



8 September 2008

Mr. David Archbold  
Managing Director  
Information and Communications Technology Authority  
Grand Cayman, Cayman Islands

Dear Sir,

**Re: Public Consultation on Local Number Portability/Costs/2<sup>nd</sup> Round**

**Introduction**

This submission is in response to the Authority's correspondence of 22 July 2008 wherein it notes that it has determined that a second round of comments would be appropriate and invites comments from Licensees and the public on the comments submitted in the first stage of the process.

**Unfair and Unreasonable Process**

The Authority, in correspondence dated 25 August 2008, with respect to second round comments, states specifically that submissions that introduce fresh evidence and/or new arguments will not be accepted.

In its Public Consultation CD 2008-1 the Authority focused uniquely upon the likely costs to subscribers and sought public comments on three very specific questions. In their submission both Digicel and Cable & Wireless submitted new arguments and fresh evidence extraneous to those very specific questions upon which the Authority requested comment. Both Digicel and Cable & Wireless embark upon a general cost/benefit analysis associated with the introduction of Local Number Portability.

The Authority appears to have accepted the new arguments and fresh evidence submitted by Digicel and Cable & Wireless. It is most unfortunate that the Authority did not take a similar stance with respect to the submissions by Cable & Wireless and Digicel in the first round on the issue of fresh evidence and new arguments as both submissions address matters extraneous to the

issue of 'likely costs to subscribers' as framed by the Authority in CD 2008-1 Local Number Portability.

TeleCayman, in its first round submission, addressed specifically the costing issue as requested by the Authority. Had TeleCayman been made aware by the Authority that it could and should submit general, extraneous and all encompassing comments as to the benefits of Local Number Portability to Licensees and subscribers it would have made an appropriate submission for the Public Record. It is patently unfair for the Authority to accept new arguments and fresh evidence from parties opposed to Local Number Portability, request second comments on 'one-sided' positions and, then, advise that if any Licensee attempts to introduce new arguments or fresh arguments, its submission will be rejected.

Cable & Wireless and Digicel (which apparently do not support Local Number Portability) raise a significant number of issues already addressed by the Authority in the proceeding which culminated in ICT Decision 2005-1, matters which were addressed in the proceedings of the LNPC and costing information submitted by Licensees in the cost exercise initiated by the Authority. They also make additional comments which are extraneous to the subscriber cost issue raised in CD 2008-1 Local Number Portability.

TeleCayman submits that it is patently unfair and unreasonable for the Authority to have permitted the Public Record to evolve in this manner.

### **Procedural Fairness**

TeleCayman respectfully submits that procedural fairness requires that the Authority disregard the comments submitted by Digicel and Cable & Wireless which do not pertain specifically to the issue of likely costs to subscribers in the context of the three question posed by the regulator.

Subject to the very serious reservation of administrative unfairness noted herein, TeleCayman submits the following second round comments. In submitting its comments TeleCayman is cognizant that any attempt to introduce fresh evidence or new arguments generally favourable to Local Number Portability will result in its submission being rejected.

### **Criticism of the Regulator**

Both Digicel and Cable & Wireless raise direct and indirect criticism of the Authority in its handling of the Local Number Portability proceeding. TeleCayman does not propose to address these criticisms as it does not view it appropriate to act as champion for an entity which is more than capable of defending its proceedings and adherence to the requirements of its empowering legislation.

## **'A Flawed Process'**

Both Digicel and Cable & Wireless state that the consultation process is flawed because an appropriate costs/benefit analysis proceeding has not been initiated. TCL strongly disagrees with these submissions. In fact, all parties have had more than fair and reasonable opportunity to submit and address both the benefits and costs associated with Local Number Portability.

In 2004 the Authority undertook its initial consultative proceeding on Local Number Portability and substantial comments were filed on the part of all parties. The Authority, in ICT Decision 2005-1 arrived at certain favourable conclusions as to the benefits associated with Local Number Portability. The Authority, in this decision, went on to state that it had to better understand the costs and actively canvassed the Licensees in this regard requiring that ALL parties submit their own costs with respect to the introduction of Local Number Portability. Further, and in parallel, the LNP Consortium was created with the objective of choosing upon a data base administrator. All aspects of the benefits, costs, and data base administrator have been canvassed by the Authority and ALL Licensees have been provided with ample opportunity to make submissions on these issues. Benefits and costs have been thoroughly canvasses by the Authority in accordance with the requirements of the ICTA Law and the Authority is in a position to weigh whether the benefits outweigh the costs of implementing Local Number Portability in accordance with subsection 71(3) of the said Law. TeleCayman submits that based on all of the various input from Licensees, the record, both public and private, is more than complete for the Authority to arrive at a decision on the issue of the introduction of local number portability.

TeleCayman strongly disagrees with the submissions made by Digicel and Cable & Wireless in support of their arguments that the process has been flawed. Specifically, TeleCayman submits that the manner in which the Authority proceeded in these local number proceedings is directly in keeping with the process outlined at paragraphs 115 to 121 of ICT Decision 2005-1. If these two parties viewed the specific process established and detailed in 2005, and adhered to by the Authority, as flawed they should have raised the issue at that time. Further, their participation over the past several years in the process without any submissions as to a flawed process makes any comments in this regard at this late date as suspect and designed to delay the local number portability proceedings. Both parties have had ample opportunity to submit their costs and they should not be permitted to now argue that they have new or unanticipated costs as a reason for delay or outright dismissal of a local number portability regime. It is all the more suspect when one part now appears to suddenly realize that the introduction of local number portability will mean the purchase of an entirely new billing system.

## **A Less Than Timely Process**

It remains that for entirely other reasons, the process has been less than optimal and TeleCayman respectfully submits the Authority needs to get it back on the right track. The single most significant failing in this proceeding has been the time taken to advance the Local Number

Portability proceeding. Unfortunately, and perhaps unwittingly, the Authority has acquiesced to parties who either wish to delay the introduction of local number portability or who wish for a decision against the introduction of Local Number Portability. Since the initial ICT Decision 2005-1, the Authority has permitted well over three (3) years to elapse uniquely to have parties settle upon a data base administrator and submit their costs. This delay may well constitute judicially reviewable conduct on the part of the Authority given the explicitly stated time table established at paragraphs 113-120 of ICT Decision 2005-1 whereby the most significant part of the remaining issues were to be addressed within 190 days of the Decision.

TeleCayman respectfully submits that the Authority needs to publish a defined process with specific dates stipulated and adhered to for purposes of addressing the remaining issues associated with the introduction of Local Number Portability. As noted below many of the issues raised by Digicel and Cable & Wireless are administrative issues which need to be addressed by the Authority subsequent to a favourable decision in favour of Local Number Portability. If Local Number Portability is to become a reality the Authority needs to take a more pronounced “hands on” approach and develop a timetable which reflects a pronounced commitment to furthering competition in the Cayman Islands.

### **The Regulatory Backdrop Specific to LNP**

TeleCayman submits that it is unreasonable and improper for the Authority to accept the new arguments and fresh evidence submitted by Digicel and Cable & Wireless in light of the extensive regulatory proceedings taken to date on the issue of Local Number Portability. Extensive proceedings have taken place on the issue of the benefits associated with Local Number Portability culminating in ICT Decision 2005-1; lengthy discussions and assessments were pursued by the LNPC, made up of all Licensees, to choose an appropriate data base administrator; and all Licensees were given ample opportunity to submit their costs associated with the introduction of Local Number Portability. It was these very LNPC assessments and cost submissions which permitted the Authority to arrive at the detailed overall costs for Central Clearing House functions, internal LNP costs and porting fees resulting in a maximum monthly charge to subscribers of \$0.85 and a potential \$10 porting fee. TeleCayman submits that Licensees have had ample opportunity to submit evidence and comments on the issue of costs, especially internal costs, and the Authority should disregard any further submissions in this regard. Any attempt by Licensees at further cost arguments should be viewed as a serious attempt to delay Local Number Portability proceedings.

### **The Benefits of Local Number Portability**

In assessing the comments made by Digicel and Cable & Wireless the Authority should take note of its various conclusions arrived at in ICT Decision 2005-1 and in particular the following comments at paragraphs 116 and 123:

“The Authority can determine that the benefits accruing from the introduction of LNP are substantial, and that in every other jurisdiction that has studied the issue, they have been sufficient to outweigh the costs of its introduction.”

“The introduction of local number portability brings internationally recognized benefits to all consumers, not just those who choose to make use of the facility. The Authority is therefore minded to mandate its introduction in the Cayman Islands unless the costs prove to be prohibitive.”

TeleCayman respectfully submits that the benefits associated with the introduction of local number portability as identified in ICT Decision 2005-1 continue to be substantial. Nothing has changed in this regard. TeleCayman further submits that the costs internal to Licensees and those proposed to be levied upon subscribers are neither prohibitive nor unreasonable.

### **The Competitive Backdrop**

In their comments Cable & Wireless and Digicel suggest that the weighing of the likely costs and benefits required by the Information and Communications Technology Authority Law, (2002) should be viewed in the context of additional internal costs (to those already submitted) , indirect cost, flawed proceedings, Ovum studies for irrelevant jurisdictions such as South Africa, data protection and the like. In other words, Cable & Wireless and Digicel suggest that the weighing of costs and benefits should be viewed in the context of their own newly submitted additional internal costs, the experience in certain select jurisdictions or difficult process issues. They seem to suggest that because the issues are difficult, the processes significant and that the effort required to implement Local Number Portability as more than nominal then local number portability should not be introduced.

TeleCayman submits that there exists a more practical, germane and legislatively relevant backdrop for assessing the cost/benefit factors. TeleCayman submits that the broader perspective from which the Authority should undertake its assessment is in the context of its enumerated principal function, as stated at subsection 9 (3) (a) of the Information and Communications Technology Authority Law, (2002), which is to promote competition in the provision of ICT services and ICT networks.

TeleCayman submitted as follows in its first round comments:

*“Local Number Portability is extremely beneficial to two market sectors. Firstly, consumers are positively impacted as they can easily transfer their phone numbers to that service provider which best meets their needs in terms of services offered, price and ongoing support. Additionally, the ability of customers to transport their numbers encourages competition amongst service providers. Secondly, Local Number Portability is advantageous to new entrant service providers as it removes the very significant impediment raised by many customers for*

*subscribing to their services to the effect that changing service provider will involve significant administrative costs.”*

TeleCayman respectfully submits that this quote speaks directly to the reasons why Local Number Portability is synonymous with the promotion of competition in the provision of ICT services and ICT networks.

### **Competition and the Regulator**

TeleCayman notes that the public statements made at the time of liberalization, the legislation introduced and the regulatory regime created had great promise for the promotion of competition in services and networks. Unfortunately, the regulatory reality over the past 5 years is at odds with this promise for competition.

Two very significant regulatory mechanisms have been utilized by telecommunication regulatory bodies throughout the industrialized world to introduce and implant viable competition in a newly liberalized market: indirect access and local number portability. In addition, regulatory bodies in newly liberalized markets demonstrate a general disposition in resolving various other regulatory issues in a manner which results in furthering competition.

Regrettably there is little in the body of past regulatory dispositions which argue for a strong commitment by the Authority to the promotion of competition in the Cayman Islands. The Authority made a very clear choice not to introduce any form of Indirect Access thereby removing an important opportunity for new entrants to quickly obtain important revenues. Despite having commenced in 2004 there is no end in sight to the current Local Number Portability proceedings. Mobile Termination Rates and the resulting cost to subscribers are incredibly high in comparison to other jurisdictions. Mobile rates in the Cayman Islands are significantly and artificially higher than the rates for wireless operators and, yet, the costs of the respective networks are not altogether dissimilar. Review of the MTR Agreement on the public record indicates the mobile licensees anticipated a new costing model in 2006. With 2009 around the corner there is no telling as to when an appropriate model will be achieved. This is extremely disconcerting as rates will not likely be in line with other jurisdictions until almost 3 years (30 months) following adoption of the appropriate model. TeleCayman submits that the great promise for a truly liberalized market is not readily apparent in the major proceeding have been or continue to be before the Authority.

TeleCayman reiterates its view that the appropriate regulatory and legislative backdrop for assessing the maximum monthly subscriber cost of \$0.85 and the maximum possible one time porting fee of \$10 is whether the benefits of Local Number Portability outweigh the costs associated with its introduction. Further, the Authority needs to consider whether local number portability can promote competition in the provision of ICT services and ICT networks. The

benefits of Local Number Portability were clearly recognized by the Authority in ICT Decision 2005-1. The costs associated with its introduction, both internal and common, are well known to the Authority and result in subscriber costs for which the Authority has not received any opposition from members of the general public. It is patently obvious that the benefits outweigh the costs to be incurred and, further, that the general public has no expressed problem or opposition to the cost they will incur for the benefits to be provided by Local Number Portability.

### **Corollary Issues**

Digicel raises a number of corollary issues such as additional internal costs (to those already submitted), indirect cost, flawed proceedings, Ovum studies for irrelevant jurisdictions such as South Africa, data protection and the like. Cable & Wireless raises issues of customer confusion, higher bills, impaired features and loss of incoming calls.

TeleCayman respectfully submits that a significant number of these corollary issues are not relevant to the very specific queries raised by the Authority in CD 2008-1 on the issue of cost to the subscriber. They are also not relevant to the Cayman Islands. For instance, Digicel uses Ovum's assessment of a jurisdiction such as South Africa which has nothing in common with the Cayman Islands in terms of population or focus as an offshore financial community. More relevant and germane jurisdictions can be found which have proceeded with a positive deployment of Local Number Portability, even mobile number portability. TeleCayman points to Isles of Jersey and Guernsey as relevant jurisdictions (see materials attached).

Other issues raised are administrative and implementation matters which have been addressed by countless jurisdictions and regulators once a decision has been taken to introduce Local Number Portability as a vehicle critical to liberalization and competition. These are issues which any active regulator committed to orderly deployment of Local Number Portability can address with a view to minimizing and/or removing transition issues. TeleCayman respectfully submits that these are issues that the Authority has the competency and resources available to address provided it maintains throughout a 'hands on' approach and a commitment to an orderly process.

### **Conclusion to be Drawn from General Public Comments**

In ICT Decision 2005-1 the Authority clearly indicated that there would likely be a round of public consultation or some other method of assessing the view of the public prior to the introduction of Local Number Portability. Undoubtedly, this was the basis for issuing CD Local Number Portability 2008-1. TeleCayman has reviewed the comments from the general public and there is unanimous approval of the maximum charges proposed to be levied upon subscribers.

TeleCayman submits that the Authority should arrive at a conclusion which favours the introduction of local number portability when assessing the comments from the general public.

At its very basic the query put to the general public by the Authority was whether they would have a problem with certain new charges on their monthly bill. It would be logical and reasonable to expect an outcry from the public if there was a problem with such a proposed charge. In the absence of such an outcry or, at the very least, some negative comments, the only logical and reasonable conclusion for the Authority to arrive at is that there is no opposition from the general public to levying such a maximum monthly charges on a subscribers' bill. To the extent that the responses received were positive suggests there is no general public issue with the charges proposed by the Authority.

## **Conclusion**

In arriving at its decision on the introduction of Local Number Portability the Authority is, in effect, determining the state of liberalization and competition in ICT services and ICT networks in the Cayman Islands. The early days of liberalization and the flexibility of the telecommunication legislation reflect great promise for a truly competitive market. The benefits of a liberalized market in terms of new services, lower prices and better customer care have been demonstrated in countless jurisdictions. The benefits of Local Number Portability to a truly competitive market are well documented and accepted by the Authority in ICT Decision 2005-1. However, the Authority, with the refusal of Indirect Access in any form, has demonstrated a reluctance to introduce a regulatory regime truly conducive to competition in ICT services and ICT networks. The Authority has the opportunity, with the introduction of Local Number Portability, to express its commitment to competition.

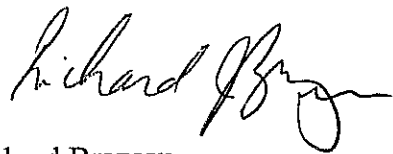
It is unfortunate that the proceedings addressing Local Number Portability date back to 2004 and that there remain much to be addressed in terms of implementation and process issues. It is more than unfortunate that parties, in response to very specific questions as to subscriber costs raised in CD 2008-1 have been permitted to introduce new arguments and fresh evidence and that the Authority has required a 2<sup>nd</sup> round of comments on such submissions. TeleCayman, in this submission, has limited its comments to the public record and abided by the Authority's directive to do so. It would be most unfortunate if the Authority were to view the submissions of Digicel and Cable & Wireless as anything more than designed to delay the implementation of Local Number Portability. They are either not germane to the issues at hand or simply represent implementation and process matters. Further, to the extent that they attempt to introduce issues or evidence which could easily have been introduced at pertinent steps in this long proceeding they represent an abuse of process.

There is little doubt that the introduction of Local Number Portability will require the Authority to adopt a more 'hands on' approach in resolving transition issues. TeleCayman submits that the Authority's decision on Local Number Portability is the ideal opportunity to demonstrate its commitment to competition of ICT services and ICT networks in the Cayman Islands. Further, the Authority's decision will determine whether the Cayman Islands keep pace with other

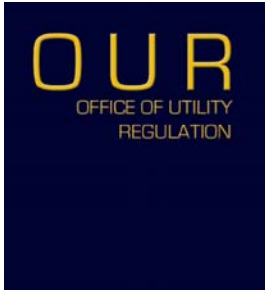


advanced countries which have implemented Local Number Portability as part of their commitment to competition and liberalization..

Yours sincerely,

A handwritten signature in black ink, appearing to read "Richard Brazeau". The signature is fluid and cursive, with a large, stylized initial "R".

Richard Brazeau  
President and Chief Financial Officer  
Javelin Connections Bermuda Limited



# Office of Utility Regulation

**Media Release – Embargo 12.01am 13<sup>th</sup> February 2008**

## **Mobile Number Portability in Channel Islands by 1<sup>st</sup> December 2008**

From 1<sup>st</sup> December 2008, mobile telephone users across the Channel Islands will be able to keep their mobile number when they change service provider.

The initiative is the result of a meeting jointly hosted by the Jersey Competition Regulatory Authority (“JCRA”) and Guernsey’s Office of Utility Regulation (“OUR”) on Friday, 8 February 2008, where the Chief Executives of the three mobile operators in the Channel Islands agreed to implement mobile number portability (“MNP”) by the start of December.

“The operators’ agreement to simultaneously implement MNP across the islands is an extremely welcome development,” said John Curran, Director General at the OUR. “For a customer to be able to change mobile operator whilst keeping their mobile number should provide an enormous benefit to consumers and also significantly boost competition in the mobile markets in both Bailiwicks.”

The agreement follows the suspension, in December, of an appeal brought by Jersey Telecom against the JCRA’s decision on the implementation of MNP in Jersey. The reason for this suspension was to explore whether an appropriate pan-Channel Islands solution to MNP might be achieved without the need for further court proceedings. The agreement reached on Friday is the successful fruition of these efforts, and will result in the introduction of MNP in both islands on a co-operative basis.

“Ensuring consumers gain the full benefit of competition is of paramount importance to both regulators and the constructive approach taken by all three operators is to be applauded.” said Chuck Webb, Executive Director at the JCRA. “The agreement was reached under the joint auspices of the JCRA and OUR, and both authorities now intend to work closely together during the ensuing implementation process, speaking with one voice to achieve our common goal of MNP for the benefit of consumers in both Islands.”

Iain Williams, CEO of Airtel-Vodafone said; “We welcome that all the operators and both regulators are working together in such a constructive fashion to ensure that MNP happens simultaneously across both Bailiwicks allowing freedom of choice and true competition in the mobile markets.”

Gregory Jordan, Commercial Director, for Cable & Wireless in the Channel Islands, which trades locally as Sure mobile, commented: “This is an important victory for mobile customers. We will work with all other parties to introduce MNP by 1<sup>st</sup> December 2008. We will also continue to advocate a true level playing field in the Channel Islands so that customers are eventually completely free to choose the operator which offers the best value mobile service.”

Daragh McDermott, Associate Director, Corporate Affairs, for Jersey Telecom/Wave Telecom echoed these views saying; “Jersey Telecom and Wave Telecom are delighted to have agreed a constructive and proportionate approach to this important issue. We now look forward to working with the other operators and both regulators as the significant amount of work required to have mobile number portability in place across the Channel Islands by 1st December 2008 gets underway.”

As a result of this agreement, both regulators will now commence the detailed work on establishing the necessary processes and procedures with the three operators to implement MNP. A Steering Group jointly chaired on behalf of the OUR and JCRA will be established to oversee this process, with the first meeting taking place next week.

**Ends**

## **Information for Editors**

- **About the OUR**

The Office of Utility Regulation was established in 2001 to regulate the three utilities of post, telecommunications and electricity in the Bailiwick of Guernsey. The Office is headed up by Director General, John Curran and has three staff.

The role of the OUR is to protect the interests of Guernsey consumers and the economy. It does this by ensuring that customers receive the best in price, choice and quality services in the three regulated sectors, while at the same time ensuring that those sectors are vibrant and robust so that they can positively contribute to and underpin a successful Guernsey economy.

The OUR licenses and regulates telecommunications operators, Guernsey Electricity Ltd and Guernsey Post Ltd. Wherever possible, the OUR promotes the introduction of competition by ensuring that there is fair play and a level playing field between the operators. Where competition is not yet effective or where it is not feasible, the OUR regulates prices and quality of services to end customers. More information is available from the OUR website [www.regutil.gg](http://www.regutil.gg), or by contacting the Office of Utility Regulation on 01481 711120.