

Response to Consultation: Locking of Cellphones Matter: C13/1001 Date, 6 August 2013

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Submitted By:

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September 30, 2013

Mr. Philip Micallef
Chief Executive
Regulatory Authority of Bermuda
Cumberland House 3rd Floor
1 Victoria Street
Hamilton, HM 11

Responses to Consultation: LOCKING OF CELLPHONES C13/1001:
Consultation on Administrative Rules

Dear Mr. Micallef,

Bermuda Digital Communications, Ltd. (“BDC”) files these comments in the above referenced proceeding pursuant to the Consultation Document released by the Regulatory Authority (“RA”) on August 6, 2013. BDC supports allowing consumers to access devices and carrier networks that best meet their needs. Accordingly, BDC supports narrowly-tailored regulation that allows consumers to take their devices from one provider to another or to freely use their devices overseas through unlocking. It should be noted that BDC, doing business as CellOne, has always sold unlocked devices to its customers. CellOne’s competitor, Digicel, does not sell all of its devices unlocked. Unlocking all devices at the point of sale would be a substantial boon to customers.

Consultation Question 1: Do you view locking of cellphones as a hindrance to competition?

Yes, BDC does view the locking of cellphones as a hindrance to competition. A customer who has purchased a device should be permitted to do with it whatever they like once they fulfill all contractual commitments, including, but not limited to, choosing the carrier they wish to have associated with the device.

As a general matter, BDC supports the unlocking of cellphones and data devices which will enable customers to move more freely between service providers. In conjunction with Local Number Portability initiatives scheduled to be implemented in 2014, unlocking will increase competition among existing carriers and enable new entrants in the mobile telecommunications sector. In addition, unfettering customers in this way will cause carriers to compete on service quality and price to retain customers rather than relying solely on subsidizing handset pricing and imposing contract terms or other restrictions that may limit choice and flexibility. BDC also maintains that unlocking cellphones will facilitate travel and the communications needs of business and recreational travelers.

Consultation Question 2: Do you view locking of cellphones as an obstacle to mobile number portability?

The locked phone can be a hindrance to mobile number portability depending on several factors. Locked phones in the context of number portability could create the unusual situation in which a customer is free to take their number but not their handset to another carrier. While the locking of phones may not directly undercut number portability, the unlocking of phones certainly promotes the goals engendered by number portability, i.e., choice, competition and flexibility. When a phone is locked it can also be branded, thereby causing confusion to the customer especially after the phone has been switched to another carrier and another number. BDC recommends that the RA require that a phone be debranded to remove any electronic logo or carrier-specific start-up screen or customizations at the same time it is unlocked at a customer's request. While physical branding on a device (e.g., an etched logo) may be difficult to remove, and BDC does not suggest that physical debranding be required, electronic debranding should be a relatively easy and inexpensive process.

Consultation Question 3: Do you agree with the RA's proposed decision on both case 1 and case 2? If not, kindly state whether you do not agree with a) both cases b) case 1 c) case 2 putting forward arguments for your reason/s.

Case 1: *Where the mobile provider has provided a locked cellphone to a consumer, it must provide the consumer with the means to unlock the device after no more than 30 days of service, at the rate specified in the contract and terms and conditions.*

BDC interprets this to mean that any device, whether subsidized or un-subsidized will be subject to the unlocking requirements. BDC agrees that a carrier should be required to unlock a phone upon request of the customer. The carrier should be responsible for the unlocking process and it should be completed in a reasonable amount of time. Carriers should be capable of either remote (or automatic over the air) unlocking or providing an automatic notification by means of the carrier's choosing, e.g., email, text, phone call, bill insert, that a customer's phone is eligible for unlocking. Unlocking of phones using unlocking codes can be a complex process and should be completed by the carrier rather than simply providing unlock codes and instructions to the customer. Carriers should be required to resolve unlocking requests within two business days, including unlocking the phone or providing an explanation of why it cannot be unlocked. Exceptions to unlocking could include, for example, the account holder cannot be verified or the device is too old to be unlocked. BDC also believes that any fee associated with unlocking should be nominal or nonexistent, otherwise customers may be effectively dissuaded from unlocking their phone.

Case 2: *The conditions under which a cellphone may be unlocked depend on whether the cellphone was subsidized or not.*

o Subsidized cellphones: Where the mobile provider has provided a subsidized cellphone to a consumer, the mobile provider must provide the consumer with means to unlock the device after no more than 30 days of service, at the rate specified in the contract and terms and conditions.

BDC maintains that whether a cellphone was subsidized or not is not relevant to the question of whether the device may be unlocked but may be relevant to when the phone may be eligible to

be unlocked. In addition, unlocking of devices should not be construed to excuse the carrier or customer from contractual commitments that may otherwise remain in place regardless of whether a related device is unlocked.

o Cellphones not subsidized: Where the mobile provider has provided a cellphone to a consumer and the cellphone (1) was provided without a subsidy, or (2) is no longer on contract, the mobile provider must provide the consumer with the means to unlock the cellphone at any time and at no charge.

BDC agrees with the Authority in this instance.

I hope that this information is helpful and provides meaningful guidance to the RA.

Sincerely,

BERMUDA DIGITAL COMMUNICATIONS, LTD.

A handwritten signature in black ink, appearing to read 'Frank Amaral'.

Frank Amaral
Chief Executive Officer