



2nd September 2015

Regulatory Authority of Bermuda
3rd Floor Cumberland House
1 Victoria Street Hamilton, HM 11
Bermuda

Re: Digicel's Responses to HDS-1 Consultation

The Authority has invited the public to generally comment on the application and allocation process of HDS-1.

As provided in the Interim Administrative Rules, Digicel submits its redacted version of the responses. It is Digicel's submission that the information redacted includes Digicel strategic information which has commercial value and if made public, will cause Digicel irreparable harm.

Any queries should be addressed to Robin Seale, Chief Executive Officer, Digicel Bermuda.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Robin Seale', is written over the typed name and title.

Robin Seale
CEO



**TELECOMMUNICATIONS (BERMUDA & WEST INDIES) LIMITED
T/A**

DIGICEL BERMUDA

RESPONSE TO CONSULTATION DOCUMENT MATTER: HDS-1

COMMENTS ON CRITERIA AND PROCEDURE FOR ASSIGNING HIGH DEMANDS SPECTRUM

The Authority has invited the public to generally comment on the application and allocation process of HDS-1. Digicel responds as hereunder to the Authority's consultation questions. Any queries should be addressed to Robin Seale, Chief Executive Officer, Digicel Bermuda.



Consultation Question 1: Please comment on expected trends in the supply of, and demand for, mobile broadband services over the next five years.

Like most developed markets, the market in Bermuda is highly penetrated in terms of mobile data users with limited organic growth in unique subscribers expected over the foreseeable future. However, the growth in total data use is expected to rise materially over the same period as subscribers continue to adopt more sophisticated products and a greater range of services continue to be made available as mobile applications. Digicel has seen average data use growth per user of c. 50% YoY over recent years and this trend is only likely to accelerate.

It is important to note that revenues in no way reflect the above trend as market pressure dictates a far lower price per MB with greater use. The above dynamics relate to both consumer and business markets. A further demand, especially in business markets, will be a growth in requirement for Machine to Machine, M2M data to support the predicted explosive growth in the Internet of Things (IOT) / Internet of Everything (IOE).

The need to carve out spectrum for mainstream (traditional) data use where speed and capacity will be ever more critical will be further accentuated by this IOT pressure for typically lower rate, but nonetheless mission critical, traffic that will only realistically be supported by an incumbent with the scale and diversified revenue streams to support this low revenue activity.

Consultation Question 2: Please comment on the need for and sustainability of a third mobile entrant in Bermuda, including niche wireless broadband operators.

Digicel believes that the limited scale of the Bermuda market means that two competitors are sufficient to find the balance between consumer pricing, value and investment in networks. A third entrant in our view would be detrimental to investment and reduce the quality of service over the longer term to the end customer. Digicel has driven year on year price reductions that the competitor has universally replicated. The competitive market dynamic works with two players competing for the relatively small subscriber base. There would be no material incremental benefit to the end consumer with the introduction of a third player in fact, the disconnect between cost and revenue that may result will likely drive prices higher.

There is historical evidence that the above is fact as seen by the acquisition of M3 by CellOne.



This view is endorsed when one considers the levels of consolidation and mergers taking place in larger mobile markets, for example in Europe. There has not been a suggestion that the current retail market configuration is giving rise to retail competition concerns and a more detailed analysis would be required to demonstrate that a third operator would result in a long term consumer welfare benefit particularly in the context of future investment requirements for networks that might support advanced data services.

As a result, Digicel is keen to ensure that spectrum allocation is fair, currently, unlike its mobile competitor, Digicel has no allocation in the 850 MHz HDS spectrum range and is struggling to maintain its competitive edge in a market where its competitor has allocations in both the 1900MHz and prime 850 MHz spectrum ranges.

Consultation Question 3: Please comment on the issues involving access to cell sites, towers and other passive infrastructure necessary to deploy network equipment needed for providing 4G services, for (1) existing mobile network operators, and (2) potential entrants.

(1) Existing operators:

Over the past few years, Digicel has experienced more community pressure with the implementation of new cell sites. As a consequence, government planning and regulatory bodies have had to impose additional requirements on operators. These new requirements result in delays such as (i) an 18 months delay to finalize cell site planning on one of Digicel's business critical sites and several months delay in others (ii) public consultation to address cell site health issues (iii) Multiple objection letters and hearings for each application.

The above levels of interaction from the public are welcomed by Digicel as they demonstrate an active involvement of the community in technology matters. However, these changes have not been met at the same pace with the planning process. Digicel is of the view that the deployment of network equipment could be improved if the Department of Planning put in place a system to deal with any objections from the community including timelines within which members of the community can raise their objections.

In addition matters such as potential health effects should be dealt with once and if there are issues then guidelines developed and if there are no material health grounds then objections on these grounds should be precluded.



Further, it is Digicel's view that the objection process should not be a continuous one and that the Department of Planning should not entertain several rounds of objections in perpetuity. Finite and time bounded planning processes are best practice as evidenced in many other countries. Digicel submits that a better balance should be struck between the rights of individuals to object and the rights of the wider Bermudian society and businesses to reap the benefits of such developments.

Additionally, microwave spectrum has not been rationalized by the Regulatory Authority. As a result, channels within the allocated spectrum ranges are already nearing capacity. The topography of Bermuda makes it more difficult as eventually, all points focus on each other causing interference which is difficult to control.

(2) Potential Entrants

In Bermuda, towers are basic poles and not elaborate structures built with the intention of housing multiple equipment. Therefore, the majority of existing cell sites used by operators are not practically capable of supporting colocation. The poles can only house a single operator and having multiple operators in residential premises is not practical or possible. The major reason for such cell sites is that potential landlords do not want sites that have multiple equipment or sites that are not aesthetically pleasing.

Additionally, engineering requirements regarding cell site structures may have to change. Existing cell sites, buildings and towers alike do not have the structural design to support wind loads and weights from multiples antennas in a colocation arrangement. Physical floor space will be needed to support additional equipment.

Given Bermuda's location within hurricane zones the additional strengthening required on existing structures to support colocation for additional operators is likely to be higher than the costs of building lighter structures which only have the wind load associated with a single operator.

Allied to this is the issue on network integrity where the loss of colocated sites results in all networks being simultaneously and similarly affected.

One material positive of separate installations is that there is a much higher probability of maintaining continuity of access to emergency services.



All the above would certainly mean that any new entrant would be obliged to install new cell towers. Even if this did not prove a prohibitive cost to entry barrier, the increased surface area to support all the equipment and/or increase in the number of antennas and microwaves on a single tower would have a significant detrimental aesthetic impact and compound the above mentioned interference issues. With the limited space allocated for towers, physical separation of equipment must be done to allow a third party to access the towers without causing damage to existing equipment. Further, an additional entrant will necessitate the installation of new generators as the current power backup generators already operate at maximum capacity.

Consultation Question 4: Do you have any comments on the proposed HDS assignment process and timing? Are there any additional factors that you believe the Authority should take into account?

Digicel has been keen to obtain the premium 850 MHz spectrum for many years. 850 MHz spectrum is preferred for UMTS. Digicel believes that allocation of HDS especially the 850 MHz band should be concluded within the shortest time possible, preferable within the next one (1) month. In order to continue to be competitive, Digicel has had to invest in temporary measures in order to sustain service to its customers. For example, Digicel has had to invest in cell site repeaters which are costly to purchase and install and potentially introduce interference. The expense arising from these and other temporary measures distracts from more meaningful investment which delivers longer term customer benefit on that investment as mobile revenue decreases and more value is expected by the customer.

Additional expense is incurred by Digicel as new cell sites have to be erected to provide coverage for the 1900 MHz spectrum range. Capital costs for the hardware are approximately (redacted). Ongoing operational costs for electricity (redacted) and lease fees (redacted) are significant costs which Digicel has expended, and continues to make, so as to compete with a competitor that does not incur these costs due to its spectrum allocations.

Digicel continues to be disadvantaged with the delay in allocating HDS spectrum because, unlike its competitor, who has the competitive advantage of 2 spectrum bands to support its customer base. This relative lack of spectrum also significantly diminishes Digicel's capability to effectively address the spiked needs of important events, such as the America's Cup and Cup Match degrading customer experience at times when the global spotlight is on Bermuda.



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Digicel expects that it could potentially remove sites with the allocation of 850 MHz thereby enabling better investment of the monies currently spent on remedial measure to maintain a minimal acceptable service to customers.

Digicel, like all carriers, has the obligation to make decisions on hardware lifecycle with the advent of LTE. Network planning is a process that requires careful consideration into the kind of equipment that a mobile operator must invest in and needs to be done at the earliest to facilitate engineering, hardware acquisition and deployment (which takes at least 6 months). Digicel is therefore disadvantaged as there is a high chance that it will not achieve additional carriers before the America's Cup racing in October 2015 due to the reduction of 1900 MHz spectrum in April 1st 2015 without an allocation of 850 MHz spectrum to date.

Digicel further has the obligation to provide communication services for Bermuda's emergency services. The delay in allocation of the HDS Spectrum has placed Digicel at of risk of breaching that obligation due to the inefficiencies of the 1900 MHz spectrum. Allocation of HDS has a direct impact on the range and quality of services that Digicel can offer to the emergency services and Digicel therefore welcomes a fair but short allocation process.

Lastly, a fair process of allocation, completed in the shortest time possible, enhances Digicel's ability to fairly and effectively compete in the market. It was a reasonable expectation by Digicel that after returning 5 MHz of the 1900MHz spectrum, the Authority would promptly allocate the HDS band to Digicel, especially the 850MHz band. The allocation would "level the playing field" and allow Digicel to compete on fair grounds. However, the current situation tilts the playing field in favour of Digicel's competitor. This situation is untenable and needs to be addressed by the Authority expeditiously.

If the Authority's goal is to increase retail competition then a balancing of spectrum allocations between the existing operators will yield a quicker and more sustainable result far more than promoting a new entrant.

Consultation Question 5: Please indicate which of the HDS-1 Blocks listed in Table 2 above should be made available in HDS-1, and which should be withheld for later assignment. Please provide a detailed explanation for your response.



Digicel believes that B block of the 850 MHz should be available now for use while B prime/B' can be reserved for future use. (Redacted)

Digicel believes that only B' spectrum should be withheld for future deployments and all other spectrum should be available to the current operators. Any greater allocation withheld at this time will undermine any meaningful developments to the good of Bermuda by existing operators. Further, as per Digicel's submissions to questions 2 and 3 above, any reservation for a "third entrant" would ultimately prove futile.

Further, the Minister's Spectrum Policy implements a spectrum cap of no more than 50% in any band. Digicel notes that for the 850 MHz HDS, one carrier already holds 50% of that spectrum. As the 850 MHz spectrum has been reserved for mobile, Digicel is of the view that a lengthy process is unnecessary. With regard to other HDS, Digicel maintains the view that withholding the same places unnecessary barriers on investment by incumbents and further reduces the level on innovation of new products and services that could benefit the Bermudian public.

With regard to the 700MHz band, Digicel is of the view that lower band B and lower band C should be made available immediately. (Redacted)

Consultation Question 6:

(a) Do you have any comments on the Authority's expectations in regard to delivery of the minimum average download user data rates where an operator obtains at least 2 x 10 MHz of spectrum in the 700 MHz and or 850 MHz bands?

Such demands across the board are completely unrealistic in that they do not reflect the limitations of different technologies. Data throughput on a 3G network is impacted by a range of factors wholly unrelated to spectrum alone, most significantly signal quality. The topography of Bermuda would require a far greater number of cell sites than currently located in order to maintain the signal quality to all parts of the island that would be a minimal requirement to potentially achieve the speeds demanded. Signal strength and HDS spectrum alone **will** not assure premium data rates.



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Additional factors that should be considered include (i) type of indoor dwelling structure (ii) distance and line of site of cell site (iii) time of day and demands on the sector being tested.

Digicel further notes that paragraph 52-54 of Annex A, *The Request for Applications for Assignment of Designated HDS-1 Frequencies in the 850MHz and 700MHz bands* (“Draft HDS 1 Application for Assignment Document”) proposes to have certain performance obligations. Digicel submits that 25-30Mbps is not an appropriate number for 850 MHz being used for UMTS deployment. Digicel is of the view that practically, it is not possible and should be differentiated from LTE spectrum bands. Paragraph 54 of Draft HDS 1 Application for Assignment Document refers to a “99.9% geographic coverage” obligation without clarifying whether such coverage is indoor or outdoor. Digicel would assume that such coverage obligations would refer to outdoor. Furthermore, it is not clear over what period of time the Authority proposes to make an assessment.

Paragraph 56 of Draft HDS 1 Application for Assignment Document subjects the Licensees to an obligation to deliver service quality and broadband speeds in line with international best practice but fails to give a quantitative definition of “international best practice.”

Paragraph 58 of Draft HDS 1 Application for Assignment Document gives the Authority the power to recover a portion of HDS spectrum if it is not being “utilized efficiently for immediate or eventual reassignment” but fails to clearly indicate how such an assessment will be performed. Digicel submits that clear assessment criteria should be put in place as it will enable Licensees to give a fair and reasonable response.

The Regulatory Authority proposes to commence a formal assessment of compliance with the obligation “to ensure Efficient Use of any HDS-1 Blocks....where “the Licensee’s Effective Data Traffic falls below an efficient traffic threshold” of a defined number of gigabytes. Digicel is of the view that the trigger to initiate an assessment of efficient use of HDS-1 blocks needs to be reconsidered as the view taken by the Regulatory Authority (Paragraph 61 of HDS 1 Application for Assignment Document) is one-dimensional. Digicel is of the opinion that seasonal factors will have to be taken into account for a period of at least three months prior to and then after deployment. Also, the introduction of a new carrier will more likely than not decrease the traffic levels of incumbent carriers which under the criteria as currently defined would then be penalised.



(b) How do you foresee the minimum average download user data rates affecting mobile markets in Bermuda over the next 3 to 5 years, and over the life of the spectrum licence (10 years)?

It is Digicel's considered view that the minimum average of 20 – 30Mbps (regardless of technology) downloads rates cannot realistically be imposed on a technology agnostic basis. If applied as a catch all, then it would be likely that development of services in Bermuda would be curtailed as the range over which the average is applied would likely be extensive. There would be a risk that operators might seek to focus on user dense areas to improve averages, thus creating significant disparity in speed of actual service across the island.

It would be reasonable, and appropriate, to mandate such minimum averages when applying / marketing any external facing statements of technology – on a pre-defined basis. Structured this way, there would be real benefit to the end users in Bermuda with clarity provided as to what could reasonably be expected by way of service for the price being paid and allow for more informed competitive comparison. This would also serve to encourage investment to extend reach of "better" technologies.

Consultation Question 7: Do you have any comments on the proposed timing of HDS-2 and the next tranche of HDS Frequencies that should optimally be assigned in HDS-2 (in line with your response to Consultation Question 5)? Please provide a detailed explanation for your response.

Digicel maintains that all of the bandwidth in Table 2 should be immediately available (in the year 2015), with the exception of the B'. The timing provided by the Regulatory Authority needs to be more definitive and less general. Digicel submits that most Carriers have to submit detailed business plans and capital expenditure budgets to their respective shareholders each year. Additional capital expenditure is difficult to obtain and requires additional levels of corporate signoffs and approvals. The lack of a definitive date within which the Regulatory Authority will allocate spectrum greatly hinders the operations of Carriers and their ability to budget and plan effectively, which are key factors in the successful operation of their businesses and such delay in deployment is to the detriment of customers.

In the event that the Authority makes HDS-1 allocations only, Digicel is of the view that the timetable for HDS-2 allocation should be published no later than end of 2015 to enable Carriers plan for the same in their next budgets.



Consultation Question 8: Do you have any comments on the basic structure of the HDS-1 process or the proposed timetable?

Digicel would prefer actual dates with milestones that are maintained noting that in the past, the timetables set have not been strictly adhered to making planning extremely difficult for network operators.

Consultation Question 9: Please indicate whether any additional eligibility requirements should be included as part of the registration stage of HDS-1, or if any modifications should be made to those proposed in the RFA. Please provide a detailed explanation for any proposed changes.

The applicant should have be able to demonstrate beyond reasonable doubt that they will comply with the Authority's requirement of providing 99.9% outdoor geographic coverage within the stipulated timeframes and proven mobility telecommunications experience.

Consultation Question 10: Do you have any comments on the proposed amount of the HDS-1 application fee? Please explain your answers by reference to the policy considerations set out in paragraph 116 of the Spectrum Policy Statement.

Digicel submits that the amounts proposed by the Regulator are excessive and in contravention of the Minister's Spectrum Policy, paragraph 86, which provides for a non-refundable fee in the range of \$ 10,000 to \$20,000 and not \$ 40,000.

Further, Digicel surrendered part of its spectrum holding in the 1900MHz and was under a reasonable expectation that the Regulatory Authority would make an allocation to enable Digicel effectively compete with its competitor CellOne, who have allocations in the 850MHz and 1900MHz bands. Digicel is of the view that with regard to allocation in the 850 MHz band, Digicel should not be subjected to an application fee given that the current 50% 850 MHz allocation was awarded to a Carrier for an application fee of zero. To now impose a fee for identical or lower percentage allocations is wholly disproportionate and anticompetitive. Simply stated, CellOne will not have to pay the application fee for the spectrum they have already secured and neither will other Licensees that maintained and/or were awarded spectrum in multiple bands in pursuance of matter SC-1501-2014 final decision.

Digicel would also expect that any application fee is levied as a single value for the entirety of their application and not on a per band basis.



Consultation Question 11: Do you have any comments on the proposed FCFS process or criteria?

Digicel is of the view that the FCFS assignment process contemplated in paragraph 46 of Consultation on the Criteria and Procedures for Assigning High Demand Spectrum (*"The Criteria and Procedure Document"*) should take into account spectrum band thresholds set by the Minister's Spectrum Policy, paragraph 86 (e) of Draft HDS 1 Application for Assignment Document and spectrum use. As 850 MHz band is reserved for mobile use and one of the two mobile operators already has the maximum spectrum it can hold in the 850MHz band, it follows that the 850MHz band should be subjected to the FCFS assignment process.

Digicel is of the view that any spectrum that is allocated under the FCFS assignment process should be done expeditiously and such allocations should not have to wait for applications that fall outside of the FCFS process.

Consultation Question 12: Do you have any comments on the appointment of an Advisory Panel to assist the Authority with the comparative selection process or its proposed composition?

Digicel is of the view that an advisory panel would be beneficial. We suggest that the panel comprise of independent telecommunications experts with no prior connections to any potential applicant no matter how distant. Digicel further submits that all potential panel members must declare all and any interests that they may have in any of the applicants and their affiliates and conform to section 31 of the Regulatory Authority Act.

Consultation Question 13: Do you have any comments on the proposed comparative selection procedures set out in Section 14.3.3 of the RFA?

Digicel submits that the matter of ownership is one for Government policy rather than regulatory policy and that the Authority's proposal to include this criterion is therefore inappropriate.

Consultation Question 14: Do you have any comments on the proposed Key Performance Obligations discussed in this Section that are not already covered in your response to Consultation Question 6?

Digicel has concerns with the average download user data rate of 25-30Mbps to be applied to all HDS-1 spectrums. The B blocks of 850MHz will be used for UMTS within Digicel where



average data rates of 1-2Mbps are more appropriate. (Redacted)

Additionally, Digicel expects that the Authority would apply the same rules to current operators with spectrum similar to that in HDS-1.

Digicel is of the view that for UMTS, 42Mbps is the maximum theoretical limit on a Multi-Carrier UMTS configuration with no traffic and perfect lab environment while 75Mbps is the maximum theoretical and 60Mbps is the maximum in practice given optimum radio and backhaul conditions for LTE. Digicel queries how these rates will be assessed and how often?

Consultation Question 15: Do you have any comments on the amount or structure of the indicative fines proposed in the draft RFA?

Table 3 of Draft HDS 1 Application for Assignment Document proposes excessively high fines for failure to meet Minimum Average Download User Data Rate and Coverage and Roll Out obligations outlined in paragraphs 53 and 54. Digicel has raised substantive issues with the criteria set by the Regulatory Authority; see our submission in consultation question 6 above. Digicel is of the view that the Regulatory Authority must clearly and concisely address all the issues raised to facilitate an informed discussion on the penalties. Digicel is therefore unable to substantively comment on the fines at this moment.

Consultation Question 16: Do you have any proposals for the detailed text of the Mandatory Licence Conditions, including the technical parameters for measuring compliance with the minimum average download user data rate licence condition and verification procedures?

Digicel is of the view that overly prescriptive mandatory technical requirements actually reduce the scope of competitive differentiation at the retail level. In particular Digicel does not agree with the Authority's view in paragraph 36 of the Criteria and Procedure Document, that retail competition is insufficient to "*deliver state-of-the art technologies and innovative services at a pace that is adequate or in keeping with international trends.*" The Authority provides no evidence to support this assertion. On the contrary this view is unsupported by the actual evidence from the Bermudan market which is reflective of one of the most advanced telecoms markets.

The proposal that the Authority can unilaterally impose additional requirements at some point in the future, paragraphs 56, 58 of the Criteria and Procedure Document, without explicitly setting out the conditions under which such requirements might be formulated completely



undermines any concept of legal certainty as to what obligations might attach to the licence and thus gives rise to an unquantifiable commercial and compliance jeopardy.

In respect of the proposed Net Neutrality obligations in paragraph 58 of the Criteria and Procedure Document, Digicel believes that this is inappropriate and premature. The Authority's proposal is in effect the imposition of a specific business model for the charging of broadband services. i.e. that there should be a prohibition on differentiated commercial terms for different data services.

The above is a fundamental issue which has the potential to seriously undermine the commercial viability of telecommunications investment in so called "micro-economies" such as Bermuda. There is no assessment of whether the proposed rules on net neutrality are in fact appropriate for such markets.

The lack of a substantive discussion of the issues related to net neutrality in the consultation is deeply concerning to Digicel. We note that the Regulatory Authorities in the US, Europe, India and Trinidad have all conducted or are conducting substantive processes to assess whether interventions on net neutrality are appropriate and if so what form they should take.

In making proposing these "transitional" obligations the Authority appears have pre-judged the outcome of a substantive consultation into Net Neutrality and appears to be proposing to follow a model adopted by the US. This was specific to the circumstances of the US legal system and wider US telecommunications and ICT markets. The European Union on the other hand (which also has high levels of broadband penetration, high levels of GDP and larger more developed economies) is proposing to adopt a different approach.

Regulators in emerging markets such as India and Trinidad and Tobago are adopting a much more cautious approach. This recognizes that simply following one or other big trading blocks on this issue may have serious, adverse and long term impacts on their economies. These regulators have and continue to consult on whether some services carried over the internet (so called OTT services) should be amenable to existing regulation and have refrained from market intervention.

Digicel therefore supports the view that a comprehensive consultation on issues relating to net neutrality should be completed before any obligations can be imposed on Carriers. The Authority's approach in attempting to introduce such fundamental and far reaching regulation on the market in the manner of 'basic "net neutrality" obligations' is not what one would expect from a best in class regulatory framework.



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Further Digicel notes that an attempt to attach these conditions on services carried on other already assigned spectrum is in fact a modification to previously awarded licences. Therefore one would end up with a situation where any Net Neutrality obligations would only partially apply.

The proposed rules take no account of future services such as telemedicine or other services requiring prioritization.

The proposed measures are also discriminatory in that they would only impose such obligations on operators obtaining spectrum under this award process and would not and could not attach similar obligations to operators holding existing awards in technically equivalent spectrum blocks.

Digicel believes therefore that the appropriate course is for the Authority to refrain from this partial, distortive and pre-judged market intervention until such time as it carries out a substantive consultation on the totality of the issues relating to Net Neutrality.

In respect of the proposal to introduce a contingent mobile obligation to supply wholesale Capacity, paragraph 58 (c) of the Criteria and Procedure Document Digicel believes that in this case the Authority has misdirected itself as to the law.

Section 38(5)(b) of the ECA provides that,
"The Authority may impose in a spectrum licence or permit for radio stations or apparatus, for a limited or indefinite periodthe obligation to provide one or more forms of wholesale wireless access ..."

Either the obligation is in the licence on the date of the award or it is not.

There is no scope for the Authority to modify the terms of a spectrum licence after it has been awarded. The Authority cannot confer on itself such rights to modify licences that do not otherwise exist in law.

Consultation Question 17: Do you have any comments on the proposed list of Optional Commitments? Please provide a full explanation of any proposed changes or additions.

See our comments to Consultation Question 13.



Consultation Question 18:

(a) Please provide any comments on the draft rules of conduct and confidentiality provisions of the draft RFA (Part B).

Paragraph 26 of 31 (g) of the Draft HDS 1 Application for Assignment Document hinders communication to Minister. Digicel submits that those paragraphs are in contravention of the Regulatory Authority Act. While the Minister has delegated its obligations relating to spectrum to the Regulatory Authority, the Authority remains a delegate and the Minister therefore is not precluded from *exercising or performing, at any time, any of the functions so delegated*, see section 9 (1)(b) of the Act;

Paragraph 44 of Draft HDS 1 Application for Assignment Document limits the rights if any ICOL holder to access a court. Digicel is of the opinion that paragraph 44 contravenes section 96 (1) of the RAA which gives any person aggrieved by the decision of the RA the right to appeal to the Supreme Court.

(b) Do you have any comments on other provisions of the draft RFA that are not already addressed in your comments?

The commitments in Table 5 of the Draft HDS 1 Application for Assignment Document are referred to as "optional commitments" but form the basis of points to be taken into consideration in allocating spectrum. Digicel requests clarity whether those commitments are in fact optional and whether or not they affect Licensees overall score. Digicel also notes that it has made comments about one of the commitments in the response to consultation question 13.