



## ICT Decision 2009-2

Grand Cayman, 3 July 2009

### **Decision on TeleCayman's Request for Infrastructure Sharing**

#### ***Summary***

*In early 2008, TeleCayman initiated discussions with Government in order to lease space within Government ducts for the purpose of having its own fibre in such duct space. After several months of unsuccessful negotiations, TeleCayman requested that the Authority issue an order directing Government to make duct space available at a cost-oriented rate for the purpose of accommodating TeleCayman's fibre network.*

*In this decision, the Authority finds that TeleCayman's request is well founded. The Authority determines that Government breached the Infrastructure Sharing Regulations and Dispute Resolution Regulations, and did not provide sufficient evidence to substantiate its assertion that sections 69(3)(a), (b) and (c) of the Law are applicable. Accordingly, the Authority hereby orders Government to give TeleCayman access to its ducts and to begin negotiations in order to determine the lease rate for such access.*

(Note: This summary is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

#### **BACKGROUND**

1. On 15 March 2004, the Cayman Islands Government ("Government") submitted an application for an ICT Licence stating that it wished to be licensed in order to, inter alia, lease ICT infrastructure to third parties. The infrastructure available to be leased was stated to include dark fibre and conduit in the George Town area. The available conduit was described as being "Dual 4 inch conduit at 2 feet under the surface". A map was provided showing the location of the conduit and fibre. Government's application for a licence was granted by the Information and Communications Technology Authority ("Authority") on 10 May 2004.
2. On 15 November 2006, the Authority was advised by the National Roads Authority ("NRA") that, between July 2007 and June 2008, it would be placing a hot mix asphalt overlay on all roads in central George Town, and specifically within the area enclosed by Elgin Avenue, Goring Avenue, Harbour Drive, Mary Street and Shedden Road. As a result, the NRA notified all ICT licensees that any excavations in this area had to be completed before the end of June 2007 and that no further excavation would be authorized in these areas until July 2010.

3. In early 2008, TeleCayman Limited ("TeleCayman") initiated discussions with Government in order to deploy a fibre optic network in Grand Cayman. TeleCayman's plan was (and still is) to use this fibre to provide advanced connectivity services to business customers in Grand Cayman. Given the NRA moratorium on road excavations, TeleCayman decided to negotiate an agreement to lease space within Government ducts for the purpose of having its own fibre in such duct space.
4. After several weeks of unsuccessful negotiations, TeleCayman decided to formalize this request by sending a letter to Government, dated 21 February 2008, accompanied by a cheque of CI\$2,000, in accordance with the Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 ("Infrastructure Sharing Regulations"). TeleCayman noted in its letter that it was formalizing its request as a precautionary measure "in the event that it is necessary to have the Information and Communications Technology Authority make an order requiring [Government] to make duct space available".
5. In its letter of 21 February 2008 TeleCayman also noted that, whilst its preference was to lease duct space to enable it to lay its own fibre, TeleCayman appreciated that Government's preference was to provide dark fibre. TeleCayman stated that it was willing to discuss this possibility. The letter requested that Government provide a map of all duct space owned by Government, a quote for accessing these ducts as well as details on the size of the ducts, and the number of fibres within them, "to enable TeleCayman to address any argument based on space limitations". TeleCayman also noted that it was prepared to engage a contractor chosen by Government to install the fibre provided that the price was reasonable and the work could be accomplished with due dispatch having regard to minimizing Government's operations.
6. Government responded to TeleCayman's request with a brief e-mail, dated 26 February 2008, indicating that it would not consider the leasing of duct space "because our smaller 2-inch pipes cannot be sub-ducted easily as is the case with Cable and Wireless". However, Government noted that it was willing to look at options for the leasing of dark fibre "along the lines of what we are already doing with the fibre run you lease between Cayman Corporate Centre and the tower by Radio Cayman".
7. One month later, on 26 March 2008, TeleCayman sent an e-mail to Government stating that it had not received any further correspondence from Government on this issue. Government replied on the same day that it had conducted a preliminary route survey and that a formal response would be sent to TeleCayman "early next week".

## **THE APPLICATION**

8. On 4 April 2008, TeleCayman filed a formal application under section 3(4) of the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 (“Dispute Resolution Regulations”). In its application, TeleCayman noted that its negotiations with Government had been unsuccessful and therefore that it was requesting an order from the Authority directing Government to make duct space available at a cost-oriented rate for the purpose of accommodating TeleCayman’s fibre.
9. TeleCayman reiterated that, from a financial, technological and business perspective, “it is essential that TeleCayman Limited acquire duct space whereby it will own the dark fibre”. It also reiterated its willingness to have Government choose a contractor for the installation of fibre as a way of addressing any Government concerns about safety, security, technical or engineering issues. In order to expedite matters, TeleCayman also requested that, if Government did not submit a reasonable rate for the leasing of duct space as part of these proceedings, the Authority should make a determination as to the appropriate rate.
10. TeleCayman’s application was accompanied by an affidavit sworn by its Chief Financial Officer, Thomas Kinstler. In his affidavit, Mr. Kinstler noted that, from a financial perspective, it was preferable for TeleCayman to retain ownership of the fibre as it entailed a capital expenditure rather than an ongoing expense. Furthermore, from a commercial perspective, Mr. Kinstler stated that business customers were more likely to subscribe to services from a provider which owned its infrastructure as opposed to leasing it from another service provider.

## **PROCESS**

11. On 10 April 2008, Government filed a submission indicating that its ability to provide duct space to TeleCayman was very limited. It noted that the underground conduits consist either of dual 2-inch ducts, in most locations, or a single 2-inch duct, in the remaining locations. Government also noted that, in the locations where there are dual 2-inch ducts, the first duct was “reserved and required to securely provide for CSD government use, as well as our short to medium term future expansion needs”. The second duct “was a hedge against potential Government long term expansion needs” and could therefore be leased to TeleCayman. Government emphasized that it could not provide any fibre and/or duct rental in locations where there was only one 2-inch duct “due to current congestion and/or our future short to medium term future needs”.
12. Government also noted that, in locations where there were dual 2-inch ducts, it was prepared to lease the second duct to TeleCayman at a cost of CI\$0.26 to CI\$0.30 per linear foot per month, plus relevant costs. In addition, Government stated that “due to security requirements” TeleCayman would be required to install “meet-me” manholes adjacent to every Government manhole along its fibre route.

13. On 29 April 2008, TeleCayman filed a reply indicating that, shortly after receiving Government's 10 April 2008 submission, it had initiated discussions with Government with a view to attempting resolution of any and all outstanding issues". However, TeleCayman noted that these discussions had been unsuccessful and therefore that it had no alternative but to reiterate its request that the Authority issue an order mandating infrastructure sharing of the duct space, setting the appropriate cost-oriented rate and providing the appropriate technical specifications concerning "meet me" boxes.
14. TeleCayman also noted that the rates proposed by Government were exorbitant, unreasonable and at odds with the regulatory principles that rates be transparent and cost oriented, as outlined in sections 6(d) and (h) of the Infrastructure Sharing Regulations. TeleCayman also stated that it had received a quote from ABC Trenching Limited, the contractor utilized by both Government and Cable & Wireless, which suggested that the rate to trench and install a 2-inch duct over a 12 mile distance in and around George Town was CI\$832,000.00. According to TeleCayman, when this cost is amortized over the expected life of the conduits, it translates to CI\$0.03 per linear foot per month. TeleCayman recognized, however, that there is a degree of subjectivity in the assumptions underlying this rate and was therefore prepared to accept a cost oriented rate in the order of CI\$0.07 per linear foot per month, or less.
15. TeleCayman also argued that there is no technical reason to have a "meet me" box at every Government manhole. According to TeleCayman, such a requirement would result in substantial unnecessary costs and the digging would cause significant inconvenience in the downtown area. TeleCayman's proposal was therefore to install "meet me" boxes in instances where the TeleCayman cable was spliced, in order to minimize the environmental impact, as stated in section 6(j) of the Infrastructure Sharing Regulations.
16. On 30 April 2008, the Authority requested clarifications from Government on various issues raised in the submissions. In particular, the Authority requested further details on the specific locations where, according to Government, there was insufficient duct capacity to accommodate TeleCayman's requirement, as well as a detailed explanation of the reason(s) why there was insufficient capacity. The Authority requested justification of Government's position that a rate of CI\$0.26 to CI\$0.30 per linear foot was cost oriented. Lastly, the Authority requested comments from Government on TeleCayman's assertions that a rate of CI\$0.03 was cost oriented and TeleCayman's proposal to install meet me boxes only at locations where its cable was spliced.
17. The Authority did not receive any response from Government on these interrogatories.
18. On 23 May 2009, the Authority received a letter from the Cabinet Office advising that TeleCayman's offer to lease Government duct space had been rejected by the Governor in Cabinet. This letter noted that this decision was taken based on a number of considerations, "including the primary issue that Government anticipates

it will need to utilize both ducts in the future to meet expansion requirements. Additionally, the letter stated that Government “is unwilling to accept the security risk of having third party access to Government fibre runs”.

19. On 12 June 2008, TeleCayman filed a submission with the Authority noting that the decision of the Governor in Cabinet did not address the substantive issues raised by TeleCayman, nor did it respond to the interrogatories sent by the Authority on 30 April 2008. TeleCayman argued that, despite having been provided with ample opportunities to contribute and complete the record of these proceedings, Government had not provided any evidence to substantiate its claims that it had insufficient duct capacity, or that leasing duct space to TeleCayman would raise safety, security, engineering or technical issues. Accordingly, TeleCayman reiterated its request that the Authority issue an order requiring Government to make available duct space to TeleCayman at a cost oriented rate of CI\$0.03 per linear foot.
20. On 19 June 2008, the Authority wrote to Government indicating that, in light of the limited contribution by Government to the public record, it was not in a position to make a fully informed decision on TeleCayman’s application. In accordance with regulation 8(a) of the Dispute Resolution Regulations, the Authority therefore reiterated its request that Government provide clarifications of its position and, in particular, of its claims under section 69(3)(a), (b) and (c) of the Information and Communications Technology Authority Law (2006 Revision) (“Law”).
21. Government responded by way of a letter dated 26 June 2008. The letter noted that “it would be neither in the public nor national interest to allow third party network infrastructure to co-exist within the same duct as Government network cables without sub-ducting being utilized”. According to the Government, because of existing cable runs and the small size of the Government duct, it is not possible to introduce sub-ducting in these ducts. Furthermore, where a second duct was available, Government had determined that this capacity would be required to run additional wiring needed to boost redundancy and mitigate the risks to business continuity.
22. Government also noted that TeleCayman’s request “will cause real security and safety issues for Government in the conduct of its day to day business”. The letter also noted that the provision of multiple links is crucial to the high availability of Government IT infrastructure and systems, whose reliable operation is critical to national security and the economy.
23. In a reply dated 8 August 2008, TeleCayman argued that Government had misconstrued TeleCayman’s application. It noted that TeleCayman was proposing to utilize 1-inch sub-ducting and that such sub-ducting would only utilize 25% of the area of a 2-inch duct, leaving Government 75% of the area for its own use, plus the other 2-inch duct, where it is available.

24. TeleCayman also noted that the issue of national interest should be approached from a broader perspective. According to TeleCayman, the Cayman Islands would be well served by having a second fibre network to serve the business community. Such a network could prove important in the event of a national disaster or other disruption to the other networks. TeleCayman also submitted that Government had failed to provide any substantiation for its claim that leasing duct space to TeleCayman would cause security and safety issues for Government. However, TeleCayman noted that it was prepared to work with Government to address these issues.
25. On 20 November 2008, the Authority wrote to Government and TeleCayman to confirm that the parties had agreed to engage in discussions to resolve this dispute. Therefore, in accordance with section 8(h) of the Dispute Resolution Regulations, the Authority directed the parties to confirm the availability of representatives for these discussions by no later than 21 November 2008. The Authority noted that it anticipated a first meeting with the parties before the end of November 2008.
26. Due to a delay in Government confirming the availability of its representatives (confirmation having been received by the Authority on 5 December 2008), this meeting was held on 9 December 2008 at the Authority's offices. During this meeting, TeleCayman announced that it had reached an agreement with LIME for the leasing of duct space in the George Town area. Accordingly, TeleCayman noted that its need for Government duct space had been significantly reduced resulting in amended requirements. TeleCayman agreed to provide its amended requirements in writing before the end of 2008. During this meeting, the Government representatives agreed to consider TeleCayman's new requirements and to bring them to the attention of Cabinet in early 2009.
27. TeleCayman outlined its amended requirements in a letter dated 11 December 2008. This letter noted that TeleCayman was proposing to utilize LIME as its primary provider for duct space. As a result, TeleCayman noted that the requirement for Government duct space had become limited to three short segments in the George Town area (representing 225 meters, 76 meters and 626 meters, respectively). Further, TeleCayman stated that it would not pursue the requirement for the insertion of a sub duct, but rather would provide Government with a 10.5 mm fibre for installation by Government (or a contractor of its choice). To address safety and security issues, TeleCayman also noted that it was prepared to meet any and all Government requirements, including the installation of meet-me manholes near Government manholes to eliminate the need for TeleCayman to have access to Government manholes. TeleCayman noted that it was willing to pay a reasonable rate for the installation of the fibre cable and market rate for the lease of the duct space.
28. On 6 April 2009, Government notified the Authority that TeleCayman's proposal had been denied. Government also noted that the Ministry of District Administration, Planning, Agriculture and Housing, assisted by the Attorney General's Chambers, had been instructed to prepare an application to the Authority to seek relief from the obligation to share infrastructure.

29. In two letters dated 28 April 2009 and 4 May 2009, TeleCayman submitted that “it is difficult to comprehend the reasons of Government for intentionally frustrating an attempt to improve Cayman infrastructure to the benefit of the Islands as a whole, and the business community in particular, in these difficult financial times”. It noted that Government had not provided any basis for the refusal noted in its 6 April 2009 correspondence and that, in previous correspondence, it simply made statements that it had safety and security concerns but failed to provide any support of backup for this statement. TeleCayman argued that it was incumbent on Government to substantiate these claims. In the absence of any substantiation, TeleCayman submitted that it is appropriate for the Authority to issue a decision requiring Government to share infrastructure with TeleCayman, in accordance with TeleCayman’s amended requirements.

## **LEGISLATIVE AND REGULATORY FRAMEWORK**

30. In reaching a decision on TeleCayman’s application, the Authority is guided by the Law. The Authority considers that the following provisions are particularly relevant:

65. (1) Subject to this section, a licensee that operates a public ICT network shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection with its ICT network and shall, in accordance with this section, ensure that the interconnection provided is made at technically feasible physical points.

(...)

(4) A request by a licensee to make any interconnection with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.

(...)

68. (1) The cost of making any interconnection to the ICT network of another licensee shall be borne by the licensee requesting the interconnection.

(2) In this section-

“accommodation” means space within buildings or land adjacent to buildings, belonging to the party providing the interconnection, for use by the requesting party’s equipment or personnel; and

“costs” means the cost of accommodation, mechanical and electrical connection and electronic programming and shall not include compensation for the loss of business which the party providing the interconnection may incur by virtue of providing the interconnection to the requesting party.

(3) The cost referred to in subsection (1) shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and shall be sufficiently unbundled such that the licensee requesting the interconnection service does not have to pay for network components that are not required for the interconnection service to be provided.

69. (1) Sections 65 to 68 shall, with necessary amendment, apply to such infrastructure sharing as the Governor in Cabinet may, after consultation with the Authority, prescribe.

(2) The Authority, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may-

- (a) coordinate with, and issue guidelines to, any or all government entities having general authority over matters affecting infrastructure; and
- (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

(3) A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except-

- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security; or
- (c) there are technical and engineering matters which would make such access difficult or impossible.

31. The Authority is also guided by the regulations made under the Law, namely the Infrastructure Sharing Regulations and Dispute Resolution Regulations. The relevant portions of the Infrastructure Sharing Regulations include the following:

2. In these regulations-

“infrastructure sharing” 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.
- (...)

4. (1) In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement.

(2) A requestor or responder shall not negotiate or propose to enter into an interconnection or infrastructure sharing agreement where the Authority determines that-

- (a) interconnection or infrastructure sharing would endanger life or safety, or irreparably damage property or threaten the integrity, security or interoperability of a public ICT service or public ICT network;
- (b) the licence issued to the responder exempts it from the obligation to provide interconnection or infrastructure sharing;
- (c) the licence issued to the requestor does not authorise it to operate the public ICT network or to provide the public ICT service for which infrastructure sharing or interconnection is sought; or
- (d) the requested interconnection or infrastructure sharing is contrary to the laws of the Islands or the public interest.

(3) A responder shall not refuse to provide infrastructure sharing services, except where-

- (a) there is insufficient capacity, taking into account its reasonably anticipated requirements; or
- (b) such provision would create a technical or engineering difficulty that could not be reasonably addressed.

(4) Where a requestor disagrees with the basis for any refusal, it may refer the matter to the Authority in accordance with the Dispute Resolution Regulations.

(...)

6. The following general principles and guidelines shall apply to the provision of interconnection and infrastructure sharing services-

- (a) each licensee has an obligation to treat requests, to negotiate interconnection and infrastructure sharing agreements and to provide interconnection and infrastructure sharing services in good faith;
- (b) consistent with sections 44 to 46 of the Law, licensees shall, in the first instance, attempt to reach agreement on interconnection and infrastructure sharing by negotiation; where there is a dispute, the parties may refer the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations;
- (c) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at reasonable rates, on terms and conditions which are no less favourable than those provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;
- (d) interconnection and infrastructure sharing rates shall be determined in a transparent manner;
- (e) in the event the Authority is satisfied that a licensee incurs an access deficit, the Authority shall determine a mechanism for recovering the access deficit that is consistent with competitor equity principles;
- (f) costs and tariffs shall be sufficiently unbundled so that the requestor shall be obliged to pay the responder only for the network elements or infrastructure sharing services that it requires;
- (g) costs shall be borne either by the requestor or the responder or both based on whether their respective requests and compliance with those requests cause those costs to be incurred; and in accordance with an interconnection or infrastructure sharing agreement between the two parties;
- (h) interconnection and infrastructure sharing rates shall be cost-oriented and shall be set to allow the responder to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards the responder's fixed and common costs;
- (i) interconnection rates shall not include compensation for loss of business as a result of providing interconnection or infrastructure sharing services to the requestor;
- (j) interconnection and infrastructure sharing services shall be provided in a manner that –
  - (i) maximises the use of public ICT networks and infrastructure;
  - (ii) minimises the potential for negative environmental impacts; and
  - (iii) enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner;
- (k) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at any technically feasible point on terms and conditions that are just, reasonable and non-discriminatory and in accordance with an interconnection or infrastructure sharing agreement between the two parties;
- (l) any disputes relating to interconnection and infrastructure sharing shall be referred to the Authority under the Dispute Resolution Regulations; and
- (m) failure to comply with any provision of these regulations shall be, among other remedies available under the Law or the licensee's licence, subject to the penalty provisions in regulation 30.

32. The Authority also notes that the ICT licence issued to Government contains the following provisions with respect to infrastructure sharing:

17.2 A Licensee shall not deny another Licensee access to its infrastructure or infrastructure arrangements, except:

- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security; or
- (c) there are technical or engineering matters which could make such access difficult or impossible.

17.3 In the event of a dispute between Licensees relating to interconnection or infrastructure sharing the Licensee shall submit such dispute to the Authority and will abide by the decision of the Authority.

33. These statutory and regulatory provisions are supplemented by a notice issued on the 4<sup>th</sup> November 2003 by the Governor in Cabinet under section 69(1) of the Law, which defines “infrastructure sharing” as “the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilization of a public ICT network”. For the avoidance of doubt, the notice also provides a list of tangibles and intangibles included in this definition. This list includes “lines, cables or wires (whether fibre optic or other)” and “ducts”.

## **AUTHORITY ANALYSIS**

34. Section 69 the Law imposes a general obligation on licensees to share ICT infrastructure. The purpose of this provision is to promote the efficient, economic and harmonized utilization of ICT infrastructure in the Cayman Islands. The importance of ICT infrastructure sharing is well accepted and recognized by telecommunications regulators around the world.<sup>1</sup>
35. The obligation to share infrastructure is subject to certain limitations. Section 69(3) of the Law, for instance, stipulates that a licensee is not required to share infrastructure if there is insufficient capacity, taking into account reasonably anticipated requirements, if there are reasons of safety or security, or if there are technical and engineering matters which would make such access difficult or impossible.<sup>2</sup> The obligation to share infrastructure is also subject to specific procedural requirements set out in the Infrastructure Sharing Regulations.
36. Under section 23 of the Law, the sharing of ICT infrastructure is considered an ICT service that requires a licence from the Authority. In accordance with this provision, Government was granted an ICT licence on 10 May 2004, at its own request, for the specific purpose of infrastructure sharing. This licence is currently used by Government to provide infrastructure to a wide variety of licensees, including the provision of tower space in Northward to wireless carriers and FM radio stations.

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<sup>1</sup> International Telecommunications Union, 2008 Symposium for Regulators, *Best Practices on Infrastructure Sharing*, available at: <http://ictregulationtoolkit.org/en/Publication.3463.html>.

<sup>2</sup> Some of the wording in section 69(3) of the Law is repeated in section 4(2) and 4(3) of the Infrastructure Sharing Regulations and in clause 17.2 of the licence.

37. The Authority notes that, in its capacity as a licensee under the Law, Government is subject to the same infrastructure sharing obligations as other licensees. In the present case, however, it appears that Government has not complied with a number of requirements imposed by the Infrastructure Sharing Regulations and Dispute Resolution Regulations. In particular, Government has failed to:
- provide to the Authority a copy of its correspondence to TeleCayman dated 26 February 2008, acknowledging receipt of TeleCayman’s request to lease Government duct space (section 8(5) of the Infrastructure Sharing Regulations);
  - notify TeleCayman, within 14 days of the acknowledgment of receipt of the request, as to whether TeleCayman’s request for infrastructure sharing was complete or whether additional information was required (as required by section 8(6) of the Infrastructure Sharing Regulations);
  - either provide a quotation to TeleCayman for the leasing of Government ducts within 30 days (as required by Regulation 8(7)) or deny TeleCayman’s request, with detailed reasons within 20 days (as required by section 8(8) of the Infrastructure Sharing Regulations);
  - provide, as part of its quotation, all the information required by TeleCayman to fully consider the rates, terms and conditions for leasing Government ducts, including date of availability, installation intervals and development and processing costs (as required by section 8(9) of the Infrastructure Sharing Regulations);
  - provide to TeleCayman a copy of its correspondence dated 23 May 2008, 26 June 2008 and 6 April 2009 responding to TeleCayman’s determination request (as required by section 6(2) of the Dispute Resolution Regulations);
  - respond to the Authority’s request for clarifications, dated 30 April 2008, on various issues raised in Government’s submissions, despite being granted an extension to respond to this request, from 9 May 2008 to 21 May 2008 (as required by section 8(a) of the Dispute Resolution Regulations);
  - meet the deadline specified in the Authority’s letter of 20 November 2008 when it confirmed the availability of its representatives to attend discussions with TeleCayman (as required by section 8(h) of the Dispute Resolution Regulations).
38. The Authority considers that, in failing to meet these requirements, Government did not fulfil its duty to treat infrastructure sharing requests and negotiate infrastructure sharing agreement in good faith set out in sections 6(a), 8(11)(c), 8(11)(d) and 8(11)(e) of the Infrastructure Sharing Regulations.
39. The Authority is particularly concerned that Government did not provide detailed written reasons for its denial of TeleCayman’s request, as required by Regulation 8(8). Despite being given ample opportunities to justify its denial of TeleCayman’s request, Government only provided vague statements to the effect that the available capacity in the ducts “would be required to run additional wiring needed to boost redundancy and mitigate the risks to business continuity” and that TeleCayman’s

request “will cause real security and safety issues for Government in the conduct of its day to day business”. The Authority considers that these assertions are insufficient to substantiate Government’s claims that it falls within the ambit of section 69(3)(a), (b) or (c) of the Law.

40. Furthermore, some of the submissions and representations made Government representatives during this proceeding contradicted these assertions. On 10 April 2008, for instance, Government filed a submission indicating that it was prepared to forgo the future use of its second duct, where it exists, and make it available to TeleCayman for lease at a cost of CI\$0.26 to CI\$0.30. The Authority views this statement as an indication that there is sufficient capacity to meet TeleCayman’s requirements while accommodating Government’s future duct requirements, if TeleCayman pays an appropriate rental fee.
41. The Authority also notes that TeleCayman has modified its proposal on several occasions in an effort to alleviate Government’s concerns about lack of capacity and national security (despite the fact that Government failed to substantiate these claims). In particular, TeleCayman has agreed not to pursue its request for 1-inch sub-ducting. TeleCayman is now willing to accept laying a 10.5 mm fibre, without sub-ducting, for installation by Government (or a contractor of its choice). Also, TeleCayman is willing to install meet me manholes near every Government manhole to alleviate any concern about safety or security.

#### **AUTHORITY DETERMINATION**

42. In the absence of any clear explanation from Government as to why section 69(3)(a), (b) or (c) of the Law are applicable, and in light of TeleCayman’s commitment to address any such concerns, the Authority hereby determines that it is appropriate to order Government to give TeleCayman access to its ducts, in accordance with the Dispute Resolution Regulations.
43. The Authority directs the parties to begin negotiations in order to determine the specific rate for the installation of the TeleCayman fibre and the lease of Government duct space. If the parties cannot come to an agreement, they can refer the matter back to the Authority for adjudication under the Dispute Resolution Regulations.
44. ICTA notes that, whilst Government states in its letter of 26 June 2008 and 6 April 2009 that it intends to apply for an exemption from the requirement to share infrastructure, the reality is that there is currently no such exemption. Unless and until such an exemption is created, the Authority must enforce the Law as it stands.