



The Bigger, Better Network.

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September 10, 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

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

Digicel (Cayman) Ltd ("Digicel") is hereby responding to LIME's submission to the other submissions made in respect of the dispute over the voting rights of member operators of the central database number portability consortium.

As the Authority requested we confirm:

- a/ that the parties have reached an impasse on the voting rights for running the central database for local number portability;
- b/ that we wish to have the Authority adjudicate this matter, in accordance with the Dispute Resolution Regulations; and
- c/ that we have provided complete submissions to the Authority and do not intend to make further submissions (subject to any further submissions permitted by the Authority, or made by other parties – in the latter case we reserve the right to reply).

## Comments on LIME's Submission

We note that LIME denies that the benefits<sup>1</sup> that accrue to its customers as a result of the implementation of the central database and consequently LNP are of any relevance here. LIME therefore appears to be disassociating what is in its customers' interests from what is in LIME's interests - we think this because LIME is in fact still behaving as if the Authority had not made Decision (2010-8) and on the grounds laid out. LIME wants no account to be taken of the fact that the total benefits which accrue to LIME from the central database are more than for other members of the consortium in terms of how the central database should be run.

This is however a regulated environment. On the basis of the Authority's Decision LIME is required, in our view, to approach the voting issue (irrespective of LIME's purely commercial views about the desirability of LNP) on the basis that LIME will obtain more benefit out of the central database than other members of the consortium. In other words LIME should regard the benefits to its customers which accrue from the option to port as benefits to LIME as a corporate entity. Another useful way of looking at this we believe, is that an approach to voting that is most likely to benefit the Cayman Islands as a whole should be adopted (again based on the Authority's Decision that LNP will need to overall net benefits), rather than one that is of most benefit to a given operator.

We note 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" – are based on an approach that assumes that the meaning of this language must be derived solely from what LIME has paid for the central database, and requires the benefits to LIME to be ignored. However, LIME's proposal is not "fair and proportional" or "democratic" based on the proportion of the benefits it derives from the database. Consequently, while the language chosen by LIME sounds pleasant, the arguments it supports are not relevant.

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<sup>1</sup> The Authority has through its Decision 2010-8 determined that these benefits exist. Consequently responses on voting rights issues should take these benefits in to account. This interpretation must be read in to all references in our correspondence to benefits for customers from the central database and LNP.

LIME's clawback adjusted approach to voting appears to be of little help to the consortium. The clawback approach gives LIME the right to block every other member of the consortium on every voting matter as LIME would have 50% of the vote. No decision, no matter how minor, would be possible without LIME's approval. Furthermore, if LIME were in the position of Chair it would be able to take all decisions without any agreement from the other operators. Additionally, as LIME makes clear, even without the Chair LIME would be able to take decisions if only one other operator supported it. In contrast the other operators would all be required to come together just to force an impasse, and could never

make a decision between them. Neither can we agree that the current situation with respect to the limited number of operators and consequent voting concentration must be assumed to be "temporary" – this may or may not be the case. In summary, LIME's clawback proposal is unfair and impractical.

Finally, we note that both Digicel and LIME have quoted from the Business Rules in support of our respective positions in this dispute. However, we note also that the Business Rules state in 2.1 that:

*"This document shall come into force on the commencement date of Number Portability service....."*

Number Portability has not yet commenced so the rules are subject to amendment. Consequently, it is arguable that the Business Rules are not determinative or should at least be read with this in mind. We thought that this should be brought to the Authority's attention.

Yours sincerely  
**Digicel Cayman Ltd**



Victor Corcoran  
Chief Executive Officer