



The Bigger, Better Network.

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September 3, 2010

Mr. David Archbold  
Information Communications Technology Authority  
P.O. Box 2502 GT  
3<sup>rd</sup> Floor Alissta Towers  
Grand Cayman

Dear Mr. Archbold

**Re:-Determination Request with Respect to Voting Rights on the Central Database Number Portability Operator Consortium**

Digicel (Cayman) Ltd ("Digicel") hereby notifies the Authority of a Determination request from Digicel brought under section 5 of the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 against Cable & Wireless (Cayman Islands) Ltd ("LIME"), 1 technology Square, P.O. Box 293, Grand Cayman KY1-1104.

**The Issues**

The dispute relates to the voting rights of all operators within the consortium which have contributed to the cost of establishing the central database to enable local number portability in the Cayman Islands. The consortium is, as the Authority knows, comprised of Digicel, LIME, TeleCayman and WestTel. It is Digicel's contention in respect of decisions to be made with respect to the development and running of the database that:

- 1/ each operator on the consortium should have an equal share of the vote. In other words each operator should have 1 vote each (this translates to 25% of the vote given that there are four operators in the consortium at this time);
- 2/ the majority of decisions made by the consortium should be arrived at by means of a majority. In other words three out of four votes;

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3/ fundamental or critical matters should be determined by means of a unanimous vote. The consortium had previously agreed that certain matters should be agreed in this fashion including vendor choice during a conference call on 29<sup>th</sup> June 2010 [copy attached] and termination of the Number Portability Business Rules and Port Order Process [copy attached] – see section 2.3.

None of the above interferes with the absolute right of any operator to appeal any matter to the Authority should it wish to do so in the event that it believes that it is suffering some prejudice or if it believes there has been a misapplication of these rules.

## **Background and Discussion**

### *Equal Voting Rights*

Subsequent to the Authority's Decision 2010-8, on 19<sup>th</sup> July 2010 with respect to the payments to be made by the consortium towards the costs of establishing the central database required for number portability LIME wrote to the consortium on 30<sup>th</sup> July 2010 [copy attached] stating that as a consequence, for the purpose of making decisions in the consortium, LIME should have the majority of the votes (56.16%), that Digicel should have 28.77%, and that WestTel and TeleCayman should have 8.22% and 6.85% of the vote respectively.

If LIME's approach were adopted it would be placed in a position that would enable it to dictate to the other members of the consortium how the database should be developed and run. Moreover this ability to make decisions without regard to, or by rejecting, the views of all the other parties would have been in respect of the development and running of a system that is designed to promote competition between the very same parties. Those parties might very well have different or conflicting views depending on their commercial positions which might, on occasion, even be diametrically opposed. Consequently, in our view, LIME's proposal was inviting trouble. It seemed likely to lead to discontent and strife between the members of the consortium. As a result, during a conference call between the parties on 5<sup>th</sup> August 2010 [note of meeting attached] Digicel stated that it could not agree to LIME's proposal. Digicel committed to write to the consortium with its views.

In Digicel's letter of 18<sup>th</sup> August 2010 [copy attached] to the consortium we reiterated the points we had made during the previous conference call and stated

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that it was more equitable if the operators had equal voting rights. In other words each operator would have 1 vote. We added that there were also economic reasons supporting, and indeed in our view requiring, a system of equal voting rights. This is because the Authority had stated in its Decision that:

*"...as common LNP system costs are incurred to enable number portability from which all customers derive benefit and the distribution of customers amongst licensees is not equal, this proposed solution will not align costs with these benefits."*

Thus, implicit in the Authority's view, and the basis on which it took its Decision to allocate costs, is that the benefits to each operator from the central database solution are proportional to the number of customers using each operator's network. The Authority has decided that each customer benefits from the fact that they are able to port (irrespective of whether they do, or do not, port). Indeed, as we read it, the Authority appears to be saying that it has based its costs order on the overall benefits that would accrue to the customers of the respective operators rather than the other way around.

In other words, and given that costs were based on the number of NXX codes held by each operator, the proportion of the benefits to each of the operators from the central database based on the Authority's views and Decision are as follows:

Benefits to LIME's customers	56.16%
Digicel	28.77%
WestTel	8.22%
TeleCayman	6.85%

Consequently, while LIME has to incur 56.16% of the costs, it, and more precisely LIME's customers, also reap 56.16% of the benefits. In contrast, while TeleCayman pays only 6.85% of the costs, its customers reap only 6.85% of the benefits. Therefore, based on the Authority's views and its Decision, each operator's customers benefit proportionately to the amount that each operator pays towards the database. Or put even more straightforwardly, each operator gets out what it puts in.

LIME's position on voting rights may be based on it looking only through the lens of what it perceives to be in the company's own commercial interests, and not

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what the Authority has decided is in the interests of LIME's customers, and predicated on a fear by LIME that as the incumbent it will only lose customers overall as a result of the implementation of number portability. While any such fears should not be a factor in terms of determining voting rights we note that it is possible that LIME may not suffer an overall drop in customers. In some countries the opposite has happened, and number portability has actually helped the larger operators to increase their market share. No doubt LIME will do all it can to emulate those operators. So number portability could be to the financial profit of LIME as a corporate entity as well as benefiting all its customers.

In summary, and based on the Authority's Decision, the share of the initial costs of implementing the central database are not a factor in our view when considering what voting rights each operator should have on the central database consortium in the Cayman Islands.

*Percentage Vote Required to Make Decisions*

As indicated above, the consortium has made special provision on a case by case basis up to this time in terms of how to take decisions on matters of particular importance. The consortium decided to require unanimity for decisions on vendor choice, and for terminating the existing porting process rules, given the far ranging consequences for all the parties involved of such decision. We believe that a case by case approach should be maintained going forwards to determine what are fundamental or critical matters which do require unanimity in decision making.

If a matter is not considered to be fundamental or critical then we believe that three out of four votes (if a one operator one vote approach is adopted) should suffice to make decisions. If the Authority supported LIME's approach to voting rights then we can only suggest that a 90% threshold would be required for these kinds of decisions as otherwise just two operators (LIME and Digicel) could make all the decisions between them and WestTel and TeleCayman could be sidelined.

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## Reliefs Sought

Digicel seeks the following reliefs:

- 1/ Each operator in the operator central database consortium should have one vote;
- 2/ Fundamental or critical matters are to be determined as such by the consortium members on a case by case basis and decisions taken in respect of such matters will require a unanimous vote;
- 3/ Other decisions will require three votes out of the four operators on the consortium.

Yours truly,  
**Digicel (Cayman) Limited**



Victor Corcoran  
Chief Executive Officer

Encs.