

NOVEMBER 5, 1996

**AGREEMENT
FOR
LICENSED OCCUPANCY
OF
CARIBBEAN UTILITIES COMPANY, LTD.
POLES BY
CABLE AND WIRELESS (CAYMAN ISLANDS) LTD.**

THIS AGREEMENT is made the 5th day of November, 1996.

BETWEEN:

CARIBBEAN UTILITIES COMPANY, LTD.,

(hereinafter called "the Owner")

OF THE FIRST PART

AND:

CABLE AND WIRELESS (CAYMAN ISLANDS) LTD.,

(hereinafter called "the Licensee")

OF THE SECOND PART

WHEREAS the Owner is in the business of the generation, transmission and distribution of electricity throughout the whole area known as Grand Cayman, Cayman Islands and the Licensee is in the business of operating a communications system within the Cayman Islands;

AND WHEREAS the Owner owns certain utility poles and other points of support (the "poles") used in connection with its business;

AND WHEREAS the Licensee has applied to the Owner for permission to attach certain wires, cables, associated fittings and/or other equipment to certain poles of the Owner, and the Owner is agreeable thereto upon the terms and conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the rental hereinafter made payable and of the covenants and agreements hereinafter contained the Owner hereby permits the Licensee to attach to such poles of the Owner as are designated in the permit or permits entered into from time to time by and between the parties (hereinafter referred to as the "Permits"), such wires, cables, associated fittings and/or other equipment of the Licensee (hereinafter referred to as "its attachments") as are detailed in the Permits. Permits shall be in the form attached hereto and marked Schedule A or as the said form may be revised from time to time. For the avoidance of doubt, any work or the scheduling thereof to be done by the Owner hereunder shall be done at the Owner's convenience in accordance with its normal operating procedures.

ARTICLE I

LICENSEE'S COVENANTS

- 1.1 The Licensee covenants and agrees with Owner as follows:
- (i) To place, maintain, co-ordinate physically and electrically and operate its attachments in a manner satisfactory to the Owner and so as not to interfere in any way with the lines, works or equipment of the Owner.
 - (ii) Subject to the foregoing sub-clause (i) to place, maintain and operate its attachments in accordance with the Owner's planning department's standard as amended from time to time (hereinafter referred to as the "Standard"), which said Standard shall be read with and form part of this Agreement and which shall be based upon the IEEE National Electrical Safety Code ("NESC").
 - (iii) To rearrange, remove temporarily or transfer any of its attachments whenever notified by the Owner so to do in order to facilitate the placement, rearrangement, maintenance or removal of any attachments or poles of the Owner and to perform such work at the Licensee's sole risk and expense within ninety (90) days after being notified in writing by the Owner so to do. If the

Licensee should fail to comply with any such notice, the Owner may perform the work directed thereby or cause the same to be performed and all costs and expenses incurred thereby shall be paid by the Licensee to the Owner upon demand.

- (iv) Not to alter any of its attachments or remove any guys required by the said Standard except with the prior written consent of the Owner as hereinafter provided or except when notified by the Owner so to do pursuant to sub-clause (iii) immediately preceeding, and not to place on any poles designated by such Permit or Permits any attachments in addition to the attachments covered by the Permits except with the prior written consent of the Owner, but the Licensee may add a single drop wire attachment on any of the said poles in order to serve an adjacent subscriber of the Licensee, and maintain the said attachments and replace any of them that become defective. The Owner agrees to respond to written requests for consent within twenty one (21) days of receipt and agrees further that such consent shall not be withheld unreasonably. With respect to drop wire attachments, the Owner shall also permit such attachments without its prior consent, provided that the Owner receives written notification of the attachment within twenty one (21) days of such attachment.
- (v) To assume all risk of damage to or loss of its attachments howsoever caused, and to release the Owner from all claims and demands accordingly, except where such loss or damage is caused by the sole negligence of the Owner.
- (vi) To indemnify and save harmless the Owner from all claims and demands for or in respect to any loss, damage or injury (including loss of life) to property or persons arising out of or attributable to the exercise by the Licensee of the permission herein granted.

- (vii) To pay the Owner for the permission hereby granted an annual rental payable quarterly in arrears commencing from the Effective Date of this Agreement for each and every year or portion of a year during which this Agreement shall remain in force and effect, at the rates shown on Schedule B attached hereto and forming part hereof or at such other rates as may be provided in any revision of said Schedule B. Such revisions shall be made annually and shall be determined in accordance with the formula(s) set out in Schedule C attached hereto and forming part hereof. Upon any revision of Schedule B, as hereinafter provided, all Permits in force at the time of such revision shall continue in force and effect provided however that any revised annual rental rates shall be deemed to supersede and replace the rates previously stated or shown on such Permits.
- (viii) To ensure that the Licensee's linemen are properly trained and competent. The Licensee shall be responsible for making its own arrangements with the appropriate regulatory agencies with respect to lineman qualifications and safe working practices.

ARTICLE II

OWNER'S COVENANTS

- 2.1 The Owner covenants and agrees with the Licensee as follows:
- (i) With the exception of installations on poles carrying sixty-nine Kilovolt (69KV) power lines and installations on poles made prior to the Effective Date, the Owner shall use all reasonable efforts to maintain the Standard in respect of installations on poles designated by Permits issued under this Agreement. No material variation from the Standard shall be made unless mutually agreed to in writing.

- (ii) Within sixty (60) days of receipt of written notice from the Licensee requesting that remedial work on poles be performed, the Owner shall carry out such work provided that; (a) the request is reasonable; (b) such work is normally provided by the Owner in the normal course of business; and (c) not in respect of poles which are considered by the Owner to be operationally difficult. The sixty (60) day period can be waived or varied on a case by case basis if it is mutually agreed to in writing by the parties. Where such work is carried out by the Owner outside its normal working hours, the Owner shall invoice the Licensee for the additional labour costs incurred by the Owner and the Licensee shall make payment to the Owner in the invoice amount within thirty (30) days of the invoice date.
- (iii) The Owner agrees to replace, reinforce or repair, as applicable and in its discretion, the poles designated by Permits issued under this Agreement which become defective and to ensure that such poles are maintained in a safe and serviceable condition as determined by it.
- (iv) If at any time it is discovered that there is any electrical power attachment in an unauthorized space (ie, in the five (5) foot space allocated for the Licensee's use including the forty (40) inch safety clearance), or any attachment (other than the Licensee's) in the twenty inch (20") "communications space", on the poles which have been designated by Permits issued under this Agreement and in respect of which the Licensee has paid the "initial charge" as defined in Schedule B hereto, the Owner shall relocate such unauthorized attachment at its expense within seven (7) days of receipt of written notice from the Licensee to relocate the same.

ARTICLE III

OWNERSHIP OF POLES

- 3.1 Any payments by the Licensee to the Owner for permission to use the Owner's poles hereby granted under any of the provisions of this Agreement shall not entitle the Licensee to the ownership of the whole or any part of said poles.

ARTICLE IV

DISCOVERY OF UNAUTHORIZED ATTACHMENT

- 4.1 If at any time an unauthorized attachment is discovered for which a Permit has not been issued as herein provided for, the Licensee shall pay the applicable rental to the Owner for the period from the time such unauthorized attachment was installed or for five (5) years, whichever is the lesser, as liquidated damages and not as penalty. It is acknowledged that the calculation of the five (5) year period referred to above shall not extend prior to the Effective Date. Such liquidated damages shall be in addition to the then current year's rental.
- 4.2 It is agreed that a Pole count shall be conducted by representatives of Owner and Licensee every six (6) months and a full pole count shall be conducted by representatives of Owner and Licensee every two years during the term of this Agreement. The parties agree that the applicable rental paid by Licensee to Owner shall be adjusted in accordance with the results of such counts, and that such adjustment shall be retroactive to the date of the actual count.

ARTICLE V

MUTUAL COVENANTS

- 5.1 The parties hereto mutually agree as follows:
- (i) If at any time the Owner deems it necessary or is required to replace any pole or change the location of any pole designated by such Permit or Permits carrying attachments of the Licensee, the Owner shall notify the Licensee accordingly, whereupon the Licensee, at the time specified in the notice and at its sole cost and expense, shall remove its attachments from the pole and, except when the notice specifies to the contrary, the Licensee may, if the Licensee so desires, transfer its

attachments to the new pole or the pole in the new location, as applicable, in which event this Agreement shall continue to apply to the attachments so transferred.

Subject to the provisions below, the Owner shall replace or change the pole and relocate its equipment (ie, transformer, recloser or other assembly or attachment) at its expense. For major line relocations the Owner will give the Licensee as much advance notice as is possible but not less than thirty (30) days' notice, except in case of emergency.

In case of emergency, the Owner may give such shorter notice as the Owner deems necessary and the notice may be given verbally. If the Licensee fails to comply with such notice, the Owner may effect removal of the Licensee's attachments and, unless notified by the Licensee to the contrary, may also effect the transfer of the attachments as aforesaid, all at the risk and expense of the Licensee.

- (ii) It is acknowledged and agreed that as of the date hereof certain poles are not in accordance with the Standard. Where at the request of the Licensee an existing jointly used pole must be replaced to meet the Standard Owner shall pay for the cost of new pole plus the cost of relocating the Owner's equipment and Licensee shall pay for the cost of moving its attachments and the "initial charge" referred to in Schedule B. Where at the request of the Licensee an existing jointly used pole must be replaced to provide accommodation for additional equipment of the Licensee or is necessary solely because of the attachment(s) of the Licensee, the Licensee shall pay to the Owner an amount equal to the cost of the new pole plus the cost of relocating the Owner's equipment to the new pole and shall be responsible for the cost of moving its own attachments. However, where such poles are being replaced by the Owner due to ageing, wear or physical damage, the Licensee shall only be required to pay the "initial charge"

referred in Schedule B and the costs of transferring its attachments from the old pole to the new pole.

- (iii) Where protector grounds and/or cable bonds are required by the Standard, the Licensee shall provide the necessary materials and make the initial connections to the telephone plant. Except as provided below, the Owner shall make any required connections to the power neutral and the cost of such work shall be borne by the Licensee. The Licensee shall be permitted to bond to the pole ground (ie, #6 bare copper wire) which runs down the length of the pole.
- (iv) Where joint use is discontinued, the Owner shall disconnect the protector grounds and/or cable bonds from the power neutral and the cost of such work shall be borne by the Licensee.
- (v) In addition to the issuance of Permits to Licensee to make attachment within the Licensee's authorized space the Owner will, upon application by the Licensee, issue Permits for the installation of vertical runs of communication cable from ground level up to such authorized space. Such runs may include mechanical and/or electrical protection and splice enclosures.
- (vi) It is agreed that the installation of conduits shall be permitted at all times for carrying power cables, by Owner's customers, vertically through the authorized space, provided that (a) no means of fixing the said conduits to the pole shall be permitted within the lower most twenty (20) inches of the Licensee's authorized space, (b) such installations shall be placed on the "bush side" of the pole, and (c) such installations shall comply with Article 239.G of the NESC.
- (vii) (a) In order to provide access to supply circuits and equipment on the upper portion of the pole, the "bush side" (ie, the side facing the bush) of the pole shall be kept free of all communication attachments. If two or more communication cables are installed they shall be

attached to the "road side" (ie, the side facing the Road) of the pole.

- (b) Communication drop wires shall, wherever practicable, follow the same route as the Owner's power lines. They shall be attached to the pole in such a manner as to provide an unobstructed area of at least thirty (30) inches by thirty (30) inches, measured from the pole surface, for raising supply equipment to the upper part of the pole.

ARTICLE VI

EASEMENTS AND APPROVALS

- 6.1 The Licensee shall be responsible for obtaining such easements, rights of way, privileges or other interests in land (including public highways) as may be necessary as well as any permits, approvals or consents as may be required from any regulatory agency for the placement, maintenance and operation of its attachments upon and along the poles designated by such Permit or Permits and if the Licensee fails to comply with the provisions of this sub-clause it shall indemnify the Owner from all claims or demands resulting from such failure.

ARTICLE VII

LINE-CLEARING

- 7.1 The performance and costs of line-clearing operations, which includes pruning or removing trees and removing underbrush, in order to facilitate the attaching of the Licensee's attachments to the Owner's poles shall be the responsibility of the Licensee.

The Owner agrees that it shall perform routine bush cutting as determined by it in accordance with the Owner's normal operating procedures but otherwise provides no guarantees or assurances with respect to line-clearing.

ARTICLE VIII

TERM

- 8.1 This Agreement shall continue in force for an initial term of fifteen (15) years commencing on the Effective Date and thereafter for successive terms of one (1) year each, provided that either party may give notice of termination effective at the end of any such term by notice in writing to the other party at least one year prior to the end of the term. The parties further agree as follows:
- (i) Each Permit entered into between the parties hereto shall continue in force during the term of this Agreement provided that either party may at any time cancel any or all Permit upon sixty (60) days' notice served in writing upon the other.
 - (ii) Upon termination of this Agreement or the Permits as described in the foregoing clause 8.1 and sub-clause (i) the Licensee shall upon receipt of notice from Owner remove its attachments from the poles of the Owner within the time frame specified in such notice and in case of failure so to do the Owner may effect such removal at the risk and cost of the Licensee.

ARTICLE IX

THIRD PARTY OCCUPANCY

- 9.1 In the event that Owner enters into a licensed occupancy agreement with any third party, pursuant to which the third party is required to maintain the same safety clearance as the Licensee from Owner's power lines, then the annual rental charged to Licensee will be reduced by an amount equal to (33%) in respect of each pole occupied by the third party and the Licensee.
- 9.2 Any such third party agreement shall be confidential and Owner shall not be obliged to disclose the terms of said agreement to Licensee. However, Owner undertakes to include in such agreement provisions that require all installations by any such third party to be in accordance with NESC and that such occupancy not unreasonably impede Licensee's access to its own installations.

ARTICLE X
ASSIGNMENT

- 10.1 Neither this Agreement nor any permission granted hereunder shall be assigned or subletted by the Licensee without the written consent of the Owner first being obtained. Subject to the foregoing, this Agreement shall extend to, be binding upon and enure to the benefit of the Owner and the Licensee, their respective successors and permitted assigns.

ARTICLE XI

NOTICES

- 11.1 Any notice regarding or permitted to be given hereunder shall be sufficiently given if served personally upon the party to be served or may be given by facsimile or by mail, postage prepaid, addressed in the case of the Owner to:

Caribbean Utilities Company, Ltd.
P.O. Box 38, GT.,
Grand Cayman
Cayman Islands

Attention: General Manager
with copy to the Company Secretary
Fax: (809) 949-5203

and in the case of the Licensee to:

Cable and Wireless (Cayman Islands) Ltd.
P.O. Box 293, GT.,
Grand Cayman
Cayman Islands

Attention: General Manager
Fax: (809) 949-7962

and if mailed as aforesaid the notice shall be deemed to have been received and effective on the first business day after mailing. Either party hereto may change its address for service at any time by notice given to the other in the manner aforesaid.

ARTICLE XII

EFFECTIVE DATE

- 12.1 This Agreement shall have force and effect from the first (1st) day of October, 1996 (the "Effective Date"), and shall supersede and replace a similar agreement between the parties dated August 22, 1966 provided that all permits issued under the superseded agreement which have not been cancelled prior to the Effective Date, shall be deemed to have been granted by the Owner pursuant to this Agreement except that the rentals set out in sub-clause (vii) of clause 1 shall apply from the effective date of this Agreement.

ARTICLE XIII

GOVERNING LAW

- 13.1 This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands.

ARTICLE XIV

WAIVER OF TERMS OR CONDITIONS

- 14.1 The failure of either party to enforce any of the terms or conditions of this Agreement shall not constitute a general or specific waiver or relinquishment of any such terms or conditions but the same shall be and remain at all times in full force and effect.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CARIBBEAN UTILITIES COMPANY, LTD.

Per: 

CABLE AND WIRELESS (CAYMAN ISLANDS) LTD.

Per: 

SCHEDULE B

The following rates shall be applicable from 1st October 1996 and shall remain in force until amended in accordance with Clause 1.1 (vii):

(A) Initial Charges

The Licensee shall pay to the Owner the following rates for each pole installed by the Owner after the effective date of this agreement regardless of whether the Licensee subsequently attaches to the poles unless the Owner has received written notification from the Licensee of his intention to opt out of the area in which the poles are being installed in accordance with Clause 1.1 (ii).

Each	30 feet	Class 4	Pole	\$
"	35 "	"	4 "	\$
"	40 "	Class 3	"	\$
"	45 "	"	2 "	\$
"	50 "	"	2 "	\$
"	55 "	"	2 "	\$
"	60 "	"	2 "	\$

(B) Variation to Initial Charges

Variations to the initial charges may be effected by the Owner from any anniversary of the effective date of this agreement by submitting to the Licensee a schedule of new rates calculated from the following formula and supported by written confirmation of increases in related costs:

$P_c =$

Where:

P_c = New "initial cost" for each pole over 30ft installed by the Owner and available for joint use.

P_j = Landed cost to the Owner of the pole that is required for joint use.

P_s = Landed cost to the Owner of the pole that would have been installed for sole use by the Owner.

H_j = Rate paid by the Owner to his hole diggers for excavation of the hole required for the planting of pole P_j .

H_s = Rate that would have been paid by the Owner to his hole diggers for excavation of a hole suitable for planting pole P_s .

(C) Base Rates Applicable to Initial Charges

Base rates applicable at 1st October 1996 are as follows:

Pole Height	Landed Cost	Excavation Rate
30 feet	\$	\$
35 "	\$	\$
40 "	\$	\$
45 "	\$	\$
50 "	\$	\$
55 "	\$	\$
60 "	\$	\$

(D) Attachment Rental

For each pole on which the Licensee shall attach any cables or equipment, regardless of the size of the pole and regardless of the number of approved attachments, a rental of CI\$2.84 per quarter or part thereof.

This rental fee shall be payable from the date of approval by the Owner of the permit granting permission to make the attachment to the said pole.

This fee shall apply to all poles on which the Licensee has attached, or has permits to attach, regardless of whether such poles meet the standards referred to under Clause 1.1 (ii).

(E) Variations to the Attachment Rental

Variation to the attachment rental may be effected by the Owner from any anniversary of the effective date of this agreement by submitting to the Licensee a new rate calculated from the following formula and supported by documents evidencing the changes in base rates claimed by the Owner.

Rn =

Where:

Rn = New annual rental/pole

Re = Annual rental/pole at 1st October 1996 = \$

Pe = Average of the landed cost of pole in the 30ft - 50ft range, at 1st October, 1996 plus 20% on cost = \$

Pn = Average of the landed cost of poles in the 30ft - 50ft range at the review date plus 20% on costs.

He = Average rate paid by the Owner to the hole diggers for excavation of holes suitable for planting poles in the 30ft - 50ft range at 1st October, 1996 plus 150% on costs = \$50 x 2.5.

Hn = Average rate paid by the Owner to the holder diggers for excavation of holes suitable for planting poles in the 30ft - 50ft range at the review date plus 15% on costs.

Le = Two hourly rate established by the Owner for a pole planting truck with crew at 1st October, 1996 plus 20% on costs = \$

Ln = Two hourly rate established by the Owner for a pole planting truck with crew at the review date plus 20% on costs.

Me = Annual maintenance cost/pole for bush clearance established by the Owner at 1st October, 1996 - \$

It is noted that this figure is derived from the formula:-

Where:

C = Number of crews employed on bush cutting at the 1st October, 1996 =

L = Rate established by the Owner for a maintenance truck with crew at 1st October, 1996 = \$ /hr.

T = Average working hours/year =

Mn = Annual maintenance cost/pole for bush cutting established by the Owner at the review date and based on the above mentioned formula.

Ie = Annual insurance premium paid by the Owner for cover of his Transmission and Distribution system expressed as a percentage of the total book value of that system at 1st October, 1996 =

In = Annual insurance premium paid by the Owner for cover on his Transmission and Distribution system expressed as a percentage of the total book value of that system at the review date.

The Owner reserves the right to revise the formula as related to insurance costs if difficulties arise in obtaining suitable insurance cover for the Transmission and Distribution system and he has to institute other measures to secure financial coverage for loss or damage to the system.

(F) Guys & Anchors

When the Owner places additional guys and anchors necessitated by the attachments of the Licensee than the Licensee shall pay the following:

(i) Attachment of a guy to an existing anchor = \$

(ii) Installation of an anchor plus a guy = \$

(G) Variations in charges For Guys & Anchors

Variations to the rates charged for the supply and installations of guys and anchors may be effected by the Owner on any anniversary of the effective date of this agreement by submitting to the Licensee new rates calculated from the following formulae and supported by documentation evidencing the changes in base rates claimed by the Owner.

(i)

Where:

G = Cost of attaching a guy to an existing anchor.

M = Materials used (rate at 1st October, 1996 = \$

L = Labour cost (rate at 1st October, 1996 = \$

(ii)

Where:

A = Cost of installing an anchor

M = Materials used (rate at 1st October, 1996 = \$

L = Labour cost (rate at 1st October, 1996 = \$

Cost of installing a new anchor plus a guy =