



**Grant of New Integrated
Communications Operating Licences
and Other Types of Communications
Operating Licences**

**Final Report
Final Decisions and Orders**
Matter: 20190215
Date: 21 August 2020

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I. INTRODUCTION

1. The Regulatory Authority of Bermuda (the “RA”) hereby issues its Final Report and Final Decisions and Orders (“Final Report”) on Applications for Integrated Communications Operating Licenses (“ICOLs”) and Application for another Communication Operating Licence (“COL”). The Final Report contains the RA’s:
 - Assessment of the responses to the Preliminary Report and the Preliminary Decisions and Orders (the “Preliminary Report”) published by the RA on 18 June 2020;
 - Final Decisions and Orders on the grant of the pending licence applications, which are set out in Appendix A; and
 - Final Decision and Order adopting the RA’s General Determination (“GD”) on the terms and conditions of a proposed Submarine Cable Communications Operating Licence (“SubCOL”), which is set out in Appendix B.
2. This Final Report is structured as follows:
 - a) Section I – Introduction;
 - b) Section II – Background;
 - c) Section III – Legislative Context;
 - d) Section IV – Summary and Discussion of Responses to the Preliminary Report;
 - e) Section V – Conclusions on Licence Applications;
 - f) Section VI – Conclusions on terms and conditions of the SubCOL;
 - g) Appendix A – Final Decision and Order on Grant of ICOL and SubCOL Applications; and
 - h) Appendix B – Final Decision and Order and General Determination on the Terms and Conditions of the SubCOL.
3. This consultation is being carried out in accordance with:
 - a) Sections 14(c), 16(1), 16(2), and 17 of the Electronic Communications Act 2011 (“ECA”);
 - b) Section 48(2), 49(2) and 50 of the Regulatory Authority Act 2011 (“RAA”);
 - c) the RA’s Final Report and Final Decision and Order on the Master Communications Operating Licence Application Process, issued on 16 August 2019, adopting a General Determination (“Master ICOL /COL GD”) stipulating the relevant licence application procedures; and

- d) the Communications Operating Policy (the “ICOL/COL Policy”) issued by the Minister of Home Affairs (the “Minister”) on 24 October 2019.

II. BACKGROUND

4. On 16 August 2019, the RA issued its Master ICOL/COL GD setting out the criteria, conditions, requirements, and procedures for the grant of new ICOLs and COLs, which provided:
 - a) the application procedures for new ICOLs (the “ICOL Application Process”) and other COLs (the “COL Application Process”);
 - b) that the general terms and conditions of COLs shall be specified by the RA in any applicable Administrative Determination, including any and all of the terms and conditions set out in sections 17 and 18 of the ECA;
 - c) the additional terms and conditions applicable to ICOLs; and
 - d) that the definition of a “Qualifying Application” for an ICOL means an application that the RA determines meets: (1) the basic eligibility requirements, as set by the Minister (“Basic Eligibility Requirements”); (2) the minimum necessary thresholds in relation to financial resources, experience, qualifications, business plan and financial plan; and (3) proof of insurance to cover commitment.
5. On 24 October 2019, the Minister issued the ICOL/COL Policy, which establishes the basic procedures for the award of new ICOLs and COLs. Among other things, the ICOL/COL Policy:
 - grants discretion to the RA to determine the number of new ICOLs to be awarded annually;
 - establishes the annual open application window process for the submission of ICOL applications;
 - identifies the preference factors that should be considered by the RA if the number of new ICOL applications received during the open window period exceeds the number of licences available; and
 - specifies the Basic Eligibility Requirements that must be met by ICOL applicants.
6. On 25 October 2019, consistent with the Master ICOL/COL GD and the Minister’s ICOL/COL Policy, the RA issued its ICOL Application and Open Window Decision and Order (“ICOL Open Window Order”) establishing the:
 - time period during which new ICOL applications would be accepted for consideration (the “Open Window Period”), which ran from 27 January 2020 to 28 February 2020, and
 - Master Application Form to be used by ICOL applicants.

7. On 25 February 2020, the RA supplemented the Master ICOL/COL GD (“Supplemental Order”) by specifying that the number of ICOLs to be awarded shall be a maximum of two (2) and confirming that it would not impose any additional eligibility requirements for a Qualifying Application, beyond those established pursuant to the Ministerial Policy. In addition, the RA published an indicative timeline for:
 - a) assessing ICOL applications following the close of the Open Window and confirm receipt of a Qualifying Application within 15 business days;
 - b) publishing the Qualifying Applications and commencing a public consultation;
 - c) publishing a preliminary report for public comment; and
 - d) issuing a final report and decision on the Qualifying Application and the grant of licences, if any.
8. The RA received three timely filed applications during the Open Window Period from the following applicants:
 - Cable and Wireless Network Services Limited (“C&W”);
 - Wave Bermuda Ltd (“Horizon”); and
 - Paradise Mobile Ltd (“Paradise”).
9. On 21 April 2020, C&W submitted a formal application, without prejudice to its pending ICOL application, for a COL more limited in scope, in the form of a SubCOL. C&W requested that the RA subordinate consideration of its original ICOL application in favor of its COL application as C&W’s preferred approach.
10. On 29 April 2020, the RA issued a Consultation Document on Applications for Integrated Communications Operating Licences (“ICOLs”); Application for Other Communications Operating Licence (“COL”) (the “Consultation Document”). The Consultation Document provided a summary of the non-proprietary information contained in each application that was relevant to evaluating whether the applicant meets the Basic Eligibility Requirements. The Consultation Document also listed the non-confidential voluntary commitments proposed by each applicant in response to the Master ICOL/COL GD (“Voluntary Commitments”), which the RA must consider in the event that more than two ICOL applications are in contention.
11. The Consultation Document also set out the RA’s preliminary assessment of each application against the Basic Eligibility Requirements established by the Minister’s ICOL/COL Policy and the RA’s ICOL/COL GD. In addition, the RA provided background on its proposal to grant an alternative application for a more limited form of Communications Operating Licence, or SubCOL (as described below), requested by C&W in lieu of an ICOL.
12. Based on its review of the applications submitted, together with information provided in response to the RA’s requests for information from each of the

applicants, the RA preliminarily concluded that the applications received constitute “Qualifying Applications” for ICOLs.

13. Accordingly, the RA proposed to grant ICOLs to both Horizon and Paradise. In light of C&W’s request, the RA also proposed to grant a SubCOL to C&W in lieu of an ICOL, without prejudice to any future ICOL application for which C&W might wish to apply. The RA sought comments on the applications submitted and the RA’s preliminary assessments.
14. The public response period for the Consultation Document commenced on 30 April 2020 and concluded on 1 June 2020.
15. The RA received comments from the following individuals (the “5G Commenting Parties”) raising concerns about potential health and environmental effects of the future deployment of 5G technology in Bermuda: Susan Armstrong; DaiVore Astwood; Anastasia Azzario; Voorhees Astwood; Therese Carroll; John and Gill Frith; Colin Hassel; Deborah L. Jackson; Jahrien Lugo; JahZion Lugo; Karen McPhee; Robin Minors; Marquis Neal; Helen Orchard; Frances Trott Portelli; Janine Richardson; Jerome Robinson; Eleonora Rouja; Heather Nova Sandys; Elizabeth Smith; Karen Terceira; Delores Thomas; Dudley Thomas; Shanell Vaughn and Winnæ Wales. Comments raising 5G concerns were also received from Bermuda Advocates for Safe Technology and Bermuda Environmental Sustainability Taskforce (“BEST”). In addition, a petition was submitted by the Bermuda Advocates for Safe Technology or B.A.S.T. (“B.A.S.T. Petition”) via Change.org listing the names of more than 2,800 individuals registering concerns about 5G.
16. Responses raising various procedural points and issues related to sustainable competition and other concerns, in relation to the Qualified Applications, were received from the following sectoral participants: (a) Deltronics Limited (“Deltronics”); (b) Telecommunications (Bermuda & West Indies) Ltd, Transact Ltd (both trading as Digicel) and the Bermuda Telephone Company Limited (trading as BTC), together (“Digicel”); (c) FKBnet Ltd. (“FKBnet”); (d) One Communications Ltd. (“OneComm”); and (e) World on Wireless (“WOW”).¹
17. On 18 June 2020, the RA published its Preliminary Report, Preliminary Decisions and Order on the Grant of New Integrated Communications Operating Licences and Other Types of Communications Operating Licences (the “Preliminary Report”). With regard to requests made by various parties in response to the Consultation Document, the RA also published non-confidential versions of the applications that were submitted by C&W, Horizon and Paradise.
18. Responses to the Preliminary Report addressing the merits of the Qualified ICOL and SubCOL applications were submitted on 20 July 2020 by Digicel, OneComm and WOW. Additionally, comments were submitted by the following individuals raising concerns about the potential deployment of 5G wireless networks in Bermuda: Dr. Alexandra Amat, Arthur Hill, Camara Reed, Sharon Andrews,

¹ Comments also were received from Nordstar in relation to corrections it requests the RA to make to a Class 6 Radio Licence that Nordstar holds. Nordstar’s request has no conceivable relevance to this consultation and has been forwarded to the radio licensing team for follow-up.

Connie Lodya, DaiVore Astwood, Delores Thomas, Elizabeth Smith, Erika Nelson, Erin Butterfield, Jahrien Lugo, JahZion Lugo, Christina Frith, Julia Frith, Gabriel Quinn, Adrian Lathan, Karen Simons, Mahood Adan, Marquis Neal, Melissa Harris, Michelle Nearon Richardson, Paul Shaffer, Perry Smith, Theodora Scarato, Tianna Spencer, Voorhees Astwood and Winnae Wales (the “5G Commenting Parties/Second Round”).

19. The RA addresses the responses to the Preliminary Report and additional comments received in Section IV below.

III. LEGISLATIVE CONTEXT

20. Section 14(c) of the ECA empowers the RA to grant licenses, permits, and other authorizations. Section 49(2) of the RAA provides that, “in any case in which an application is filed in connection with an individual licence or permit, the Authority shall... conduct a public consultation and issue a decision and order concerning the application”.
21. Section 16(1) of the ECA authorizes the RA to grant COLs in the form of individual licenses, including ICOLs, in accordance with general policies and regulations made by the Minister and the criteria, conditions, requirements and procedures specified by general determination.
22. Section 16(2) of the ECA empowers the RA, by general determination, to specify the criteria, conditions, requirements and procedures that shall apply to the grant of individual ICOLs and other forms of COLs. These parameters were set out in the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination 2019.
23. Section 17(1) of the ECA states that the RA shall specify, in a General Determination, the terms and conditions which COL holders must comply under each type of individual licence apart from the terms and conditions of the ICOL, which have been established by regulation pursuant to section 73(2) of the ECA.
24. Section 50 of the RAA states that the RA may include, as a condition of any licence, permit or other authorization a requirement that the authorization holder:
 - a) Pay any fees or penalties that may be imposed by the RA;
 - b) Comply with all duties specified in Part 7 of the RAA;
 - c) Comply with applicable sectoral legislation;
 - d) Comply with any regulations made by the Minister;
 - e) Comply with any administrative determinations made by the RA;
 - f) Meet any consumer protection requirements specified by the RA;
 - g) If found to have significant market power in any relevant market, comply with any remedy imposed by the RA;

- h) Comply with any information request issued by the RA; and
- i) Participate in industry self-regulatory or co-regulatory bodies, when directed to do so by the RA.

IV. SUMMARY AND DISCUSSION OF RESPONSES TO THE PRELIMINARY REPORT

- 25. Summaries of the responses to the RA's Preliminary Report are set out below, followed by the RA's response.

IV.A Comments on 5G Wireless Network Concerns

- 26. Various concerns regarding the deployment of 5G mobile technology based on potential health and environmental impacts were submitted by the 5G Commenting Parties/Second Round. The points raised are similar to those made in the initial round of comments submitted by the 5G Commenting Parties in response to the RA's Consultation Document.

RA Response

- 27. The RA acknowledges the questions that have been raised regarding the deployment of 5G mobile technology and notes that the issues of concern to the 5G Commenting Parties/Second Round are much the same as those raised by the 5G Commenting Parties in the first round.
- 28. As the RA explained in its Preliminary Report, this consultation process is not the appropriate context in which to address health, safety or environmental issues that may be associated with 5G. The grant of an ICOL does not authorize or guarantee the licence holder any right to the assignment of spectrum. The successful ICOL applicants emerging from this proceeding will be required to apply for new high-demand spectrum assignments in a separate spectrum licensing process. In any event, neither the Minister nor the RA has made any decisions on whether to authorize high-demand spectrum for 5G use. Consideration of the issues raised concerning 5G wireless networks is therefore beyond the scope of this licensing process.
- 29. As indicated in the Preliminary Report, before any 5G spectrum awards are made, the RA plans to carry out a review on the perceived health, safety and environmental concerns that have been raised in relation to 5G. The RA also plans to engage in public outreach to convey the information it obtains on the impact of 5G technology following the completion of its study.

IV.B Response of Digicel

- 30. Digicel's response acknowledges that "the time has passed for debating whether the Moratorium on new ICOL grants should be lifted," but questions the wisdom of granting new communications operating licences at this particular time. Digicel's response concludes, however, that it *does not object to the granting of the new ICOL licences to Horizon and Paradise and SubCOL to C&W, provided that the successful applicants meet the prescribed Basic Eligibility Requirements and current economic and telecommunications industry's needs in Bermuda.*

31. In that regard, Digicel seeks clarification that the RA has considered and assessed the “*public interest concerns and satisfied its Basic Eligibility Requirements*” in regard to the ICOL licence applications. Furthermore, Digicel remains concerned about the economic impact of the COVID-19 pandemic. Digicel also points to the fact that Horizon intends to build a 4G LTE network, whereas Digicel and OneComm each has already invested in building the same type of network across Bermuda.
32. Digicel’s Response also repeats the concern raised in its initial comments that, although the RA’s Consultation Document summarized the salient contents of the applications under review, the RA did not publish the licence applications themselves. Digicel believe that this has denied the public an opportunity to “meaningfully engage with the subject of the consultation” and creates “the appearance of bias.”
33. Digicel’s response also makes reference to the fact that the Bermuda Infrastructure Fund will become a majority investor in Horizon upon the grant of an ICOL. Digicel notes that “*there is still no or little information on how this fund will work*” and highlights published information about the potential participation of the Government of Bermuda as an investor in the Fund under certain circumstances.
34. Finally, Digicel reiterates the position set out in its initial comments, calling upon the RA to complete the Market Review Consultation, remove unnecessary *ex ante* regulations and withdraw the hold-separate obligation imposed by the Concentration Review Conditions that currently apply to Digicel.

RA Response

35. The RA welcomes Digicel’s qualified support for the RA’s proposal to grant the pending licence applications, as well as Digicel’s acknowledgement that ‘*the time has passed for debating whether the moratorium on new ICOL grants should be lifted*’.
36. The RA has carefully considered the economic challenges arising from the COVID-19 global pandemic. Despite the economic uncertainty in the near term, the RA concludes that the greater risk is in *not* moving forward at this time. The risk associated with the current economic uncertainty resulting from the COVID-19 global pandemic is far outweighed by the benefits that increased competition will bring to Bermuda over the longer term. The proposed ICOL grants are a necessary, but not sufficient, condition for the two new entrants to compete effectively in the provision of fixed and mobile networks in Bermuda. Granting the ICOLs at this time will at least commence the process of opening the sector to new entry and introducing increased competition over the longer term.
37. Indeed, because of the pandemic, the ability of the new entrants to gain traction in the market will be an even greater challenge than would otherwise be the case and could prolong their respective start-up periods. The RA therefore sees no reason to delay the grant of the pending licence applications. In fact, it would be contrary to the public interest to delay this first step in the road toward increased competition, which, if allowed to develop over time, is expected to benefit the overall economy of Bermuda in the years to come.

38. No evidence has been provided by Digicel or any other party that would alter the RA's preliminary assessment that each of the licence applicants meets the established Basic Eligibility Requirements. In that regard, the RA is aware of no reason why the participation of the Bermuda Infrastructure Fund as an investor in Horizon would impact that applicant's eligibility. For the avoidance of doubt, the Government's potential role in the Fund, as a potential investor in Horizon, has had absolutely no bearing on the RA's decision whether to grant Horizon's licence application.
39. In regard to Digicel's procedural point, the RA considers that Digicel and other interested stakeholders have had ample time and opportunity in this proceeding to consider and comment on the pending applications. The main elements of each application were summarized in the RA's Consultation Document. Subsequently, in response to Digicel's request, all three applications were published in full (subject to the redaction of confidential information) on the RA's website when the RA published its Preliminary Report. Having had more than a month to consider the application summaries provided by the RA and an additional month to review the published applications (and thus over two months to carry out its own due diligence on the applicants), Digicel has failed to identify any material concerns that would call into question the ability of each applicant to meet the Basic Eligibility Requirements.
40. In fact, the RA has more than fulfilled its obligation to ensure that all stakeholders were given a full and fair opportunity to review the submissions pertinent to the Basic Eligibility Requirements for grant of the pending licence applications. Digicel's claims that it has not had an opportunity to "engage" in this process and that there has consequently been an "appearance of bias" are completely unfounded. Based on the record evidence, the RA concludes that all three applicants meet the relevant Basic Eligibility Requirements. Furthermore, the RA has considered the public interest impact and is confident that the grant of two new ICOLs, and one SubCOL, is fully consistent with the statutory purposes listed in section 5(1) of the ECA.
41. Finally, as indicated in the Preliminary Report, the RA is nearing completion of the Market Review Consultation process and will soon issue its final decision on the *ex ante* obligations that will apply going forward to operators that possess significant market power in the relevant markets, as discussed in greater detail below in the RA's response to OneComm. The RA also plans to address the basis on which the extant Merger Control Conditions will be discontinued as a separate matter.

IV.C Response of OneComm

42. Echoing its initial response, OneComm "*welcomes new entrants to the industry in the belief that competition drives better outcomes for all stakeholders.*" Indeed, OneComm believes that the ICOL application process should be less complicated, observing that it "is not supportive of the overly complex award process that continues to unfold."
43. Although OneComm does not support what it perceives to be a "protracted licensing process," its main concern is that the RA should not fail to take into

account the grant of two new ICOLs and one SubCOL when assessing significant market power in the pending Market Review consultation. In particular, OneComm states that:

Upon granting ICOLs to these new entrants, the RA cannot deny that new entry is possible, and now imminent. New entry is not being prevented by existing providers. No significant barriers to entry exist beyond the regulatory processes created and managed by the RA. Accordingly, these “expected market circumstances” cannot be ignored in the forward-looking assessment required by the ECA as part of the Market Review; nor can they be ignored as the RA considers remedies based on its increasingly outdated market assessment.

44. In support of its argument, OneComm points to Section 21(e) of the ECA, which provides that the RA “*shall seek to rely on market forces and withdraw, reduce or limit ex ante remedies in circumstances where the RA concludes that markets are effectively competitive or likely to become so within a reasonable period of time.*”

RA Response

45. OneComm’s continued support for the ICOL/COL award process is very welcome, and the RA will look for ways to streamline the licensing process in the future. The RA acknowledges that the process for creating a new licensing framework and then implementing the new framework for the first time has required the RA to follow a number of procedural steps mandated by the ECA and the RAA. Because a GD establishing the basic licensing framework is now in place and has been tested, the application review process is expected to be much more straightforward in the future.
46. In regard to the Market Review consultation, the RA must consider developments that are reasonably foreseeable over the period of the next few years. The award of communications operating licenses in this proceeding does not automatically create effective or sustainable competition. Other necessary conditions for the development of effective, sustainable competition include the availability and award of spectrum to one or both of the ICOL applicants to support fixed wireless and/or mobile networks and services, as well as the ability of the new entrants to negotiate reasonable interconnect and wholesale access arrangements with existing ICOL holders, including OneComm and Digicel.
47. As indicated in the Preliminary Report, the RA does not expect that the proposed new ICOL and SubCOL holders will have a significant impact on the competitive dynamics of any relevant electronic communications markets that will be subject to *ex ante* regulation in the near term. This expectation is due, in part, to the fact that the only form of infrastructure-based competition in which the two new ICOL holders will be authorized to engage as a result of *this* licensing process is fixed-line networks, which will require a substantial lead time to deploy, including the negotiation of access and interconnection arrangements with OneComm, Digicel and other existing ICOL holders. At this point in time, it simply is not possible to determine whether or when the new ICOL holders will be awarded spectrum suitable for the provision of advanced mobile or fixed wireless networks.

48. If and when the new entrants achieve a level of commercial success that enables them to exercise an effective pricing constraint on incumbent ICOL holders in markets regulated pursuant to the RA's Market Review Consultation, the RA will not hesitate to use its powers under section 25 of the ECA. That provision empowers the RA to initiate proceedings to consider the withdrawal of any *ex ante* regulations that remain in place which are no longer necessary due to the development of effective competition in the relevant market or markets.

IV.D Response of WOW

49. Having had the opportunity to review the non-confidential versions of the licence applications, WOW confirms in its response that: "[A]s far as we can determine from the information submitted to the RA, each applicant would appear to meet the basic eligibility requirements."
50. WOW further notes that it looks forward to collaborating with the RA and other stakeholders to assess ways of dealing effectively with unlicensed subscription television services and the harmful impact they are having on Bermuda's licensed providers. WOW urges the RA to commence this process "extremely soon."
51. Finally, WOW's response acknowledges that this is not the appropriate proceeding in which to raise concerns about the potential for the new ICOL holders' use of wireless network technologies to create RF interference with WOW's subscription TV network. WOW plans to address its concerns in future spectrum licensing proceedings.

RA Response

52. The RA welcomes WOW's acknowledgement that the pending licence applications meet the Basic Eligibility Requirements based on review of the applications.
53. With regard to the timing of the process for dealing with the provision of unlicensed subscription television services in Bermuda, at the time of writing, the RA has moved forward to address the banning of unlicensed subscription television service providers from Bermuda. The RA looks forward to receiving any further proposals or ideas that WOW and other stakeholders may wish to put forward.

V. CONCLUSIONS AND FINAL DECISION ON LICENCE APPLICATIONS AND THE GRANT OF TWO NEW ICOLS AND A SUBCOL

54. The responses to the RA's Preliminary Report confirm that there is no evidence-based opposition to the award of the pending licence applications, insofar as the applications meet the Basic Eligibility Requirements established by the Minister's ICOL/COL Policy and the RA's General Determination establishing the ICOL/COL award process. In fact, the responses submitted by all three existing ICOL holders that responded to the Preliminary Report are broadly supportive of the RA's proposal to grant the licences.
55. The RA has considered whether there is any basis for delaying the award of these licences at this time, due to the economic uncertainty created by the COVID-19 global pandemic. For the reasons discussed above, however, the RA has decided

that there is no basis for delay and that there is a strong public interest in the grant of two new ICOLs and one SubCOL at this time.

56. Furthermore, there is no significant or credible opposition to the creation of a new form of COL, the SubCOL, or the award of a SubCOL to C&W.
57. Having fully considered the pending ICOL and SubCOL applications as well as the responses submitted concerning these applications, the RA concludes that:
 - a) Horizon and Paradise each meet all of the prescribed Basic Eligibility Requirements for the award of an ICOL and the requirements of the RA's ICOL/COL GD, and therefore both applicants should be granted ICOLs in a form substantially similar to the model ICOL;
 - b) C&W meets all of the prescribed Basic Eligibility Requirements and the requirements of the RA's ICOL/COL GD for the award of a COL other than an ICOL, and furthermore falls within the scope of the terms and conditions of the SubCOL (as set out in Appendix B); and
 - c) Because C&W has elected not to pursue an ICOL at this time, there is no contention for the two new ICOLs that are available in 2020 and, therefore, there is no need for the RA to evaluate the quality or enforceability of the Voluntary Commitments proposed by any of the applicants.
58. The Authority therefore has decided to issue the accompanying Order granting ICOLs to Horizon and Paradise, and a SubCOL to C&W, as set forth in Appendix A to this Final Report.

VI. CONCLUSIONS AND FINAL DECISION ON THE TERMS AND CONDITIONS OF THE SUBCOL

59. Having considered the responses submitted, the RA notes that there were no objections or proposed modifications to the terms and conditions of the proposed new form of communications operating licence, the SubCOL.
60. Accordingly, the RA hereby adopts this new form of communications operating licence in accordance with the accompanying Order adopting the RA's General Determination as set forth in Appendices B-1 and B-2 to this Final Report, including the basic terms and conditions of the SubCOL that are set out in Annex 1 to Schedule B-2.

APPENDIX A

ORDER GRANTING
ICOL AND SUBCOL APPLICATIONS



BERMUDA
**REGULATORY
AUTHORITY**

**Order:
Grant of ICOL and
SubCOL Applications**

Date: 21 August 2020

- I. The Regulatory Authority, pursuant to section 49(2) of the Regulatory Authority Act 2011 and sections 14(c) and 16(1) of the Electronic Communications Act 2011, hereby adopts this Decision and Order to grant, subject to the fulfilment of any and all applicable conditions precedent that may be stipulated by the RA, the following licences to the specified parties:
 - a) an ICOL to Wave Bermuda Ltd.
 - b) an ICOL to Paradise Mobile Ltd.
 - c) a SubCOL to Cable and Wireless Network Services Ltd.
- II. So Ordered this 21 day of August 2020

APPENDIX B-1

ORDER
ADOPTING GENERAL DETERMINATION ON
THE TERMS AND CONDITIONS OF THE SUBCOL



BERMUDA
**REGULATORY
AUTHORITY**

Order:

**Terms and Conditions of the Submarine
Cable Communications Operating Licence
(issued pursuant to Section 16 of the
Electronic Communications Act 2011)**

Date: 21 August 2020

- I. The Regulatory Authority, pursuant to section 50 of the Regulatory Authority Act 2011 and section 17 of the Electronic Communications Act 2011, hereby:
 - a) adopts the General Determination attached hereto, which sets out terms and conditions that shall apply to holders of a Submarine Cable Communications Operating Licence (“SubCOL”);
 - b) directs the Chief Executive of the Regulatory Authority to forward the General Determination to the Cabinet Secretary; and
 - c) authorizes the General Determination to be effected on the date of its publication in the Official Gazette.
- II. So Ordered this 21 of August 2020.

APPENDIX B-2
GENERAL DETERMINATION

BERMUDA
REGULATORY AUTHORITY
(SUBMARINE CABLE COMMUNICATIONS OPERATING LICENCE)
GENERAL DETERMINATION 2020

BR / 2020

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The Regulatory Authority, in the exercise of the power conferred by section 62 of the Regulatory Authority Act 2011, as read with section 50 of that Act and section 17 of the Electronic Communications Act 2011, makes the following General Determination:

Citation

1 This General Determination may be cited as the Regulatory Authority (Submarine Cable Communications Operating Licence) General Determination 2020.

Interpretation

2 In this General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011, the Electronic Communications Act 2011, and the Schedule to this General Determination.

General purpose

3 This General Determination establishes the terms and conditions of a specific type of individual Communications Operating Licence, as provided for in section 17 of the Electronic Communications Act 2011, which shall be known as the Submarine Cable Communications Operating Licence or “SubCOL.” The SubCOL shall be available to qualified applicants authorized by the Regulatory Authority in accordance with the procedures for the grant of Communications Operating Licences other than ICOLs that are set out in the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination, provided that the applicant is the operator of a submarine cable landing in Bermuda and such operator:

- (a) was lawfully established before the coming into force of the Submarine Communications Cables Act 2020, and/or whose submarine cable operations have been “grandfathered” pursuant to SCCA Section 80; or
- (b) has obtained a Submarine Cable Licence pursuant to Part 6 the Submarine Communications Cables Act 2020.

**REGULATORY AUTHORITY (SUBMARINE CABLE COMMUNICATIONS OPERATING LICENCE)
GENERAL DETERMINATION 2019**

Determination

4 (1) This General Determination is made pursuant to the Consultation Document entitled “Applications for Integrated Communications Operating Licences (“ICOLs”); Application for Other Communications Operating Licence (“COL”) dated 29 April 2020 and the Regulatory Authority’s Decision on it.

(2) Taking into account the responses received to the Consultation Document and the Preliminary Report and Preliminary Decision and Order, and for the reasons given in the Decision, the Authority determines that the terms and conditions of the SubCOL shall be those set out in the template set out in the Schedule.

Terms and conditions of General Determination

5 (1) The Schedule to this General Determination has effect.

(2) The Schedule is published on the Regulatory Authority’s website (www.ra.bm), and is also available for inspection at the offices of the Authority (1st Floor, Craig Appin House, 8 Wesley Street, Hamilton HM 11) during ordinary business hours.

Effective date of General Determination

6 This General Determination shall become effective on the day it is published in the Gazette (“the effective date”).

Signed this 21 day of August 2020

Chairman, Regulatory Authority



BERMUDA
**REGULATORY
AUTHORITY**

**Schedule to Regulatory Authority
(Submarine Cable Communications
Operating Licence) General Determination**

General Determination
Date: 21 August 2020

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4. FINAL DETERMINATION
5. ANNEX 1 — SUBMARINE CABLE COMMUNICATIONS OPERATING LICENCE (template)

This General Determination is made by the Regulatory Authority of Bermuda (the “Authority”) pursuant to section 50 of the Regulatory Authority Act 2011 (“RAA”) and section 17 of the Electronic Communications Act 2011 (“ECA”) and establishes the terms and conditions of a particular type of Communications Operating Licence (“COL”) that shall be known as a Submarine Cable Communications Operating Licence (“SubCOL”).

1 DEFINITIONS

The definitions used in this General Determination shall be those found in the Definitions section of the Annex to this Schedule.

2 INTERPRETATION

- (1) For purposes of interpreting this General Determination:
 - (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA and the ECA;
 - (b) where there is any conflict between the provisions of this General Determination and the ECA or RAA, the provisions of the ECA or RAA, as the case may be (subject to section 3 of the ECA), shall prevail;
 - (c) terms defined herein and in the ECA and RAA have been capitalised;
 - (d) headings and titles used herein are for reference only and shall not affect the interpretation or construction of this General Determination;
 - (e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
 - (f) a document referred to herein shall be incorporated into and form part of this General Determination and a reference to such document is to the document as modified from time to time;
 - (g) expressions cognate with those used herein shall be construed accordingly;
 - (h) use of the word “include” or “including” is to be construed as being without limitation; and
 - (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3 LEGISLATIVE AND PROCEDURAL BACKGROUND

- (1) This General Determination has been adopted in accordance with section 62 of the RAA, as read with section 50 of the RAA, and the exercise by the Authority of its powers under sections 17 of the ECA.
- (2) The Authority initiated the consultation by publishing a Consultation Document on 29 April 2019 that invited responses from members of the public, including electronic communications sectoral participants and sectoral providers, as well as other interested parties. The purpose of the Authority’s initial Consultation Document was, in pertinent part, to consult on the advisability of adopting a new form of COL that would be available to Authorized Submarine Cable Operators and limited to the provision of International Wholesale Services by such operators or their Affiliates.

- (3) Responses to the Consultation Document were solicited from the public electronically through the Authority's website at www.ra.bm.
- (4) The initial response period commenced on 29 April 2020 and concluded on 2 June 2020.
- (5) The Authority received 5 responses from sectoral providers, as well as responses from three organizations and various members of the public (unrelated to the terms and conditions of the SubCOL).
- (6) The Authority issued a Preliminary Report, Preliminary Decision and Order on [18] June 2020 that invited responses from members of the public, including electricity sectoral participants and sectoral providers, as well as other interested parties.
- (7) In response to the Preliminary Report, Preliminary Decision and Order, the Authority received 3 responses from sectoral providers, as well as response various members of the public.

4 FINAL DETERMINATION

- (1) Pursuant to section 62 of the RAA, as read with section 50 of the RAA, and in accordance with section 17 of the ECA, using the general powers granted to the Authority under section 13 of the RAA and in accordance with the procedures established for this purpose in section 62 of the RAA, the Authority hereby determines that:
- (2) The adoption of a new form of COL in the form of the SubCOL template contained in Annex 1 to this Schedule is consistent with the purposes of the ECA, including: (a) ensuring the availability of reliable and affordable access to quality Electronic Communications Services in Bermuda; (b) encouraging sustainable domestic competition and Bermuda's competitiveness in the global marketplace; (c) the orderly development of, and innovation in, the communications sector; and (d) promoting investment in the communications sector.

ANNEX 1 to Schedule B-2



BERMUDA
REGULATORY
AUTHORITY

Submarine Cable Communications Operating Licence

*(issued pursuant to section 16 of the Electronic
Communications Act 2011)*

[template]

Licensee:

Address:

Licence Number:

Issue Date:

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The Regulatory Authority of Bermuda (the “Authority”), in the exercise of the authority conferred upon it by the Electronic Communications Act 2011, hereby grants to [LICENSEE] a licence to provide certain Electronic Communications Services specified herein, within the territorial limits of Bermuda and between Bermuda and other countries, subject to the terms of this Licence, the Electronic Communications Act 2011, the Regulatory Authority Act 2011, and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1 DEFINITIONS

In this Licence, unless the context otherwise requires:

“**Affiliate**” means any entity that directly or indirectly Controls, is Controlled by or is under common Control with another legal person;

“**Associated Facilities**” means those associated services, physical infrastructures and other facilities or elements associated with electronic communications that enable or support the provision of services via an electronic communications network or service or have the potential to do so, and includes buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, cabinets and such other facilities that may be specified by the Authority;

“**Associated Services**” means those services associated with electronic communications which enable or support the provision of services by means of electronic communications or have the potential to do so, as specified by the Authority;

“**Authority**” means the Regulatory Authority of Bermuda;

“**Authorized Submarine Cable Operator**” means any operator of a submarine cable landing in Bermuda which:

- (a) was lawfully established before the coming into force of the Submarine Communications Cable Act 2020, and/or whose submarine cable operations have been “grandfathered” pursuant to SCCA Section 80; or
- (b) has obtained a Submarine Cable Licence pursuant to Part 6 the SCCA;

“**Condition**” means a condition, including a Transitional Condition set forth in Annex A, of this Licence;

“**Control**” (including cognates) means:

- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
- (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type;

“ECA” means the Electronic Communications Act 2011;

“Electronic Communications Services” means a service normally provided for remuneration which consists wholly or mainly of the conveyance of signals by means of electronic communications networks, including the distribution and provision of subscription audiovisual services;

“End-user” means a person that uses goods or services provided by a communications provider on a retail basis;

“ICOL” means Integrated Communications Operating Licence as defined in Section 18 of the ECA;

“International Wholesale Services” means Electronic Communications Services that are provided to an ICOL holder solely by means of submarine cables landing in Bermuda that are operated by the Licensee or an Affiliate of the Licensee.

“Licence” means this Submarine Cable Communications Operating Licence granted to [LICENSEE];

“Licensee” means [LICENSEE] and, for the avoidance of doubt, does not include any Affiliates of the Licensee unless otherwise stipulated in this Licence;

“Number” means a number assigned to the Licensee by the Authority in accordance with the Numbering Plan;

“Other Licensee” means another licensee that holds an Individual Licence;

“Person” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person;

“RAA” means the Regulatory Authority Act 2011;

“SCCA” means the Submarine Communications Cables Act 2020.

“SubCOL” means a Submarine Cable Communications Operating Licence that is issued to an Authorised Submarine Cable Operator or its Affiliate and authorizes the SubCOL holder to provide International Wholesale Services to ICOL holders solely by means of the SubCOL holder’s, or its Affiliate’s, capacity on international submarine cables landing in Bermuda (but, for the avoidance of doubt, does not include the provision of any additional electronic communications networks or services within Bermuda);

“Transitional Condition” means the Condition set forth in Annex A of this Licence; and

2 INTERPRETATION

For the purpose of interpreting this Licence:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in the Licence, the ECA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Licence and the ECA or RAA, the provisions of the ECA or RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalized;
- (d) references to Conditions and Annex A are to Conditions and Annex A of the Licence, as modified from time to time in accordance with the Licence and the ECA;
- (e) a document referred to in this Licence shall be incorporated into and form part of the Licence and a reference to a document is to the document as modified from time to time;
- (f) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (g) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (h) expressions cognate with those used in this Licence shall be construed accordingly;
- (i) use of the word "include" or "including" is to be construed as being without limitation; and
- (j) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3 SCOPE OF THE LICENCE

3.1 This Licence grants the Licensee, as an Authorized Submarine Cable Operator, the right to provide certain Electronic Communications Services within the territorial limits of Bermuda and between Bermuda and other countries, which services shall be limited to the Licensee's provision of International Wholesale Services to ICOL holders solely by means of the Licensee's, or its Affiliate's, capacity on international submarine cables landing in Bermuda.

3.2 This Licence does not grant the Licensee the right to establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications

Services in Bermuda that fall outside the scope of the services authorized by Condition 3.1.

- 3.3 This Licence does not grant the Licensee, and shall not be construed as an entitlement on the part of the Licensee to, any licences or permits for the use of radio spectrum, radio stations or radio apparatus.
- 3.4 Nothing in this Licence shall relieve the Licensee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide Electronic Communications Services or exercise the Licensee's rights or discharge its obligations under this Licence, including any applicable requirements under the SCCA.

4 GRANT AND DURATION OF THE LICENCE

- 4.1 The Licence is valid and effective from the date hereof and shall remain in effect until the earlier of:
 - (a) [DATE/15 year term];
 - (b) the date on which the Licensee surrenders the Licence in accordance with Condition 18.2;
 - (c) the date on which the Licence is revoked or terminated pursuant to Sections 18(5) or 18(6) of the ECA or Section 93 of the RAA; or
 - (d) the date on which the Licensee is no longer considered "grandfathered" pursuant to SCCA Section 80.
- 4.2 The Licence may be renewed for an additional term or terms pursuant to Section 18(4) of the ECA.

5 FEES, CONTRIBUTIONS AND PENALTIES

- 5.1 The Licensee shall pay to the Authority such Government Authorization Fees as may be prescribed pursuant to Section 52 of the RAA and the Government Fees Act 1965.
- 5.2 The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 11 of the ECA and Section 44 of the RAA.
- 5.3 The Licensee shall make such contributions to support the provision of Universal Service as may be specified in Regulations made by the Minister pursuant to Section 34 of the ECA.
- 5.4 The Licensee shall pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework.

6 COMPLIANCE

The Licensee shall comply with:

- (a) the terms of this Licence, including Annex A;
- (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Licensee;
- (c) the Applicable Regulatory Framework, including, but not limited to, any applicable:
 - (i) Regulations made by the Minister;
 - (ii) Administrative Determinations made by the Authority pursuant to Section 9(2)(c) of the ECA;
 - (iii) Universal Service obligations imposed in accordance with Part 6 of the ECA;
 - (iv) obligations imposed by the Authority to interconnect with the Electronic Communications Networks of other ICOL holders and any Other Licensees that may be designated by the Authority for this purpose by the Authority, promptly and on reasonable terms and conditions;
 - (v) Ex Ante Remedies imposed by the Authority in accordance with Part 4 of the ECA;
 - (vi) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Licence, associated licences, authorizations and permits, or other requirements specified by the Authority;
- (d) the Convention and any other international agreements relating to Electronic Communications to which Bermuda is a party; and
- (e) the ECA, the RAA, the SCCA and any other applicable law, enactment, regulations or order in effect in Bermuda to which the Licensee is subject.

Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, General or other Administrative Determinations made by the Authority, and this Licence.

7 PROVISION OF SERVICES

7.1 The Licensee shall provide the Electronic Communications Services authorised by this Licence in a manner that:

- (a) does not prejudice or obstruct, or is likely to prejudice or obstruct, navigation by ships at sea or aircraft on the ground or in the air; and
- (b) does not interfere with the operation of Electronic Communications Networks and the provision of Electronic Communications Services by Other Licensees.

7.2 The Licensee shall:

- (a) provide the Authority with information, in such manner and format as the Authority may require, that separately identifies the personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorised by this Licence that are located in Bermuda and those that are located outside of Bermuda; and
- (b) comply with any General Determinations or Directions made by the Authority requiring the Licensee to locate in Bermuda some or all of the personnel, Associated Facilities and Associated Services relating to the provision of any or all of the Electronic Communications Services authorised by this Licence.

7.3 The Licensee shall maintain in Bermuda the original files of all Personal Data relating to the provision of the Electronic Communications Services authorised by this Licence. The Licensee shall ensure that all such Personal Data are capable of being accessed by the Government of Bermuda in real time. The Authority may, with the approval of the Minister, waive this Condition in whole or in part if, and to the extent that, the Authority determines that:

- (a) appropriate inter-governmental arrangements are in place that provide the Government of Bermuda and the Authority with access to such Personal Data on the same terms and conditions and within the same timeframes as if such Personal Data were located in Bermuda; and
- (b) a waiver would be in the public interest, not unduly discriminatory in respect of other similarly situated licensees, and consistent with requirements of Schedule 2 of the ECA.

7.4 The Licensee shall report planned and unplanned outages of the Electronic Communications Services authorised by this Licence in accordance with any requirements established by the Authority.

7.5 The Licensee shall procure such insurance or post such performance bonds as the Authority may reasonably require to ensure that any works undertaken by the Licensee are completed and that any property abandoned by the Licensee or that has fallen into disrepair is removed from public property.

7.6 Upon the revocation or termination of the Licence, the Licensee shall make reasonable efforts to sell the Licensee's Electronic Communications business and assets, and facilitate the transfer of the Licensee's Bermudian staff employed in Bermuda, to another provider of Electronic Communications in Bermuda.

8 NATIONAL SECURITY, EMERGENCIES AND LAW ENFORCEMENT

8.1 The Licensee shall cooperate with, and at the lawful Direction of the Governor, Minister or Authority, shall provide assistance to the relevant Government ministries responsible for national security and emergency services.

8.2 The Licensee shall, at the Direction of the Governor, Minister or the Authority, give Telecommunications of the relevant Government ministries responsible for national security and emergency services priority over all other Telecommunications.

8.3 The Licensee shall comply with the Authority's Directions regarding the location and concealment of the Licensee's Electronic Communications facilities to protect them from accidental or malicious injury.

8.4 The Licensee shall comply with the requirements of Schedule 2 of the ECA.

9 SIGNIFICANT MARKET POWER

9.1 If the Authority determines that the Licensee possesses Significant Market Power in a relevant market, the Licensee shall promptly comply with each Ex Ante Remedy or obligation imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the ECA, until the remedy or obligation is removed pursuant to Section 25 of the ECA.

9.2 With regard to any market in which the Licensee has been determined to possess Significant Market Power, the Licensee shall comply with the following requirements unless they are specifically waived by an Administrative Determination of the Authority:

(a) not to unduly discriminate in relation to the provision of Interconnection or Access, in particular, by applying equivalent conditions in equivalent circumstances to Other Licensees providing equivalent services, and providing them with services and information (including technical specifications and network-related information) under the same conditions and of the same quality as it provides for its own services or those of its Affiliates, subsidiaries or partners;

(b) not to adopt any technical specifications that would unreasonably or unnecessarily obstruct or impede the ability of Other Licensees to interconnect with the Licensee's facilities or Access parts of the Licensee's network that are subject to Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA; and

(c) enter into an Interconnection agreement with an Other Licensee within 90 days of receipt of a reasonably detailed written request for Interconnection or within such other time frame as may be required by the Authority or any Ex Ante Remedy imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the

ECA; provided, however, that the Licensee shall not be required to enter into an Interconnection agreement or provide Interconnection service if the Authority determines that Interconnection would be technically infeasible, could reasonably be expected materially to impair the quality of any of the Licensee's Electronic Communications Services, or would threaten the integrity, security or interoperability of the Licensee's Electronic Communications Network.

For purposes of Condition 11.2, "Access" shall have the meaning ascribed to it by Section 24(8) of the ECA.

10 PRIVACY OF COMMUNICATIONS

- 10.1** The Licensee shall take all reasonable measures to ensure the privacy of all Telecommunications.
- 10.2** Except as otherwise provided in the ECA or any other applicable enactment, the Licensee may not intercept, or willfully divulge the content of, any Electronic Communications.

11 CONFIDENTIALITY OF PERSONAL DATA

- 11.1** The Licensee shall abide by the requirements of Sections 29 and 31 of the ECA, any other applicable enactment and any General Determinations made by the Authority in relation to the confidentiality of customer information or the security of customer data.
- 11.2** The Licensee shall not make use of any End-User or Subscriber information, network and traffic data, or any other information obtained from Other Licensees as a result of entering into Interconnection and other agreements with such Other Licensees, other than for the purpose for which such information and data were provided. The Licensee shall implement reasonable internal measures, including by limiting access to physical records, systems and processes where appropriate, to safeguard and maintain the confidentiality of any such data that is commercially or competitively sensitive.

12 INFORMATION, AUDITS AND INSPECTION

- 12.1** In addition to the information required by Section 53 of the RAA, the Licensee shall promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA and ECA, including but not limited to information regarding (a) the services or equipment provided to Users, Other Licensees and Persons with Class Licences; (b) the rates and charges for such services and equipment; (c) copies of contracts with Other Licensees; (d) statistics regarding usage of the Licensee's Electronic Communications Services; (e) relevant activities, operations, or shareholdings of any Related Persons; and (f) any arrangements or relationships between the Licensee and any Related Persons that the Authority determines to be relevant to competition in the sector. For purposes of Condition 15.1, "Related Person" shall mean any entity that directly or indirectly owns, is directly or indirectly owned by, or is under common ownership with, the Licensee, as evidenced by the ownership of five per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an arrangement of any type.

- 12.2** The Licensee shall permit the Authority or Persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Licensee's business.
- 12.3** Subject to the provisions of Section 92 of the RAA, the Licensee shall permit the Authority or Persons designated by the Authority to enter the Licensee's premises, and shall facilitate access by them to premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 12.4** The Licensee shall place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

13 MODIFICATION OF THE LICENCE

The Licence may be modified:

- (a) with the mutual consent of the Licensee and the Authority;
- (b) by the Authority pursuant to the provisions of Section 51 of the RAA and Section 9(2)(c)(i) of the ECA; and
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of Section 93 of the RAA.

14 ENFORCEMENT AND REVOCATION

- 14.1** The Authority may initiate enforcement proceedings pursuant to Section 93 of the RAA and Section 18(5) of the ECA if there is reason to believe that the Licensee has contravened the terms of this Licence or the Applicable Regulatory Framework. The Licensee shall participate in good faith in such enforcement proceedings. Upon finding that the Licensee has contravened this Licence or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Licensee's total annual turnover, or modify or suspend this Licence.
- 14.2** The Authority may revoke or terminate this Licence in accordance with the provisions of Sections 18(5) and 18(6) of the ECA. If this Licence is revoked or terminated, the Licensee shall make reasonable efforts to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Service.

15 DISCONTINUATION OF SERVICE; SURRENDER OF LICENCE

- 15.1** Subject to any Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA, the Licensee shall not discontinue the general provision of any Electronic Communications Service unless the Licensee first provides the Authority and affected Subscribers and Other Licensees with no less than 60 days advance notice, or such other greater or lesser notice as the Authority may determine, of the discontinuation of service.

The Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees from the discontinued Electronic Communications Service to a reasonable alternative service provided by either the Licensee or an Other Licensee.

- 15.2** The Licensee may surrender the Licence, with the agreement of the Authority. The Licensee shall submit a request to surrender the Licence no less than 180 days, or such lesser period as the Authority may allow, in advance of the date on which the Licensee proposes to surrender the Licence. If the Authority agrees to the surrender of the Licence, the Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Services.

16 ASSIGNMENT

The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee, without the prior written authorization of the Authority.

17 CHANGE OF CONTROL

The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorization of the Authority.

18 INDEMNIFICATION

- 18.1** The Licensee shall indemnify the Regulatory Authority against all actions, claims and demands which may be brought or made by any Person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorised by the Licence. The Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

- 18.2** The Licensee shall indemnify the Government of Bermuda for the reasonable costs of repairing, restoring or replacing any Electronic Communications Networks or Electronic Communications Services used by the Government that are damaged, interrupted or otherwise interfered with, either directly or indirectly, by the Licensee.

19 FORCE MAJEURE; OTHER EVENTS

- 19.1** If the Licensee is prevented from complying with the Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control:

- (a) the Licensee shall notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and

(b) the Authority may suspend such obligations of the License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

19.2 In addition to events of force majeure, the Licensee shall notify the Authority of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of such fact or event.

20 NOTICES

20.1 Unless the Authority determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by registered letter to the address shown on the cover page of the Licence to the attention of the Chief Executive Officer.

20.2 Unless the Authority determines otherwise, notices to the Authority under the Licence shall be in writing and sent by registered letter to the Chief Executive of the Authority at the business address of the Authority.

ANNEX A

TRANSITIONAL CONDITION

A1 PERSONNEL, FACILITIES AND SERVICES

- A1.1** Until such time as the Authority makes a General Determination to the contrary, the Licensee shall maintain in Bermuda all of the personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence that were located in Bermuda as at the date of this Licence. The Authority may, with the approval of the Minister, waive this Transitional Condition in whole or in part if, and to the extent that, the Authority determines that:
- (a) there are insufficient human or other resources available in Bermuda to enable the Licensee to continue to comply with this Transitional Condition; or
 - (b) continued compliance with this Transitional Condition would be economically impractical, deprive Bermuda of new and innovative services or result in higher prices for Bermudian consumers; and
 - (c) a waiver would be in the public interest and not unduly discriminatory in respect of other similarly situated licensees.
- A1.2** Until such time as the Authority makes a General Determination to the contrary, the Licensee shall provide the Authority with no less than 120 days advance notice, or such other notice as the Authority may determine, before employing outside of Bermuda any personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence.