



### With Compliments

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Broadband - Dedicated Internet - Business Continuity - International Circuits - Voice Solutions - CoLocation - Data Services



08 August 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 26 June 2008 and received 29 July 2008 wherein it is stated that the Governor-in-Cabinet rejects the offer to lease Government Duct space and purports to set out the basis for such refusal. I propose addressing the specifics outlined as the basis for such refusal as well as the broader policy and political implications of Government taking such a position upon the liberalization of the telecommunications marketplace in the Cayman Islands. Ultimately, the purpose of this correspondence is to request that the Authority pursue several important steps prior to deliberating upon TeleCayman's Determination Request filed 29 April 2008.

**Specifics of the Refusal**

Cabinet states that it would neither be in the public nor national interest to allow TeleCayman's request without sub ducting being utilized. Clearly Cabinet has misconstrued the Application at hand as TeleCayman's proposal is to utilize sub ducting. TeleCayman proposes to utilize 1" sub ducting which is more than sufficient given the advances in fibre technologies.

Cabinet suggests that its duct network is primarily comprised of a single 2" duct. TeleCayman is of the view that Cabinet is ill advised as Government employees knowledgeable of the duct network have repeatedly stated most of its network in the downtown core is two 2" ducts (i.e. 4" of duct space). Given the apparent misunderstanding within Government, the Authority should undertake an empirical review of the two 2" duct network which could be available for infrastructure sharing. It is worth noting that when Government proposed leasing lit fibre to TeleCayman it proposed the entirety of the second 2" duct. Again, TeleCayman only has a requirement

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for a 1" sub duct. Further, Cabinet suggests that it is not possible to introduce sub ducting into 2" ducts. TeleCayman notes that it has been advised by industry players that it is indeed practical and not uncommon to introduce 1" sub ducts into a 2" duct. A TeleCayman consultant advises that a 1" sub duct only uses 25% of the area of a 2" duct leaving Government 75% of the area for its own use (see diagram). This in addition to Government's other 2" duct which is entirely reserved for its own use.

Cabinet states that it will easily consume all of its 2" ducts (i.e. 4" of duct space) for expansion of its network and to boost redundancy. TeleCayman notes that with the advancement of fibre technology it can easily introduce 3 strands of dark fibre into its 1" sub duct which will address enormous telecommunication capabilities. Presumably Government would be utilizing similar technologies to expand and boost the redundancy of its own network. Further, Government has publicly stated that its present direction in office space utilization is to consolidate the operation of Government to selected locations thereby freeing up duct space. Going forward, new fibre technologies and consolidation of Government operations should result in reduced requirements for duct space, not more.

TeleCayman submits that there exists serious misapprehension and misunderstanding on the part of Cabinet as to the factual underpinnings of TeleCayman's Application to share duct infrastructure. TeleCayman respectfully submits that, in the circumstances, it is incumbent upon the Authority to delay any decision on the issues until such time as it is satisfied that Cabinet fully understands TeleCayman's Application. In this regard TeleCayman requests that the parties meet under the auspices of the Authority to ensure a consensus on the facts germane to the issues at hand.

Cabinet states that it would not be in the national interest to allow third party network infrastructure into Government infrastructure. TeleCayman submits the issue of national interest should be approached from a broader perspective. Currently C&W is the only Licensee with a fibre network servicing the downtown core. As the fifth largest banking centre in the world, the Cayman Islands would be well served to have a second fibre network serving the business community. All the more so in the event of a natural disaster, or otherwise, impacting one of the networks. Viewed from this perspective the national interest, especially the continued economic well-being of the Cayman Islands, would be better protected and better served.

Government states that it is of the opinion that "access by TeleCayman as requested by them" will cause real security and safety issues for Government in the conduct of its day to day business. TeleCayman submits that it is unclear if Government arrives at this assessment based on its mistaken stated understanding that "sub ducting will not be utilized". Significantly, Government fails to lay any basis for its safety and security statement. From the very outset TeleCayman has offered to work with Government to minimize security and safety issues. If Cabinet is suggesting that a request tailored differently would alleviate such concerns TeleCayman is prepared to work with Government as to how best to address these concerns. TeleCayman submits that the Authority should request Government to substantiate its statement of security and safety

concerns and provide the basis for such statement with a view to determining if such concerns can be practically addressed. As an alternative, the Authority could require the parties to meet before it and determine if TeleCayman's proposal, as requested, can be modified to address Cabinet's concerns. If any licensee, other than Government, took the position that it had safety or security concerns surely the Authority would find it incumbent upon itself to investigate the matter fully and satisfy itself in this regard. Neither the Government's Licence nor the legislation makes any distinction as to different treatment for different licensees.

### **Policy and Political Considerations**

TeleCayman wishes to express serious misgiving and concern with the current state of its Application for Infrastructure Sharing and the manner in which the Application has proceeded to date. There has been a serious failure of Government to abide by its own Dispute Resolution Regulations in terms of process and substance. Further, the Authority itself may have crossed the line in terms of acting as an independent arbiter when, in its correspondence of 19 June 2008, it requested reasons for Government's refusal to share infrastructure and then went on to state which reasons would be deemed acceptable. It is an egregious practice for an impartial arbiter to suggest an acceptable response in a proceeding contested in Dispute Resolution procedures. Cabinet should simply have been requested to provide the basis for its refusal without being "steered" in the direction of an acceptable response. As Government has not made any confidentiality claim on its deliberations and has provided the outcome of those deliberations, TeleCayman submits it is appropriate and reasonable in the circumstances to have Cabinet provide an extract of the Cabinet minutes pertaining specifically to this matter. In this manner the Authority can better determine the factual basis for its decision and the safety and security considerations underpinning its position. This will also assist in determining whether modification of TeleCayman's proposal can alleviate Cabinet's concerns. At the very least Cabinet should be obliged to provide the basis for concluding safety and security concerns so that the merits of such basis for refusal can be assessed.

An over abiding factor in TeleCayman's investors' decision to enter the telecommunications market and invest millions in the Cayman Islands was the Government's stated commitment to full liberalization and the regulatory framework established for such liberalization. Of significant importance to TeleCayman is the fact that at the time it liberalized the telecommunications market in the Cayman Islands, Government proposed to introduce a competitive environment conducive to open and fair competition. Important elements of a liberalized marketplace are the introduction of Local Number Portability and infrastructure sharing. Some four years into liberalization and Local Number Portability has yet to be determined, let alone introduced. The absence of Local Number Portability in the Cayman Islands is the single most significant impediment to a fully liberalized telecommunications market in terms of a real choice for the business community and the financial viability of TeleCayman as a new entrant service provider. The requirement for infrastructure sharing is enacted both in the Information and Communications Technology Authority Law, 2002 and subsequently, the Interconnection and Infrastructure Sharing Regulations. In seeking a licence, which

included the provisioning of infrastructure, Government undertook to abide by the Authority's legislation and its regulations which require infrastructure sharing. Infrastructure sharing was an essential component in the deployment of mobile services as licensees were required to share tower space. In this particular Application, TeleCayman, a wire line licensee is making a corollary request in terms of duct space. However, Government takes an opposite stance to its liberalization policy stating it will seek an exemption from infrastructure sharing and interconnection requirements. This despite the fact that it already has long term agreements to make tower space available in accordance with infrastructure sharing regulations. Further, a potential future application for exemption has no probative value to this proceeding as the issue of an exemption is hypothetical and would necessitate submissions, in a separate proceeding, from other licensees potentially impacted by such a decision. Government should abide by its commitment to liberalization of the telecommunications marketplace which includes the obligation of all licensees to share infrastructure, including itself.

TeleCayman respectfully requests that prior to deliberating upon a final decision the Authority should obtain empirical data as to that portion of the duct space network which involves two 2" ducts (i.e. 4" of duct space), ensure that Cabinet's misunderstanding of TeleCayman's Application is corrected and that Cabinet provide the basis for its security and safety concerns so as to determine whether the TeleCayman proposal for a 1" sub duct, as requested, could be modified to address such concerns. As a licensee who has invested millions in the Cayman Islands, TeleCayman wishes to be reassured as to the Government's political commitment to a fully liberalized marketplace and the regulator's independent adjudicative role vis-à-vis all licensees. Further, TeleCayman suggests that it would be appropriate for the Authority to schedule a meeting involving all parties to the issues at hand.

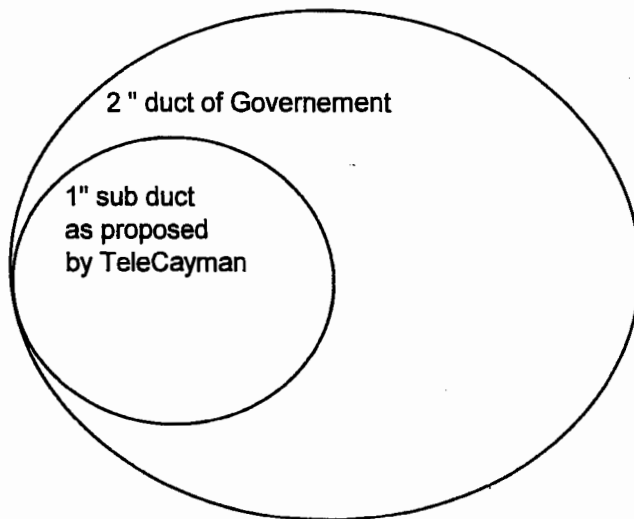
Yours sincerely,



Richard Brazeau  
President and Chief Financial Officer  
Javelin Connections Bermuda Limited

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

## Duct Space Utilization



Area of a 2" duct = 3.1429 square inches

Area of a 1" sub duct = .7857 square inches

Proportion of 1" sub duct to 2" duct = 25%