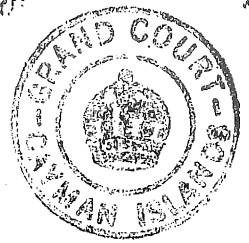


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. 91 OF 2012



IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

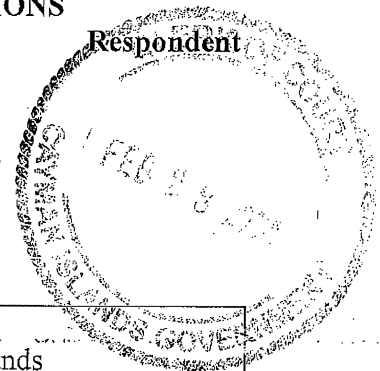
BETWEEN: WESTSTAR TV LTD.

Applicant

AND: THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY ("ICTA")

Respondent

EX PARTE APPLICATION FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW
(GCR O.53, r.3)



To the Clerk of the Court, Law Courts, George Town, Cayman Islands	
Name, address and description of Applicant	WestStar TV Ltd , Public and Subscription Television Broadcaster c/o DIAMOND JONES of Grand Pavilion Commercial Centre, 802 West Bay Rd, PO Box 2887, George Town, Cayman Islands, KY1-1112;
Judgment, order, decision or other proceeding in respect of which relief is sought	<u>DECISIONS/ACTIONS OF THE RESPONDENT</u> (1) The Decision of the Respondent made 1 December 2011 (the "1 December Decision") to modify the licence of Infinity Broadband Ltd ("Infinity") to lower the Caymanian

	<p>participation required as a condition of Infinity's licence.</p> <p>(2) The decision of the Respondent made 22 December 2011 (the "22 December Decision") to modify the licence of Infinity;</p> <p>(3) The direction imposed as a consequence of the 22 December Decision for the Licensee to complete its ICT Network and ICT Services deployment ("Roll Out") by 31 March 2012 conditional upon (4) below;</p> <p>(4) The directions imposed as a consequence of the 22 December Decision for the Licensee to complete its Roll Out as stipulated in Annex 1A of the 22 December Decision sub-clauses (a) to (g) inclusive (as attached); and</p> <p>(5) The decision of the Respondent made 19 January 2012 (the "19 January Decision") to consent to Infinity's request to transfer a majority 51% of its issued shares to BVI company Camber Holdings Ltd ("Camber").</p>
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RELIEF SOUGHT

The Applicant seeks leave of the Court to permit Judicial Review of the 1 December Decision, the 22 December Decision and consequent directions and the 19 January Decision complained of and seeks the following relief:-

1. An Order of *Certiorari* to quash the 1 December Decision of the Respondent to modify the Licensee's licence to lower the Caymanian participation required as a condition of Infinity's licence.
2. An Order of *Certiorari* to quash the 22 December Decision of the Respondent to modify the Licensee's licence and the directions made as a consequence of the Decision;
3. An Order of *Certiorari* to quash the 19 January Decision of the Respondent to consent to Infinity's request to transfer a majority 51% of its issued shares to BVI company Camber.
4. A Declaration that the 1 December Decision, the 22 December Decision and consequential directions and the 19 January Decision were and are erroneous in law, unreasonable and contrary to the principles of Natural Justice;
5. Further and/or other relief;
6. Damages; and
7. Costs

GROUND ON WHICH RELIEF IS SOUGHT

1. The following grounds are categorized for convenience only and a number of the matters herein referred to are over-lapping and properly fall within several grounds. The Applicant reserves the right to add to and/or amend these grounds upon disclosure herein.

2. The Respondent was not lawfully entitled to reach the said Decisions and, in so doing, erred in law and in fact, acted unfairly and procedurally improperly. Further, the said Decisions were, in all the circumstances, unreasonable.

Errors of Law, Abuse of Power and Illegality

3. ~~The Respondent in making the Decisions and omitting to act:~~
 - 3.1. Failed to act fairly and reasonably taking into account all relevant licensees and its statutory objectives and functions and in particular those set out in sections 9(3)(a), (c), (e), (g) and (h) of the Information and Communications Technology Authority Law 2011 R (the “ICTA Law”);

 - 3.2. Failed in its duty to understand the nature of its powers in relation to Infinity and Information and Communications Technology (“ICT”) Service Providers, including ICTA Law ss. 10, 23(1) and (6)(b) 25(1) and (3), 28(b), 31, 32, 33, 36 and 69 (2) and (3), and to consider the correct factors in reaching the said Decisions. 39.2.1

 - 3.3. Failed properly or at all to balance the interests of licensees and of the public and, in particular to take into account the impact on the Applicant and the public of continuing Infinity’s licence and failed adequately or at all to take the necessary steps and to ensure proper infrastructure sharing thereby delaying the

roll out of services to the public and causing economic harm to the Applicant
39.2.7

3.4. Failed adequately or at all to consider the public interest in permitting Infinity to maintain its licence notwithstanding Infinity's non-compliance with Infinity's fundamental licence condition to roll out its fibre optic cable network and, in particular, in fostering, permitting and allowing a market in ICTA licences 39.2.5; 39.2.1

3.5. Failed properly or at all to consider its policy in respect of licensees in fundamental breach of their obligations and conditions of their licences (the "Policy").

3.6. Acted inconsistently in considering and/or exercising its powers, and in particular ICTA Law ss. 31, 32 and 33 of the Law, in respect of licensees in fundamental breach of the conditions of their licenses. 50.4.7;

3.7. Acted in denial of the Applicant's legitimate expectation that the Respondent would treat the Applicant fairly in considering its powers in line with its Policy and the Respondent's stated intent to apply it in relation to Infinity; and failed to take the said expectation into account properly or at all. 41.1.2/3; 41.1.18,56.1.8.

3.8. Failed properly or at all to identify and take into account the availability of ICT infrastructure and the impact/consequences of the same in furtherance of the Respondent's statutory objectives and functions.

3.9. Failed properly or at all to consider or give effect to its statutory obligation pursuant to ICTA Law ss. 9(1) and 23 to license ICT Service Providers and, in particular, those providing poles and to take the necessary steps to ensure proper ICT infrastructure sharing by those ICT Service providers. 5.1.4

3.10. Wrongly took into account that the Applicant could apply to DataLink Limited (“DataLink”) for ICT infrastructure sharing if and when DataLink was granted an ICT Services licence and wrongly disregarded and/or failed properly or at all to take into account that:-

3.10.1. The ICT infrastructure that would be available was the same as that available at the time of the said Decisions and provided by CUC;

3.10.2. The delay to the Applicant and to the public in the roll out of the Applicant’s services; and

3.10.3. The adverse economic impact on the Applicant of delay and the unfair advantage thereby given to Infinity as a non-compliant competitor licensee.

Errors of Fact

4. Further or alternatively, the Respondent wrongly found, in the face of the evidence, that there was ICT infrastructure such as to enable both Infinity and the Applicant to lease pole space from CUC and or DataLink and thus infrastructure availability was such that the Applicant was not adversely affected by the Respondent’s said Decisions in relation to Infinity’s non-compliance with its licence conditions. 49.1

Procedural Impropriety 60.1.11

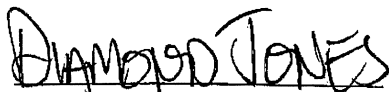
5. The Respondent acted in a procedurally improper manner and/or in breach of the principles of Natural Justice in that, notwithstanding the Applicant’s legitimate expectation set out in [] above and the Respondent’s change of policy on the revocation of Infinity’s licence: 50.4.6

5.1.1. The Respondent failed, neglected or refused to consult the Applicant in relation to the said Decisions directly affecting the Applicant; and/or

5.1.2. In respect of each said Decision the Respondent failed, neglected or refused to provide the Applicant an adequate opportunity to make informed representations about the Respondent's departure from its policy and its own decision to act to revoke Infinity's licence, the factors relevant to such departure, the consequences thereof and as to why the Respondent's policy should be followed.

6. Unreasonability Further or alternatively, in the aforesaid circumstances, the said Decisions of the Respondent were manifestly unreasonable.
7. Time: This application is made at the earliest opportunity and within the time limits imposed by GCR O. 53, r. 4(1).
8. Affidavit: The Applicant will rely on the 1st Affidavit of Mr Jeremy Elmas (the Applicant's Vice President) sworn 15 February 2012 herein as providing further and other grounds upon which Relief is sought and will apply to or will amend the Notice of Motion in due course as permitted by GCR O. 53, r. 6(2), if necessary, required or Ordered by the Court.

Dated: ²⁸ 28 February 2012


DIAMOND JONES
Attorneys for the Applicant

THIS EX PARTE APPLICATION FOR LEAVE FOR JUDICIAL REVIEW was filed by DIAMOND JONES, Attorneys for the Applicant, whose address for service is Grand Pavilion Commercial Centre, 802 West Bay Rd, PO Box 2887, George Town, Cayman Islands, KY1-1112, Tel: 769-9352, E-mail: stuart.diamond@diamondjones.ky (Ref: DJA/SND).