



The Bigger, Better Network.

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March 11, 2011

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

Dear Mr. Archbold:

RE: Managing LNP Moving Forward

Further to my letter of 4th March I am hereby providing a full response to the Authority's email of 1st March asking for our comments on LIME's letter of 1st March 2011 entitled "Mandate of LNP Consortium".

Currently, four individual companies are due to enter into individual contracts with the LNP database vendor. These contracts cannot be modified or the terms changed in an attempt to insert some additional clauses unless each contract is individually modified by each party. In order to achieve this there would have to be unanimity between the parties. This is not workable as it has been near impossible to reach agreement to date at the consortium level. Nor can any party legally be compelled to sign a new contract with which it disagrees. Moreover, the database vendor wants to interact with a single organization. This means that we must establish a single legal entity that can represent the operators in order to move forwards.

Legal Entity to Be Established to Represent the Operators

The single legal entity we require needs to be established and organised in a way that: a/ enables it to operate and make decisions effectively; b/ which is likely to be in the best interests of the Cayman Islands; and c/ enables it to accommodate likely future events. As a minimum therefore we think that the following questions need to be answered:

- The form of legal entity that must be established – likely to be either a not for profit incorporation limited by guarantee or an incorporated association;
- The voting rights of each of the parties and the process to be adopted in the event of a split vote. We have deliberated further on this issue and we realize that to be effective and fair we must have a voting system which separates out mobile and fixed operators. This is because the impact of decisions taken could have significantly different effects in terms of costs and resource demands to implement those proposals in a mobile as opposed to a fixed environment. Consequently, where decisions have an impact on

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mobile operators only or where the resource and/or cost impacts are significantly greater for mobile operators, then only mobile operators should be allowed to vote. Where resource and/or cost impacts are similar between the two groups and it is not possible to divorce impacts on mobile and fixed operators then each group should have no more than 50% of the votes (dual fixed and mobile operators would have 1 vote and choose which camp to vote in to prevent them from tactically and unfairly voting to their commercial advantage).

In contrast, the system proposed for the Consortium would allow the two fixed operators to dictate terms and solutions for the mobile operators without having to face the burden of the cost and operational challenges those terms or solutions may impose on a mobile operator. There are significant additional costs and difficulties in terms of implementing portability on mobile operators where they have to for example enable MMS messaging and other advanced services to work in a number portability environment. If a third small fixed operator were to obtain a license and was able to vote on a basis as proposed for the consortium, the three could override all objections by the mobile only operators;

- The manner in which new providers of telecommunications in the Cayman Islands (including VOIP providers) will be required to become members of that legal entity and the contributions they will have to make. Presumably licence modifications will be needed to stipulate what the financial burden will be in terms of number portability in order to provide legal certainty for investors wishing to participate in the Cayman Islands telecommunications market;
- The financial contribution that must be made by a new entrant depending on the time at which the new entrant enters the market – presumably a costing exercise would be necessary as the assets owned by the company would have depreciated by that time;
- Whether the costing exercise would be the responsibility of the operators;
- The levy to be charged, or the way in which a levy is to be determined, for all ports by all operators on each other and/or on the porting customer;
- Whether the entity will be subject to licence conditions in the same way as other operators;
- Whether and how the entity is supposed to interact with members of the public – how will press notices be agreed for example and how will the entity deal with complaints due to a failure or malfunction of the database. Is the entity supposed to answer on behalf of the vendor or should the vendor report to the Authority?
- Who will be the Directors of the entity and how they will be appointed and retired?

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We note LIME's suggestion that an association should be formed which consists of the LNP Consortium. We understand the vendor to be seeking a situation of legal certainty where it knows with whom it is dealing and where it can rely on the decisions of a single legal entity. That would require, as we indicated above, that the parties to form a not for profit incorporation limited by guarantee or an incorporated association description with an appropriate membership structure and processes to guide and manage decision making. Perhaps this is more or less what LIME intends in which case we would be roughly in agreement.

Logic has suggested that the body set up would have one representative from each operator and would be chaired by the Authority. We are unclear how this sort of Chairmanship could work legally speaking. For example within the context of establishing a legally recognized entity it is not the case in our experience that a Chairman (especially an external one) can be permanently installed, and we would have to question whether this sort of arrangement would be open to legal challenge. A Chairman could be rotated between the operators but of course that would leave open the possibility of internal politicking and alliance forming to the benefit of some parties and the disadvantage of others. This risk exists of course as the organization would consist of members in competition with one another.

LNP Vendor

We also need to understand how the Authority and/or the legal entity formed by the operators will exercise control over the vendor in the event that it decides to abuse its dominant position in provision of an LNP database by demanding excessive fees in the future. For example, we expect the Authority and/or the operators' legal entity to be able to require the vendor to make available its operating software source code and specifications of its technical interfaces as well as a full copy of the databases themselves at any time. We consider that it may also be necessary to create an escrow vehicle in to which a back up of the source code and databases would be placed every few hours (by copying the database onto a server). This may be necessary to give the entity the option of replacing the vendor. If the operators have to exercise these controls then it will have to be via a contractual stipulation between the entity and the vendor.

The Vendor itself as LIME has pointed out, is uncomfortable with the format proposed for the contract in that they have identified possible conflicts within the structure. The contract requires the operators to give the Vendor instructions on a number of issues and the Vendor would like to know, who exactly is to represent the will of the operators where they are distinct legal entities, without joint and several liabilities. The Vendor could very well be administering a service where one or more parties may be in breach or where one or more parties have subsequently terminated or being terminated. This creates an existing contract with parties the Vendor had not initially envisioned, and services and revenues which were not initially tendered for.

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Simply extending the life of the Consortium, does not create a single entity which can contract with the Vendor. Where ICTA breathes new life in the consortium and extends the voting rules, action taken at the consortium level still has no legal impact on the Vendor where the Vendor itself is not subject to a decision governing the Consortium. A party who simply violates the ICTA ruling would of course be subject to sanctions by the Authority under the Information, Communication and Technology Act but the Vendor would have no rights under the contract against that party. Express provisions governing the parties' relationship with the Vendor are therefore necessary before the contract can be signed. These provisions at the very least must set out in the form of a binding contract between the stakeholders in the legally incorporated body which would then be empowered to represent the operators. The Vendor at that stage would have a proper party with which to contract, that party would have singular responsibility to discharge the obligations to the Vendor and have transparent rules governing the relationship with the individuals that make up the Operator.

Yours truly,
Digicel (Cayman) Limited

A handwritten signature in black ink, appearing to read "Victor Corcoran", followed by a long horizontal line extending to the right.

Victor Corcoran
Chief Executive Officer