRR approves the proposed supply of capacity to GoV on the condition that this supply is at a price not greater than the maximum price set out below, and that this price applies from the date this capacity began to be supplied by FCC:

a. For the supply to GoV of [redacted] Mbps of capacity on a [redacted] term, for a price of US$[redacted]/Mbps/Month.

14. The relevant factors considered by TRR include FCC's costs and risks, the cost recovery and margin available to FCC based on the above prices, and the other prices currently in place for FCC's other customers, as referred to in TRR's prior decisions.

15. TRR also has considered the usual principle that significant increments in volume of capacity purchased, and/or longer-term commitments, generally warrant some reductions in per-unit pricing. However, that does not mean that all increases by a customer in volume (or term) will lead to lower pricing. Under this approach, and having regard to the other pricing approved by TRR, if GoV were to seek approval to acquire significant additional capacity, and/or lengthen its term commitment, a materially lower price is likely to apply.

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