



## ICT Decision 2010-9

Grand Cayman, 1 October 2010

### **Decision in Determination Request related to Allocation of Votes in the Number Portability Consortium**

#### **Overview**

*In this decision, the Authority makes a determination on how to allocate votes in the Number Portability Consortium. The Authority finds that the Consortium members will have an equal share of the votes and that a simple majority of 50%+1 will be required to reach a decision. In the event of a tie, the Authority determines that the Consortium should hold a second vote within 24 hours giving members an opportunity to re-assess their positions. If the second vote again results in a tie, a casting vote will be assigned randomly.*

(Note: This overview is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

#### **BACKGROUND**

1. In ICT Decision 2005-1, Interim Decision and Further Process for Local Number Portability, released 29 March 2005, the Information and Communications Technology Authority (“the Authority”) determined that there were significant benefits to Local Number Portability (“LNP”) and that it would be appropriate to further consider the cost of implementing LNP in the Cayman Islands. Accordingly, the Authority established a Local Number Portability Consortium (“the Consortium”), consisting of major ICT network licensees with Authority Staff providing administrative support, to identify the most appropriate LNP model for the Cayman Islands and to investigate its costs.
2. In ICT Decision 2008-5, Decision and Further Process on Local Number Portability, the Authority determined, based on the evidence filed, that the benefits likely to arise from the requirement to provide LNP outweigh the likely cost of implementing. The Authority was also satisfied on reasonable grounds that such a requirement would not impose an unfair burden on any licensee. Therefore, in accordance with section 71(3) of the Information and Communications Technology Authority Law (2006 Revision) (“ICTA Law”), the Authority directed all operators licensed to provide telephony services (Type 1, 3, 4 and 5 Services) to implement LNP.

3. In ICT Decision 2010-8, Decision in Determination Request related to Cost Sharing of Local Number Portability Costs, the Authority determined that common LNP system costs should be allocated on the basis of each currently active licensee's share of NXX's. This determination was prompted by a dispute between the members of the Consortium.
4. An additional dispute has arisen between the members of the Consortium with regards to the appropriate method of allocating voting rights within the Consortium. This dispute was raised with the Authority on 3 September 2010, by way of submissions filed by all four Consortium members. Reply comments were received from Digicel and LIME on 10 September 2010.

## **SUBMISSIONS**

5. LIME submitted that the primary method of decision making within the Consortium should be consensus. LIME noted that this approach was used by the Consortium prior to 19 July 2010, and was accepted by all members as the primary approach to decision making in the Consortium's Business Rules and Port Order Processes.
6. LIME submitted that it had become increasingly clear that decision making by consensus would be an unlikely occurrence within the Consortium and that an additional methodology for decision making would be needed where consensus should fail.
7. According to LIME, on 30 July 2010, it proposed an alternative form of decision making, where each member of the Consortium would receive a number of votes proportional to its share of the common costs of LNP. LIME submitted that this methodology would be democratic and would recognize the relative financial interests of the operators in the LNP system. In addition, it would be easily and automatically adjusted as existing and new operators acquired or surrendered NXXs. In LIME's view, this methodology would, unlike alternatives such as "one operator, one vote" or "unanimity", be fair to all operators as it would not force a licensee to pay for something without having an equivalent and equitable ability to determine what those costs ought to be.
8. LIME noted that an allocation of voting rights based on NXXs results in LIME currently receiving more than 50% of the votes. To counteract the ability to exercise more than 50% of all the votes in the Consortium, LIME suggested a "clawback" approach whereby a licensee is limited to no more than 50% of the votes.

9. Digicel submitted that each Consortium member should have an equal share of the vote. Further, Digicel considered that the majority of decisions made by the Consortium should be arrived at by means of a majority which translates to three out of four votes and that fundamental or critical matters should be determined by means of a unanimous vote.
10. According to Digicel, LIME's proposal to allocate voting rights based upon sharing of common LNP system costs suggests that it is looking only through the lens of what it perceives to be in the company's own commercial interests, and not what the Authority has decided is in the interests of LIME's customers.
11. WestTel submitted that 100% consensus voting would not work and further noted that a system whereby a member of the Consortium holds majority voting rights could mean that the rights of one operator would always be favoured. WestTel favoured a three party majority unless some other proposal they deemed to be fair was put forward.
12. Telecayman submitted that each member of the Consortium is equally important. Accordingly, Telecayman did not agree with LIME's proposal to use the allocation of common LNP system costs as the basis for voting rights. Further, considering that operators have the option to re-coup their start up and monthly costs by invoicing subscribers at the monthly rate of \$0.60 (start-up) and \$0.20 (monthly) per line, Telecayman submitted that it could not see how LIME could be burdened with an unequal share of the common LNP costs.
13. Telecayman noted that the Consortium in many instances would not have 100% agreement and proposed a democratic majority whereby more than 50% of the votes would be required to reach a decision. With four members in the Consortium, Telecayman submitted that a clear majority would require three operators in agreement.
14. In its reply comments, LIME submitted that the fundamental problem with the allocation of one vote to each licensee is that it ignores the fact that the operators do not have reasonably similar, let alone equal, economic interests in the establishment and operation of the LNP central reference database and order handling solution. LIME noted that the one vote per licensee approach as it currently stands would mean that three operators who collectively have to pay only 43% of the costs of the LNP solution, and individually pay as little as 5 or 6%, could dictate the cost to LIME, who has to pay for the remaining 57%. LIME submitted that this would be grossly unfair and that there was no regulatory or other justification for this kind of imbalance.
15. Further, LIME submitted that the ability to recoup LNP costs through charges to its subscribers did not necessarily, as suggested by Telecayman, leave LIME unburdened with an unequal share of the common LNP costs. If all operators decided not to charge their subscribers for LNP then, according to LIME, it would

by default be put in a position where it also could not charge its subscribers, as this action would be competitively untenable. In LIME's view, by compelling it to bear the bulk of the common LNP costs, it would be put in a high risk position relative to all the other operators.

16. In Digicel's reply comments it submitted that all of LIME's references in support of its approach to voting – “it would be fair to all operators”, “would not force an operator to pay for something”, references to equivalence and equity, “fair and proportional”, “democratic” – were based on an approach that assumed that the meaning of this language must be derived solely from what LIME would pay for the central database, and required the benefits to LIME to be ignored. However, according to Digicel, LIME's proposal would not be not “fair and proportional” or “democratic” based on the proportion of the benefits it derives from LNP.
17. Further, Digicel submitted that LIME's clawback approach to voting would appear to be of little help to the Consortium as it gives LIME 50% of the vote and hence the right to block every other member of the Consortium on every voting matter. According to Digicel, the other operators would all be required to come together just to force an impasse, and could never make a decision between them. In summary, Digicel viewed LIME's clawback proposal as unfair and impractical.

## **AUTHORITY'S ANALYSIS AND DECISION**

18. The Consortium members have attempted to come to an agreement on an appropriate voting methodology for the Consortium. However, after several weeks of discussion, an impasse has been reached. Accordingly, the Consortium members have requested that the Authority adjudicate this matter under the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 (“Dispute Resolution Regulations”).
19. The members of the Consortium have suggested two primary voting methods as part of this proceeding:
  - **Equal votes:** Each Consortium member would have an equal share of the votes. A simple majority of 50%+1 would be required to reach a decision.
  - **Votes based on cost-sharing:** Each Consortium member would receive a number of votes proportional to its share of the common costs of LNP, subject to a “clawback” whereby each member is limited to no more than 50% of the votes. A simple majority of 50%+1 would be required to reach a decision.
20. In deciding between these voting methodologies, the Authority is guided by section 11 of the Dispute Resolution Regulations:

11. *In determining a dispute, the Authority shall act expeditiously, and in doing so may have regard to-*
- (a) the subject matter of the dispute;*
  - (b) the need to inquire into and investigate the dispute;*
  - (c) the objectives and functions of the Authority; and*
  - (d) all matters affecting the merits, and fair settlement of the dispute.*
21. While the criteria at Regulations 11(a), 11(b) and 11(d) are largely self-evident, it may be helpful to re-state the objectives and functions of the Authority with regard to LNP (Regulation 11(c)). Subsection 9(3) of the ICTA Law outlines the principal functions of the Authority, including the promotion of “competition in the provision of ICT services and ICT networks” and of “an efficient, economic and harmonised utilisation of ICT infrastructure”. Subsection 71(3) also empowers the Authority to make rules in connection with number portability.
22. The objectives of the Authority with respect to LNP are contained in ICT Decisions 2005-1 and 2008-5. In summary, these are to give customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase and to promote competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. The Authority believes that the resulting competition will benefit all users of telecommunications services, not merely those that take advantage of LNP.
23. Based upon these considerations and the submissions made by licensees, the Authority has developed a number of criteria to guide its assessment of voting methodologies. These are:
- **User equality:** To promote user choice and encourage competition, the voting methodology should result in Consortium decisions where all users, irrespective of provider, benefit equally from LNP.
  - **Simplicity:** The voting methodology should be easy to implement and understand. When the rules are clear and simple and based on unambiguous principles they will minimise uncertainty in the decision making process.
  - **Timeliness:** The voting methodology should limit the likelihood of deadlock and enable the Consortium to make decisions without delay. Licensees have failed to introduce LNP by the date originally mandated by the Authority and it appears unlikely that they will meet the revised implementation date. This is not in the public interest as customers have been denied the benefits of LNP. Accordingly, the Authority considers a voting methodology that will promote timely decision making to be desirable. No benefits will accrue to users until the LNP system is implemented.

24. After careful consideration, the Authority has determined that the equal votes method is most appropriate. It balances the need for user equality with the need for timely decisions by requiring the majority of Consortium members to approve any decision. It is also simple as it would be easy to implement and understand.
25. By contrast, voting based on cost-sharing would enable an operator with more than 50% of NXX's to veto any Consortium decision. In the Authority's view, such an outcome would not be in line with one of the principal functions of the Authority, namely to promote competition and it likely would be inconsistent with the user equality principle.
26. The Authority notes that the members of the Consortium, in their respective submissions, did not recommend any mechanism to be used in the event of a tie. This would not be helpful to the Consortium and would not satisfy the timeliness requirement.
27. In order to rectify this deficiency, the Authority believes that the following tie-breaking mechanism is necessary. In the event of a tie, the Consortium should hold a second vote within 24 hours. This will give members an opportunity to re-assess their positions in light of the apparent deadlock. If the second vote again results in a tie, a casting vote will be assigned by randomly drawing the name of one operator from a "hat" containing the names of all members of the Consortium. (A practical implementation of this might make use of the random list generator at [www.random.org/lists](http://www.random.org/lists)).
28. The Authority recognizes that this tie-breaking mechanism is arbitrary. However, the Authority considers that the use of a tie-breaking method is essential to bring some finality to Consortium decision-making. After careful consideration, the Authority has therefore determined that the benefits of this method outweigh its disadvantages.
29. In light of the foregoing, the Authority determines that the Consortium should use the following voting methodology:
  - Each Consortium member will have an equal share of the votes.
  - A simple majority of 50%+1 will be required to reach a decision.
  - The mechanism described in paragraph 27 above will be used in the event of a tie.
30. This voting methodology should be used for all Consortium decisions, effective immediately.