



**Digicel Response to the Public Consultation**

**by**

**The Regulatory Authority of Bermuda**

**on**

**Wave Bermuda Ltd. trading as Horizon Communications, Change of  
Control**

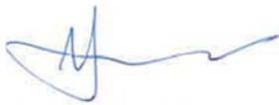
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**Response Date: 16<sup>th</sup> February 2021**

Telecommunications (Bermuda & West Indies) Limited, Transact Limited (both trading as “Digicel”) and the Bermuda Telephone Company Limited (trading as “BTC”), together “Digicel”, respectfully submit its comments and responses on the public consultation “Wave Bermuda Ltd. trading as Horizon Communications, Change of Control”, dated 5th February 2021.

The views submitted herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the draft Regulations or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part, nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel’s rights in any way.

Please do not hesitate to refer any questions or remarks that may arise as a result of the subsequent overview to: -



*Mi Hong Yoon*  
*Head of Legal & Regulatory Counsel*  
*Digicel Bermuda & BTC*  
*Email: Mihong.Yoon@digicelgroup.com*

1. In order to provide adequate comments and feedback to the Regulatory Authority (the “Authority”), the Authority would need to provide a notice and reasonable period for the public, including electronic communications, sectoral participants, sectoral providers and other interested parties to review the issues during a public consultation process.
2. It is noted that the response deadline of the current public consultation on the Change of Control request submitted by Wave Bermuda Ltd, trading as “Horizon Communications” (the “Horizon Change of Control Consultation”) is extremely short (i.e. 1 week), compared to other ICOL holder’s or sectoral provider’s applications. The Authority, for example, allowed two (2) weeks for comments on the Transact Limited’s Change of Control<sup>1</sup> and that foreshortening the period for Horizon Communications without objective reasoning being given would appear to amount to differential treatment being applied to similarly situated industry participants, which is inconsistent with Section 16 (h) of Regulatory principles of the Regulatory Authority Act 2011 (the “RAA”):

*16 In performing its duties under this Act, the Authority shall...*

*(h) act **without favouritism** to any sectoral participant, including any sectoral participant in which the Government has a direct or indirect financial interest [**emphasis added**];*
3. The Authority cannot simply rely on the fact that information on Horizon Communications’ shareholders and Fortress’s involvement was featured in previous ICOL application as a reason for this unusually short consultation period.
4. Although Horizon Communications’ Master ICOL application was published on the Authority’s website, subject to confidentiality restrictions, during its ICOL application process, the issues on which public was asked to comment were fundamentally different from the current matter.
5. It is agreed that the scope and foundation of the last year’s public consultation on Horizon Communications’ ICOL application was ‘*whether there is reason to believe that any of the licence applicants fail to meet the Basic Eligibility Requirements*’. It was never intended to focus on its ownership structure, majority shareholders or potential changes, while Horizon Change of Control Consultation is asking to comment on, whether the Proposed Transaction is likely to (paragraph at 29):
  1. *Have an effect(s) on the residents of Bermuda with particular interest in, but not limited to, the provision of electronic communication services in Bermuda?*
  2. *Have an effect on innovation within Bermuda’s electronic communications sector?*
6. There is no factual background nor publically available information for Digicel to comment on above questions.

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<sup>1</sup> It should be noted that the Change of Control application by Transact Limited is not closed as of today-  
<https://www.ra.bm/documents/transact-change-of-control/?wpdmdl=15405&refresh=602c20d2694251613504722>

7. However it appears that Horizon Communications is not permitted to transfer ownership or change of control, directly or indirectly for three (3) years following the date of its Licence, pursuant to *the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination 2019 (BR 90/2019)* dated 16<sup>th</sup> August 2019 (the "General Determination")<sup>2</sup>:

#### **ANNEX 4 – ANNEX TO NEW ICOLS**

The following shall be inserted at the end of Annex A for any new ICOL issued after the effective date of this GD:

#### **ANNEX A - TRANSITIONAL CONDITIONS**

The Licensee shall comply with each of the Transitional Conditions set forth below.

**A6 TRANSFER OR ASSIGNMENT OF ICOL; TRANSFER OF OWNERSHIP OR CONTROL**

Notwithstanding the provisions of Conditions 19 and 20, the Licensee may not, for a period of three years following the date of this Licence, directly or indirectly:

- a) sub-license, assign or grant any right, interest or entitlement in the License nor transfer the Licence to any other Person, including an Affiliate of the Licensee; or
- b) transfer ownership or control of the Licensee.

For purposes of this Transitional Condition A1, "control" shall have the meaning assigned to it by section 18(7) of the ECA, except that the reference to "25 per cent" shall be replaced by "10 per cent."

8. The Authority has made a decision to include the above Transitional Conditions when issued the General Determination, Final Report and Final recommendations to Minister on ICOL application process after the public consultations on that subject matter in 2019.
9. It is our submission that if the Authority wishes to change above conditions of the General Determination, it would require a public consultation under Section 66 (2) (a) of the RAA.
10. In conclusion, Digicel does not object to the Change of Control application by any ICOL holders, provided that it is consistent with the General Determination issued by the Authority.

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<sup>2</sup> <https://www.ra.bm/documents/master-communications-operating-licence-application-process-final-report-decision-order-and-gd/?wpdmdl=13929&refresh=602c0f99a1c211613500313>.