



BERMUDA  
**REGULATORY  
AUTHORITY**

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# **Criteria and Procedures for Assigning High Demand Spectrum**

**Final Report & Final Decision**

Matter: HDS-1

Date: 19 May 2016

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This document contains the Authority's Final Report on the comments received in response to the HDS-1 Preliminary Report, Preliminary Decision and Order and includes the Final Decision, Order and General Determination adopted by the Authority pursuant to ECA Section 38(6)(c) as well as the final RFA.

## 1 Definitions

1. In this document, unless the context otherwise requires:

"**Authority**" means the Regulatory Authority of Bermuda;

"**BDC**" means Bermuda Digital Communications Ltd.;

"**BodyTrace**" means BodyTrace Netherlands B.V.;

"**Commenting Parties**" means the parties having submitted comments to the Authority on the HDS-1 Second Consultation Document and includes BDC, Digicel, BodyTrace, and Mr. Raymond Seymour;

"**Digicel**" means the Telecommunications (Bermuda & West Indies Limited);

"**ECA**" means Electronic Communications Act 2011;

"**Final Report**" means this Final Report and Final Decision;

"**HDS Frequencies**" means the spectrum that the Authority proposes to define as high demand spectrum in its General Determination;

"**HDS-1**" means the process for the assignment of Designated HDS-1 Frequencies commencing with the publication of the Consultation by the Authority and concluding in accordance with Section 16 of the RFA;

"**HDS-1 Consultation Document**" means the initial Consultation on the Criteria and Procedures for Assigning High Demand Spectrum, Matter HDS-1, issued on 12 August 2015;

"**HDS-1 Second Consultation Document**" means the Preliminary Report, Preliminary Decision and Order, Matter HDS-1, issued on 21 January 2016;

"**Initial Consultation**" means the consultation document accompanying the RFA on the Criteria and Procedures for Assigning High Demand Spectrum, Matter: HDS-1, and dated 12 August 2015;

"**Minister**" means the Minister responsible for the electronic communications sector;

"**Preliminary Report**" means the document titled Preliminary Report, Preliminary Decision and Order regarding the Criteria and Procedures for Assigning High Demand Spectrum Matter: HDS-1, and dated 21 January 2016;

"**RAA**" means Regulatory Authority Act 2011;

"**RFA**" means the Request for Applications, together with its Annexes;

**“Second Consultation”** means the Preliminary Report, Preliminary Decision and Order accompanying the revised RFA concerning the Criteria and Procedures for Assigning High Demand Spectrum, Matter: HDS-1, and dated 21 January 2016;

**"Spectrum Policy Statement"** means the statement by the Minister effective on 22 September 2014 for the purpose of providing the spectrum management policies for the Authority to implement going forward with respect to spectrum allocations, spectrum assignments and spectrum related fees;

2. All other terms, words or expressions shall, except insofar as the context otherwise requires, have the meaning, if any, assigned to them by the RAA, the ECA, the Interpretation Act 1951, and the General Determination set out in Annex D. In addition, all terms, words, or expressions defined in Annex A to the final RFA are to be given the same meaning when used or referenced in the present document.

## **2 HDS-1 Consultation History**

3. The Initial HDS-1 Consultation commenced on 12 August 2015 in accordance with RAA Section 70. The Authority received responses from the two incumbent mobile operators, BDC and Digicel, on 2 September 2015. Supplementary comments were received from BDC and Digicel following a technical workshop conducted by the Authority on 19 October 2015.
4. On 21 January 2016, the Authority initiated a Second Consultation on HDS-1 in accordance with RAA Section 72. The Second Consultation Document included the Authority's Preliminary Report and drafts of the General Determination and Order. The Preliminary Report summarised the comments received in response to the HDS-1 Consultation Document, provided a revised version of the RFA in consideration of the comments received, and solicited comment on a set of further consultation questions. On 22 February 2016, the Authority received comments from BDC, Digicel, BodyTrace, and Mr. Raymond Seymour.
5. The Authority has given careful consideration to the comments received in response to both consultation documents and thanks the Commenting Parties for their valuable inputs.
6. The Authority hereby incorporates by reference the content and conclusions of the HDS-1 Initial Consultation Document and the HDS-1 Second Consultation Document where not inconsistent with the conclusions of this Final Report and the text of the final RFA, as set out in Annex A to this Final Report.

## **3 Report on Responses to the HDS-1 Second Consultation Document and Further Consultation Questions**

7. Set out below and in Annex B is a discussion of the main issues raised by the Commenting Parties in their responses to the HDS-1 Second Consultation Document. A list of the further consultation questions and a summary of the responses received are set out in tabular form in Annex B. Apart from the issues addressed below, the Authority's views concerning the responses received are provided in Annex B in the column marked "Authority's Response."

### **3.1 Statement of Purpose**

8. Consistent with the purposes and objectives established by Sections 5 and 37 of the ECA, Section 12 of the RAA and the Ministers Spectrum Policy Statement, the Authority has refined

the Statement of Purpose set out in paragraphs 1 and 2 of the final RFA to reinforce that the RFA process will be conducted in accordance with the public interest as set out in the relevant legislation and the relevant policies established by the Minister. The public interest standard will be the touchstone of the RFA selection process and the post-selection implementation of the commitments made by the Successful Applicants.

### **3.2 Applicable Fee for HDS-1 Process**

9. The Authority has decided to change the timing of payment of the service fee that was identified as an “Application Fee” in the prior RFA drafts. This change will eliminate the need for the Authority to deal with refund issues if a Participant is deemed ineligible for participation in the HDS-1 process or disqualified due to circumstances beyond its control. The Authority has consulted on, and has recommended to the Minister, a service fee, of BMD 40,000. As this service fee requires approval under the procedure established by RAA Section 44, Registrants will be required to commit to pay the amount of the service fee established by regulation if they become a Successful HDS-1 Applicant. Payment of the fee will be required of each Successful HDS-1 Applicant by a date stipulated by the Authority. The stipulated date will fall after an HDS-1 Final Decision is issued by the Authority in respect of the Successful HDS-1 Applicant but before the relevant HDS-1 Licence is granted (or modified) pursuant to Section 15.2 of the RFA. The fee will be renamed the “Successful Applicant Service Fee” to reflect this change.

### **3.3 Applicability of the 99.9% Geographic Coverage Obligation to Lot L-2**

10. The Authority has taken into consideration the comments submitted in relation to certain transitory issues surrounding the use of Lot L-2. These issues result from the current lack of mobile broadband devices that use these frequencies and are compatible with GSM or UMTS/HSPA technologies, as a result of commercial arrangements that have evolved in the U.S. market. The Authority notes that this situation may well change in the near future as a result of commercial or regulatory developments in the United States. In light of the current challenges, the Authority has decided to amend paragraph 54 of the RFA to enable Applicants for Lot L-2 to seek a waiver of the 99.9% Geographic Coverage Obligation, as is permitted with regard to Lots L-3 and L-4.

### **3.4 Requirements and Procedures – Advisory Panel**

11. Section 13.11 of the RFA provides that, if any of the available HDS-1 Lots are subject to the comparative selection process, the Authority will appoint an Advisory Panel. On further reflection the Authority has decided to modify the deadline for selecting the Advisory Panel in this circumstance in order to enable the Authority to have sight of the Applications submitted, including the number of Alternative Requests, before deciding on the number and composition of the Advisory Panel. This adjustment to the timetable will permit the Authority to decide on the optimal number and skillsets of the members of the Advisory Panel. Accordingly, paragraph 106 of the RFA now states that “no more than five working days following the date established by the RFA for submission of the Applications, the Authority will appoint an expert Advisory Panel to assist the Authority . . .” Section 107 of the RFA has similarly been adjusted to allow for the Authority to appoint an Advisory Panel of *up to* five members, including *up to* three external experts. This change is meant to give the Authority flexibility to appoint a panel of fewer than five individuals, as appropriate. It will enable the Authority to take into account the number of Applications received and Alternative Eligible Requests submitted by each of the Applicants. On that basis, the Authority will be in a position to appoint an Advisory Panel that can efficiently and effectively evaluate the Alternative Requests that are referred to it by the Authority. Sections 135-138 also have been modified to clarify:

- (a) the roles and responsibilities of the Advisory Panel and the Board of the Authority in regard to the scoring process set out in Tables 4 and 5 and the ranking procedures set out in paragraph 135;
- (b) the process to be followed by the Authority in the event that a decisive winner does not emerge from the Advisory Panel's recommendations for a particular HDS-1 Lot or based on the Authority's own assessment (paragraph 136);
- (c) the process to be followed in the event that the Advisory Panel is unable to reach a consensus or recommend a decisive winner for a particular HDS-1 Lot; and
- (d) the responsibility of the Authority to render a Final Decision on the HDS-1 assignments in line with the public interest.

### **3.5 Information Required in the Technical Solution**

- 12. Upon further consideration of the responses received throughout the HDS-1 consultation process and based on further research concerning the type and scope of information that the Authority will need to assess in the applications, the Authority has decided to provide additional details on the minimum information requested under section 115 of the final RFA and Annex E. The additional specifications pertain to information on network capacity, backhaul, carrier aggregation, sub-sea cable capacity, the use of small cells, network resilience, the Applicant's approach to the use of LTE-Advanced technology and the Applicant's approach to VoLTE.

### **3.6 Annex D – Eligibility Documentation**

- 13. Upon further consideration of the Required Registration Documentation and in order to streamline and ensure the uniformity of Registrants' responses to the Eligibility Documentation, the Authority has decided to modify the format of the required Eligibility Documentation contained in Annex D. Specifically, the Authority has revised the Eligibility Documentation in the form of a model letter to be executed by the Registrant's Authorized Person.

## **4 Final Decision**

- 14. The text of the Final Decision is set out below.
- 15. The Final Decision takes into account the information provided by the Commenting Parties in response to the Authority's Second Consultation and comments received on the Preliminary Report, Preliminary Decision and Order.
- 16. After taking into account the comments received from the Commenting Parties (identified in Section 2 above and Annex B attached), the Authority hereby issues the Order concerning the Criteria and Procedures for Assigning High Demand Spectrum and makes a general determination, in accordance with ECA Section 38(6)(c) to establish the procedures, criteria and conditions for the award of individual spectrum licences, as set forth in the annexed document entitled: "Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz, and 2100 MHz Bands."

**Annex A — Final RFA**

*[Please see separate attachment]*

**Annex B — Summary of Responses Received on the Further Consultation Questions**

*[Please see stand-alone HDS-1 Summary of Responses]*