



BERMUDA

REGULATORY AUTHORITY (LOCKING OF CELLPHONES) GENERAL  
DETERMINATION 2014

BR 20 / 2014

The Regulatory Authority, in exercise of the power conferred by section 62 of the Regulatory Authority Act 2011, makes the following General Determination:

Citation

1 This General Determination may be cited as the Regulatory Authority (Locking of Cellphones) General Determination 2014.

General Purpose


2 This General Determination sets out the procedures and obligations ICOL Holders that provide retail and wholesale mobile telephone services to the Bermuda public including voice and data are required to adhere to from 1 March 2014. It includes the basis upon which a request to unlock a cellphone may be accepted or declined by a mobile carrier, the time within which a request to unlock a cellphone must be acted upon and provisions designed to ensure that the public are informed of these obligations by the mobile carriers.

Terms and conditions of the General Determination

3 The Schedule has effect.

SCHEDULE

(regulation 4)

 <p>BERMUDA <b>REGULATORY AUTHORITY</b></p>
<p><b>Locking of Cellphones</b></p> <p><b><u>General Determination</u></b></p> <p>Matter: C13/1562 Date: 11 February 2014</p>

## REGULATORY AUTHORITY (LOCKING OF CELLPHONES) GENERAL DETERMINATION 2014

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This General Determination is made in accordance with the Regulatory Authority Act 2011 section 62. For the reasons set out in the corresponding decision dated 11<sup>th</sup> February 2014 entitled "Cellphone Locking", and taking into account the responses received to the Consultation on this matter dated 6 August 2013 of the same title, the Regulatory Authority ('the RA') hereby determines as follows;

### 1. Definitions

1.1. In this General Determination, unless the context otherwise requires:

**"Authorized Request,"** means a request to Unlock a Cellphone made by any Person who is a current or former customer of a Mobile Carrier;

**"Cellphone"** means portable telephone that uses wireless cellular technology to send and receive phone signals and/or other data. This technology works by dividing the Earth into small regions called cells. Within each cell the wireless telephone signal goes over its assigned bandwidth to a cell tower, which relays the signal to a telephone switching network, connecting the user to the desired party;

**"Cellphone Unlocking", "Unlocking" or "Unlock"** means the process of removing the Carrier or third party installed programming placed on a Cellphone that prevents the phone from being operated on any other network such that the phone will be able to operate on any compatible network around the world;

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

**"Mobile Carrier"** means any holder of a COL servicing Bermuda's National Market for the supply of Retail mobile services, including voice and data, wholesale access and local call origination on mobile networks and/or a Bermuda's National Market for the supply of Wholesale origination of international calls on mobile networks;

**"Person"** means a natural person or any company or association or body of persons, whether corporate or unincorporated, 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; and

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

### 2. Interpretation

2.1. For the purpose of interpreting this General Determination:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them herein, the ECA, RAA and Interpretation Act 1951;
- (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, shall prevail;
- (c) terms defined herein have been capitalized;

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- (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 a document is to a 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.

This General Determination shall be construed by reference to the Consultation Document and Final Decision issued in the Public Consultation entitled "Locking of Cellphones," Matter C13/1001. Where there is any conflict between the Consultation Document and the Final Decision, the provisions of the Final Decision shall prevail. Where there is any conflict between the Final Decision and this General Determination, the provisions of this General Determination shall prevail.

### **3. Contract Remains Effective after Unlocking**

- 3.1.** For the avoidance of any doubt, the Unlocking of a Cellphone by a Mobile Carrier under this General Determination does not in any way absolve a customer from their responsibilities under a valid contract with their Mobile Carrier.

### **4. Unlock Upon Request**

- 4.1.** All Mobile Carriers shall, upon receipt of an Authorized Request, Unlock an eligible Cellphone without charge.

### **5. Unlocking Process and Response Time**

- 5.1.** Mobile Carriers shall bear full responsibility for the Unlocking process and are required to Unlock the Cellphone for a customer if requested to do so.
- 5.2.** Mobile Carriers shall Unlock eligible Cellphones within one business day of receiving an Authorized Request.
- 5.3.** If the Cellphone cannot be Unlocked or cannot be Unlocked within the required time, the Mobile Carrier is required to provide the customer with a clear and satisfactory explanation as to why the device does not qualify for Unlocking, or why additional time is needed to process the request before the end of the one day period.

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**6. Declining an Unlocking Request**

- 6.1. A Cellphone will not be eligible for Unlocking if it has been purchased or otherwise procured from a source other than a Mobile Carrier operating within Bermuda.
- 6.2. Mobile Carriers are entitled to decline a request to Unlock a Cellphone if, they have reasonable grounds upon which to believe;
- a. the request is a fraudulent and/or an unauthorized request; or
  - b. the cellphone is stolen;
  - c. the cellphone is not eligible to be unlocked;
  - d. if the customer is not current on their outstanding fees for services (provided there is no legitimate unresolved dispute concerning those outstanding fees);
  - e. there is some other good reason to refuse the request

In the event a Mobile Carrier exercises its right to decline an Unlocking request, the customer must be informed of the Mobile Carrier's decision promptly and the Mobile Carrier must state upon which ground(s) the request is being refused.

**7. Consumer Information**

- 7.1. Consumers shall have access to clear, concise, and readily available policies about Unlocking Cellphones on all Mobile Carrier websites, which shall include, at a minimum, the rights and obligations of Mobile Carriers and their customers set out in this General Determination.

**8. Date of Unlocking Implementation**

- 8.1. Mobile Carriers are required to implement Cellphone Unlocking upon request in accordance with the stipulations set out in this General Determination no later than **Saturday 1 March 2014**.

**9. Effective Date of General Determination**

- 9.1. This General Determination shall become effective on the later of the date set forth below or the date upon which this General Determination is published in the official gazette.

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Signed this 11th day of February 2014

Carl Musson  
Commissioner, Bermuda Regulatory Authority