



12 June 2008

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

Dear Sir,

**Re: Determination Request/Infrastructure Sharing/Dispute Resolution Regulations**

TeleCayman is extremely disappointed with the response provided by the Cabinet Secretary dated 4 June 2008, received 11 June 2008, wherein it is stated that the Governor-in-Cabinet rejects the offer to lease Government Duct space. The purpose of this correspondence is to request that the Authority issue a Decision as requested in TeleCayman's Determination Request filed 29 April 2008.

TeleCayman respectfully submits that the Authority's decision needs to reflect the record established to date and the Law and Regulations which govern the issue of infrastructure sharing.

**The Record**

TeleCayman repeats, and incorporates by reference, its comments made in the Application for Determination dated 4 April 2008, and supporting documents including Affidavit evidence and its comments made in correspondence to the Authority dated 29 April 2008, and supporting documents. Materials are attached for ease of reference.

Discussions with Government for duct space were initiated in late February 2008. In these initial discussions Government indicated it would make dark fibre available to TeleCayman in its duct space. In these discussions the only duct space stated as too small to accommodate dark fibre was in that section of West Bay Road leading out of Georgetown. On the basis of business considerations TeleCayman stated its preference was to own the fibre and lease the very duct space the Government was to utilize to provision dark fibre. Government refused to make the duct space available and TeleCayman initiated its Application for Determination. [See Affidavit of Tom Kinstler.]

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In its Reply dated 10 April 2008 Government appeared to accept the obligation to share duct space but suggested a rate of 30 cents per foot per month. [See Reply of Gilbert McLaughlin.] TeleCayman submitted empirical data indicating that a cost oriented rate should be in the order of 3 cents per linear foot.

Government issued correspondence dated 4 June 2008 effectively denying access to its duct space. It must be noted that Government failed to address the substantive issues raised in the Application for Determination and TeleCayman's correspondence of 29 April 2008. Government also failed to address specific subsequent interrogatories issued by the Authority on substantive matters and costing issues. TeleCayman respectfully submits that Government has been provided with ample opportunities to contribute and complete the record on the very significant and substantive issues before the Authority. Further, TeleCayman submits that Government has at its disposition substantial telecommunication and legal resources to complete the record and address the issues. Accordingly, it is respectfully submitted that the Authority should not conclude any matters favourable to Government which arise as a result of this Application for Determination.

The record contains absolutely no expressed Government concerns with respect to safety, security, technical and engineering issues. Nonetheless, TeleCayman continues to be willing to have Government choose a contractor of its choice for the installation of fibre.

### **The Law and the Regulations**

It is an accepted Rule of Law in all democratic societies which apply the common law that "no one is above the law". This includes Government.

The Government of the Cayman Islands enacted the Information and Communications Technology Authority Law, 2002 and enacted Interconnection and Infrastructure Sharing Regulations and other Regulations. Further, Government applied for and was awarded a Licensee in accordance with the Law and the Regulations. The Law, Regulations and the Licence are unequivocal with respect to Government's obligation to share infrastructure. There is nothing on the record of these proceedings which mitigates against this obligation.

TeleCayman respectfully requests that the Authority exercise its legislative mandate and require Government to make available duct space at the cost oriented rate proposed by TeleCayman.

### **Public Policy**

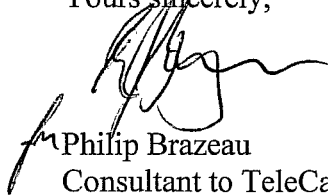
In liberalizing the telecommunications marketplace the Government of the Cayman Islands created a regulatory regime which provided new entrants with the reasonable opportunity to succeed so as to provide citizens and residents with service provider alternatives, competitive rates and introduction of new products and services. An

important element of the regulatory regime created by Government was the obligation for all licensees to share infrastructure. In refusing access to its duct space Government is refuting the very regime it created to induce new entrants into the marketplace and is acting contrary to the legal obligations imposed upon all licensees to share infrastructure.

As an aside, TeleCayman has been informed that the Government of the Cayman Islands currently has a moratorium against trenching in the downtown core. In light of this prohibition the failure to make duct space available must be viewed as anti competitive activity contrary to the Law as Government is preventing TeleCayman to access competitive requirements to offer competitive services.

TeleCayman appreciates that Government's refusal to provide access to its duct space places the Authority in the unenviable position of issuing a decision which may be contrary to the desires of the Governor-in Cabinet. However, competitive realities and business considerations require TeleCayman to request that the Authority issue a decision which is in accord with both the letter and the spirit of the Law as well as reflective of the information available on the public record. The Authority is respectfully requested to issue a decision requiring Government to make available duct space at the cost oriented rate of 3 cents a linear foot.

Yours sincerely,



Philip Brazeau  
Consultant to TeleCayman Limited

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Cc Mr. Orrett Connor, MBE, JP  
Cabinet Secretary  
Government of the Cayman Islands

Gilbert McLaughlin  
Director,  
Computer Services Department  
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