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Our ref: GRCR/15.19
19th October 2010

Mr. David Archbold,
Managing Director,
Information and Communication Technology Authority,
3rd Floor Alissta Towers,
P.O. Box 2502GT,
Grand Cayman. KY1-1104

Dear Mr. Archbold:

Re: Request to Reconsider ICT Decision 2010-9

Cable and Wireless (Cayman Islands) Limited, trading as LIME ("**LIME**"), requests that the Information and Communications Technology Authority ("**Authority**") review and reconsider its determination on the question of voting procedures in the LNP Consortium of the Cayman Islands¹ (the "**Determination**"). Specifically, LIME requests that the Authority remove the requirement to resolve deadlocks in votes by selecting a casting vote at random. For the avoidance of doubt, LIME is not requesting a review of any other element of the determination.

The Determination

The members of the LNP Consortium had been for some time unable to agree on the appropriate methodology for voting on Consortium decisions. As a result, the members all agreed to raise the issue to the Authority for a determination under the *Information and Communications Technology Authority (Dispute Resolution) Regulations* (the "**Regulations**"). Indeed, the member of the Authority's staff who had attended Consortium meetings from time to time, had encouraged the members of the Consortium² to raise any disputes to the Authority in a timely manner.

The Determination specified that members were to have one vote per operator, and that a simple majority of operators would be sufficient to reach decisions. In practice,

¹ ICT Decision 2010-9, Decision in Determination Request related to Allocation of Votes in the Number Portability Consortium, 1 October 2010.

² LIME, Digicel Cayman Limited ("**Digicel**"), TeleCayman Limited ("**TeleCayman**") and WestTel Limited, trading as Logic ("**Logic**") – collectively referred to as the "**Operators**".

because there are four operators, a decision of the Consortium would require the agreement of at least three operators. In the event of a deadlock (i.e. no more than two votes in favour of any given position), the Determination required operators to conduct a second vote. If the deadlock remains after the second vote, the Determination required the operators to select one of themselves at random to have a casting vote.

In other words, million dollar decisions affecting consumers in the country would be decided by a throw of the dice.

Irrational Decision

LIME submits that this aspect of the Determination is irrational. The Legislature established the Authority under the *Information and Communications Technology Authority Law (2006 Revision)* (the “**Law**”) as the expert on telecommunications in the Cayman Islands, and the Government enacted the Regulations specifically to give it the jurisdiction to hear and resolve disputes among operators and between operators and consumers. Having been granted this jurisdiction by both the Legislature and the Governor in Council, it is irrational and inappropriate for the Authority to prevent disputes from being brought to it, by having them determined by random chance instead.

It is common practice for parties to a contract to address dispute resolution matters. However, the parties invariably choose an expert authority for assistance in resolving the dispute. Whether recourse is to the courts, to regulators, to arbitrators or to mediators, invariably parties in dispute around the world seek to bring their dispute to expert human beings who can apply their judgment to the resolution of an issue. LIME is not aware of any Cable & Wireless Communications plc Group company, in that Group’s more than a century of existence, which agreed to have disputes resolved by reference to a random number generator.

Lack of Jurisdiction / Improper Delegation

The ICT Licensees do not behave irrationally or frivolously. LIME notes that, if a matter among Operators cannot be resolved after two votes on the subject, there is clearly an issue of major importance that needs to be resolved. The only entity that has jurisdiction to address these issues in the ICT sector is the Authority. The Legislature certainly did not give a random number generator website the power to determine disputes in the ICT sector. Nor did it give the Authority the power to delegate its jurisdiction to that website, or any similar random decision-making tool. Nor did the Legislature give the Authority the right to avoid its duty to determine disputes properly brought before it.

Lack of Consultation

The Authority acknowledges that the submissions by the Operators did not address the question of how to deal with a deadlock or tie in the Consortium. LIME can confirm that the question was not discussed in the meetings of the Consortium as, otherwise, it would have formed part of LIME’s submissions on the voting procedures. The Authority also acknowledges that the tie-breaking mechanism is “arbitrary”. In these circumstances, it is a breach of the requirements of natural justice for the Authority to make a

determination of its own motion, without (as admitted by the Authority), any consultation with the Operators or indeed the public.

Consequences of Determination

LIME firmly believes that important regulatory decisions affecting consumers should not be left to random chance. LIME has been seeking to implement MNP services in Cayman as soon as possible, and has been working through the Consortium to that end. Unfortunately, the Authority's determination will only frustrate the timely and cost-effective implementation of MNP services.

The Authority is well aware from the documents filed by LIME in the vendor selection dispute that there is a wide disparity in the costs of the various solutions and vendors. There is also a wide disparity in the time required to implement the various solutions, both in terms of the time required by the vendors to produce and install their solutions and in terms of the time required by LIME and the other Operators to integrate their networks and billing/customer management systems with that solution. The Authority has also been clear in its communications with the Operators that timely implementation of MNP services is in the public interest, even to the point of threatening regulatory action against the operators under section 58 of the Law. Having determined that timely and cost effective MNP is in the public interest, the Determination would now frustrate that determination on MNP by potentially resulting in a requirement to implement the most expensive solution or the least timely solution, simply on a roll of the dice. This is contrary to the public interest and contrary to the Authority's own stated goals in achieving timely implementation of MNP services.

Recommended Solution

LIME requests that the Authority rescind paragraphs 27 and 28 of the Determination. LIME's recommendation is for any disputes that went through the voting process without resolution of the deadlock should be referred to the Authority, as the proper dispute resolution entity in the Cayman Islands for matters falling within the ICT sector. In LIME's view, the Authority has a statutory duty to consider disputes properly brought to it for resolution, and must not avoid that duty through some random decision-making process. If the Authority is not prepared to exercise this duty to determine disputes, then it should, they should appoint an alternate third party who should be an objective party capable of evaluating the arguments and the public interest, and of rendering timely decisions.

At a minimum, the Authority must consult with Operators and the public on the issue. As an administrative tribunal, the Authority has a duty to consult with affected parties on its decisions. In this case, no consultation at all took place, and LIME urges the Authority to remedy this gap.

As noted above, LIME is seeking the early and cost-effective implementation of MNP services in the Cayman Islands. As a result, LIME is not seeking to review the other aspects of the Determination, and is prepared to accept the "one operator one vote" and

“simple majority” methodologies in the interest of moving the work of the Consortium forward. However, LIME strongly believes that the “casting vote” portion of the Determination is inappropriate, bad public policy and wrong at law. As a result, please note that LIME reserves all of its rights in this matter.

Yours faithfully,
Cable and Wireless (Cayman Islands) Ltd.,
trading as LIME

‘Signed’

Frans Vandendries
VP, Legal Regulatory and Corporate Affairs (Central), LIME

c.c. Anthony Ritch, Country Manager, LIME
Charles Douglas, Regulatory Advisor, LIME
Camille Facey, VP Legal Regulatory and Corporate Affairs (Jamaica & OFC), LIME