

IN THE MATTER OF A DISPUTE BETWEEN THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY AND WESTSTAR T.V. LIMITED;

IN THE MATTER OF THE INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2011 REVISION), THE INFORMATION AND COMMUNICATIONS TECHNOLOGY (INFRASTRUCTURE SHARING) NOTICE, 2003 AND THE INFORMATION AND COMMUNICATIONS TECHNOLOGY (INTERCONNECTION AND INFRASTRUCTURE SHARING) REGULATIONS, 2003;

IN THE MATTER OF ANNEX 2 OF THE LICENCE ISSUED TO WESTSTAR T.V. LIMITED BY THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY; AND

IN THE MATTER OF A DISPUTE RESOLUTION AGREEMENT MADE 25 APRIL 2014 BETWEEN THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY AND WESTSTAR T.V. LIMITED

ARBITRATOR'S DECISION

A. NATURE OF THE DISPUTE AND ARBITRATOR'S DECISION

1. The dispute between the Information and Communications Technology Authority ("the ICTA") and WestStar T.V. Limited ("WestStar") concerns whether WestStar, under Annex 2 of its licence, is entitled to deduct from "Quarterly Revenue" and "Annual Revenue", as defined in Annex 2, fees paid to another licensee, WestTel Ltd t/a Logic ("Logic").
2. The dispute raises the question of whether the fees paid were for "interconnection", "infrastructure sharing" or "wholesale services". If the answer to any of the three alternatives is in the affirmative, WestStar is entitled to the deduction. If the answer to all of the alternatives is in the negative, WestStar is not entitled to the deduction and must pay the royalty due to ICTA for the period for which the deduction was claimed and taken.
3. The arbitrator's decision is that the fees paid to Logic were **not** for "interconnection", "infrastructure sharing" nor "wholesale services"; the reasons for this decision follow below.

4. Throughout this decision, I have highlighted key words and terms; these are not highlighted in the various provisions of the Law (as defined hereinafter) but, in my opinion, help in the understanding of the provisions of the Law and the Regulations.

B. THE LAW AND SUBSIDIARY LEGISLATION

5. The ICTA is an authority established pursuant to the Information and Communications Technology Law ("Law"), first made as Law 4 of 2002; the current revision of the Law is the 2011 Revision.
6. On **04 November 2003**, the Governor in Cabinet made The Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 ("I&IS Regs) and The Information and Communications Technology Authority (Infrastructure Sharing) Notice, 2003 ("IS Notice"), both gazetted as supplements to Gazette No. 24 dated **01 December 2003**.
7. The IS Notice makes the provisions of what are now sections 65 to 68 of the Law relating to **interconnection** applicable to **infrastructure sharing** as defined in the IS Notice. The definitions of **infrastructure sharing**, **tangibles** and **intangibles** is the same in the IS Notice and in the I&IS Regs; the latter apply to both **interconnection** and **infrastructure sharing**.

C. KEY DEFINITIONS

(a) ICT Service

8. Section 2 of the Law defines an **ICT service** as follows:

"means any information technology service, telecommunications service, electronic media and broadcast service, Internet service, digital library and commercial information service, network-based information service and related specialized professional service provided by electronic means and any other similar service and includes a service that consists of or includes the provision of ICT infrastructure:"

(b) ICT Network

9. Section 2 of the Law defines an **ICT network** as follows:

"means any network **used** in connection with the provision of an ICT service:"

(c) Network

10. The word **network** is not defined in the Law nor in the Regulations. However, the definition of **infrastructure sharing** in section 2 of the I&IS Regs. quoted below, helps in arriving at a definition:

“means the provision to licensees of access to **tangibles used in connection with a public ICT network** or **intangibles facilitating the utilisation of a public ICT network**; and for the avoidance of doubt –

(a) **tangibles** include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and

(b) **intangibles** include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

11. This definition leads to the conclusion that a **network** consists of the **tangibles used in connection with** and the **intangibles facilitating the utilization of** the network in question.

(d) Licenced ICT Networks and Licenced ICT Services

12. The ICTA licences the providers of **ICT networks** and **ICT services** and maintains a public register of the same. The current version of the Alphabetical Index of the Licence Register is attached to this decision as Attachment 1 along with that part of the Chronological Listing which relates to WestStar and Logic, numbers 2 and 14, respectively.

13. The Chronological Listing in Attachment 1 states clearly which **ICT networks and ICT services** each of WestStar and Logic are licensed to provide to the **public** (more later about who comprises the **public**).

(e) Interconnection

14. Section 2 of the Law and section 2 of the I&IS Regs define **interconnection** as follows:

“means the **physical** or **logical** connection of **public ICT networks** of different ICT network providers;”

15. It follows from the definition of **interconnection** that, in order to have **interconnection**, there must be a physical or logical connection of at least two (2) **public ICT networks**, each of which is provided by a different **public ICT network** provider.

(f) **Public ICT Networks**

16. There is no definition in the Law, nor in the I&IS Regs, as to what makes an **ICT network** a **public ICT network**. However, as will be seen from the paragraphs below, there are two things which make an **ICT network** a **public ICT network**:

(a) a **public ICT network** provider who is providing **ICT services** on that network has **subscribers** and **end users**; and

(b) the ICTA has designated the provision of certain **ICT services** on certain **ICT networks** not only as having to be licenced but also as **major public ICT networks**.

17. The Law defines a **subscriber** as follows:

“unless otherwise specified in this Law, means a person who is provided with an ICT service by an ICT service provider and includes the end user of that ICT service:”

18. The licences of WestStar and Logic each refer to and define the terms **subscriber** and **end user** as follows:

“‘Subscriber’ means a legal entity or natural person who has a contract with the Licensee to receive Licensed ICT Services.”

“‘User’ means a legal or natural person who uses, or may use the networks or services of the Licensee, but is not necessarily a Subscriber.”

19. Section 3 of the I&IS Regs states the following:

“3. In these Regulations, the word ‘licensee’ refers only to licensees under the Law that hold licences for major public ICT networks as prescribed in the notice gazetted pursuant to section 23(2) of the Law.”

20. The latest notice gazetted pursuant to section 23(2) of the Law was gazetted on **18 May 2011** and is attached to this decision as Attachment 2. Table 1 of that notice shows what the **major public ICT networks** are.
21. It follows from the gazetted notice referred to immediately above, more specifically, Table 1 to that notice (Attachment 2) and from the licences issued to WestStar and Logic (Attachment 1) that both WestStar and Logic are licensed to provide **major public ICT networks** (consisting of the **tangibles used in connection with those major public ICT networks** and the **intangibles facilitating the utilization of those major public ICT networks**).

(g) Infrastructure and Infrastructure Sharing

22. Section 2 of the Law defines “**ICT infrastructure**” as “includes dark fibre”: this does not provide a great deal of specificity; however, more is provided by the definition of **infrastructure sharing** in the I&IS Regs.

23. The Law does not define **infrastructure sharing**; however, section 2 of the I&IS Regs defines **infrastructure sharing** as follows:

“means the provision to licensees of access to **tangibles used in connection with a public ICT network** or **intangibles facilitating the utilisation of a public ICT network**; and for the avoidance of doubt –

(c) **tangibles** include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and

(d) **intangibles** include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

24. The followings conclusions flow from the definition of **infrastructure sharing** above:

(a) **infrastructure** means, and is comprised of, the **tangibles used in connection with a public ICT network** and the **intangibles facilitating the utilization of that public ICT network**;

(b) the **tangibles** are being **used** by the licensee of the **public ICT network** and the **intangibles** facilitate that utilization:

- (c) the licensee which is seeking access also wants to use **tangibles** and **intangibles**, that is, to share them, for the purposes of that licensee's **public ICT network** to provide **licensed ICT services**; and
- (d) if exclusive use of a **tangible** has been given by a licensee to another licensee, that **tangible** is not being **used** by the first licensee in connection with the first licensee's **public ICT network** (nor is it available for such use) and is not, and cannot, be shared.

D. PROVISIONS OF THE LAW AND THE I&IS REGS DEALING SPECIFICALLY WITH "INTERCONNECTION" AND "INFRASTRUCTURE SHARING"

(a) Interconnection

i. The Process

- 25. Sections 65 to 68 of the Law deal with **interconnection**; that is, the **physical** or **logical** connection of the **public ICT networks** of **different** ICT network providers.
- 26. Subsection 65(2) of the Law requires the licensee seeking **interconnection** to make the **request** for **interconnection** in writing. The other subsections of section 65 of the Law deal with responding to the request and rates which may be charged.
- 27. Although the Law does not define the word **request**, section 2 of the I&IS Regs defines a **request** as a formal application for **interconnection**.
- 28. Subsection 8(2) of the I&IS Regs outlines the minimum contents of a **request**.
- 29. The other subsections of section 8 oblige the responder to acknowledge receipt of the **request**, consider and analyze it, provide a **quotation** and provide detailed reasons for a denial, if any.
- 30. Subsection 8(9) outlines the minimum information required to be in a **quotation**.
- 31. Section 6 of the I&IS Regs sets out the principles and guidelines which are applicable to the provision of **interconnection**.

32. Section 9 of the I&IS Regs provides that the rates offered by a **responder** to a **requestor** shall clearly identify all charges for **interconnection**.
33. Section 10 of the I&IS Regs outlines the characteristics of a **responder's** charges for **interconnection** and period of recovery.
34. Section 66 of the Law mandates written **interconnection agreements**, copies of which must be submitted to the ICTA within seven (7) days of being signed and kept by the ICTA in a public registry which is to be open to public inspection.
35. Section 7 of the I&IS Regs provides that **interconnection agreements** shall be based on the Law and the terms of the **responder's** legal framework document. The latter is a document which, pursuant to subsection 7(1) of the I&IS Regs, must be filed with the Authority within the time period specified in the **responder's** licence and, if not so specified, upon the receipt of a request by a requestor to obtain **interconnection**.
36. Subsection 7(4) of the I&IS Regs sets out the minimum contents of the legal framework document which must include the **interconnection** services which the licensee is prepared to provide and the commercial terms and conditions under which such **interconnection** services are to be provided on its **public ICT network** to the **public ICT network** of the **requestor**.
37. Section 19 of the I&IS Regs states the minimum matters which are to be contained in an **interconnection agreement**.
38. Section 20 of the I&IS Regs outlines the provisions which shall **not** be contained in an **interconnection agreement**.
39. Section 67 of the Law provides for the **requestor** or **responder**, unable to achieve an **interconnection agreement**, to refer the dispute to the ICTA.
40. Subsection 92(3) of the Law gives the ICTA the power to institute civil proceedings against any person who contravenes the Law and gives the Grand Court the power to make such order as it considers appropriate, including an order that the person in contravention comply with the Law and the Regulations (including the I&IS Regs).

ii. **Existing Interconnection Agreements**

41. The ICTA maintains a public register of **Interconnection and Infrastructure Sharing Agreements**. From this register, I have assembled a separate list of the **Interconnection Agreements**; this list is attached as Attachment 3.

iii. **The Purposes of Interconnection**

42. Subsection 8(1) of the I&IS Regs states the purposes of **interconnection**, as follows:

“Licensees shall have a right and, when requested by other licensees, an obligation to negotiate **interconnection** and **infrastructure sharing** services in order to ensure the **provision** and **interoperability** of services throughout the Islands.”

(b) **Infrastructure Sharing**

i. **The Process**

43. Section 69 of the Law makes the provisions referred to in paragraphs 25 to 40 above with respect to **interconnection**, with necessary amendment, applicable to **infrastructure sharing**, as defined in the IS Notice and in section 2 of the I&IS Regs (see paragraph 23 above).

ii. **Existing Infrastructure Sharing Agreements**

44. From the ICTA’s public register of **Interconnection and Infrastructure Sharing Agreements**, I have assembled a separate list of **Infrastructure Sharing Agreements**; this list is attached as Attachment 4.

iii. **The Purposes of Infrastructure Sharing**

45. Subsection 8(1) of the I&IS Regs states the purposes of **infrastructure sharing**, as follows:

“Licensees shall have a right and, when requested by other licensees, an obligation to negotiate **interconnection** and **infrastructure sharing** services in order to ensure the **provision** and **interoperability** of services throughout the Islands.”

E. CHRONOLOGY TO DATE AND THE POSITIONS OF THE ICTA AND WESTSTAR

46. Both WestStar and Logic hold licences issued by the ICTA under the Law to operate the **Licensed ICT Networks** and to supply the **Licensed ICT Services** specified in their respective licences; see Attachment 1. We have already determined from Attachments 1 and 2 that they each operate **major public ICT Networks**.
47. Following the submission by WestStar, on **16 January 2013**, of its quarterly report for the fourth quarter of 2012 (01 October to 31 December 2012), which included a deduction of [REDACTED] from **Quarterly Revenue** for a monthly payment of [REDACTED] to WestTel Ltd./Logic, the ICTA, by an e-mail of **08 March 2013**, asked for more specificity as to what the charges were for other than the notation of "P2P [REDACTED]" stated on the Logic invoices [REDACTED]
48. Further to a follow-up e-mail dated **24 April 2013** from the ICTA, WestStar replied, by e-mail dated **29 April 2013**, that: "**The Logic P2P is leased fiber from Logic to provide point to point television signal for our client, [REDACTED]** Attached to the e-mail was a Customer Order Form on the letterhead of WESTTEL LIMITED TRADING AS LOGIC ("Logic") from WestStar, [REDACTED] for "**LOGIC POINT TO POINT – Pt to Pt [REDACTED]; Term: [REDACTED]**" with a monthly rental charge of [REDACTED] (Written Statement).
49. By an e-mail dated **03 May 2013** to WestStar (Exhibit 3 to the ICTA Written Statement), Dr. Richardson of the ICTA stated the following:
- ".....it is not clear to me from the documentation provided that this is an interconnection service under those Regulations. In the Regulations, 'interconnection' is defined as the physical or logical connection of public ICT networks of different ICT network providers. You have indicated that one end point of the point-to-point connection is [REDACTED] used to provide television service to that client. Please identify the other end point location and identity which public ICT network it connects to at that end point."
50. By an e-mail dated **06 May 2013** to the ICTA (Exhibit 3 to the ICTA's Written Statement) Mr. Elmas of WestStar made the following reply:
- "The circuit originates on our own router, then transits to a Logic router who delivers it [REDACTED] where they hand it back to us for termination on our edge device."

51. By an e-mail dated **13 May 2013**, from Dr. Richardson of the ICTA to WestStar (Exhibit 3 to the ICTA's Written Statement), Dr. Richardson said the following:

".....there does not seem to be any obvious 'interconnection' between WestStar's and Logic's networks as defined by the Infrastructure and Interconnection Regulations, in that there is no 'physical or logical' connection of their public ICT networks.

Indeed, from what has been provided, it appears that the transmission path is part of a private network that is used to connect one point in WestStar's network to another point on WestStar's network. This, therefore, appears to be a retail private line service provided by Logic to WestStar and not an interconnection service."

Dr. Richardson requested the full contract under which Logic provided the service to WestStar and requested that the e-mail be treated as the ICTA putting WestStar on notice under the latter's licence that the ICTA disagreed with the inclusion of the amount as a deductible.

52. By an e-mail dated **06 June 2013** (Exhibit 4 to ICTA's Written Statement), WestStar provided, as the only contract, the CUSTOMER ORDER FORM referred to in paragraph 48 above.

53. The ICTA and WestStar met on **24 July 2013** but were unable to resolve the dispute with respect to the deduction. This was followed by a letter dated **01 August 2013** from the ICTA to WestStar invoking the dispute resolution process in section 2 of Annex 2 of WestStar's licence [REDACTED]

54. By an e-mail dated **02 August 2013**, WestStar asked the ICTA for a more detailed explanation of the ICTA's position (Exhibit 6 to the ICTA's Written Statement).

55. By an e-mail dated **06 August 2013**, the ICTA provided the more detailed explanation requested by WestStar (Exhibit 7 to the ICTA's Written Statement); the e-mail contained the following:

(a) the explanation already given (see paragraph 51 above);

(b) the opinion that the definition of **interconnection** in section 2 of the I&IS Regs meant that, in order for there to be **interconnection**, WestStar must send traffic to Logic to terminate on Logic's customer connections and vice versa. The traffic in this case, being traffic sent by WestStar from one point in WestStar's network to

another point in WestStar's network. was a private leased transmission service provided by Logic in order to connect one point in WestStar's network with another point in WestStar's network;

- (c) relying on subsection 8(1) of the I&IS Regs. the statement that the purpose of requiring the negotiation of **interconnection** and **infrastructure sharing** services was to ensure the **interoperability of services throughout the Islands**. That being the case, the opinion was expressed that there was no need for interoperability "as Logic does not use the transmitted data to provide services to its customers nor does WestStar use any data from Logic to provide services to its customers.";
- (d) the opinion that data transmission services are not included in the definition of **infrastructure sharing**;
- (e) the statement that the detailed requirements for **interconnection** and **infrastructure sharing** in the I&IRS Regs have not been met; and
- (f) the opinion that, since the arrangement was neither an **interconnection** nor **infrastructure sharing**, the meeting of the detailed requirements, in any event, was not appropriate.

56. By an e-mail dated **07 August 2013**, (Exhibit 8 to the ICTA's Written Statement) WestStar replied to the e-mail referred to in paragraph 55 above by inserting its comments in red. Briefly, WestStar raised the following questions and made the following comments in connection with the points made by the ICTA in paragraph 55 above:

- (a) although **public ICT network** is not a defined term, it means a network which provides **ICT services** to the **public**;
- (b) what does the ICTA believe the term "logical connection" means?
- (c) does the ICTA dispute that Logic and WestStar's **public ICT networks** have physical connection points to provide service [REDACTED];
- (d) the definition of **interconnection** mentions nothing about a requirement for licensees to send traffic back and forth;

- (e) does the ICTA believe that the statement of the purpose of **interconnection** in subsection 8(1) of the I&IS Regs supercedes the definition of **interconnection** in the I&IS Regs?
 - (f) would it also be appropriate to read subsection 8(1) of the I&IS Regs and come to the conclusion that **infrastructure sharing** ensures interoperability of services and that **interconnection** endures the provision of services throughout the Island?
 - (g) does the ICTA believe that the lists [of tangibles and intangibles] contained in sections (a) and (b) of the definition of **infrastructure sharing** in the I&IS Regs are exhaustive? and
 - (h) does the ICTA view the joint use of a cable as **infrastructure sharing**? If yes, are there any types of sharing that would not be included (eg. DWDM)?
57. By an e-mail dated **09 August 2013** (Exhibit 9 to the ICTA's Written Statement), the ICTA requested that WestStar nominate, by no later than **23 August 2013**, an independent accountant/attorney so that an appointment can be made by **30 August 2013**. With respect to the questions posed and comments made by WestStar in its e-mail of **07 August 2013** (paragraph 56 above), the ICTA stated the following:
- (a) the ICTA stands by its position that to qualify as an **interconnection**, there must be an exchange of traffic between the two connected public ICT networks;
 - (b) WestStar should seek its own legal advice with respect to subsection 8(1) of the I&IS Regs; and
 - (c) the questions about joint use of cable and DWDM are not relevant to the dispute.
58. By an e-mail dated **15 August 2013** (Exhibit 10 to the ICTA's Written Statement), WestStar reiterated the questions posed and comments made in its e-mail of **07 August 2013** (see paragraph 56 above).
59. By an e-mail dated **28 August 2013** (Exhibit 11 to the ICTA's Written Statement), the ICTA reiterated its previous positions and requested the nomination of an independent accountant/attorney to consider the dispute.
60. By an e-mail dated **30 August 2013** (Exhibit 12 to the ICTA's Written Statement), WestStar stated the two main issues which it wanted to understand:

(a) WestStar did not see, in the definition of **interconnection** in the legislation, the requirement that **interconnection** requires the passage of two way traffic and wanted to know specifically how the ICTA arrived at this conclusion; and

(b) WestStar wanted to know ICTA's definition of the term **Public ICT Network** and the source of the ICTA's definition.

61. By an e-mail dated **02 September 2013** (Exhibit 13 to the ICTA's Written Statement), the ICTA responded to the two questions raised by WestStar in its e-mail of **30 August 2013** (see paragraph 60 above), as follows:

"Interconnection is defined in the ICTA's Interconnection and Infrastructure Sharing Regulations.....as the 'physical or logical connection of public ICT networks of different ICT network providers'. As mentioned previously, the reference to public ICT networks being connected is in the plural, which by its nature relates to the interconnection being for the passing of two-way traffic (ie. the interoperability of those two networks).

"This requirement for interoperability is provided for in the Regulations. Regulation 8(1) of the Regulations specifically states that 'Licensee shall have a right and, when requested by other licensees, an obligation to negotiate interconnection and infrastructure sharing services in order to ensure the provision and interoperability of services throughout the Islands'.The numerous requirements in the Regulations for interconnection agreements are there because of the interoperability of services between different licensees."

62. By an e-mail dated **06 September 2013** (Exhibit 14 to the ICTA's Written Statement), the ICTA, with a view to narrowing the issues, made the following request:

".....could you please confirm by return that WestStar's challenge is only to the Authority's view that the service that Logic is providing to WestStar is not interconnection for the purposes of Annex 2 to WestStar's Licence (ie. the only matter in dispute is whether or not the WestStar/Logic contract is for interconnection)."

63. By an e-mail dated **16 September 2013** (Exhibit 15 to the ICTA's Written Statement), WestStar responded to the ICTA request to narrow the issues as follows:

“In regard to your question regarding our position, we continue to hold our position that the circuit is either an interconnection or infrastructure sharing.”

64. Despite the statement quoted from WestStar’s e-mail of **16 September 2013** above, WestStar, in its Written Response of **16 May 2014** raised the issue of entitlement to the deduction on the basis that what Logic provided was “wholesale services”.
65. In its **Reply** of **26 May 2014**, despite the lateness in the raising of the claim, the ICTA dealt with the issue and denied that Logic was providing “wholesale services”.

F. DISCUSSION AND REASONS FOR THE DECISION

(a) Interconnection

i. Definition in Section 2 of the Law and the I&IS Regs

66. Section 2 of the Law and section 2 of the I&IS Regs define **interconnection** as follows:

“means the **physical** or **logical** connection of **public ICT networks** of different ICT network providers;”.

67. What this definition says is that a **physical** or **logical** connection is a necessary but not a sufficient condition to achieve **interconnection**. In addition to the **physical** or **logical** connection, the connection must be that of at least two (2) **public ICT networks**, each of which is provided by a different **public ICT network** provider.

ii. Statement of Purposes in Subsection 8(1) of the I&IS Regs

68. The provisions of subsection 8(1) of the I&IS Regs stating the purposes of **interconnection** do not supplant the definition of **interconnection** in sections 2 of the Law and section 2 of the I&IS Regs; they enhance it and give meaning to the requirement, in the definition of **interconnection** in the Law and I&IS Regs, that the connection must be that of at least two (2) **public ICT networks**, each of which is provided by a different **public ICT network** provider.

iii. Reasons for Seeking Interconnection

69. A requestor, the licensee of a **public ICT network**, may seek **interconnection** for different reasons. In the case of telecommunications, **interconnection** is sought so

that the **public ICT networks** of two (2) licensees can **interconnect** and operate seamlessly throughout the Islands, thus meeting the purposes of **interconnection** stated in subsection 8(1) of the I&IS Regs.: for example, customers (subscribers and end users) of Digicel want to, and need to be able to, place telephone calls to customers of LIME. As can be seen from Attachment 3, **List of Interconnection Agreements**, LIME has negotiated **interconnection agreements** with all of the major players who are licensed to provide such **public ICT services**. It is obvious that, in providing such telecommunications services pursuant to an **interconnection agreement**, the two licensees are **using** the **tangibles** and **intangibles** of their respective **public ICT networks**; in other words, in addition to availability, there is **interoperability**.

70. **Interconnection** may be sought by a licensee of a **public ICT network** in order to be able to obtain from another licensee of a **public ICT network** a licenced **ICT service** which the **requestor** is not licenced to provide to its customers. In such a case, the **public ICT networks** of both licensees would still be in use to provide the said service to the customers of the **requestor** and the purposes of **interconnection** stated in subsection 8(1) of the I&IS Regs would be met, even though the information flowed from the responder to the customers of the requestor.

iv. **The British Telecommunications PLC and Vodafone Case**

71. In the British Telecommunications PLC and Vodafone case provided by the ICTA, the citation being [2004] CAT 8 (Case No. 1018/3/3/03), the subject matter was telecommunications. BT provided to Vodafone radio base station ("RBS") backhaul circuits which connected to a Vodafone base station controller ("BSC"), normally located within a Vodafone switch ("MTX"). The Director General of Telecommunications, relying on the wording of a European Parliament Directive (Directive 97/33/EC), held that the dispute between BT and Vodafone over the backhaul circuits was an "interconnection dispute". BT challenged this and ultimately prevailed before the Competition Appeal tribunal.

72. The Directive defined **interconnection** as follows:

"means the physical and logical linking of telecommunications networks used by the same or a different organization in order to allow users of one organization to communicate with users of the same or another organization, or to access services provided by another organization. Services may be provided by the parties involved or other parties who have access to the network;"

73. BT argued that **interconnection** meant the linking of two distinct telecommunications networks for the purpose of permitting a customer of network A to communicate with a customer of network B, and vice versa, to achieve end to end interoperability. This concept, according to BT, did not apply to the facts of the case as the function of the backhaul circuits provided by BT to Vodafone was to complete Vodafone's network, essentially purchasing transmission capacity from BT, rather than **interconnecting** Vodafone's network with that of BT in the sense intended by the Directive (paragraph 11 of the Case).
74. A number of observations from the BT case are relevant for this dispute between the ICTA and WestStar, as follows:
- (a) mobile operators often bought backhaul services from external suppliers and Vodafone obtained them most often from BT (paragraph 85);
 - (b) if a mobile operator wanted cable links, it was often cheaper to obtain the backhaul circuit from an established network operator such as BT rather than install its own links (paragraph 90);
 - (c) BT argued that the touchstone of **interconnection** was to allow one operator to access the customers of another. On the facts of the case, the link provided by BT did not allow Vodafone to access a customer of BT (paragraph 108);
 - (d) BT contended that for the Director to argue that, where the mobile operator (Vodafone) self-provided the links, there was no **interconnection**, but, when it obtained such links from BT, there was **interconnection**, was "bizarre" (paragraph 113);
 - (e) BT contended that the "transparent, dedicated capacity dedicated to Vodafone's sole and exclusive use is wholly separated from BT's network and becomes part of Vodafone's network for the duration of the contract" (paragraph 120);
 - (f) the Tribunal said that, it may reasonably be inferred from reading the Directive, that the overarching purpose of the Directive was to establish a European Community-wide framework for **interconnection** between networks, so as to secure **interoperability** in the sense that end users of one network are enabled to communicate with the end users of another network, or access services available to the latter (paragraph 204);
 - (g) the Tribunal said that the function of the RBS backhaul circuit, in its view, was to enable Vodafone subscribers in the vicinity of the RBS to make and receive calls over the Vodafone network (paragraph 230) and that the supply of the RBS circuit does not, of itself, enable any Vodafone subscriber to communicate with a BT subscriber or any other subscriber, or to access any services provided by any other network, or vice versa (paragraph 231);

- (h) the Tribunal stated that, in its view, the RBS backhaul was essentially concerned with **intraoperability** within a single network (i.e. Vodafone's), and not the **interoperability** between networks which the Directive contemplates (paragraph 250); and
- (i) the Tribunal stated, with reference in the Directive to the "same organization" that, as BT pointed out, a cable company may have more than one geographical network and may require connection between them. The Tribunal added that a mobile operator may have different networks in different countries which may need **interconnection** (paragraph 298).

v. **The Lease of Fiber Optic Cable by Logic to WestStar**

75. It is acknowledged by WestStar that Logic **leased** the cable in question to WestStar for the purpose of WestStar being able to provide television service to its customers [REDACTED] (subscriber and end users). Instances of such acknowledgement by WestStar are contained in paragraph 48 of this decision, above, and in paragraph 29 of WestStar's Written Response, dated **16 May 2014**, which states the following:

"There is no dispute that the circuit, part of a fiber optic cable, which was leased from Logic, is indeed the property/infrastructure of Logic".

76. WestStar also stated, in paragraph 42 of its Written Response, that the lease of the cable from Logic gave WestStar the time to lay its own fiber optic cable.

77. A lease confers on the lessee the exclusive right to use the property in question, for the period of the lease, to the exclusion of the owner and all others. Therefore, in this case, even though the fiber optic cable was the property/infrastructure of Logic, during the period of the lease it became the part of the infrastructure of WestStar's **public ICT network**. The **physical** or **logical** connection was with WestStar's own **public ICT network** and there was no connection to Logic's **public ICT network**; therefore, there was no **interconnection** between the **public ICT networks** of two different **ICT network** providers.

78. There was no licensed **ICT service** which WestStar sought for WestStar's customers from Logic, or vice versa. The only purpose for the leased cable was for WestStar to deliver contracted **ICT services** to its own customers [REDACTED]

(b) Infrastructure Sharing

79. The Law does not define **infrastructure sharing**.

80. Section 2 of the I&IS Regs defines **infrastructure sharing** as follows:

“means the provision to licensees of access to **tangibles used in connection with a public ICT network** or **intangibles facilitating the utilisation of a public ICT network**; and for the avoidance of doubt –

(a) **tangibles** include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and

(b) **intangibles** include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

81. It follows from the definition in paragraph 80 above that a licensee of a **public ICT network** (“licensee A”) uses the **tangibles** and **intangibles** comprising its **public ICT network** in order to provide the **ICT services**, which licensee A is licensed to provide, to its own customers.

82. If another licensee (“licensee B”), the **requestor**, also wants to use the **infrastructure** of licensee A in order to be able to provide, to its own customers, the **ICT services** which it is licensed to provide to such customers, licensee A and licensee B may enter into an **infrastructure sharing agreement**.

83. I referred previously, in paragraph 44 above, to the ICTA’s public register of **Interconnection and Infrastructure Sharing Agreements**. With respect to the latter, Attachment 4 is a List of Infrastructure Sharing Agreements. The essential feature of the first three **infrastructure sharing agreements** is joint use.

84. The last item on the List of Infrastructure Sharing Agreements in Attachment 4 is what appears to be a draft **infrastructure sharing agreement** between WestStar and Logic prepared in 2004 (the first four pages are attached as Attachment 5). Two things are of interest in the draft:

(a) In the definition of **infrastructure** in clause 1.1, various items are mentioned as being part of WestStar’s **infrastructure** if “owned, **leased**, or licensed by WestStar for the provision of licensed wireless cable television.....”; and

(b) the statement, in sub-clause 2.1.3(b), that the **infrastructure** shall be **shared** to “enable the simultaneous provision” of services by both WestStar and Logic.

85. For the reasons stated with respect to **interconnection** in paragraph 77 above with respect to the leased cable, on the facts, there was no **infrastructure sharing**: for the period of the lease, the cable “belonged” to WestStar and WestStar used it, without simultaneous use by Logic, to provide services to WestStar’s customers [REDACTED]. While WestStar’s own view, at least seemingly held in 2004, that a **leased tangible** is its own, is interesting, it is not necessary for my decision on **infrastructure sharing**.

(c) Wholesale Services

86. The definition of “Quarterly Revenue” in Annex 2 of WestStar’s licence, in part, states the following:

“‘Quarterly Revenue’ means Quarterly Turnover less:

(a) Payments made to Other Licensees for ... and wholesale services.....”

87. There is no definition of **wholesale services** in the Law nor in the I&IS Regs.

88. The ICTA’s first licensee, by a licence dated **10 July 2003**, was Cable & Wireless (C.I.) Ltd. T/A LIME (“C&W”). As can be seen from Attachment 3, List of Interconnection Agreements, the opening of the telecommunications market in the Cayman Islands necessitated the negotiation by new providers of **interconnection agreements** with C&W.

89. In Annex 5 of C&W’s licence, the ICTA imposed price controls on C&W’s prices, called “Interim Price Restrictions” until an “Initial Price Cap” plan could be finalized (section 35 of Annex 5). Certain services could be provided by C&W to other licensees at retail, but others only at wholesale prices during the stages of the deregulation process.

90. Part 6 of Annex 5 was called “Wholesale Services”. In reality, the ICTA was ordering C&W, through its power to do so in the licence, to provide certain **ICT services**, including the provision of some of its **ICT infrastructure**, at wholesale, as opposed to retail, prices. Section 64 of Annex 5 said the following:

“**Authority may mandate resale.** From the Effective Date, C&W shall offer any service to other licensed operators on a wholesale basis if the Authority has issued a

written direction requiring C&W to do so. The wholesale price of any service that is required to be offered for resale shall, subject to any specific exemptions listed in section 66 below, be:

91. Section 64 of Annex 5 was modified in section 70, as follows:

“C&W Commitments. Without being specifically required to do so by the Authority, C&W shall, from the dates specified in Attachment 1, make the wholesale services available to ICT licensees on request as set out in Attachment 1.....”

92. One of the services required to be offered to other licensees at wholesale prices was called a “Domestic Leased Circuit (DLC)” (Part of Attachment 1 to Annex 5).

93. WestStar tries to extrapolate from the foregoing directives in the C&W licence that the leased cable provided by Logic was a “wholesale service”: I do not agree.

94. The ICTA directives to C&W were made in 2003 as the first phase of the deregulation of the telecommunications market in the Cayman Islands by which C&W gave up its monopolistic position. As part of this, the ICTA mandated that, for certain periods, C&W’s prices would be controlled and it had to provide certain **ICT services** at wholesale prices (wholesale services). Thus, this was a unique situation, lasting until the advent of competition in the telecommunications sector. It may even be that WestStar and/or Logic, in the past, acquired “wholesale services” from C&W pursuant to the C&W licence issued in 2003.

95. No other licensee has had imposed a condition in its licence that it provide certain **ICT services** at wholesale prices; certainly, the license issued to Logic does not contain such a provision. Therefore, what Logic provided to WestStar was not a “wholesale service”.

(d) Double “Taxation”

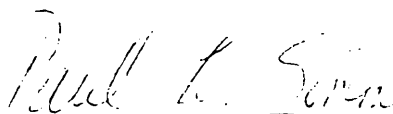
96. WestStar raises the argument, at paragraphs 12 to 14 of its Written Response dated **16 May 2014**, that, because Logic has included the lease payments in its “Turnover” numbers, not to allow a deduction by WestStar for such payments would amount to double “taxation”. I do not agree. The definition of “Quarterly Revenue” in the WestStar licence states that a deduction may be made for “payments to Other Licensees for interconnection, infrastructure and wholesale services”. Since the payments made to Logic were not for any of the items mentioned, as stated above, no deduction may be taken.

G. CONCLUSION

97. In conclusion, my decision is that the payments made to Logic by WestStar were not deductible as they were not made for any of the matters for which a deduction is allowed from "Quarterly Turnover" and that, if necessary, recalculations be made accordingly.

98. I would like to thank both WestStar and the ICTA for their able submissions and for the professional manner in which they have conducted themselves.

Date: 02 June 2014



PAUL L. SIMON, ARBITRATOR
BODDEN & BODDEN, ATTORNEYS-AT-LAW



ATTACHMENT 1 TO THE ARBITRATOR'S DECISION (PARA. 12)

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BROADCASTING

KY DOMAIN

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PUBLIC REGISTERS

COMPLAINTS

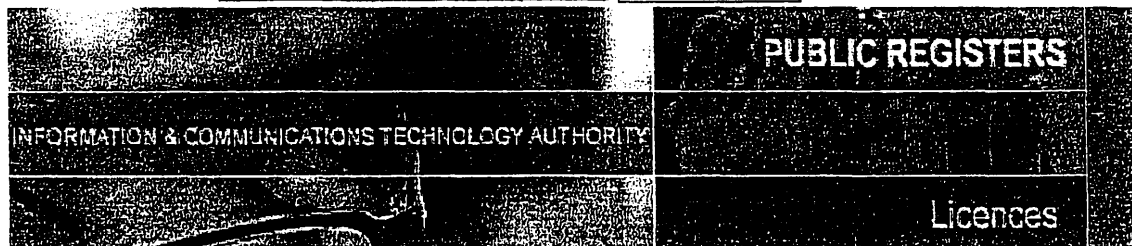
CONSUMER ADVICE

FREEDOM OF INFO (FOI)

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LICENCE REGISTER

Alphabetical Index:

- Azure Seas Ltd
- Blue Bison Communications Limited
- Blue Sky Communications
- Blue Sky Wireless
- C.I. Conference of Seventh-Day Adventists
- Cable and Wireless (C.I.) Ltd (T/A LIME)
- Camana Bay Communications Ltd
- Caycom Ltd
- Cayman Adventist TV Network
- Cayman Broadcasting Ltd (Love FM)
- Cayman Christian TV
- CaymanBuzz.com Ltd
- Cerentis Broadcasting Systems
- Christian Communications Association
- DataLink Limited
- Digicel Cayman Limited
- dms Broadcasting
- E-Technologies Limited
- Foster Cayman Ltd.
- Government of the Cayman Islands
- Grace Broadcasting Ltd.
- GrandTel Limited
- Hurleys Entertainment Corporation
- ICCI
- Infinity Broadband
- Interactive Broadcasting and Media Ltd
- Island Electronics
- Mr Everton Malcolm (T/A Praise 87.9)
- North Rock Communications (Cayman) Ltd
- Panorama Productions
- Paramount Media Services
- Radio Cayman
- TeleCayman Limited
- United Telecommunication Services Ltd
- West Indian Electronic Technologies Ltd
- WestStar TV Limited
- WestTel Limited
- Wireless Ventures (Cayman Islands) Ltd

Chronological Listing:

2. **WestStar TV Limited**

#45 Eclipse Way
PO Box 31117
Grand Cayman KY1-1205

Web: www.weststartv.com
E-mail: jelmas@weststartv.ky
Contact: Jeremy Eimas, Chief Operating Officer

Licensed ICT Networks & Services:

Service 01 Fixed Telephony
Service 05 Internet Telephony
Service 06 Public Service TV Broadcasting
Service 07 Subscription TV Broadcasting
Service 09 Internet Service Provider (ISP)
Service 11 Provision of Infrastructure ex darkfibre
Service 11A Provision of Infrastructure - dark fibre
Service 15 Video on Demand

Network B Fixed Wireless
Network D1 Fibre Optic Cable - Domestic
Network E1 Satellite (incl VSAT) - Domestic
Network E2 Satellite (incl VSAT) - International
Network F Broadcast Network
Network S Spectrum

Licence Documents:

»View Licence document
»View Amendment #1
»View Amendment #2
»View Amendment #3
»View Amendment #4
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»View Amendment #6
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»View Amendment #8
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»View Amendment #11
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»View Amendment #14
»View Amendment #15
»View Amendment #16

Date of Issue:

10 Oct 2003 (Amended 12 Feb 04)

14. **WestTel Limited**

1st Floor Trinity Square
PO Box 31112
Grand Cayman KY1-1205

Web:
E-mail: edenholm@westtel.ky
Contact: Mike Edenholm, Chief Tech Officer and Project Coordinator

Licensed ICT Networks & Services:

Service 01 Fixed Telephony
Service 04 Resale of Telephony
Service 05 Internet Telephony
Service 06 Public Service TV Broadcasting
Service 07 Subscription TV Broadcasting
Service 09 Internet Service Provider (ISP)
Service 11 Provision of Infrastructure ex darkfibre
Service 14 Application Service Provider (ASP)
Service 15 Video on Demand

Network B Fixed Wireless
Network D1 Fibre Optic Cable - Domestic
Network F Broadcast Network
Network S Spectrum

Licence Documents:

»View Licence document
»View Amendment #1
»View Amendment #2
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Date of Issue:

12 Feb 2004

ATTACHMENT 2 TO THE ARBITRATOR'S DECISION (PARA. 20)

CAYMAN  ISLANDS
GAZETTE

Extraordinary No. 40/2011

Wednesday, 18th May 2011

GOVERNMENT
Regulatory Notice

THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY

TYPES OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) NETWORKS AND
SERVICES WHICH REQUIRE TO BE LICENSED BY THE AUTHORITY

13th May 2011

Licensing provisions

1. This Notice is issued by the Information and Communications Technology Authority ("the Authority") in accordance with section 23(2) of the Information and Communications Technology Authority Law, (2010 Revision) ("the Law") that requires the Authority to publish in the Gazette a notice specifying which types of Information and Communications Technology (ICT) Networks and Services are required to be licensed.
2. This Notice comes into force immediately and supersedes all previously published versions.

Types of ICT Networks and ICT Services which are required to be licensed

3. The Authority has determined that all ICT Networks are required to be licensed by the Authority with the exception of:
 - a. Fixed (Wireline) Communication Systems used solely for a Person's own use.
 - b. Free Space (Wireless) Communication Systems which are:
 - (i) used solely for a Person's own use;
 - (ii) operated within the 902 to 928 MHz or 2.4 GHz spectrum bands;
 - (iii) fully qualify as certified equipment; and
 - (iv) are utilized in accordance with the operating parameters and specifications for which they have been specified.
4. For clarity, the types of ICT Networks that require a Licence include, but are not limited to :
 - a. public switched telephone networks, whether fixed, wireless or cellular, using either packet or circuit based switching or routing techniques;
 - b. Communication Systems used for Interconnection;
 - c. cable networks, cables and cable landing points, whether undersea or on land, which originate on, or terminate on, or traverse the territory of the Cayman Islands;

- d. Communication Systems incorporating orbiting or geo-stationary satellites, including Very Small Aperture Transmission (VSAT) satellites, which are used for the transmission of Messages;
 - e. dark fibre or other unlit fibre; and
 - f. all Free Space Communication Systems other than those defined at paragraph 3b above.
5. The Authority has also determined that all ICT Services that use an ICT Network to provide services to the public, whether or not for a fee or for commercial profit, are required to be licensed, except for-
- (a) computer back-up and disaster recovery services located in Grand Cayman;
 - (b) Information Security Services specified in Note (b) of Table 6 in this Notice; and
 - (c) the provision of ICT Infrastructure and dark fibre (ICT Service Types 11 and 11a of Table 6 in this Notice) by DataLink Limited to the Cayman Islands Government in support of the Government's CCTV project, until such time as the Authority makes a determination on DataLink Limited's current ICT Licence application.
6. For clarity, the types of ICT Services that require a licence include, but are not limited to :
- a. Telephony -
 - i. All forms of wholesale telephony or any other form of supply of Communication System capacity, whether as interconnection services or as airtime, by one ICT Licensee to one or more other ICT Licensees or by an ICT Licensee to Subscribers;
 - ii. All forms of retail telephony involving the transmission to and from Subscribers of signals over Communication Systems, including the domestic and international transmission of voice, data, facsimile, moving image or still image messages, regardless of the method of transmission;
 - iii. All forms of providing (including selling, leasing, renting, gifting etc.) dark or unlit fibre to any Person;
 - b. Television services -
 - i. All forms of terrestrial television programming broadcast from a station in the Cayman Islands;
 - ii. All forms of television programming distributed by cable, satellite, or other ICT Network (including the Internet) from a distribution point located in the Cayman Islands;
 - c. Video on demand services –

The streaming of video material in the Cayman Islands in response to a request from a subscriber, or for subsequent resale to a subscriber, except where the video stream is delivered over the public Internet, or the video material is television programming.
 - d. Sound broadcasting services -

All forms of sound broadcasting transmitted from a station in the Cayman Islands:
 - e. Internet services -
 - i. Internet Service Providers, regardless of the scope or type of services provided;
 - ii. Application Service Providers;
 - f. Other services -
 - i. Computer back-up and disaster recovery services, located in Cayman Brac or Little Cayman, which use any form of Communication System except if used solely for a Person's own use; and
 - ii. The supply of directory listings in any medium, format or sequence information whereby the identity of Subscribers may be made public.

Licence applications

7. The Authority will currently consider applications for ICT Network and ICT Service Licences of the types listed in the following Tables 1 to 8:

Table 1: Major Public ICT Networks

(Licensees of these networks are subject to a royalty fee based upon a percentage of annual gross revenue.)

Type	Description	Comments or explanatory notes
A	Fixed wireline	A wireline network providing access to ICT Service(s) to residential and/or business Subscribers.
B	Fixed wireless	A wireless network (other than Mobile) providing access to ICT Service(s) to residential and/or business Subscribers.
C	Mobile (cellular)	Mobile networks normally operating in the 800, 900, 1800, 1900 or 1800 to 2200 MHz frequency bands.
D1	Fibre optic cable - Domestic	Whether "lit" or "unlit".
D2	Fibre optic cable - International	Whether "lit" or "unlit".
E1	Satellite (incl VSAT) - Domestic	
E2	Satellite (incl VSAT) - International	
F	Broadcast network	As used for "over-the-air" radio and TV broadcasters

Table 2: Radio Stations

(Licensees of these networks are subject to a fixed licence fee, usually annually.)

Type	Description	Comments or explanatory notes
J	Amateur radio station	Radio transmitting and receiving equipment which; (a) is used solely for a Person's own use; (b) operates on radio frequencies to be specified by the Authority following consultation; and (c) is limited in output power to a level to be specified by the Authority following consultation.
K	Aircraft radio station	For aircraft registered in the Cayman Islands.
L1	Ship radio station	For vessels of less than 300 gross tons with no MMSI number.
L2	Ship radio station	For vessels of less than 300 gross tons requiring an MMSI number.
L3	Ship radio station	For vessels of more than 300 gross tons but less than 1600 gross tons.
L4	Ship radio station	For vessels of greater than 1,600 gross tons.
L5	Ship radio station	Coastal vessel
M	Spacecraft radio station	For spacecraft registered in the Cayman Islands.

Table 3: Transmitters

(Licensees of these networks are subject to a fixed license fee per transmitter, usually annually.)

Type	Description	Comments or explanatory notes
N	Ground to air radio	Radio transmitting equipment used to communicate from the ground to aircraft on the ground and in the air using aviation frequencies.
O	Marine (Coastal) radio	Base station operating on designated maritime frequencies in the coastal waters of the Cayman Islands.
P	Land (Mobile) two-way radio	Base station and mobile radio transmitters (including hand-held) operating on designated frequencies in the Cayman Islands.
Q	Wireless Utilities Metering	Base station and wireless metering equipment at the end-users' premises.

Table 4: Spectrum

(Fixed spectrum license fees are to be paid annually.)

Type	Description	Comments or explanatory notes
S	All transmitters/ transponders other than those licensed under Tables 2 or 3, or those otherwise exempted by the Authority.	Each transmission frequency or channel is required to be licensed. This requirement extends to most uses of spectrum whether that use is in connection with a public or private network. For the avoidance of doubt, Licensees of Table 1 are required to obtain the appropriate Type S licences. Only Licensees of Tables 2 or 3 are exempt from the requirement to obtain a Type S licence. In addition, certain types of low power radio equipment may be exempted from any licensing requirement, or may be covered by a Class Licence, if operated in the 902 to 928 MHz or 2.4 GHz spectrum bands (see para 3 above). The Authority is currently considering whether Class Licences should be issued for additional spectrum bands. The results of these considerations will be published in a further Notice in the Gazette.

Table 5: Miscellaneous

(Licensees are subject to a fixed license fee, usually annually.)

Type	Description	Comments or explanatory notes
U	Radio dealer	A licensed dealer in radio transmitters is exempted from obtaining in advance an import licence for each radio that they import for subsequent resale.
V	Radio Operator	
W	Radio Importation	

Table 6: ICT Services

(Licensees of these services are subject to a royalty fee based upon a percentage of annual gross revenue.)

Type	Description	Comments or explanatory notes
1	Fixed Telephony	Whether utilising fixed wireline or fixed wireless networks. Refer also to paragraph 7a of this Notice for a description of Telephony.
2	Fall-back International Voice and Data Communications	An applicant for a Type 2 Licence must already hold, or must apply simultaneously for, a Type E2 (International Satellite) Network Licence. For further information, see Note (a).
3	Mobile Telephony	
4	Resale of Telephony	Also includes those services sometimes referred to as calling card services.
5	Internet Telephony	Voice over the Public Internet (not the use of Voice over Internet Protocol, which falls under Type 1).
6	Public Service Television Broadcasting	Refer to paragraph 7b of this Notice.
7	Subscription Television Broadcasting	Sometimes referred to as "cable broadcasting" or "wireless cable broadcasting". Applicants should note that a Type 7

Type	Description	Comments or explanatory notes
		Licence will not be issued without a Type 6 Licence. In other words, applicants wishing to provide Subscription Television Broadcasting service must also apply to provide Public Service Television Broadcasting service.
8	Sound Broadcasting	Refer to paragraph 7d of this Notice.
9	Internet Service Provider	
10	Information Security Services	Licensing by the Authority is optional at the discretion of the applicant. See Note (b) below.
11	The provision, by lease or otherwise, of ICT infrastructure other than dark fibre to a Licensee.	
11a	The provision, by lease or otherwise, of dark fibre to a Licensee.	
12	Retail sale of ICT equipment	A Type 12 Licence is available only to Types 1, 3 or 5 Licensees. All others must obtain an appropriate licence from the Cayman Islands Trade and Business Licensing Board. For consistency with the procedures adopted by the Cayman Islands Trade and Business Licensing Board, a separate Type 12 Licence is required for each retail outlet.
13	The publication of directories derived from ICT subscriber records	Refer to paragraph 7f ii of this Notice.
14	Application Service Provider	
15	Video on Demand	Whether viewable real-time or near real-time.

Notes

(a) This licence permits a Licensee to offer international voice and data communications to the Licensee's business clients solely for use in emergency situations. An emergency is defined as instances where the client's normal communications service provider(s) is unable to provide its services for a period of such duration that there is a material impact upon the transaction of the client's normal business (e.g. as the result of damage following a hurricane) and the Authority has acknowledged in writing the existence of such conditions.

(b) Information Security Services may be licensed by the Authority on application from Persons who wish to be so licensed, but such licensing is not mandatory. Where a Person wishing to provide Information Security Services makes application to the Authority for an ICT Service Licence, the Authority will process that application in the same manner and to the same standards as it would process applications for any other type of ICT Service Licence, and the Authority may decline to award such Licence.

Table 7: Service Licences issued by the Governor in Cabinet under Section 23(3) of the Law, for the development of the Sister Islands

Type	Description	Notes
100	The provision of off-site ICT disaster recovery and	Applicable only to Licensees operating within and from Cayman Brac or Little Cayman, and as further defined in their Licences.

associated services.

Table 8: Class Licence issued by the Information and Communications Technology Authority under Section 23(2) of the Law, for Fall-back International Voice and Data Communications

Type	Description	Notes
200	permits a Class Licensee to put in place an international satellite Network and associated Services, for the Licensee's exclusive use in emergency situations, so as to provide itself with fall-back international voice and data communications.	An emergency is defined as instances where the Class Licensee's normal communications service provider(s) is unable to provide its services for a period of such duration that there is a material impact upon the transaction of the client's normal business (e.g. as the result of damage following a hurricane) and the Authority has acknowledged in writing the existence of such conditions. Testing restrictions are noted in the actual licence. The rights and obligations normally associated with Licences for Public ICT Networks (Table 2) or Services (Table 6), such as infrastructure sharing and wholesale rates, are not applicable to Type 200 Class Licenses, unless otherwise determined by the Authority.

DAVID A ARCHBOLD
 Managing Director
 Information & Communications Technology Authority

APPENDIX TO NOTICE

Definitions

1. The following terms have the same definition as those provided in the Law:

Authority
ICT
ICT Network
ICT Service
Interconnection
Internet Access
Licence
Licensee
Message
Person
Subscriber

2. In this Notice:

“Certification Bodies” means certification bodies so designated by the European Commission and/or certification bodies accredited by the National Institute of Standards and Technology in accordance with the rules of the United States Federal Communications Commission.

“Certified Equipment” means either apparatus or an assembly of various apparatus designed for interoperability as a system, which has been approved by certification bodies either individually or as a system.

“Communication System” means facilities, equipment or components which are used for the emission, transmission or reception of Messages by any wire, cable, radio, wireless, microwave, laser, satellite, optical (including all free space optical techniques) or other electromagnetic system, or by any similar technical system, provided the facilities, equipment or components are located in the Cayman Islands, or operated from ships, aircraft or spacecraft registered or operating in the Cayman Islands. For the purposes of this Notice, the term “Communication System” includes a whole Communication System, equipment or facilities forming part of a Communication System, or an individual component of a Communication System.

“Free Space Radiation” means the transmission of a Message without the use of a conductor, and includes transmission through the use of: any part of the electromagnetic spectrum: radiation or other free space optic techniques: radio: microwave: wireless techniques: infra-red techniques: laser; or satellite.

“Free Space Communication System” means a Communication System that uses Free Space Radiation.

“Fixed Communication System” means any Communication System that does not use Free Space Radiation.

“Information Security Services” has the meaning given in the Electronic Transactions Law, 2000.

“Infrastructure” has the meaning prescribed by the Governor in Cabinet under the provisions of section 48 of the Law.

“Internet Service Provider” means a Person who provides Internet Access to Subscribers.

“Notice” means this notice issued under Section 23(2) of the ICTA Law.

ATTACHMENT 3 TO THE ARBITRATOR'S DECISION (PARA. 41)

LIST OF INTERCONNECTION AGREEMENTS

1.

Cable & Wireless(CI) Ltd and Blue Sky Wireless Ltd.

- » Covering Letter
- » Legal Framework
- » Definitions
- » Service Descriptions
- » Joint Working Manual
- » Service Schedule
- » Parameter Schedule
- » Tariff Schedule

2.

C&W, Digicel, and WVCI Mobile Termination Rate (MTR) Agreement

- » Mobile Termination Rate Agreement

3.

Wireless Ventures (CI) Ltd (Trading as AT&T Wireless) and Digicel Cayman Ltd SMS Agreement

- » Addendum to the International GSM Roaming Agreement: SMS Interworking Agreement

4.

Cable & Wireless(CI) Ltd and WestTel Ltd

2009 Agreement

- » Schedule 1 - Definitions
- » Schedule 2 - Service Descriptions
- » Schedule 3 - Joint Working Manual
- » Schedule 4 - Service Schedule
- » Schedule 5 - Parameter Schedule

- » Schedule 6 - Tariff Schedule
- » Schedule 7 - Legal Framework

2007 Amending Agreement

- » First Amending Agreement

2004 Agreement

- » Legal Framework
- » Definitions
- » Service Descriptions
- » Joint Working Manual
- » Service Schedule
- » Parameter Schedule
- » Tariff Schedule

5.

Cable & Wireless(CI) Ltd and TeleCayman Ltd Interconnection Agreement

- » Covering Letter
- » Legal Framework
- » Definitions
- » Service Descriptions
- » Joint Working Manual
- » Service Schedule
- » Parameter Schedule
- » Tariff Schedule

6.

Cable & Wireless(CI) Ltd. and Wireless Ventures (CI) Ltd (Trading as AT&T Wireless)

- » Covering Letter and Confidentiality Claim
- » Interim Agreement
- » Joint Working Manual
- » Legal Framework
- » Definitions
- » Service Descriptions
- » Service Schedule
- » Tariff Schedule

7.

Cable & Wireless (CI) Ltd and Digicel Cayman Ltd

2012 Amending Agreement

- » Variation Agreement
- » Revised Schedule 6 - Tariff Schedule (Redacted)

2011 Agreement

- » Covering Letter
- » Legal Framework
- » Schedule 1 - Definitions
- » Schedule 2 - Service Descriptions
- » Schedule 3 - Joint Working Manual
- » Schedule 4 - Service Schedule
- » Schedule 5 - Parameter Schedule
- » Schedule 6 - Tariff Schedule (Redacted)

2004 Agreement

- » Covering Letter
- » Amendment Letter
- » Interim Agreement
- » Confidentiality Claim

- » Joint Working Manual
- » Legal Framework
- » Amended Definitions
- » Amended Service Descriptions
- » Amended Service Schedule
- » Amended Tariff Schedule
- » Parameter Schedule

ATTACHMENT 4 TO THE ARBITRATOR'S DECISION (PARA. 44)

LIST OF INFRASTRUCTURE SHARING AGREEMENTS

1.

CUC Ltd. and Cable & Wireless (Cayman) Ltd.

- » Cable & Wireless Agreement for Licensed Occupancy of CUC Poles 1996 (Redacted)
- » Novation Agreement between CUC, DataLink and Cable and Wireless (Cayman) Ltd. Nov 2012
- » Attachment A to Novation Agreement Nov 2012

2.

CUC Ltd. and Infinity Broadband Ltd.

- » Master Pole Joint Use Agreement (Redacted)
- » Deed of Variation (Redacted)

3.

Cable & Wireless(CI) Ltd and TeleCayman Ltd Infrastructure Agreement

- » Duct Space Infrastructure Sharing Agreement

4.

WestStar Ltd and WestTel Ltd Infrastructure Sharing Agreement

- » Infrastructure Sharing Agreement (Redacted)

ATTACHMENT 5 TO THE ARBITRATOR'S DECISION (PARA. 84)

EXHIBIT A

WESTSTAR T.V. LIMITED/WESTTEL LIMITED
INFRASTRUCTURE SHARING AGREEMENT

THIS AGREEMENT made in duplicate and dated as of the _____ day of _____
2004

BETWEEN:

WESTSTAR T.V. LIMITED of 40 Eclipse Drive, P.O. Box 30563 SMB, Grand Cayman, Cayman Islands,
British West Indies.

(“WESTSTAR”)

AND:

WESTTEL LIMITED having its registered office at 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman,
Cayman Islands, British West Indies.

(“WESTTEL”)

WHEREAS:

- A. WESTSTAR operates an ICT network and provides wireless cable television ICT services in the Cayman Islands pursuant to its licence granted on 10 October 2003;
- B. WESTTEL was granted a licence on 12 February 2004 to provide telephony and data ICT services in the Cayman Islands; and
- C. It has been agreed that WESTSTAR will provide access to its infrastructure to WESTTEL in accordance with the terms of this Agreement.

THEREFORE, IN CONSIDERATION of the premises and the mutual promises in this Agreement, the parties agree as follows:

1. DEFINITIONS, AGREEMENT PARTS, PRIORITY

1.1 Definitions

In this Agreement, including the recitals, the following terms have the following meanings:

“**Authority**” means the Information and Communications Technology Authority of the Cayman Islands established under the Law, or its successor or substitute body having jurisdiction;

“**Business Day**” means any day Monday through Friday, except a day recognised as a public holiday in the Cayman Islands;

“**Licensee**” means a licensee as defined in the Law;

“**Dispute Resolution Regulations**” means the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 made by the Governor in Council pursuant to the Law;

“Dollar” or “S” refers to Cayman Islands currency;

“Fees” means any fees charged by WESTSTAR to WESTTEL under s.4 of this Agreement.

“ICT Licence” means a licence as defined in the Law;

“ICT Service” means ICT service as defined in the Law;

“Infrastructure” includes, but is not limited to the towers, antennas, head-end facilities, transmitters, receivers, spectrum splitters, combiners and other equipment located on a customer’s premises, or located on the premises and facilities owned, leased or licensed by WESTSTAR, and that are owned, leased or licensed by WESTSTAR for its provision of licensed wireless video program distribution (commonly referred to as wireless cable television) and includes any hardware, software, patent, or other form of intellectual property, including equipment licenses, necessarily secured and held by WESTSTAR for its provision of wireless video program distribution and that will be required by WESTTEL for its installation, operation, maintenance and repair of any new equipment, or retrofitted equipment, to be used to provide its prospective licensed ICT services.

“Interconnection Regulations” means The Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 made by the Governor in Council pursuant to the Law;

“Law” means the Information and Communications Technology Authority Law, 2002 of the Cayman Islands, as amended, and all regulations prescribed thereunder, currently in effect and as enacted from time to time, and any successor or substitute legislation thereto;

“Network” means ICT network as defined in the Law.

1.2 Other Terms

Other terms used but not defined in this Agreement shall have the meaning generally understood in the telecommunications industry.

1.3 Computation of Time

Where there is a reference to a period of time consisting of a number of days or calendar months after a specified day, the number of days and months, respectively, shall be counted from, but should not include, the specified day of the month from which the count started. If the end day of the period of time so computed falls on a non-Business Day, then the end day of the period shall be the next Business Day.

1.4 Recitals

The recitals to and in this Agreement form an integral part of the Agreement and are intended to assist in the interpretation of this Agreement.

2. OBLIGATIONS AND SCOPE OF INFRASTRUCTURE ACCESS

2.1 Sharing of Infrastructure

2.1.1 WESTSTAR agrees to provide access to its Infrastructure to WESTTEL, in accordance with and subject to:

- (a) the terms and conditions in this Agreement as may be amended from time to time;
- (b) any applicable rate provisions of WESTSTAR’s tariffs, as may be amended from time to time, and approved by the Authority; and

- (c) the rates, terms and conditions specified in any Government of the Cayman Islands or Authority regulations, decisions, orders or ICT license conditions, as may be lawfully applicable.

2.1.2 WESTSTAR will provide WESTTEL with written notice of any proposed tariff filings that will affect the matters governed by this Agreement, at the same time as it submits those tariff filings to the Authority.

2.1.3 WESTSTAR represents and warrants that:

- (a) the Infrastructure that it provides pursuant to this Agreement shall be of good quality consistent with industry best practices in the telecommunications industry;
- (b) it shall share its Infrastructure in a manner that will enable the simultaneous provision of fixed wireless video program distribution ICT Services by WESTSTAR and fixed wireless telephony and data ICT services by WESTTEL;
- (c) that its Infrastructure can be retrofitted to provide fixed wireless telephony and data ICT Services using WestStar Infrastructure; and
- (d) that WESTSTAR has all necessary hardware and software licenses for WESTTEL to provide fixed wireless telephony and data ICT Services using WESTSTAR's Infrastructure.

2.1.4 The provision of the Infrastructure by WESTSTAR under this Agreement shall be subject to the requirement that WESTTEL pay compensation to WESTSTAR as set out herein.

2.2 Exchange of Confidential Information

Each party agrees that any information provided by either party to the other in connection with the prospective or actual implementation of this Agreement shall be kept confidential by the party receiving such information in accordance with the provisions of a mutual-non-disclosure agreement to be executed by the parties concurrently with this Agreement in the form of the draft nondisclosure agreement attached as Schedule A.

2.3 Valid License

So long as it shall be a party to this Agreement, each party represents that it is qualified to act as a Licensee under the Law and that it holds a valid ICT Licence as deemed or granted under the Law.

2.4 No Title

Nothing in this Agreement operates to convey to either party any implied right, interest or title to any services, and/or facilities or equipment of the other party.

2.5 Right to Advocate for Regulatory Issues

Nothing in this Agreement shall prevent either party from petitioning the Authority to take any action or refrain from taking action, with respect to:

- (a) the rates, terms and/or conditions of this Agreement;
- (b) either party's compliance with the Law;
- (c) the orders, decisions or directives of the Authority.

2.6 Co-ordination

The parties will work co-operatively when one or the other adds, changes or disconnects service to a customer and in the sharing of Infrastructure as contemplated under this Agreement. The parties will establish a protocol that will address how to coordinate such matters as the addition of the telephony and

data ICT Services provided by WESTTEL by an existing customer of WESTSTAR, the activation of WESTTEL ICT Services by a customer who has not previously been a customer of WESTSTAR and the disconnection or modification of ICT Services where a customer relationship continues with one or both parties.

2.7 Customer Education

- (a) The parties will work cooperatively to make their respective customers aware that WESTSTAR shall remain responsible for responding to problems relating to wireless video program distribution ICT Services and WESTTEL shall be responsible for responding to problems relating to wireless telephony and data ICT Services.
- (b) The parties will work cooperatively to provide instructions, written materials, software and related documentation to customers with respect to how WESTSTAR's Network will provide video program distribution ICT Services and WESTTEL's Network will provide telephony and data ICT Services.

2.8 Co-location

- 2.8.1 During this Agreement, WESTSTAR grants, and WESTTEL accepts, a non-exclusive license to occupy suitable co-location space on WESTSTAR's premises and Infrastructure for co-locating Infrastructure for use with WESTTEL's ICT Services. WESTTEL must not sub-license the co-location space provided by WESTSTAR under this Agreement. WESTTEL's Infrastructure co-located will remain the property of WESTTEL and be deemed personal and movable property, even though it may become attached or affixed to realty.
- 2.8.2 WESTSTAR will use commercially reasonable efforts to maintain a back-up power supply system appropriate for the provision of wireless video program distribution, telephony and data ICT Services. If WESTSTAR's premises are damaged as a result of any negligence or wilful act or omission of WESTTEL, WESTSTAR may, without prejudice to any other remedies available to it, repair such damages at WESTTEL's expense.

3. Infrastructure and Networks

3.1 Responsibility for Infrastructure and Networks

- 3.1.1 Each party shall be responsible for taking all necessary precautions in locating, constructing, operating and maintaining its Infrastructure and Network so as to prevent any hazards, troubles, interference with, or interruption to the Network or ICT Services of the other party.
- 3.1.2 Subject to Sub-article 3.3, the characteristics and methods of operation of any Infrastructure or Network of either party must not:
 - (a) interfere with, impair or create an unreasonable risk of interference with or impairment of the operation of the other party's Network or Infrastructure or ICT Services; or
 - (b) cause damage, or an unreasonable risk of damage, to the other party's Network or Infrastructure; or
 - (c) create a hazard to the health or safety of any person; or
 - (d) impair, or creates an unreasonable risk of impairment of, the privacy of any communications carried over the other party's Network; or
 - (e) interfere with the obligations of the other party under its ICT Licence or the Law