

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. 91 OF 2012

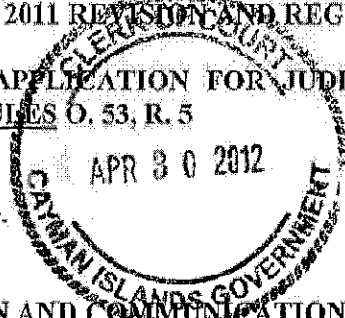


IN THE MATTER OF THE INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY LAW 2011 REVISION AND REGULATIONS

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
PURSUANT TO GRAND COURT RULES O. 53, R. 5

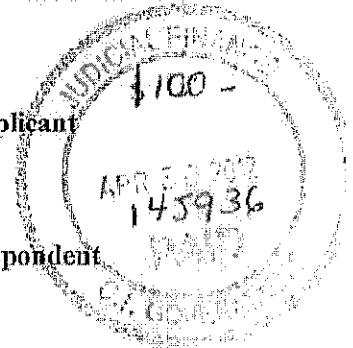
BETWEEN: WESTSTAR TV LTD.

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



Applicant

Respondent



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on _____ at _____ or as soon thereafter as counsel can be heard, by counsel on behalf of WestStar TV Ltd. for orders for the following relief, namely:-

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; and

5. Such further and/or other relief as the Court shall think appropriate;

And for an order that the costs of and incidental to this application may be paid by the Respondent ICTA or otherwise be provided for.

AND FURTHER TAKE NOTICE that the grounds of this application are:-

1. The grounds herein 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 discretion 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.

- 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 to ensure proper infrastructure sharing thereby delaying the roll out of services to the public and causing economic harm to the Applicant.
- 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.
- 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.;
- 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.
- 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.

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.

Procedural Impropriety

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 3.7 above and the Respondent's change of policy on the revocation of Infinity's licence:-

5.1.1. The Respondent failed, neglected or refused to consult or adequately inform 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.

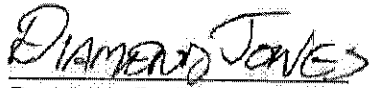
Unreasonability

6. Further or alternatively, in the aforesaid circumstances, the said Decisions of the Respondent were manifestly unreasonable.

Statement of Facts

7. The Applicant will rely on the 1st Affidavit of Mr Jeremy Elmas (the Applicant's Vice President) sworn 15 February 2012 as a Statement of the facts relied on herein without prejudice to and reserving its right to supplement or amend the same upon disclosure or discovery herein.

Dated: 26 April 2012



DIAMOND JONES
Attorneys for the Applicant

TO: The Clerk of the Court

AND TO: The ICTA
Allista Towers
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George Town
Grand Cayman
Cayman Islands

THIS NOTICE OF ORIGINATING MOTION was issued 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, Grand Cayman, Cayman Islands, KY1-1112, Tel: 769-9352, E-mail: stuart.diamond@diamondjones.ky (Ref: DJA/SND).