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LIME

3rd 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: Decision-making in the LNP Consortium

Cable and Wireless (Cayman Islands) Limited, trading as LIME (“**LIME**”) is providing the following submission on its preferred methodology for decision-making within the LNP Consortium (“**Consortium**”).

Procedural Matter

As requested by the staff of the Authority at the 24 August 2010 meeting of the Consortium if the parties were to decide they had reached an impasse on an issue and wished the Authority to make a determination, LIME confirms that it is of the view that the members of the Consortium have reached an impasse on the matter of decision-making methodology within the Consortium, and wishes that the Authority adjudicate on the matter.

Preference for Consensus

LIME believes the primary method of decision-making within the Consortium should be consensus. This method of decision-making ensures the greatest “buy-in” by the various participants in the Consortium and will ultimately result in an earlier and more successful implementation of LNP/MNP.

LIME notes that this was in fact the approach that LIME had been taking in the Consortium prior to 19 July 2010, and this was the approach that all members had agreed ought to be the primary approach to decision-making (see for example the rules regarding making changes to the Business Rules, described below).

ICT Decision 2010-8

In ICT Decision 2010-8, *Decision in Determination Request related to Cost Sharing of Local Number Portability Costs*, 19 July 2010, (the “**Determination**”), the Authority determined that each operator’s share of the common costs should be proportional to the number of NXXs allocated to them. While none of the operators had advocated this particular methodology, the Authority noted that each consumer in the Cayman Islands will benefit equally from LNP/MNP, and that *inter alia* this NXX-based methodology would allow for a greater alignment of the common costs with the ultimate beneficiaries of number portability.

Licensee*	NXX's	Distribution
Digicel	21	28.77%
LIME/C&W	41	56.16%
TeleCayman	5	6.85%
WestTel	6	8.22%
Total	73	100.00%

Since the date of the Determination, it has become increasingly clear that decision-making by consensus is an unlikely occurrence within the Consortium, despite LIME’s hopes to the contrary. This means that the Consortium needs an additional methodology for decision-making where consensus should fail. Further, the Determination has made it clear that, while each consumer may have an equal interest in LNP/MNP, each operator does not. Given the potential high costs of implementing LNP/MNP (estimated at CI\$ 2.2 million by the Authority in 2008, not including CI\$ 780,000 in annual operating costs¹), the disparity of cost to each operator of LNP/MNP is quite high.

Proportional Voting

On 30 July 2010, LIME proposed an alternative form of decision-making, where each operator would receive a number of votes proportional to its share of the common costs of LNP/MNP. LIME submitted that this methodology would be democratic and would recognize the relative financial interests of the operators in the LNP/MNP system. In addition, it would be easily and automatically adjusted as existing and new operators acquired or surrendered NXXs. Unlike the alternative methodologies of “one operator, one vote” and

¹ “Public Consultation on Local Number Portability”, ICT Authority Consultative Document CD 2008-1, 21 April 2008, at page 3.

“unanimity”, it would be fair to all operators as it would not force an operator to pay for something without having an equivalent and equitable ability to determine what those costs ought to be.

It bears noting that this principle of basing voting rights on the obligation to pay was readily accepted by all operators, in fact agreed as a consensus, when the “Business Rules and Port Order Processes” were developed earlier this year. These Business Rules explicitly tied the question of voting rights to the obligation to pay, howsoever that obligation might be determined.

“Amendment requests will be debated in the relevant LNPCo meeting and accepted or rejected by consensus or majority voting in accordance with the following rules:

- i) A voting quorum will be achieved provided each of the Operators has received a minimum of two full working weeks’ advance notice of the meeting, or has waived in writing the requirement for the minimum advance notice, and a majority of the Operators is present.
- ii) Each Operator is entitled to a number of votes equal to that Operator’s share of the costs of the central reference database and order handling system (i.e., if an Operator is responsible for two-thirds of the costs, that Operator will have two-thirds of the votes, while if all Operators share the costs equally, each Operator will have one vote).
- iii) Only the votes of Operators present will be considered.
- iv) In the absence of a consensus view, majority voting will apply.”

[emphasis added]

In other words, LIME is only advocating here what all the operators agreed in June 2010: that consensus was the preferred approach, that voting on the basis of a simple majority should apply where consensus does not, and that votes should be proportional to the share of the common costs.

LIME also notes that this methodology for decision-making is also far more likely to result in decisions than the “unanimity” approach advocated by one member of the Consortium. As LIME has noted with dismay and increasing frustration, that approach allows one operator to halt the forward momentum of the Consortium in its efforts to implement number portability, and to delay the day consumers will enjoy the benefits of portability noted by the Authority on several occasions over the last few years. LIME has no interest in any decision-making methodology that delays LNP/MNP, and submits that the Authority also should not.

Alternative Methodology

Notwithstanding the approach outlined in the preceding paragraphs, which remain LIME’s preference, LIME has noted the arguments by some of the smaller members of the Consortium that, with 56.16% of the vote, LIME would have “too much” say over the work of the Consortium. In LIME’s view, this is a temporary situation resulting from legacy issues in the allocation of NXXs in the Cayman Islands, and will quickly disappear as existing competitors grow and new competitors emerge. The Authority should not plan for the long-term based on a temporary situation.

Nevertheless, LIME would be willing to consider a methodology whereby each operator receives a number of votes proportional to its share of the common costs of LNP/MNP, but where one operator would receive more than 50% of the votes, it could not exercise more votes than 50% of all the votes in the Consortium. The advantages of this “clawback” approach are:

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 vote with it. 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.

The following tables demonstrate how this alternative approach would work:

The current situation:

Licensee	NXX's	Nominal Votes		Actual Votes	
Digicel	21	21	28.77%	21	32.81%
LIME	41	41	56.16%	32	50.00%
TeleCayman	5	5	6.85%	5	7.81%
WestTel	6	6	8.22%	6	9.38%
Total	73	73	100.00%	64	100.00%

With two more licensees similar in size to WestTel and TeleCayman:

Licensee	NXX's	Nominal Votes		Actual Votes	
Digicel	21	21	25.00%	21	25.00%
LIME	41	41	48.81%	32	48.81%
TeleCayman	5	5	5.95%	5	5.95%
WestTel	6	6	7.14%	6	7.14%
Licensee A	5	5	5.95%	5	5.95%
Licensee B	6	6	7.14%	6	7.14%
Total	84	84	100.00%	84	100.00%

In the second situation, no adjustment to the votes would be required, as no operator would have more than 50% of the assigned NXXs or more than 50% of the common costs of LNP/MNP. However, the fundamental principle of proportional voting would be retained in both situations.

Conclusion

LIME requests that the Authority adopt the basic principle that each operator’s votes in the Consortium be proportional to that operator’s share of the costs of LNP/MNP. If the Authority were to be uncomfortable

with one operator having more than 50% of the votes in the circumstances, the Authority could consider the additional “clawback” rule described above.

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