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23 January 2009

Mr. David Archbold
Managing Director
Information and Communication Technology Authority
3rd Floor Alissta Towers
85 North Sound Road
Grand Cayman KY- 1104

Dear Mr. Archbold:

Re: Digicel Application for Reconsideration of ICT Decision 2008-5, LNP

WestTel supports Digicel's application for Reconsideration of ICT Decision 2008-5 regarding Local Number Portability (LNP). We believe there is no question that the Information and Communications Technology Authority (the Authority) has the jurisdiction to review its 18 December 2008 decision. In addition, we agree with Digicel on many of its substantive arguments in support of the Authority's reconsideration.

First, we believe it is clear that the Authority has the jurisdiction to reconsider ICT Decision 2008-05 under Section 78 of the Information and Communications Technology Authority Law (2006 Revision) (the Law). Digicel is a licensed carrier as required by Section (78)(3)(a) that requested reconsideration of a decision that falls well within Section (78)(1)(l) pertaining to "such other decision as may be prescribed." Digicel filed its application in a timely manner as required by Section (78)(3) of the law. Thus, there is no question that the Authority has the jurisdiction to reconsider ICT Decision 2008-5.

Second, WestTel recommends that ICT Decision 2008-5 be reversed pending further consultation. While we do not disagree that the Authority has the right to impose number portability per Section (71)(3) of the law, we are not convinced that the Authority has met the tests of Section (71)(3)(a) and (b). Section (71)(3) says:

Subject to this Law, the Authority may make rules imposing on any licensee the responsibility to offer number portability if the Authority is satisfied on reasonable grounds 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.*



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WestTel believes that the Authority falls short of satisfying both (a) and (b) based solely on the plain language of the Law. With respect to subsection (a), the Authority has provided no assessment of the benefits associated with the LNP solution (an electronic query of all calls) recommended by the LNP consortium in May 2007. It was in March 2005 in ICT Decision 2005-1 that the Authority determined there were significant benefits to local number portability. Thus, the Authority's conclusion regarding the benefits of number portability predated the selection of "a particular form of number portability," as the Law requires, by almost two years and, therefore, cannot stand as the rationale for requiring number portability now.

The Authority's 18 December 2008 decision also fails subsection (b) regarding whether the requirement imposes an unfair burden on licensees. Setting aside the fundamental question of whether the estimated costs of implementing local number portability are right (or indeed current), the Law on its face requires the Authority to assess the burden on licensees. The Authority, however, has assessed the burden on subscribers. In CD 2008-1 launched 21 April 2008, the Authority asks whether subscriber costs of CI\$0.85 per month and one time porting costs of CI\$10.00 are acceptable. It does not query whether industry investments that may run as high as CI\$2.5 to \$3 million pose an unfair burden on "any licensee" as the Law requires. Indeed, without establishing the methodology for allocating costs among licensees, which the Authority admittedly has not done, it is impossible for the Authority to make any determination whatsoever as to whether the requirement imposes an unfair burden on "any licensee."

Thus, WestTel believes that the Authority's 18 December 2008 Decision is flawed and must be reconsidered. In doing so, the Authority must gather current costs for the LNP Consortium recommended solution (or, more preferably, send the LNP Consortium back to the drawing board to refresh its recommendations); determine how these costs would be apportioned among licensees and recovered (whether by subscribers, the general public, or industry); assess the benefits associated with the particular form of number portability selected; and evaluate the impact on every licensee. In addition, the Authority must fully and explicitly communicate the information it relies on in making its decision to ensure that all parties are completely informed of the Authority's fact base and rationale.

WestTel looks forward to a further consultation on this important issue of local number portability for Cayman.

Sincerely,

A handwritten signature in black ink, appearing to read "M Edenholm".

Mike Edenholm
Chief Executive Officer