

January 12<sup>th</sup> 2009

Mr. David Archbold  
Managing Director  
Information, Communication & Technology Authority  
P.O. Box 2502  
3<sup>rd</sup> Floor Alissta Towers  
Grand Cayman  
KY1-1104

Dear Mr. Archbold;

**Re: Digicel Request for Reconsideration of Decision 2008 – 5 LNP**

Digicel has received the Authority's Decision 2008 – 5 on LNP which has been issued December 18<sup>th</sup> 2008. Under this decision the Authority has mandated Number Portability for the Cayman Islands having satisfied itself by powers granted in Section 71 (3) of the Information and Communications Technology Authority Law (2006 Revision) ("The Law"), that:-

- (a) the benefits likely to arise from the requirement to provide a particular form of number portability outweigh the likely cost of implementing it and;
- (b) the requirement will not impose an unfair burden on any licensee.

There is no question that Digicel has a right to ask for a reconsideration of this decision being a decision made pursuant to and specifically required by the Authority under the above quoted section. It is therefore a "... decision as may be prescribed in accordance with the Law." under Section 78 (1) to which a reconsideration request can be made under Section 78 (3).

Digicel hereby requests a reconsideration of ICT Decision 2008 – 5 "Decision and Further Process on LNP" and sets forth its arguments below:

Digicel submits that the Authority has failed to discharge its statutory obligations to satisfy itself that benefits on implementing LNP outweighs the costs and that the implementation of LNP will not create an undue burden on an operator, namely Digicel. It is our view that having regard to the responses made to the several consultative documents, and the financial, technical and historical fact impacting on LNP, no reasonable Authority could be so satisfied. Further we submit that in the absence of key information on the costs and benefits of LNP, no Authority can be satisfied within the terms of the Law, to mandate LNP.

**Mr. David Archbold**  
**January 12, 2009**

#### **BENEFITS:**

The Law requires a proper balancing of costs and benefits. We contend that the failure of the Authority to address its mind to an empirical cost/benefit analysis is a failure to observe the requirement of Section 71 (3) of the Law. The fact that the Authority has limited resources does not empower it to disengage from relevant mathematical analysis/quantitative where that is pivotal to discharging its statutory obligations. In order to arrive at a reasonable view of the relative value of cost and benefit in a situation where the decision affects financial entities operating an economic free market enterprise, the only logical method of making this determination must be the cost/benefit analysis. We do agree that there are financial constraints in the Authority which may mean that care will be taken in crafting more restrictive terms of reference for a cost/benefit analysis so that key information is assessed at minimal cost. To rely on incomplete data or not to advise oneself of the data in a methodical and established manner is an abdication of the duties under the Law.

The Law requires a clear defensible articulation of the benefits and a statement by residents, current or future subscribers or other operators that they perceive a benefit is not anywhere near sufficient under the Law. Any reasonable authority ought to address its mind to issues such as the impact on competitiveness, and service. It is a matter of law how LNP creates a benefit within the meaning of section 71 and the Authority has misdirected itself in law and in fact by not addressing how LNP creates a benefit, what benefits are created by LNP, what values are ascribable to them.

An obvious exclusion from the Decision is data on who may avail themselves of LNP. Ex ante studies have indicated that these numbers are generally inflated. Whilst it is possible that these studies are incorrect, it is the duty of the Authority to address its mind to these numbers and nothing in the Decision indicates that the Authority has made a sensible determination of these key parameter other than to note the anecdotal popularity for LNP in the consultations.

#### **COSTS:**

Digicel maintains that key costs of LNP were never determined and hence could not have been accounted for in the weighting of costs against benefits as required under the Law. Nor could the Authority reasonably assess whether any licensee and which licensees would bear an unfair burden in the implementation of LNP.

No account was taken of the full costs of the offshore administration of LNP and we maintain that neither the sum of \$300,000.00 nor the sum of \$380,000.00

**Mr. David Archbold**  
**January 12, 2009**

accepted by the Authority as a fair figure for the off shore central data base option and the LNP internal cost recovery respectively bears any relation to actual costs. Further it is the Authority which ought to proffer credible figures to satisfy itself under the Law and not Digicel. There is no evidence that it had before it the actual costs or costs reasonably estimating same.

Where the identification of the true costs of LNP is to assist the Authority in determining a sum to be recovered from the subscribers and a further sum to be absorbed by the operator, the Authority is not at liberty to be arbitrary in the figures it accepts as material. Further it is duty bound to vigorously and rationally seek out the figures in the most reasonable and precise manner. Surely there can be no lesser duty where the Authority determines a very precise manner the maximum sums which can be recovered by the operator as a one-off Porting Charge (\$10.00) or a monthly Recurrent and Implementing Charge (C\$0.85). It is in our submission that it is inconsistent with the reading of the Law under which ICT Decision 2008-5 was made that the Authority can openly state at paragraph 62 of the Decision "that the precise internal costs cannot be determined at this stage of the process", yet proceed to mandate precise figures for one off and monthly charges.

The Authority has indicated that the LNP Consortium took account of the relevant costs and advised on them. We continue to remind the Authority that the Consortium did not comment or offer figures to capture the operating costs for the LNP in the Cayman Islands. As such the Authority did not consider the relevant costs as required by statute and failed to discharge its duties to properly weigh benefits against costs. The Authority has also failed to address its mind properly to the costs where it has merely determined that the costs are to be shared between the operators without specifying which costs and in what amounts.

We ask the Authority to reconsider the approach of apportioning LNP costs on the basis of subscriber numbers. Where there is a vast difference in subscriber base in the industry we believe one or more operators will bear an unfair burden in the implementation of LNP and therefore offend section 71(3) of the Law.

We submit that the maximum recoverable costs as determined in this Decision have no basis in fact and if incorrect, the implementation of LNP may have adverse financial effect on the operators. The unspecified benefits to be enjoyed by an unspecified number of subscribers could result from costs far in excess of the operating costs. This could result in an unfair burden.

Digicel has responded with real figures during the consultative process. The fact that the costs which it presented were subsequently revised upwards and without justification to the Authority's liking cannot be grounds for ignoring them. It

**Mr. David Archbold**  
**January 12, 2009**

continues to be the Authority which must satisfy itself and reasonably so that benefits outweigh costs. It is not acting reasonably to reject figures offered by an interested party, without rigorous inspection, or without providing its own on the basis that they were submitted late in the day.

It must be fatal to the Decision of the Authority that even the cost estimates coming out of the LNP Consortium are being considered outdated and inappropriate by the Authority by the date of the Decision. Paragraph 83 of the Decision we maintain indicates clearly that the Authority cannot mandate the implementation of LNP without further investigation from the Consortium. At the very least, Section 71(3) would require the Authority, of its own volition to revisit the costs put forward by the Consortium in the past.

#### SUMMARY

It is our request that the Authority reconsiders ICT Decision 2008-5 on the grounds that it has not sufficiently discharged its obligations to satisfy itself that the benefits of implementation of number outweighs the costs and that no licensee suffers an unfair burden in the process.

Until the authority has made it clear that all relevant cost of LNP can be recovered by the operators it is intrinsically unfair to mandate maximum sums that can be billed to the subscribers. This is particular dangerous and must offend against section 71(3) where both the Authority and major players in the market agree that significant cost and methodology are yet to be defined.

We maintain that not to address all or the relevant costs and the benefits; necessarily means that the Authority could not carry out its duty under the Law could not legally or factually satisfy itself on the requirements set out in Section 71.

Yours truly,  
Digicel (Cayman) Limited

A handwritten signature in black ink, appearing to read 'Victor Corcoran', followed by a long horizontal flourish.

Victor Corcoran  
Chief Executive Officer