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22 January 2009

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

By email

Dear Sir,

Re: Local Number Portability/Application for Reconsideration

This constitutes the submission of TeleCayman Limited concerning the Application for Reconsideration submitted by Digicel on 12 January 2009 and the 2 questions raised by the ICTA in correspondence dated 15 January 2009; namely, whether the Authority has jurisdiction, under section 78 of the ICTA Law to reconsider ICT Decision 2008-5 and, assuming jurisdiction, whether the Authority should confirm, reverse or modify ICT Decision 2008-5, and for what reasons.

JURISDICTION

TeleCayman respectfully submits that the Authority does not have the jurisdiction under section 78 of the ICTA Law to reconsider ICT Decision 2008-5. The Authority's ability to review its decisions is specifically mandated by legislation at section 78 of the ICTA Law. This provision specifically and clearly enumerates the circumstances and subject matter entertained by the Authority which can give rise to a Decision subject to an Application for Reconsideration. At no time does section 78 reference directly or indirectly the subject matter contained in section 71 of the ICTA Law, namely Local Number Portability.

Further, Digicel is incorrect in attempting to posture the words "such other decision as may be prescribed" as a general 'catch all' basket for all other matters not specifically enumerated in section 78 of the ICTA Law. The proper construction to the words "such

other decisions as may be prescribed" is to recognize that the legislature, in its wisdom, may prescribe by amendment to the Law or by Regulation additional subjects which may be adjudicated upon by the Authority which may give rise to the right to submit an Application for Reconsideration. In addition, TeleCayman notes that Digicel erroneously and unfairly adds the words "prescribed in accordance with the Law" as an attempt to buttress its misconstruction of Section 78 of the ICTA Law.

In concluding on this issue TeleCayman cautions the Authority not to embark upon a reconsideration which is outside the parameters of its legislative mandate. To do so would be to commit a serious error of Law reviewable by the Judiciary.

CONFIRM, REVERSE OR MODIFY

In light of the above submissions on the Authority's jurisdiction, it is moot to embark upon a discussion of whether ICT Decision 2008-5 should be confirmed, reversed or modified. Nonetheless, out of an abundance of caution TeleCayman shall submit several comments.

TeleCayman respectfully submits that the Authority has correctly and fully discharged its statutory obligations to satisfy itself that the benefits to provide local number portability outweigh the likely costs of implementing it and that the requirement does not impose an unfair burden on a licensee.

ICT Decision 2008-5 is the culmination of a lengthy and detailed process on Local Number Portability commenced in 2004, followed with issuance of an interim Decision 2005-1, and the subsequent creation of a Local Number Portability Consortium to address alternatives and costs to which all licensees participated, the issuance of a further consultation of the public's views on subscriber costs and finally issuance of ICT Decision 2008-5. Throughout the process the Authority has demonstrated a keen interest to obtaining, understanding and assessing the costs associated with the introduction of Local Number Portability. All licensees and members of the general public, individuals and businesses alike, can feel comfortable that the Authority has embarked and completed a vigorous examination of the benefits and costs associated with Local Number Portability.

TeleCayman has reviewed the submissions by Digicel in support of a request for reconsideration and is hard pressed to identify any substantive arguments which would support such reconsideration. At its very basic Digicel seems to argue that the Authority should have issued an empirical and detailed balance sheet outlining the benefits and the costs, i.e. a definitive mathematical cost benefit model. The Law neither requires nor specifies such an exercise. The Law simply requires the Authority to determine whether the benefits likely to arise outweigh the likely cost of implementation. The Authority has more than fulfilled its mandate as prescribed by section 71 of the ICTA Law.

Digicel erroneously argues that all costs related to Local Number Portability must be recovered by operators and it is intrinsically unfair to mandate maximum sums that can be billed to subscribers. TeleCayman submits that Digicel wishes to unfairly pass all the costs associated with Local Number Portability directly to subscribers. Clearly licensees

can absorb some of these costs or may attribute them across their full range of services. There is no requirement in the Law that all costs associated with Local Number Portability be directly billed to subscribers. The Authority has not committed any error in this regard which requires a reconsideration of ICT Decision 2008-5.

TeleCayman respectfully requests that the Authority reject the Application for Reconsideration submitted by Digicel as being outside the scope of section 78 of the Law and, if not, as being without substance which would warrant such a reconsideration. ICT Decision 2008-5 should stand and the Authority and licensees proceed with the direction contained in this decision to implement Local Number Portability no later than 30 June 2010. Additionally, the Authority should not waiver from any timetable which will permit the LNP Consortium to provide a detailed implementation plan and milestones for 29 May 2009.

Yours sincerely,



PP Philip Brazeau
Consultant on behalf of
TeleCayman Ltd

CC Mr Victor Corcoran, Digicel