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LIME

10 September 2010

Mr. David Laliberte
General Counsel
Information and Communications Technology Authority,
P.O. Box 2502
3rd Floor Alissta Towers
Grand Cayman, KY1-1104

Dear Mr. Laliberte:

Re: Reply Comments RE: Voting Rights for the LNP Consortium

Cable and Wireless (Cayman Islands) Limited, trading as LIME (“**LIME**”) is providing the following reply comments on the submission on its preferred methodology for decision-making within the LNP Consortium (“**Consortium**”). An absence of comment on any specific view of or position taken by another party should not be construed as agreement with that view or position.

Further to the Authority’s 8 September 2010 email, LIME confirms that it agrees that the parties have reached an impasse on the voting rights for local number portability, that we wish to have the Authority adjudicate this matter, in accordance with the *Information and Communications Technology Authority (Dispute Resolution) Regulations*; and that, with these reply comments, we have provided complete submissions to the Authority and do not intend to make further submissions.

Clear Majority: Comment on the proposal for 3 out of 4 votes:

A number of parties proposed decision-making be based on some form of supermajority which, in the current circumstances of the Consortium, would translate as 3 out of 4 votes (note that, in our current circumstances, even a simple majority would translate as 3 out of 4 votes).

Wikipedia defines a supermajority or a qualified majority as:

..."a proposal to gain a specified level or type of support which exceeds a simple majority (over 50%)."

WestTel's proposal favors a 3 party majority but is open to any voting rights proposal that is fair.

Digicel's proposal favors a 3 out of 4 majority, provided that the decisions in question are not 'fundamental' or 'critical' – for those decisions Digicel proposes a unanimous vote. Digicel does not define what a 'fundamental' or 'critical' decision is but reserves the right to decide on a case-by-case basis. It is difficult to understand why Digicel considers this to be a practical alternative when it has become very clear to all parties that decision-making by consensus is an unlikely occurrence.

LIME's view is that it would be more prudent to define a majority vote as a vote which receives agreement by the majority of operators. If there are two new entrants in the future (total of 6), then 3 out of 4 votes is no longer relevant. In this case, it may be more useful to define a majority vote as 60% or more. If there are 4 operators then a majority would constitute 3 out of 4, however if there are 6 operators a majority would consist of 4 out of 6 votes.

Having said this, LIME does not agree with this approach, as there are issues with providing an equal vote to each operator.

The fundamental problem with this approach of providing one vote to each operator is that it completely 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. This approach would mean that three operators who collectively have to pay only 43% of the costs of the solution, and individually pay as little as 5 or 6%, could dictate the cost of the fourth operator (i.e., LIME, who has to pay for the remaining 57%). This is grossly unfair and there is no regulatory or other justification for this kind of imbalance.

In addition, what if a new operator enters the market tomorrow? Will the Consortium provide this new operator with an equal vote as compared to other existing Consortium members? What if the new operator is responsible for less than 1% of the costs and only provides VOIP services? This operator would have decision-making right completely disproportionate to its economic interests or its obligation to pay for the system, a problematic situation at best.

This is why in parliamentary or corporate voting arrangements the shares or votes are assigned based on one's 'stake' (investment) in the company, or based on the number of representatives elected to the government.

In addition, this principle is not unheard of in consortia of operators providing LNP services. For example, the Canadian LNP Consortium ("**CLNPC**") was established using the principle of allocating shareholders' votes

on the basis of one vote for each exchange in which portability was implemented and in which the shareholder operated as a local exchange carrier. This was done so that the CLNPC's voting structure would ensure that the interests of the local exchange carriers that were more active in the local telecommunications market were adequately represented in the CLNPC's decisions. In this regard, LIME notes the Authority's approach to-date is in line with this concept, as it stated in Decision ICT 2010-8:

“In addition, as the number of NXX's to a large extent reflects the market presence and size of each licensee, the Authority considers the number of NXX's to be a reasonable basis on which to share common LNP costs.”¹

Alternative Methodology proposed by LIME:

In disagreeing with the idea of linking votes to share of costs, TeleCayman comments that “they do not see how LIME is burdened with an unequal share” because LIME is allowed to charge its subscribers and recoup its costs. This is not necessarily true. If all operators decide not to charge their subscribers for LNP then, by default, LIME would be put in a position where it also could not charge its subscribers, as this action would be competitively untenable, and would cause a loss of subscriber offsetting any potential revenue. And depending on the cost of the LNP solution selected, there is no guarantee that LIME would be able to recoup much of its cost from subscribers. The reality is that, by compelling LIME to bear the bulk of the common LNP costs, LIME is in a high risk position relative to all the other operators.

To adequately mitigate LIME's inherent business risks (bearing a high cost with no corresponding ability to determine the level of those costs), while establishing an appropriate decision-making methodology for on the LNP Consortium, LIME's proposal of assigning voting rights based on the portion of NXX's, subject to an adjustment (or “clawback”) for voting rights in excess of 50%, is both ‘fair’ and ‘equitable’. We wish to reiterate the advantages of this approach:

1. A simple majority would still be required for decisions, meaning no one operator could frustrate the wishes of all the other operators (as would be the case in an “unanimity” approach);
2. Conversely, no one operator could make all the decisions of the Consortium, as the “50%” operator would need at least one other operator to support its vote. The votes of those two operators would provide the simple majority needed to make decisions, and would represent the clear majority of the economic interest in the Consortium;
3. Voting rights would still be fair and proportional to the obligation to pay (unlike in the case of a “one operator, one vote” approach); and
4. No changes to the decision-making methodology would be required as and when existing and new operators are assigned new NXXs, because the “clawback” on votes would simply cease to apply.

Conclusion

LIME's proposal addresses the majority of Consortium members who desire a qualified majority on voting rights. In addition, it partially equalizes the unique risks that have been outlined above.

¹ ICT Decision 2010-8, *Decision in Determination Request related to Cost Sharing of Local Number Portability Costs*, 19 July 2010, at paragraph 21.

Please do not hesitate to contact the undersigned if you have any questions.

Yours sincerely,

'Signed'

Anthony Ritch
General Manager

cc. David Archbold, Managing Director, ICTA
Donald Austin, EVP Legal Regulatory & Corporate Affairs, LIME