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Information & Communications Technology Authority

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## **Recent Media Statements by Cable & Wireless (CI) Ltd Concerning the ICT Authority**

The Information and Communications Technology Authority (“ICTA” or “the Authority”) is not in the habit of responding to press releases, interviews or letters to the media, especially those made by licensees. This is particularly true in situations where the licensee has a right of appeal, either back to the Authority or to the courts. However, when a licensee directly or implicitly questions, without justification, the integrity of the ICTA, the Authority has a responsibility to ensure that the general public is aware of all of the facts.

Such is the case in respect of the recent press statements made by Mr Alee Fa’amoe, when he was Acting Chief Executive of Cable & Wireless (CI) Ltd., and a letter to the Editor from Mr Eugene Nolan, VP Competitive Strategy for Cable & Wireless, Northern Caribbean. On 15<sup>th</sup> April 2004, Mr Fa’amoe implied on Cayman 27 that there was something wrong about the fact that the Authority made publicly available details of Cable & Wireless’ planned mobile rates three days in advance of their release to the public.

As a senior manager in Cable & Wireless, Mr Fa’amoe should be aware that the Authority is obligated to make such information publicly available unless Cable & Wireless simultaneously files a confidentiality claim in accordance with the ICTA’s Confidentiality Regulations. Cable & Wireless had been advised many times in the past by the Authority to abide by the Confidentiality Regulations when, in fact, the company had neglected to do so. The company was also advised that unless it complied with the Confidentiality Regulations in future, the Authority would have no option but to publish the information.

Among other things, the Confidentiality Regulations are essential to ensuring that the maximum possible amount of information is available so that the public, including other licensees, have the ability to provide their views and comments to the Authority before it issues its decisions. When Cable & Wireless filed its new mobile rates on 3 March 2004, it again provided no claim of confidentiality. Once more, the Authority contacted the company to check whether or not this was intentional, and gave Cable & Wireless a short time in which to respond. At the end of that time, because Cable & Wireless had filed no claim of confidentiality, the information was published.

In Mr Nolan's more recent letter to the editor, published in the *Cayman Net News* on 30<sup>th</sup> April 2004, he draws a comparison between regulation of the ICT market in the Cayman Islands and the game of cricket. As any sports fan knows, if a decision goes against a team, the team sometimes blames the umpire. In the sporting world as in this example the criticism is often without justification.

The ICTA's first priority is to protect the interests of consumers in the Cayman Islands. This means that the Authority strives to ensure the development of long-term, sustainable competition in the ICT market. As an incumbent, Cable & Wireless has an enormous advantage over new entrants: Cable & Wireless initially had all the customers and owned the entire infrastructure. The company, left unchecked, has the means, the incentive and the ability drive new entrants out of the marketplace. No right-minded competitor would want to enter, or remain in, the market under such circumstances. Cayman's economy would be irreparably damaged as a result, and the ICTA would have failed to fulfil its mandate. It is for this reason that, throughout the developed world, regulators are tasked with regulating the actions of incumbents to ensure that they do not take unfair advantage of their dominant position.

As far as "lobbying" by the new entrants is concerned, as claimed by Mr Nolan, this is incorrect. Most certainly the entrants filed formal submissions with the Authority. Such submissions are permitted, indeed encouraged, by the ICTA Law. This is precisely how the process works in the best regulated jurisdictions. The Authority's job is to listen to the arguments and to reach a considered and unbiased decision based upon the provisions of the ICTA Law. If an interested party feels aggrieved, they have rights of rehearing and appeal. Cable & Wireless is well aware of its rights in this regard.

Interestingly, Cable & Wireless omits to say that every such submission was copied to the company and that it was given every opportunity to respond. Cable & Wireless also neglects to say that much of what the company filed with the Authority regarding its mobile services was in confidence and therefore not readily available to other parties for their scrutiny.

The ICTA has a statutory mandate to protect and promote sustainable competition and it will do so fearlessly, vigilantly and independently. As for Mr Nolan's rhetorical flourish about "Who will regulate the Regulator", the answer is the Courts of the Cayman Islands. That way all competitors and consumers may have equal faith in the ICTA and the assurance of a robust, competitive ICT market in these Islands.