



BERMUDA

REGULATORY
AUTHORITY

Communications Operating Licences: Exemptions and Class Licences

Consultation Summary, Final Decision, Order and
General Determination

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APPENDIX A – ORDER AND GENERAL DETERMINATION

1 EXECUTIVE SUMMARY

1. Section 74(d) of the Electronic Communications Act 2011 (“ECA”) directs the Regulatory Authority to initiate a public consultation regarding exemptions from the requirement to hold a communications operating licence (“COL”), class licences and any other type of COL that the Authority deems necessary during the moratorium period established pursuant to Section 75 of the ECA.

2. As directed by Section 74(d), the Regulatory Authority initiated this public consultation on 4 February 2013. In preparing the Consultation Document that began the consultation process, the Regulatory Authority was informed by the responses that were submitted during the pre-consultation that was conducted during October and November 2012 at the direction of the then Minister responsible for telecommunications. Accompanying the Consultation Document were copies of the proposed exemption, class licence and general determination.

3. The consultation concluded on 4 March 2013. Six parties filed responses to the Consultation Document. Upon consideration of those responses and as required by Section 74(d)(ii) of the ECA, the Regulatory Authority has prepared this Final Decision, and hereby makes, a general determination establishing exemptions from the requirement to hold a COL, class licences for the provision of various electronic communications services, and procedures governing such exemptions and class licences.

4. More specifically, the Regulatory Authority makes a general determination exempting the following persons from the obligation to obtain a COL if they operate within the requirements and limitations of the exemption:

- (a) Private Network Operators;
- (b) Value-Added Service Providers; and
- (c) Wi-Fi Service Providers.

5. An exemption from the requirement to obtain a COL does not relieve private network operators, value-added service providers and Wi-Fi service providers of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.

6. The Regulatory Authority also makes a general determination authorizing providers of the following electronic communications services to do so pursuant to a class licence:

- (a) Closed User Groups;
- (b) Electronic Communications Services Provided by Hotels, Hospitals, Prisons, Schools and Similarly Situated Institutions;
- (c) Pay Telephone Services;

- (d) Operator Services; and
- (e) Cyber Cafes.

7. Each of these class licensees will be required to register with the Regulatory Authority. Registration for a class licence does not relieve a licensee of the obligation to secure a licence for radio spectrum or a permit for radio apparatus, where permitted or required.

8. The Regulatory Authority also makes a general determination that class licensees that are required to register with the Authority do so electronically, using a form posted on the Regulatory Authority's official website. The Regulatory Authority also adopts procedures for creating new class licences, and for modifying or eliminating existing class licences. The Regulatory Authority also adopts procedures pursuant to which exemptions from the requirement to hold a licence will be created or eliminated.

9. The Regulatory Authority makes a further general determination that the networks and services that are the subject of the exemptions and class licences identified above are not "public electronic communications services" within the meaning of the ECA.

10. Finally, the Regulatory Authority concludes that the spectrum uses described by regulations issued under the Telecommunications Act 1986 ("TA86") do not constitute the provision of an electronic communications service, but rather the use of radio spectrum to communicate. As such, they require radio spectrum licences, rather than communications operating licences. The Regulatory Authority will therefore take steps to establish class radio spectrum licences (within the meaning of the ECA) for these spectrum uses.

2 LEGISLATIVE FRAMEWORK

11. In the Consultation Document, the Regulatory Authority reviewed the provisions of Section 12 of the ECA that require all operators of electronic communications networks and providers of electronic communications services (collectively referred to in the ECA as “electronic communications”) to obtain a licence.

12. The Regulatory Authority also addressed Section 14 of the ECA, which empowers the Authority to establish a licensing framework for the operation and provision of electronic communications, other than public electronic communications, by general determination.

13. The Regulatory Authority also discussed the provisions of Sections 16(2)(b) and 16(2)(c) of the ECA, which empower the Authority to grant class licences and exemptions from the obligation to obtain a COL.

14. Finally, the Regulatory Authority reviewed the interplay between Section 16(2)(d)(i), which authorizes class licences and exemptions for services which are provided on a private basis, and Section 14(d), which empowers the Regulatory Authority to make “general determinations to establish or clarify the distinction between public and private electronic communications networks and services.” In considering the import of these provisions, the Regulatory Authority was guided, as the first step in the analysis, by the ECA’s definitions of “public telecommunications service” and “public telecommunications licence.” The Regulatory Authority noted that both definitions look to the licences issued to Class A, B, and C carriers and providers of subscription audiovisual services under the TA86, as these licences will be converted into ICOLs pursuant to Section 73(3) of the ECA. The Regulatory Authority also considered the nature of the TA86 licences and the networks and services they authorize, in comparison to the types of networks and services that were the focus of the Consultation Document. Accordingly, the Regulatory Authority proposed to make a general determination that the networks and services that are the subject of the exemptions and class licences discussed below are not “public electronic communications services” within the meaning of the ECA.

15. Digicel has argued that where services are “provided for revenue . . . we think these must be public and not private services given that so many members of the public use them.” Although Digicel raised this argument both with respect to private network operators that are the subject of an exemption and electronic communications that will be authorized by a class licence, Digicel’s argument clearly applies only to the latter. Private networks may not be used by third parties, with or without compensation. The Regulatory Authority also notes that Digicel’s argument ignores the provisions of Sections 16(2)(d)(i) and 16(2)(d)(ii) of the ECA. Section 16(2)(d)(i) allows for exemptions and class licences where electronic communications are provided on a private basis; Section 16(2)(d)(ii) allows for exemptions and class licences where electronic communications are provided on other than a commercial basis, *i.e.*, other than for payment. If revenue were the only test, there would be no need for Section 16(2)(d)(i). Moreover, as noted above, the electronic communications that will be authorized pursuant to a class license differ from those public telecommunications services authorized under the TA86. The Consultation Document also noted the considerations that led the Regulatory Authority to conclude that individual services authorized by a class licence are being offered on a private rather than

a public basis. The Regulatory Authority therefore makes a general determination that the networks and services that are the subject of the exemptions and class licences discussed below are not “public electronic communications services” within the meaning of the ECA.

3 COMMUNICATIONS OPERATING LICENCE EXEMPTIONS

3.1 Introduction

16. In the Consultation Document, the Regulatory Authority proposed to make a general determination exempting the following persons from the obligation to obtain a COL if they operate within the requirements and limitations of the exemption:

- (a) Private Network Operators;
- (b) Value-Added Service Providers; and
- (c) Wi-Fi Service Providers.

17. The Regulatory Authority also tentatively concluded that an exemption from the requirement to obtain a COL would not relieve private network operators, value-added service providers and Wi-Fi service providers of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.

18. The Regulatory Authority also tentatively concluded that persons exempt from the requirement to hold a COL would not be required to register with or notify the Regulatory Authority of their operations, or to certify their compliance with the requirements of the proposed exemption. The Regulatory Authority, however, reserved the right to impose one or more of the foregoing requirements in order to monitor and ensure compliance with the terms of the exemption.

19. The comments filed in response to the Consultation Document were generally supportive of the proposed exemptions. The commenting parties, however, urged the Regulatory Authority to more clearly define the persons eligible for, and the terms and conditions of, the proposed exemptions. These suggestions are discussed below.

3.2 Private Network Operators

20. Private networks are electronic communications networks dedicated to the exclusive use of a single person. Such networks may be limited to a single office suite or span the globe. Private networks may include the provision of domestic and international voice, data and Internet services. In addition to voice and data communications, such networks can also include more specialized applications that are provided for the network operator's own use.

21. The Regulatory Authority makes a general determination that the operation of private networks does not require active regulation by the Regulatory Authority and should be exempt from the requirement to hold a COL. The Regulatory Authority also concludes that an exemption satisfies the requirements of Section 16(2)(c) of the ECA, as only the limited conditions set forth below need apply to private network operators and no Regulatory Authority or Government authorization fees are required of such operators. An exemption satisfies the requirements of: Section 16(2)(d)(i), as electronic communications are provided on a private rather than a public basis; and Section 16(2)(d)(ii), as private networks are provided on other than a commercial basis.

22. In order to ensure that private networks operate as internal networks dedicated to the exclusive use of the network operator, the Regulatory Authority concludes that an exemption for such networks should be subject to the following conditions:

Condition 1. Private networks that are operated by persons “whose principal line of business does not include the provision of electronic communications” may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained on a retail basis from licensees with an ICOL or individual COL.

Condition 2. Private networks that are operated by persons with an individual COL may self-provision network facilities other than within their own premises or campus only to the extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained from other licensees with an ICOL or an individual COL.

Condition 3. Private networks may not carry third-party communications or be operated for a profit from the provision of electronic communications services.

23. In framing Condition 1, the Regulatory Authority has taken into consideration the concerns of LinkBermuda and Quantum regarding the definition of “person” in the text of the exemption adopted by the general determination. More specifically, the Regulatory Authority has concluded that the definition of person need not include affiliates.¹ As suggested by LinkBermuda and Quantum, the exemption has been modified to reference affiliates where appropriate, such as in the definition of a private network. LinkBermuda and Quantum also expressed concern about the uncertainty created by the proposed definition of “principal line of business.” They did not articulate the basis for their concern or propose an alternative standard. The Regulatory Authority has concluded that the definition of “principal line of business” in the exemption should be retained in unmodified form.²

24. Although supportive of an exemption for private networks, Bermuda Telephone Company (“BTC”) and Logic argued that Government Departments and Boards, other than the Police and Bermuda Regiment, should not be eligible for an exemption as private network operators. In their view, ICOL holders (which are required to pay regulatory and Government authorization fees) would be effectively foreclosed from competing for “the provision of high level retail electronic communications services” to Government agencies if such agencies were permitted to operate their own private networks (funded by fees paid by ICOL holders). In the alternative, BTC and Logic argued that private networks operated by Government agencies should be required to pay the same fees as ICOL holders. The Regulatory Authority has concluded that, whatever the merits of their

¹ As now defined in Condition 1 of the Exemption, a person is “a natural person or 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.”

² As defined in Condition 3.4 of the Exemption, a person’s principal line of business includes the provision of electronic communications if it holds an individual COL or is providing electronic communications, the provision of which requires an individual COL.

economic claims, such considerations are not relevant to whether a private network operator qualifies for an exemption under the ECA. Moreover, requiring the payment of fees is inconsistent with the terms and conditions of an exemption as set forth in Section 16(2)(c)(ii) of the ECA.

25. Although conceding that private network operators should be required to obtain their “primary connectivity” from ICOL holders on a retail basis, Quo Vadis asserts that private network operators should be permitted to use their own wireless connections to connect distant premises “for disaster recovery/high availability purposes.” The Regulatory Authority concludes that the construction and operation of such facilities by private network operators outside of their premises or campus would require a COL and thus be inconsistent with the limitations of Section 75 of the ECA on the grant of additional COLs during the moratorium period. The Regulatory Authority anticipates that the competition created by the issuance of ICOLs will provide private network operators with access to electronic communications of the quality they require at competitive prices, and the Authority encourages private network operators to pursue such alternatives. The Regulatory Authority, however, recognizes that private network operators will require some time to make such alternative arrangements. The Regulatory Authority will therefore permit private network operators to continue to use such facilities for 120 days following the effective date of this general determination. The continued operation of such facilities beyond that date would be subject to penalty as an offence within the meaning of Section 61 of the ECA.

26. The Regulatory Authority, however, notes that Section 75(5)(b)(ii) of the ECA permits communications providers (not included on Schedule 1) that were providing electronic communications prior to the enactment of the ECA to apply for a new or normalized COL. The Regulatory Authority will conduct a public consultation pursuant to Section 75(5)(b)(ii)(D) to consider any such timely filed applications (*i.e.*, those filed within 150 days of the commencement of Part 12 of the ECA). Pending the completion of that public consultation, the Regulatory Authority will permit the continued provision of the electronic communications in question, but only to the extent and in the manner in which these electronic communications were provided as of the date set forth in Section 75(5)(b)(ii)(C). Applicants that are not found to qualify for a new or normalized COL must cease the provision of the electronic communications in question within 120 days of the effective date of the Regulatory Authority’s determination in that public consultation.

3.3 Value-Added Service Providers

27. Value-added services, broadly defined, are services delivered through the use of electronic communications services that employ computer processing applications that enable users to access, interact with, monitor, store, retrieve and manipulate information.

28. As set forth more fully in the Consultation Document, value-added services can be grouped into four broad categories: database access and research services; monitoring or alarm services; cloud computing or remote access data processing services; and electronic mail services. Value-added services are often provided over the public Internet, but can also be offered over dedicated wireline and wireless networks.

29. Although value-added services vary widely, electronic communications services are but one, and the least valuable, input in the provision of value-added services. Indeed, in many cases, users provide their own connectivity to value-added services through Internet access services to which they independently subscribe. In some cases, a value-added service provider may acquire the electronic communications services connecting its customers with the provider's computer centres, acting as an agent for the customer. In neither case is the value-added service provider offering electronic communications services.

30. In those cases in which a value-added service provider acquires the underlying electronic communications services, it does so in its own name and for its own use in the delivery of its services to users. There is no separate charge assessed for the use of the electronic communications component of these services.

31. Given the foregoing and the fact that communications in value-added services are generally between the user and the service provider, the Regulatory Authority makes a general determination that the provision of value-added services does not require active regulation by the Regulatory Authority and should be exempt from the requirement to hold a COL.

32. The Regulatory Authority concludes that an exemption satisfies the requirements of Section 16(2)(c) of the ECA, as no Regulatory Authority or Government authorization fees are required of such operators and only the limited conditions set forth below need apply to value-added service providers:

Condition 1. Value-added services provided by persons "whose principal line of business does not include the provision of electronic communications" may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained on a retail basis from licensees with an ICOL or individual COL.

Condition 2. Value-added services provided by persons with an individual COL may self-provision network facilities other than within their own premises or campus only to the extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained on a retail basis from other licensees with an ICOL or an individual COL.

Condition 3. Value-added service providers may not separately sell or charge for the electronic communications component of their value-added service offerings.

33. Finally, the Regulatory Authority concludes that an exemption satisfies the requirements of: Section 16(2)(d)(i) of the ECA, as value-added services are often custom-tailored and are thus "provided on a private rather than a public basis"; and Section 16(2)(d)(ii), as the electronic communications components of these offerings are generally acquired by the users of these services and, to the extent they are acquired by the value-added service provider, there is no separate charge for, or independent offering of, the electronic communications component.

34. BTC, Logic and Quo Vadis either supported or did not disagree with the exemption for value-added service providers. Quo Vadis correctly noted that value-added service providers are not selling electronic communications; rather, electronic communications are “an important enabler” of value-added services.

35. Although conceding that value-added service providers should be prohibited from acting as “de facto electronic communications providers,” Quo Vadis argued that such operators should be free to “explicitly demarcate the cost of the electronic communications component of their services.” The Regulatory Authority disagrees. As Quo Vadis has noted, communications are merely one, albeit an important, input into the bundle of inputs involved in the provision of value-added services. To allow value-added providers to separately charge for such services would open the door for such providers to market electronic communications separately from the value-added component of their offerings, thereby enabling them to become de facto carriers.

36. BTC and Logic take a somewhat different view and argue that the exemption should prohibit value-added service providers from charging for communications, “whether priced separately or in a bundle.” As noted above, the bundling of all of the inputs of value-added services will prevent such providers from operating as de facto carriers. Moreover, BTC and Logic appear to assume that the electronic communications component of value-added services are always dedicated to a single customer and thus can be obtained separately from an ICOL holder. This is not the case. The underlying communications component is often shared by multiple users and the value-added service provider itself. As a consequence, the Regulatory Authority does not accept the change proposed by BTC and Logic.

3.4 Wi-Fi Service Providers

37. Wi-Fi provides users with a wireless connection between mobile devices and an Internet connection. The use of Wi-Fi is common in residential and business settings as a substitute for wired connections to public electronic communications networks. In such circumstances, the use of Wi-Fi is part of a private network and, as discussed above, would be exempt from the obligation to hold a COL. Wi-Fi services, however, are often provided by coffee shops and other retail establishments to their patrons without charge, as well as by schools, libraries and the like. The Wi-Fi services provided by these latter organizations are the subject of this consultation.

38. Although Wi-Fi services only provide a connection between users and the public electronic communications network interface, such services constitute the provision of electronic communications service within the meaning of the ECA. Given the limited geographic coverage of Wi-Fi services and the fact that they are provided without charge to users, the Regulatory Authority makes a general determination that the provision of Wi-Fi services does not require active regulation by the Regulatory Authority and is exempt from the requirement to hold a COL.

39. The Regulatory Authority makes a further determination that an exemption satisfies the requirements of Section 16(2)(c) of the ECA, as no Regulatory Authority or Government authorization fees are required of such operators and only the limited conditions set forth below need apply to Wi-Fi service providers:

Condition 1. Wi-Fi services provided by persons “whose principal line of business does not include the provision of electronic communications” may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained on a retail basis from licensees with an ICOL or individual COL.

Condition 2. Wi-Fi services provided by persons with an individual COL may self-provision network facilities other than within their own premises or campus only to the extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained on a retail basis from other licensees with an ICOL or an individual COL.

Condition 3. Wi-Fi service providers may only provide Wi-Fi services using unlicensed radio spectrum and devices approved pursuant to Part 15 of the rules of the U.S. Federal Communications Commission.

Condition 4. Wi-Fi service providers may not impose a charge for the use of the service.

Condition 5. Wi-Fi service providers may not bundle Wi-Fi service with another electronic communications service for which a charge is imposed.

40. Finally, the Regulatory Authority concludes that an exemption satisfies the requirements of: Section 16(2)(d)(i) of the ECA, as Wi-Fi services can be characterized as being provided “on a private rather than a public basis” given the settings in which such services are provided and the limited geographic coverage of Wi-Fi services; and Section 16(2)(d)(ii), as such services are provided without charge and can be characterized as being “provided on other than a commercial basis.”

41. BTC and Logic do not disagree with the exemption of Wi-Fi service providers from the obligation to hold a COL and agree with the terms and conditions of the exemption.

4 CLASS LICENCES

4.1 Introduction

42. In the Consultation Document, the Regulatory Authority proposed to make a general determination authorizing providers of the following electronic communications services to do so pursuant to a class licence:

- (a) Closed User Groups;
- (b) Electronic Communications Services Provided by Hotels, Hospitals, Prisons, Schools and Similarly Situated Institutions;
- (c) Pay Telephone Services;
- (d) Operator Services; and
- (e) Cyber Cafes.

43. The Regulatory Authority tentatively concluded that each of these class licensees would be required to register with the Regulatory Authority. Qualifying persons that satisfy the conditions of the class licence would be able to act in accordance with the class licence after the Regulatory Authority enters the class licensee's name and contact information on the Authorizations Register.

44. The Regulatory Authority also tentatively concluded that registration for a class licence does not relieve a licensee of the obligation to secure a licence for radio spectrum or a permit for radio apparatus, where permitted or required.

45. The comments filed in response to the Consultation Document were generally supportive of the proposed class licence. The commenting parties, however, urged the Regulatory Authority to more clearly define the persons and activities eligible for the proposed class licence. These suggestions are discussed below.

4.2 Closed User Groups

46. A closed user group is a group of persons who share a common business, economic or social interest or affinity other than the need to communicate with one another. A closed user group network is, in one sense, a collective private network dedicated to the exclusive use of members of the group. A closed user group network may be operated by one member of the group, or collectively by some or all members of the group, on behalf of the entire group. In order to qualify as a closed user group, however, they may only do so on a cost-sharing basis. The network operator may not derive any profit by virtue of its role as network operator for the closed user group, other than the reduced communications costs resulting from a shared network.

47. The Regulatory Authority makes a general determination that the operation of a closed user group network constitutes the provision of electronic communications and that the operation of such networks should be authorized pursuant to a class licence. A class

licence for closed user groups satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to such groups and their provision of electronic communications are limited and can be applied generally in a manner that is administratively efficient.

48. A class licence for the operators of closed user group networks also satisfies the requirements of: Section 16(2)(d)(i), as electronic communications are provided on a private rather than a public basis; Section 16(2)(d)(ii), as closed user group networks are provided on other than a commercial basis; and Section 16(2)(d)(iii), as only closed user groups operated “by a natural person or legal entity whose principal line of business does not include the provision of electronic communications” will be eligible for a class licence.

49. The Regulatory Authority also makes a general determination that the operators of closed user groups should be subject to a registration requirement. In registering with the Regulatory Authority, the operators of closed user groups will be required to identify the members of the closed user group (including their affiliates), describe their common interest, and identify any members of the group that are involved in the operation of the network.

50. In order to ensure that closed user group networks operate in accordance with the ECA, the Regulatory Authority makes a general determination that the class licence for such networks be subject to the following conditions, all of which satisfy the requirements of Section 50 of the Regulatory Authority Act 2011 (“RAA”):

Condition 1. Closed user group networks may only consist of, and may only be operated by, persons “whose principal line of business does not include the provision of electronic communications.”

Condition 2. Closed user groups may self-provision network facilities only within the respective premises or campus of each member of the closed user group. All other electronic communications services and network facilities must be obtained on a retail basis from licensees with an ICOL or individual COL.

Condition 3. Closed user group networks may not carry third-party communications or be operated for the commercial gain of one or more members of the closed user group.

51. As noted above in connection with private network operators, LinkBermuda and Quantum raised concerns about the definitions of “person” and “principal line of business” in the class licence. The definition of person has been modified in the class licence to address their concerns. The definition of principal line of business in the exemption has been included in the class licence

52. BTC and LinkBermuda opposed the creation of a class licence for closed user groups. They argued that, while there may have been some basis for closed user groups in a monopoly environment, there is no basis for permitting such networks in a competitive marketplace. They also argued that such networks could impact the long-term viability of a competitive market, and undermine the economies of scale and scope of ICOL holders. The concerns expressed by BTC and LinkBermuda are not totally without basis if closed

user groups are abused and are used to compete unfairly with ICOL holders. It is for this reason that the Regulatory Authority concluded in the first instance to require a class licence, rather than grant an exemption, for such networks. The Regulatory Authority has also imposed a more rigorous registration requirement on closed user groups than other class licensees. The Regulatory Authority will monitor the number, composition and operations of closed user groups to determine whether the class licence should be continued for such networks. The Regulatory Authority has therefore concluded that, until such time as it gains experience with closed user groups, there should be a class licence for such groups.

53. BTC and LinkBermuda stated that they did not disagree with the terms, conditions and registration requirement for the class licence for closed user groups if the Regulatory Authority concluded that a class licence should be adopted for such networks.

54. Digicel did not take a position with respect to the merits of a class licence for closed user groups. It argued, however, that such groups should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. The Regulatory Authority notes that fees are not the subject of this consultation, and that the Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

4.3 Electronic Communications Services Provided by Hotels, Hospitals, Prisons, Schools and Similarly Situated Persons

55. Institutions such as hotels, hospitals, prisons and schools, respectively, provide their guests, patients, prisoners and students with electronic communications services, including domestic and international voice, data, audiovisual and Internet services.³

56. The Regulatory Authority makes a general determination that the provision of electronic communications services by hotels, hospitals, prisons, schools and other similar institutions constitutes the provision of electronic communications service within the meaning of the ECA and that the provision of such services should be authorized pursuant to a class licence. A class licence for such activities satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to these institutions and their provision of electronic communications are limited and can be applied generally in a manner that is administratively efficient.

57. A class licence also satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given that the clientele to which these institutions provide electronic communications services are limited to guests, patients, prisoners, students and the like, these services can be characterized as being provided “on a private rather than a public basis.” If these institutions do not assess a charge in connection with the provision of these services, they

³ The Bermuda Hospitals Board and Department of Corrections have been granted exemptions to provide such services without a licence. See Telecommunications (Bermuda Hospitals Board) Exemption Order 1999; Telecommunications (Department of Corrections’ Prisons Telephone Systems) Exemption Order 2011.

can be characterized as being “provided on other than a commercial basis.” ECA Section 16(2)(d)(ii).

58. The Regulatory Authority also makes a general determination that the members of the class should be subject to a registration requirement.

59. Government Departments and Government Boards, other than the Police and Bermuda Regiment, are subject to the class licence requirement if they engage in the activities covered by the class licence. Similarly, persons that engage in the activities described above are also obligated to register with the Regulatory Authority and comply with the class licence notwithstanding the fact the class licensee is also subject to regulation, and holds a licence, pursuant to a legislative instrument other than the ECA.

60. In order to ensure that the members of the class operate in accordance with the ECA, the Regulatory Authority also makes a general determination that the class licence for the provision of the services described above should be subject to the following conditions, all of which satisfy the requirements of Section 50 of the RAA:

Condition 1. Members of the class may only include persons “whose principal line of business does not include the provision of electronic communications.”

Condition 2. Members of the class may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained from licensees with an ICOL or individual COL.

Condition 3. Members of the class must conspicuously post on or near each telephone, data access point or television the rates that will be charged for domestic and international calls, operator-assisted calls, access to toll free numbers, Internet access, and subscription audiovisual services.

Condition 4. Members of the class may not knowingly charge for unanswered calls.

Condition 5. Members of the class must immediately connect calls to emergency services without charge.

61. BTC and LinkBermuda do not disagree with the terms, conditions and registration requirement for the class licence for hotels, hospitals, prisons, schools and other similar institutions.

62. Digicel did not take a position with respect to the merits of a class licence for hotels, hospitals, prisons, schools and other similar institutions, although it does support a registration requirement. Digicel, however, argued that such institutions should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. Digicel also noted that if these class licensees were required to report their revenues and pay fees, it would create downward pressure on the rates they charge their end-users. As the Regulatory Authority has explained above, fees are not the subject of this consultation, and the

Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

4.4 Pay Telephone Services

63. Pay telephone services are services provided from stationary telephones in public (e.g., public thoroughfares) and private (e.g., retail establishments or restaurants) locations, through which users can make domestic and international voice, data or teletext calls. Payment can be made either with currency or with credit or calling cards.

64. The Regulatory Authority makes a general determination that the provision of pay telephone services constitutes the provision of electronic communications within the meaning of the ECA and therefore requires a licence. The provision of pay telephone service in public places is limited to the holders of ICOLs.

65. The Regulatory Authority, however, concludes that the provision of pay telephone services in private locations should be authorized by a class licence. A class licence for the provision of pay telephone services in private locations satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to the provision of pay telephone services are limited and can be applied generally in a manner that is administratively efficient.

66. A class licence also satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given that pay telephones and the users of these telephones are located in private locations, these services can be characterized as being provided “on a private rather than a public basis.”

67. The Regulatory Authority also makes a general determination that the members of the class should be subject to a registration requirement.

68. The Regulatory Authority recognizes that small retail establishments and small guest houses may be providing, or may wish to provide, a single pay telephone for the use of their patrons and guests. Requiring such providers to register for a class licence would be disproportionate. The Regulatory Authority therefore waives the registration requirement for persons who operate a single pay telephone.

69. In order to ensure that providers of pay telephone services operate in accordance with the ECA, the Regulatory Authority also makes a general determination that the class licence for such providers be subject to the following conditions, all of which satisfy the requirements of Section 50 of the RAA:

Condition 1. Members of the class “whose principal line of business does not include the provision of electronic communications” may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained from licensees with an ICOL or individual COL.

Condition 2. Members of the class with an individual COL may self-provision network facilities other than within their own premises or campus only to the

extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained from other licensees with an ICOL or an individual COL.

Condition 3. Pay telephones may only be located in private locations.

Condition 4. Members of the class must conspicuously post on or near each pay telephone: (a) the charges, including surcharges, that will be incurred for domestic and international calls, operator-assisted calls, and access to toll-free numbers; and (b) the name, address and toll-free number of the pay telephone provider.

Condition 5. Members of the class may not knowingly charge for unanswered calls.

Condition 6. Members of the class must immediately connect calls to emergency services without charge.

70. BTC and Logic supported the Regulatory Authority's conclusion that the provision of pay telephone service in public places is an activity reserved to ICOL holders. With one exception, they also agreed with the terms, conditions and registration requirement for the class licence for pay telephone service. BTC and Logic, however, objected to waiving the registration requirement for class licensees with one pay telephone. They argued that registration is the only way to monitor compliance with the conditions of the class licence. As noted above, the Regulatory Authority concludes that a registration requirement for such class licenses would be disproportionate. Moreover, the complaint process is available to end-users if such class licensees fail to comply with the requirements of the class licence.

71. Digicel did not take a position with respect to the merits of a class licence for pay telephone service, although it does support a registration requirement and an exemption for class licenses with a single pay telephone. Digicel, however, argued that class licensees should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. As the Regulatory Authority has noted above, fees are not the subject of this consultation, and the Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

4.5 Operator Services

72. Operator services can take a number of forms. In the Consultation Document, the Regulatory Authority invited comment on whether two types of operator services should be authorized pursuant to a class licence: calling card services and teleconferencing services.

(a) **Calling Card Services**

73. The first group of operator services, sometimes referred to as calling card services, enable users to place domestic and international calls through any telephone, either with the assistance of a live operator or on an automated basis. Although capable of being used domestically, calling card services are generally used to make international calls. At the present time, it appears that pre-paid calling cards are being issued primarily, if not exclusively, by the operators that will ultimately hold ICOLs. It also appears that the calling card services offered by providers licensed in other countries (“foreign operators”) cannot be used in Bermuda, as access to these services appears to be blocked by one or more of the existing Class A and Class B carriers.

74. The Regulatory Authority concludes that the provision of operator services for domestic and international voice calls constitutes the provision of electronic communications service within the meaning of the ECA. The Regulatory Authority also concludes that the provision of such services is limited to holders of ICOLs and, except as noted below, the Regulatory Authority will continue this established practice, at least during the moratorium period. The Regulatory Authority, however, also concludes that the provision of operator services by foreign operators to the subscribers of those foreign operators and billed to those subscribers in their home countries should be authorized by a class licence (“Foreign Calling Card Services”). The Regulatory Authority expects ICOL holders to cooperate with such foreign operators in making any necessary local access arrangements to facilitate the provision of these services.

75. The Regulatory Authority makes a general determination that the provision of Foreign Calling Card Services constitutes the provision of electronic communications services within the meaning of the ECA and therefore requires a class licence. A class licence for these services satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to the provision of these services are limited and can be applied generally in a manner that is administratively efficient.

76. A class licence also satisfies the requirements of Section 16(2)(d)(i) of the ECA. Calling card services offered to the subscribers of foreign providers can be characterized as being provided “on a private rather than a public basis,” as these services are being provided to users temporarily visiting Bermuda.

77. The Regulatory Authority also makes a general determination that the members of the class should be subject to a registration requirement.

78. In order to ensure that providers of Foreign Calling Card Services operate in accordance with the ECA, the Regulatory Authority makes a general determination that the class licence for such providers be subject to the following conditions, all of which satisfy the requirements of Section 50 of the RAA:

Condition 1. Members of the class may only include providers of electronic communications services that hold a licence or other authorization to and, in fact, provide such services in their home country.

Condition 2. Members of the class may provide calling card services only to subscribers who obtain service from, and are billed by, the foreign service provider in their home country.

Condition 3. Members of the class may not hold an individual COL in Bermuda.

Condition 4. Members of the class may not self-provision network facilities. All electronic communications services and network facilities must be obtained pursuant to negotiated arrangements with licensees with an ICOL or individual COL.

Condition 5. Members of the class must identify themselves, verbally or otherwise, at the beginning of the call before the call is connected and billed.

Condition 6. Members of the class may not knowingly charge for unanswered calls.

Condition 7. Members of the class must immediately connect calls to emergency services without charge.

79. BTC and LinkBermuda do not disagree with the terms, conditions and registration requirement for the class licence for Foreign Calling Card Services.

80. Digicel did not take a position with respect to the merits of a class licence for Foreign Calling Card Services, although it does support a registration requirement. Digicel, however, argued that class licensees should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. As the Regulatory Authority has noted above, fees are not the subject of this consultation, and the Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

(b) Teleconferencing Services

81. The second group of operator services, sometimes referred to teleconferencing or conference call services, include the provision of on-demand and pre-scheduled multi-party voice, data and video domestic and international conference calls. Such conference call services can be provided on either a subscription or one-off basis, in the latter case using calling cards or commercial credit cards.

82. The Regulatory Authority concludes that conference calling services constitute the provision of electronic communications services within the meaning of the ECA. The Regulatory Authority makes a general determination that the provision of voice, data and video conference call services requires a class licence. A class licence for these services satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to the provision of these services are limited and can be applied generally in a manner that is administratively efficient.

83. The Regulatory Authority also concludes that a class licence also satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given the nature of today's sophisticated conference call services and the limited group of persons who use them, teleconferencing services can be characterized as being provided "on a private rather than a public basis."

84. The Regulatory Authority also makes a general determination that the members of the class should be subject to a registration requirement.

85. In order to ensure that providers of teleconferencing services operate in accordance with the ECA, the Regulatory Authority makes a general determination that the class licence for such providers should be subject to the following conditions, all of which satisfy the requirements of Section 50 of the RAA:

Condition 1. Members of the class "whose principal line of business does not include the provision of electronic communications" may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained from licensees with an ICOL or individual COL.

Condition 2. Members of the class with an individual COL may self-provision network facilities other than within their own premises or campus only to the extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained from other licensees with an ICOL or an individual COL.

Condition 3. Members of the class must identify themselves, verbally or otherwise, at the beginning of the conference call before the call is connected and billed. Members of the calls must also provide a mechanism to inform callers of the price of the conference call, including any surcharges, before the call is connected and billed.

Condition 4. Members of the class may not knowingly charge for unanswered calls.

Condition 5. Members of the class must immediately connect calls to emergency services without charge.

86. BTC and LinkBermuda do not disagree with the terms, conditions and registration requirement for the class licence for teleconferencing services.

87. Digicel did not take a position with respect to the merits of a class licence for teleconferencing services, although it does support a registration requirement. Digicel, however, argued that class licensees should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. As the Regulatory Authority has noted above, fees are not the subject of this consultation, and the Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

4.6 Cyber Cafes

88. Cyber cafes or, as they are sometimes called, Internet cafes vary widely in terms of the services and equipment they make available to consumers. At a minimum, Cyber cafes provide access to personal computers, from which users can access the services of the Internet service provider to which they have previously subscribed. Others provide Internet access service and voice telephony.

89. The Regulatory Authority makes a general determination that Cyber cafes that provide their patrons with Internet services and voice telephony are engaged in the provision of electronic communications services within the meaning of the ECA and therefore require a licence. A class licence for such activities satisfies the requirements of Section 16(2)(b) of the ECA. More specifically, the conditions that should be applicable to Cyber cafes and their provision of electronic communications are limited and can be applied generally in a manner that is administratively efficient.

90. A class licence also satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given that Cyber cafes are private establishments, the Regulatory Authority makes a general determination that these services are being provided “on a private rather than a public basis.”

91. The Regulatory Authority also makes a general determination that the members of the class should be subject to a registration requirement.

92. In order to ensure that Cyber cafes operate in accordance with the ECA, the Regulatory Authority makes a general determination that the class licence for Cyber cafes should be subject to the following conditions, all of which satisfy the requirements of Section 50 of the RAA:

Condition 1. Members of the class “whose principal line of business does not include the provision of electronic communications” may self-provision network facilities only within their own premises or campus. All other electronic communications services and network facilities must be obtained from licensees with an ICOL or individual COL.

Condition 2. Members of the class with an individual COL may self-provision network facilities other than within their own premises or campus only to the extent authorized by the terms of their individual COL. All other electronic communications services and network facilities must be obtained from other licensees with an ICOL or an individual COL.

Condition 3. Members of the class must conspicuously post on or near each computer (or electronically within the initial log-on screen) or telephone the charges, including surcharges, that will be incurred for Internet access and, if provided, domestic and international calls, operator-assisted calls, and access to toll free numbers.

93. With one exception, BTC and Logic did not disagree with the terms, conditions and registration requirement for the class licence for Cyber cafes. They argued that the class

licence should be modified to limit the voice telephony services that can be offered by Cyber cafes to IP voice telephony services. The Regulatory Authority notes that, even if the class licence were so limited, Cyber cafes would be free to register for a pay telephone class licence, thus enabling them to provide other than IP voice telephony. The Regulatory Authority therefore concludes that no purpose would be served by limiting the class licence for Cyber cafes to IP voice telephony, other than to increase the administrative burden on the class licensee and the Authority.

94. Digicel did not take a position with respect to the merits of a class licence for Cyber cafes, although it does support a registration requirement. Digicel, however, argued that class licensees should be required to pay regulatory and Government authorization fees if their revenues exceed a pre-determined threshold established by the Regulatory Authority. As the Regulatory Authority has noted above, fees are not the subject of this consultation, and the Authority will revisit the obligation of class licensees to pay regulatory and Government authorization fees during the work plan and budget consultation for the next financial year.

5 PROCEDURAL REQUIREMENTS; COMPLIANCE

5.1 Registration Process and Requirements

95. The Regulatory Authority makes a general determination that class licensees that are required to register with the Authority do so electronically, using a form posted on the Regulatory Authority's official website. The class licensee will be required to provide the following information: (a) name; (b) address; (c) telephone number, fax number and/or email address; (d) the class licence for which it is registering; (e) a certification that the service provider meets the eligibility requirements for the class licence; and (f) a certification that the service provider will comply with all conditions of the class licence. A closed user group network will also be required to (a) identify all members of the closed user group, including their affiliates, (b) describe the common interest of the members of the group, and (c) identify the members of the group that are involved in the operation of the network.

96. Registration for a class licence does not relieve a licensee of the obligation to secure a licence for radio spectrum or a permit for radio apparatus, where required.

97. The Regulatory Authority will, within 15 days of the receipt of a registration form, add the class licensee to the Authorizations Register, issue an order rejecting the registration, or request additional information needed to determine whether the service provider is eligible for the class licence. The Regulatory Authority will provide public notice of the filing of registrations as well as orders rejecting a registration, as suggested by the commenting parties. Although interested parties will be free to comment upon registration applications, the Regulatory Authority does not envision the conduct of formal proceedings with respect to registrations for class licenses. Registration will become effective when the Regulatory Authority adds the class licensee's name and contact information to the Authorizations Register, which will be posted on the Authority's official website.

98. During the moratorium period, class licensees will be required to submit an annual statement that: (1) confirms (or updates) the licensee's contact information; (2) certifies that the licensee continues to meet the eligibility requirements for the class licence; and (3) certifies that the licensee has complied, and will continue to comply, with all conditions of the class licence. The Regulatory Authority anticipates revisiting these requirements at the conclusion of the moratorium period.

5.2 Suspension and Revocation of a Service Provider's Status as a Class Licensee

99. The Regulatory Authority makes a general determination regarding the procedures governing the suspension and revocation of an individual service provider's status as a class licensee. Specifically, the Regulatory Authority will suspend or revoke the status of an individual service provider as a class licensee where the Authority concludes that the licensee has: (a) made false statements of material facts, committed fraud or made a misrepresentation in the registration statement or in its subsequent certifications; (b) failed to comply with the terms of the class licence and the applicable regulatory framework; or (c) failed to pay to the Regulatory Authority any Government authorization fees, Regulatory Authority fees or make any other required payment.

100. Prior to suspending or revoking an individual service provider's status as a class licensee, the Regulatory Authority will provide the class licensee with written notice specifying: (a) the action that the Regulatory Authority proposes to take; (b) the factual and legal basis on which the Regulatory Authority proposes to take the proposed action; (c) the time frame within which the class licensee may submit a written response regarding the proposed action; (d) the actions that the class licensee must take to avoid suspension or revocation, and (e) the timeframe in which such actions must be taken. The Regulatory Authority will provide public notice of such actions. Although interested parties will be free to comment, the Regulatory Authority does not envision the conduct of formal public proceedings with respect to notices of suspension or revocation.

101. After considering the class licensee's submission, the Regulatory Authority, pursuant to a vote of the Board of Commissioners, will issue a written order, which will be served on the licensee and posted on the official website. In any case in which the Authority revokes an individual service provider's status as a class licensee, the revocation will not become effective until at least ten days after publication of the order on the Regulatory Authority's official website.

102. BTC and Logic do not disagree with the procedures set forth above.

5.3 Process for Creating, Modifying or Eliminating Class Licences

103. The Regulatory Authority makes a general determination regarding the procedures for creating, modifying or eliminating class licences. Any such action will apply to all members of the class. This process may be initiated by the Regulatory Authority, pursuant to a vote of the Board of Commissioners, either on its own motion or at the request of a sectoral participant. In any case in which a sectoral participant makes the request, the sectoral participant will be required to follow the procedures specified in the Regulatory Authority's Administrative Rules for requesting initiation of a public consultation in order to adopt an administrative determination.

- (a) **Procedures for creating a new class licence.** As the market develops, the Regulatory Authority may wish to issue class licences for additional categories of electronic communications services. Prior to doing so, the Regulatory Authority will conduct a public consultation, pursuant to the procedures specified in the Regulatory Authority's Administrative Rules. Specifically, the Regulatory Authority will issue a consultation document that specifies: (a) the characteristics of the proposed class licensees; (b) the proposed conditions applicable to all class licensees; (c) the basis on which the Regulatory Authority has tentatively concluded that the class meets the requirements of Section 16(2)(d) of the ECA; and (d) whether the Regulatory Authority proposes to require class members to notify or register before they are authorized to provide service.
- (b) **Procedures for modifying an existing class licence.** As the market develops, the Regulatory Authority may wish to modify an existing class licence. For example, the Regulatory Authority may wish to refine the definition of the members of the class or to add to, remove or modify the conditions contained in the existing class licence. Prior to modifying an existing class licence, the Authority will conduct a public consultation, pursuant to the procedures specified

in the Regulatory Authority's Administrative Rules. Specifically, the Authority will issue a consultation document that specifies: (a) the proposed modification to be made to the class licence; (b) the justification for the proposed modification; (c) the basis on which the Regulatory Authority has tentatively concluded that the changes to the class licence will continue to meet the requirements of Section 16(2)(d) of the ECA; and (d) the basis on which the Regulatory Authority has tentatively concluded that any proposed new conditions are consistent with the requirements of Section 50 of the RAA. In addition to publishing the consultation document on the official website, the Regulatory Authority will serve notice on each member of the class listed on the Authorizations Register.

- (c) **Procedures for eliminating a class licence.** Over time, the Regulatory Authority may conclude that a service being provided pursuant to a class licence should, instead, either be exempt from licensing or provided pursuant to an individual licence. Prior to eliminating an existing class licence, the Regulatory Authority will conduct a public consultation pursuant to the procedures specified in the Regulatory Authority's Administrative Rules. Specifically, the Regulatory Authority will issue a consultation document that specifies: (a) the justification for the proposed elimination of the class licensee; (b) the basis on which the service can be provided after the elimination of the class licensee (*i.e.*, pursuant to an exemption or an individual licence); and (c) the basis on which the Authority has tentatively concluded that the grant of an exemption or an individual licence is consistent with Section 16(2) of the ECA. In addition to publishing the consultation document on the official website, the Regulatory Authority will serve notice on each class licensee listed on the Authorizations Register.

104. In each case, following the public consultation, the Regulatory Authority will issue a general determination.

105. BTC and Logic do not disagree with the procedures set forth above.

5.4 Process for Creating or Eliminating Licence Exemptions

106. The Regulatory Authority makes a general determination regarding the procedures pursuant to which exemptions from the requirement to hold a communications operating licence will be created or eliminated. If the Regulatory Authority decides to require a class licence for an electronic communication service which is currently subject to an exemption, the procedure set forth in section 5.3(a) above will be followed. If the Regulatory Authority decides to grant an exemption for a service for which a class licence is currently required, the procedure set forth in section 5.3(c) above will apply. Finally, if the Regulatory Authority identifies new electronic communications for which an exemption may be appropriate, the Regulatory Authority proposes to issue a consultation document that specifies: (a) the specific characteristics of the services for which the proposed exemption is to be granted; (b) the justification for the proposed exemption; and (c) the basis on which the Regulatory Authority has tentatively concluded that the exemption is consistent with Section 16(2)(c) of the ECA.

107. The process may be initiated by the Regulatory Authority, pursuant to a vote of the Board of Commissioners, either on its own motion or at the request of a sectoral

participant. In any case in which a sectoral participant makes the request, the participant will be required to follow the procedures specified in the Regulatory Authority's Administrative Rules for requesting initiation of a public consultation in order to adopt an administrative determination. Following the public consultation, the Regulatory Authority will issue a general determination.

108. BTC and Logic do not disagree with the procedures set forth above.

5.5 Compliance

109. The Regulatory Authority recognizes that, upon the adoption of an exemption and class licence regulatory regime, industry will require a reasonable amount of time within which to comply with the new requirements. The Regulatory Authority concludes that, except as set forth in paragraphs 25 and 26 above, it would be reasonable to expect industry to comply with the new regulatory framework within 90 days of the effective date of the general determination.

110. BTC and Logic do not disagree with the 90-day period within which industry must comply with the new exemption and class licence regulatory regime.

6 SPECTRUM USES

111. Regulations issued under the TA86 require the licensing of a variety of spectrum uses. These include:⁴

- (a) Class Three Radio (Amateur Service) Regulations 1987;⁵
- (b) Class Eight Radio (Personal Radio Service) Regulations 1988;⁶
- (c) Class Nine Radio (Maritime Mobile Service) Regulations 1988;⁷ and
- (d) Class Eleven Radio (Aeronautical and Maritime Land Services) Regulations 1987.⁸

112. The Wireless Telegraphy (Licence) Regulations 1961⁹ and Wireless Telegraphy (Exemption from Licensing) Regulations 1967¹⁰ also address these uses. Section 79(1) of the ECA provides that these regulations will remain in full force and effect until such time as the Minister or the Regulatory Authority amends, revokes or otherwise makes dispositions in respect of these regulations.

113. The Regulatory Authority conclude that most, if not all, of the spectrum uses described by these regulations do not constitute the provision of an electronic communications service, but rather the use of radio spectrum to communicate. As such, they do not require communications operating licences. Such a conclusion is consistent with practice under the TA86, in which operating licences were not issued for these spectrum uses. Under the TA86, however, these uses did require radio spectrum licences. The same conclusion is required by the ECA.

⁴ Although Class Five Radio (Small Craft) and Class Six Radio (Aeronautical Mobile Services) spectrum uses are addressed by the Wireless Telegraphy (Licence) Regulations, no regulations for these uses have been promulgated under the TA86. They may be the subject of a future consultation by the Regulatory Authority.

⁵[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Three%20Radio%20\(Amateur%20Service\)%20Regulations%201987.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Three%20Radio%20(Amateur%20Service)%20Regulations%201987.pdf).

⁶[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Eight%20Radio%20\(Personal%20Radio%20Service\)%20Regulations%201988.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Eight%20Radio%20(Personal%20Radio%20Service)%20Regulations%201988.pdf).

⁷[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Nine%20Radio%20\(Maritime%20Mobile%20Service\)%20Regulations%201988.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Nine%20Radio%20(Maritime%20Mobile%20Service)%20Regulations%201988.pdf).

⁸[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Eleven%20Radio%20\(Aeronautical%20and%20Maritime%20Land%20Services\)%20Regulations%201987.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Class%20Eleven%20Radio%20(Aeronautical%20and%20Maritime%20Land%20Services)%20Regulations%201987.pdf).

⁹[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Wireless%20Telegraphy%20\(Licence\)%20Regulations%201961.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Wireless%20Telegraphy%20(Licence)%20Regulations%201961.pdf).

¹⁰[http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Wireless%20Telegraphy%20\(Exemption%20from%20Licensing\)%20Regulations%201967.pdf](http://www.bermulalaws.bm/Laws/Consolidated%20Laws/Wireless%20Telegraphy%20(Exemption%20from%20Licensing)%20Regulations%201967.pdf).

114. The Regulatory Authority concludes that class radio spectrum licences (within the meaning of the ECA) would be appropriate for most, if not all, of the spectrum uses identified above. Given the nature of these spectrum uses, a registration requirement would be essential. Unlike the registration requirement for the class operating licences discussed above, the Regulatory Authority envisions that registration for these class spectrum licences would be a more robust requirement.

115. The Regulatory Authority also concludes that the exemption provided by the Wireless Telegraphy (Exemption from Licensing) Regulations 1967 should be continued.

116. The Regulatory Authority anticipates initiating one or more public consultations to address the regulations set forth above. In addition to conforming these regulations to the new regulatory framework established by the RAA and ECA, the Regulatory Authority anticipates a comprehensive review of these regulations and instruments to determine whether and how they should be revised to further implement the regulatory reform process initiated by these Acts.

7 CONCLUSION

117. In furtherance of the conclusions set forth above, the Regulatory Authority adopts the General Determination set forth in Appendix A.

APPENDIX A – ORDER AND GENERAL DETERMINATION



BERMUDA
**REGULATORY
AUTHORITY**

Communications Operating Licences: Exemptions and Class Licences

Order
Matter: C13/03

1. The Regulatory Authority, pursuant to Section 62 of the Regulatory Authority Act 2011 and Sections 9, 14, 16, 17 and 74 of the Electronics Communications Act 2011, hereby:

(a) Adopts the General Determination, attached hereto, exempting certain providers of electronic communications from the requirement to hold a communications operating licence, establishing a Class License for the provision of certain electronic communications services, and prescribing associated procedures;

(b) Directs the Chief Executive of the Regulatory Authority to forward the General Determination to the Cabinet Secretary; and

(c) Makes the General Determination effective on the date of its publication in the Gazette.

2. So ordered this 29th day of April 2013.



BERMUDA
**REGULATORY
AUTHORITY**

Communications Operating Licences: Exemptions and Class Licences

General Determination
Matter: C13/03

This General Determination is made by the Regulatory Authority pursuant to Section 62(1) of the Regulatory Authority Act 2011, and in accordance with Sections 14(b) and 16(2) of the Electronic Communications Act 2011, and establishes: an Exemption for certain providers of Electronic Communications from the requirement to hold a communications operating licence, as set forth in Attachment A; a Class Licence, as set forth in Attachment B; and certain associated procedures.

I. DEFINITIONS

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

“Affiliate” means any entity that owns, or is owned by, another entity, as evidenced by the ownership of 25 per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an agreement or arrangement of any type;

“Class Licensee” means a Person who is entered on the Authorizations Register by the Regulatory Authority;

“Closed User Group” means a group of Persons who share a common business, economic or social interest or affinity, other than the need to communicate with one another or the provision of Electronic Communications;

“ECA” means the Electronic Communications Act 2011;

“Official Website” means the website established by the Regulatory Authority pursuant to Section 18 of the RAA;

“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; and

“RAA” means the Regulatory Authority Act 2011.

II. INTERPRETATION

2. 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 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 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.

3. This General Determination shall be construed by reference to the Consultation Document and Final Decision issued in the Public Consultation entitled “Communications Operating Licences: Exemptions and Class Licences,” Matter C13/3. 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.

III. LEGISLATIVE BACKGROUND AND PURPOSE

4. Section 62(1) of the RAA authorises the Regulatory Authority to make General Determinations in order to carry out the provisions and purposes of the RAA.

5. Section 12 of the ECA requires all operators of Electronic Communications Networks and all providers of Electronic Communications Services (collectively, “Electronic Communications”), within the territorial limits of Bermuda or between Bermuda and another country, to secure a licence.

6. In accordance with the ECA’s licensing framework, not all providers of Electronic Communications are subject to the same licensing requirements. Sections 16(1)(a) and (b) of the ECA provide for two categories of communications operating licences (“COLs”):

- (a) COLs (including Integrated Communications Operating Licences (“ICOLs”)) granted to individual Licensees; and
- (b) Class COLs (or Class Licences), which are licences granted to Persons that meet the requirements of a particular class.

Section 16(1)(c) of the ECA empowers the Regulatory Authority to grant exemptions from the requirement to hold a COL. Section 16(2)(c) of the ECA authorizes the Regulatory Authority to grant exemptions from the requirement to hold a COL if:

- (a) no conditions, or only limited conditions, need apply to the exempted group of communications providers or the provision of the exempted type or types of Electronic Communications; and
- (b) no Regulatory Authority Fees or Government Authorization Fees are required in respect of the exempted providers of Electronic Communications.

7. Section 14(b) of the ECA empowers the Regulatory Authority to establish a licensing framework for the operation and provision of Electronic Communications, other than Public Electronic Communications, by General Determination establishing eligibility criteria, terms and conditions and applicable procedures.

8. In accordance with Sections 62(2) and 69(1) of the RAA, the Regulatory Authority is required to conduct a Public Consultation in order to adopt an Administrative Determination.

9. In accordance with Section 70(1) of the RAA, the Regulatory Authority published a consultation document entitled "Communications Operating Licences: Exemptions and Class Licences" on 4 February 2013, thereby initiating a Public Consultation inviting stakeholders and interested parties for their comments on: a draft Exemption of certain providers of Electronic Communications from the requirement to hold a communications operating licence, a draft Class Licence, and a draft General Determination that appeared respectively as Appendix A, Appendix B and Appendix D to the consultation document. The Public Consultation was closed on 4 March 2013. In accordance with Section 72(4) of the RAA, the Regulatory Authority published a Final Decision in the Public Consultation, setting out its conclusions regarding the issues raised during the Public Consultation process.

10. This General Determination adopts the Exemption of certain providers of Electronic Communications from the requirement to hold a communications operating licence and the Class Licence that appear respectively as Attachment A and Attachment B. It also adopts procedures associated with both the Exemption and Class Licence.

IV. MAIN PROVISIONS

1. Determination on the adoption of the Exemption of certain providers of Electronic Communications from the requirement to hold a COL and on the adoption of a Class Licence

11. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 14(b) and 16(2) of the ECA, the Regulatory Authority hereby determines that the Exemption of certain providers of Electronic Communications from the requirement to hold a communications operating licence and the Class Licence that appear respectively as Attachment A and Attachment B are adopted.

2. Procedures that apply with respect to the creation or elimination of a licence exemption

12. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 14(b) and 16(2) of the ECA, the Regulatory Authority also determines that the following procedures will apply with respect to the creation or elimination of an exemption from the requirement to hold a COL.

13. In the case that the Regulatory Authority decides to grant an exemption for a service for which a Class Licence is currently required, the procedure set forth below in Paragraphs 43 – 47 will apply.

14. In the case that the Regulatory Authority decides to require a Class Licence for an Electronic Communications Service which is currently subject to an exemption, the procedure set forth in Paragraphs 48 – 50 will apply.

15. In the case that the Regulatory Authority identifies new Electronic Communications with respect to which it considers that an exemption may be granted, it will issue a consultation document that specifies:

- (a) the specific characteristics of the services for which the proposed exemption is to be granted;
- (b) the justification for the proposed exemption; and
- (c) the basis on which the Regulatory Authority has concluded that that the exemption is consistent with Section 16(2)(c) of the ECA.

16. The procedures for the creation or elimination of an exemption as outlined above may be initiated by the Regulatory Authority, pursuant to a vote of the Board, either on its own motion or at the request of a Sectoral Participant. In any case in which a Sectoral Participant makes the request, the Sectoral Participant will be required to follow the procedures specified in the Regulatory Authority's Administrative Rules for requesting initiation of a Public Consultation in order to adopt an Administrative Determination.

17. The Regulatory Authority will issue a General Determination following the conclusion of the Public Consultation.

3. Procedures that apply with respect to registration and the creation, modification or elimination of a Class Licence

18. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 14(b) and 16(2) of the ECA, the Regulatory Authority determines that the following procedures shall apply with respect to registration and the creation, modification or elimination of a Class Licence:

(i) Registration process

19. A registration requirement will enable the Regulatory Authority to monitor compliance with the class-specific conditions as set out in Annexes A – E of the Class Licence.

20. Therefore, all Class Licensees satisfying the eligibility criteria as also set out in Annexes A – E of the Class Licence will be subject to a registration requirement. The registration requirement will not apply to Persons that operate a single pay telephone.

21. A Person that is required to register with the Regulatory Authority to obtain a Class Licence will do so electronically, using a form posted on the Official Website.

22. When registering, a Person will provide the following information:

- (a) name;
- (b) address;

- (c) telephone number, fax number and/or email address;
- (d) the Class Licence for which it is registering;
- (e) a certification that the Person meets the eligibility requirements for the Class Licence; and
- (f) a certification that the Person will comply with all conditions of the Class Licence.

23. In addition to the information required pursuant to Paragraph 22, a Person that seeks to register for a Class Licence to participate in or operate a Closed User Group network will:

- (a) identify all members of the Closed User Group, including their Affiliates;
- (b) describe the common interest of the members of the Closed User Group; and
- (c) identify the members of the Closed User Group that are involved in the operation of the network.

24. For the avoidance of doubt, registration for a Class Licence does not relieve a Licensee of the obligation to secure a licence or permit for Radio Spectrum, Radio Stations or Radio Apparatus.

25. Within five business days of receipt of the registration form, the Regulatory Authority will provide public notice of the filing on the Official Website.

26. Interested parties may submit written comments regarding a registration application within seven days after the Regulatory Authority has provided public notice.

27. Within fifteen days of the receipt of a registration form, the Regulatory Authority will take one of the following actions:

- (a) add the Class Licensee to the Authorizations Register;
- (b) issue an order rejecting the registration; or
- (c) request additional information needed to determine whether the Person is eligible for the Class Licence.

28. The Regulatory Authority will provide public notice, on the Official Website, in any case in which it issues an order rejecting a registration.

29. Registration will become effective when the Regulatory Authority adds the Class Licensee's name and contact information to the Authorizations Register.

30. Unless the Regulatory Authority directs otherwise, Class Licensees will be required to submit an annual statement that:

- (a) confirms (or updates) the Class Licensee's contact information;
- (b) certifies that the Class Licensee continues to meet the eligibility requirements for the Class Licence; and

- (c) certifies that the Class Licensee has complied, and will continue to comply, with all conditions of the Class Licence.

(ii) Suspension and revocation of a Person's status as a Class Licensee

31. The Regulatory Authority will suspend or revoke the status of a Person as a Class Licensee when it concludes that the Class Licensee has:

- (a) made false statements of material facts, committed fraud or made a misrepresentation in the registration statement or in its subsequent certifications;
- (b) failed to comply with the terms of the Class Licence and the Applicable Regulatory Framework; or
- (c) failed to pay to the Regulatory Authority any Government Authorization Fees or Regulatory Authority Fees or make any other required payment.

32. Prior to suspending or revoking a Person's status as a Class Licensee, the Regulatory Authority will provide the Class Licensee with written notice specifying:

- (a) the action that the Regulatory Authority proposes to take;
- (b) the factual and legal basis on which the Regulatory Authority proposes to take the proposed action;
- (c) the time frame within which the Class Licensee may submit a written response regarding the proposed action;
- (d) the actions that the Class Licensee must take to avoid suspension or revocation; and
- (e) the timeframe in which such actions must be taken.

33. The Regulatory Authority will provide public notice, on the Official Website, that it intends to suspend or revoke a Person's status as a Class Licensee.

34. The Regulatory Authority will post a copy of the Class Licensee's response on the Official Website. The Class Licensee may request confidential treatment in the manner specified in the Regulatory Authority's Administrative Rules.

35. Interested parties may submit written comments regarding the Regulatory Authority's proposed suspension or revocation of a Person's status as a Class Licensee within seven days after the date on which the Regulatory Authority posts the Class Licensee's response on the Official Website.

36. After considering the Class Licensee's submission and any comments filed, the Regulatory Authority, pursuant to a vote of the Board, will issue a written order, which will be served on the Class Licensee and posted on the Official Website.

37. In any case in which the Regulatory Authority revokes a Person's status as a Class Licensee, the revocation will not become effective until at least ten days after publication of the order on the Official Website.

(iii) Modification of an existing Class Licence

38. The Regulatory Authority may modify an existing Class Licence.
39. Prior to modifying an existing Class Licence, the Regulatory Authority will conduct a Public Consultation, pursuant to the procedures specified in the Regulatory Authority's Administrative Rules.
40. The Regulatory Authority will issue a consultation document that specifies:
- (a) the proposed modification to be made to the Class Licence;
 - (b) the justification for the proposed modification;
 - (c) the basis on which the Regulatory Authority has tentatively concluded that the changes to the Class Licence will continue to meet the requirements of Section 16(2)(d) of the ECA; and
 - (d) the basis on which the Regulatory Authority has tentatively concluded that any proposed new conditions are consistent with the requirements of Section 50 of the RAA.
41. At the same time that the Regulatory Authority posts the consultation document on the Official Website, it will serve notice on each member of the class listed on the Authorizations Register in the manner specified in the Regulatory Authority's Administrative Rules.
42. Following the Public Consultation, the Regulatory Authority will issue a General Determination specifying the modifications to be made and the date on which they will become effective.

(iv) Elimination of a Class Licence

43. The Regulatory Authority may eliminate an existing Class Licence.
44. Prior to eliminating an existing Class Licence, the Regulatory Authority will conduct a Public Consultation pursuant to the procedures specified in the Regulatory Authority's Administrative Rules.
45. The Regulatory Authority will issue a consultation document that specifies:
- (a) the justification for the proposed elimination of the Class Licence;
 - (b) the basis on which the service can be provided after the elimination of the Class Licence; *i.e.*, pursuant to an exemption or an Individual Licence; and
 - (c) the basis on which the Regulatory Authority has tentatively concluded that that the grant of an exemption or an Individual Licence is consistent with Section 16(2) of the ECA.
46. At the same time that the Regulatory Authority posts the consultation document on the Official Website, it will serve notice on each member of the class listed on the

Authorizations Register in the manner specified in the Regulatory Authority's Administrative Rules.

47. Following the Public Consultation, the Regulatory Authority will issue a General Determination stating the date on which the Class Licence will be eliminated.

(v) Creation of a new Class Licence

48. The Regulatory Authority may create a new Class Licence.

49. Prior to creating a new Class Licence, the Regulatory Authority will issue a consultation document that specifies:

- (a) the characteristics of the proposed Class Licensees;
- (b) the proposed conditions applicable to all Class Licensees;
- (c) the basis on which the Regulatory Authority has tentatively concluded that the class meets the requirements of Section 16(2)(d) of the ECA; and
- (d) whether the Regulatory Authority proposes to require class members to notify or register before they are authorized to provide service.

50. Following the Public Consultation, the Regulatory Authority will issue a General Determination that specifies:

- (a) the characteristics of the class;
- (b) the conditions applicable to all Class Licensees;
- (c) any notification or registration requirement with which Class Licensees must comply; and
- (d) the date on which the new Class Licence will become effective.

IV. EFFECTIVE DATE; COMPLIANCE

51. This General Determination will become effective on the date on which it is published in the Gazette.

52. Persons that provide Electronic Communications pursuant to the Exemption must be in compliance with the Conditions of the Exemption no later than 90 days after the effective date of this General Determination. Persons that provide Electronic Communications pursuant to the Class Licence must register with the Regulatory Authority no later than 90 days after the effective date of this General Determination. Persons that provide Electronic Communications pursuant to the Exemption or Class Licence that are currently operating facilities outside of their premises or campus not authorized by a COL must discontinue the use of such facilities within 120 days of the effective date of this General Determination or, if such a Person has applied for a new or normalized COL, within 120 days of the date on which the Regulatory Authority determines that the Person does not qualify for a new or normalized COL.

Attachment A



BERMUDA

REGULATORY
AUTHORITY

**Exemption From Requirement
to Hold a Communications Operating
Licence**

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1 DEFINITIONS

In this Exemption, unless the context otherwise requires:

“**Affiliate**” means any entity that owns, or is owned by, another entity, as evidenced by the ownership of 25 per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an agreement or arrangement of any type;

“**Campus**” means a contiguous parcel of land, not separated by public or private land, on which one or more structures may be located;

“**Condition**” means a condition of this Exemption;

“**ECA**” means the Electronic Communications Act 2011;

“**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;

“**Private Network**” means an Electronic Communications Network operated by, and dedicated to the exclusive use of, a Person, including its Affiliates;

“**RAA**” means the Regulatory Authority Act 2011;

“**Unlicensed Spectrum**” means Radio Spectrum as to the use of which the Authority has made a general determination that an individual spectrum licence is not required;

“**Value-Added Service**” means a service delivered through the use of Electronic Communications that employs computer processing applications that enable users to access, interact with, monitor, store, retrieve and manipulate information. Value-Added Services include: database access and research services; monitoring or alarm services; cloud computing or remote access data processing services; and electronic mail or messaging services;

“**Wi-Fi Equipment**” means equipment using Wi-Fi technology and approved pursuant to Part 15 of the rules of the U.S. Federal Communications Commission, 47 C.F.R. Part 15; and

“**Wi-Fi Service**” means the provision of Electronic Communications Services to End-Users through the use of Wi-Fi Equipment and Unlicensed Spectrum that establishes a wireless connection between mobile devices and an Internet connection.

2 INTERPRETATION

For purposes of interpreting this Exemption:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in this Exemption, the ECA, the RAA, and the Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Exemption and the ECA or RAA, the provisions of the ECA and RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalised;
- (d) headings and titles used in this Exemption are for reference only and shall not affect its interpretation or construction;
- (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 in this Exemption shall be incorporated into and form part of the Exemption and a reference to a document is to a document as modified from time to time;
- (g) expressions cognate with those used in this Licence 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 include a reference to any part unless explicitly limited.

3 EXEMPTION

3.1 Persons are exempt from the requirement of Section 12 of the ECA to hold a communications operating licence to the extent that they meet the criteria set forth in Conditions 4, 5 and 6.

3.2 Nothing in this Exemption shall be deemed to:

- (a) relieve any Person of any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate an Electronic Communications Network or provide an Electronic Communications Service, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Station or Radio Apparatus;
- (b) grant any Person any authorization to self-provision Electronic Communications other than within such Person’s premises or Campus; or
- (c) waive, modify or otherwise limit, either directly or indirectly, any Ex Ante Remedies imposed on an ICOL holder that meets the criteria set forth in, and is

exempt from the requirement to hold a communications operating licence pursuant to, Conditions 4, 5 and 6.

- 3.3** Persons exempt from the requirement to hold a communications operating licence pursuant to this Exemption shall comply with such notification, registration or certification requirements as may be established by the Regulatory Authority.
- 3.4** For purposes of this Exemption, a Person's principal line of business will be deemed to include the provision of Electronic Communications if such Person holds an Individual COL or is providing Electronic Communications, the provision of which requires an Individual COL.

4 PRIVATE NETWORKS

A Person who establishes, constructs or operates a Private Network, provided that such Private Network:

- (a) does not carry third-party communications;
- (b) is not operated for a profit from the provision of Electronic Communications Services; and
- (c) is comprised of Electronic Communications obtained on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

5 VALUE-ADDED SERVICES

A Person who provides Value-Added Services, provided that such Person:

- (a) does not separately sell or charge for the Electronic Communications component of its Value-Added Services; and
- (b) obtains the Electronic Communications component of its Value-Added Services on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

6 WI-FI SERVICES

A Person who provides Wi-Fi Services, provided that such Person:

- (a) does not charge for the use of the Wi-Fi Service;
- (b) does not bundle the Wi-Fi Service with another Electronic Communications Service for which a charge is imposed; and
- (c) obtains the Electronic Communications component of its Wi-Fi Service on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

Attachment B



BERMUDA

REGULATORY
AUTHORITY

Class Licence

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1 DEFINITIONS

In this Class Licence, unless the context otherwise requires:

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

“**Authorizations Register**” means the register of Persons granted this Class Licence and maintained by the Authority;

“**Campus**” means a contiguous parcel of land, not separated by public or private land, on which one or more structures may be located;

“**Class Licensee**” means a Person who is entered on the Authorizations Register by the Authority;

“**Commencement Date**” means the date on which the Class Licensee is entered on the Authorizations Register by the Authority;

“**Condition**” means a condition, including a Special Condition set forth in the Annexes, of this Class Licence;

“**ECA**” means the Electronic Communications Act 2011;

“**Equipment**” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“**Hotel**” means any place, land-based or not, including all grounds and premises appurtenant thereto, which provides sleeping accommodation for six or more guests and a charge is made for such accommodation;

“**Licensed Service**” means a service described in the Annexes to this Class Licence;

“**Person**” means a natural person or a 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; and

“**Special Condition**” means a Condition applicable to a specific Licensed Service set forth in the Annexes to this Class Licence.

2 INTERPRETATION

For the purpose of interpreting this Class Licence:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in the Class Licence, the ECA, the RAA, and the Interpretation Act 1951;

- (b) where there is any conflict between the provisions of this Class Licence and the ECA and RAA, the provisions of the ECA and RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalised;
- (d) references to Conditions and Annexes are to Conditions, Special Conditions and Annexes to the Class Licence, as modified from time to time in accordance with this Class Licence and the ECA;
- (e) a document referred to in this Class Licence shall be incorporated into and form part of the Class Licence and a reference to a document is to a document as modified from time to time;
- (f) headings and titles used in this Class 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 Class 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 GRANT AND DURATION OF THE CLASS LICENCE

3.1 The Class Licensee is granted this Class Licence as of the Commencement Date.

3.2 This Class Licence shall continue in force in respect of each Class Licensee until the earlier of the following events:

- (a) the Class Licensee requests that it be removed from the Authorizations Register;
- (b) there is a change of control of the Class Licensee;
- (c) the Class Licensee is suspended or removed from the Authorizations Register by the Authority; or
- (d) the Class Licence is modified or revoked by the Authority.

4 SCOPE OF THE CLASS LICENCE

The Authority grants to the Class Licensee a right to provide any Licensed Service for which the Class Licensee has been entered on the Authorizations Register.

5 UNDERTAKINGS OF THE CLASS LICENSEE

- 5.1** Subject to all other applicable laws and regulations, the Class Licensee undertakes to comply with the Conditions of this Class Licence and the Applicable Regulatory Framework.
- 5.2** The Class Licensee shall pay to the Authority such Regulatory Authority Fees and Government Authorization Fees as may be prescribed pursuant to Section 11 of the ECA, Sections 44 and 52 of the RAA and the Government Fees Act 1965.
- 5.3** The Class Licensee shall advise the Authority of any changes in the information provided by the Class Licensee to the Authority as part of its registration to become a Class Licensee.
- 5.4** The Class Licensee shall make such annual reports, certifications or other filings as the Authority may require.
- 5.5** The Class 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 Class Licensee permitted or authorized by this Class Licence.

6 RESTRICTIONS

- 6.1** The provision of Licensed Services by a Person who holds an Individual COL, including an ICOL, shall be governed exclusively by this Class Licence, provided, however, that nothing in this Class Licence shall be deemed to waive, modify or otherwise limit, either directly or indirectly, any Ex Ante Remedies imposed on an ICOL holder that is also a Class Licensee under this Class Licence.
- 6.2** Nothing in this Class Licence shall be deemed to:
 - (a) relieve the Class Licensee of any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate Electronic Communications Networks, provide Electronic Communications Services or exercise the Class Licensee's rights or discharge its obligations under the Class Licence, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus;
 - (b) grant the Class Licensee any authorization to self-provision Electronic Communications other than within such Person's premises or Campus; or

- (c) entitle the Class Licensee to obtain Wholesale services, the rates, terms and conditions of which are the subject of Ex Ante Remedies imposed pursuant to Sections 23 and 24 of the ECA, from an ICOL holder.

6.3 For purposes of this Class Licence, a Person's principal line of business will be deemed to include the provision of Electronic Communications if such Person holds an Individual COL or is providing Electronic Communications, the provision of which requires an Individual COL.

7 CONSUMER PROTECTION

7.1 The Class Licensee shall, in offering to provide, or providing, the Licensed Services, publish clear, transparent and up-to-date information regarding its rates, terms and conditions.

7.2 If the Class Licensee intends to modify the terms and conditions of a contract with a Subscriber, the Class Licensee shall:

- (a) provide the Subscriber with at least one month's notice of its intention detailing the proposed modification; and
- (b) inform the Subscriber of the ability to terminate the contract without penalty if the proposed modification is materially adverse to the Subscriber;

provided, however, that Condition 7.2(a) shall not apply to proposed modifications that reduce the prices of the Licensed Services.

7.3 Subject to any General Determinations, including codes of practice, that the Authority may adopt pursuant to Section 26 of the ECA, the Class Licensee shall establish, publish and thereafter maintain fair and reasonable procedures for the handling of complaints made by End-Users in relation to the provision of the Licensed Services.

7.4 When the Class Licensee's End-User has not paid the Class Licensee all or part of a bill for the Licensed Services provided by the Class Licensee, any measures taken by the Class Licensee to effect payment or disconnection shall:

- (a) be proportionate and not unduly discriminatory;
- (b) give prior warning to the End-User of any consequent service interruption or disconnection; and
- (c) except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the Licensed Service concerned, as far as technically feasible.

7.5 The Class Licensee shall publish the details of measures it may take against End-Users to effect payment or disconnection in accordance with Condition 7.4 above by:

- (a) placing such information on any relevant website operated or controlled by the Class Licensee; and
- (b) sending a copy of such information or any appropriate parts of it to any End-User who may request such a copy.

7.6 The Class Licensee shall not render any bill to an End-User in respect of the provision of any Licensed Services unless every amount stated in that bill accurately reflects the true extent of any such service actually provided to the End-User.

7.7 The Class Licensee shall use reasonable endeavours to provide the Licensed Services to a standard that could be reasonably expected by End-Users, having regard to the nature of the services and any advertising or sales information provided by the Class Licensee.

7.8 The Class Licensee:

- (a) may only charge an End-User for the specific Licensed Services that the End-User has ordered, and an End-User shall have no liability to pay for any Licensed Service that it has not ordered;
- (b) shall permit an End-User, on request, to review its expenditures relating to the Licensed Services provided by the Class Licensee;
- (c) shall not make or cause to be made any claim or suggestion regarding the availability, price or quality of its Licensed Services or those of another Class Licensee if the Class Licensee knows or reasonably ought to know that the statement or claim is false or misleading; and
- (d) shall draft all standard terms and conditions and codes of practice in plain English, provide copies on request and free of charge to any End-User who requests them, and make them prominently available on the Class Licensee's website.

8 CONFIDENTIALITY OF PERSONAL DATA

8.1 Subject to Condition 8.2 and Section 31 of the ECA, the Class Licensee:

- (a) may not without an End-User's informed consent collect, use, maintain or disclose Personal Data about an End-User for any purpose; and
- (b) shall apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such Personal Data.

8.2 The Class Licensee shall comply with any General Determinations made by the Authority requiring the Class Licensee to retain, or prohibiting the Licensee from retaining, specified Personal Data relating to End-Users, including information about billing, beyond a specified period.

- 8.3** The Class Licensee shall take reasonable steps to ensure that any Personal Data it discloses or retains concerning an End-User is accurate and complete for its intended use.
- 8.4** The Class Licensee shall permit an End-User to inspect its records regarding a Licensed Service provided to that End-User and to require correction or removal of information that is shown to be incorrect.
- 8.5** The Class Licensee shall disclose to End-Users, in a clear and transparent manner, the purpose for requesting or collecting any information about the End-User and may not use or maintain information about the End-User for undisclosed purposes.

9 PRIVACY OF COMMUNICATIONS

- 9.1** The Class Licensee shall take all reasonable steps to ensure the privacy of all Telecommunications.
- 9.2** Except as otherwise provided in the ECA or any other applicable enactment, the Class Licensee may not intercept, or wilfully divulge the content of, any Telecommunications.

10 AUDIT, INFORMATION AND INSPECTION

The Class Licensee shall:

- (a) 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 Class Licensee's business;
- (b) provide the Authority with such information, documents, accounts, returns, estimates, reports or other information as may be requested by the Authority in the manner and at the times specified by the Authority. The Authority may use this information for purposes of compiling statistics and publishing periodical reviews of the Electronic Communications Sector, and as required or permitted by the ECA or other laws or legal process; and
- (c) permit the Authority or Persons designated by the Authority to enter upon the Class Licensee's premises, and shall facilitate access by them to premises used by the Class Licensee, to conduct an inspection, examination, investigation or audit of the Class Licensee.

11 BREACH OF THE CLASS LICENCE

If the Authority has reason to believe that any Class Licensee has failed to comply with any Condition, the Authority may take all such action as is permitted by the RAA and ECA against the Class Licensee.

12 MODIFICATION AND REVOCATION

The Authority may modify or revoke this Class Licence or the Conditions applicable to any Licensed Service following a Public Consultation conducted pursuant to the Authority's Administrative Rules.

13 FORCE MAJEURE

The Class Licensee shall be relieved of its obligations under this Class Licence if and for as long as the Class Licensee is prevented from complying with the Class 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 Class Licensee's control.

14 CHANGE OF CONTROL

This Class Licence shall automatically terminate upon any change of control of the Class Licensee, without prejudice to the ability of the Class Licensee to submit a new registration application to the Authority, prior to or after the change in control, that reflects the change of control.

15 ASSIGNMENT

The Class Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Class Licence to any Person, including an Affiliate of the Class Licensee.

16 NOTICES

16.1 Unless the Authority determines otherwise, notices to the Class Licensee under the Class Licence shall be in writing and sent by registered letter to the address provided by the Class Licensee and shown on the Authorizations Register.

16.2 Unless the Authority determines otherwise, notices to the Authority under the Class 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 -- CLOSED USER GROUPS

1. LICENSED SERVICES

- 1.1** The provision of Electronic Communications Services by a closed user group by means of an Electronic Communications Network operated by one or more members of the closed user group on behalf of the closed user group for the exclusive use of the members of the closed user group.
- 1.2** A closed user group is a group of Persons who share a common business, economic or social interest or affinity, other than the need to communicate with one another or the provision of Electronic Communications. All members of the closed user group shall be deemed the Class Licensee.

2. SPECIAL CONDITIONS

- 2.1** The Class Licensee may not be engaged in the provision of Electronic Communications as its principal line of business.
- 2.2** The Class Licensee may not transmit third-party communications using the closed user group network.
- 2.3** The Class Licensee may not operate the closed user group network for the commercial gain of one or more members of the closed user group.

**ANNEX B -- ELECTRONIC COMMUNICATIONS SERVICES PROVIDED BY HOTELS,
HOSPITALS, PRISONS, SCHOOLS AND SIMILARLY SITUATED PERSONS**

1. LICENSED SERVICES

The provision of Electronic Communications Services by Hotels, hospitals, prisons, schools, and similarly situated Persons to, respectively, their guests, patients, prisoners, students and other End-Users with whom the Class Licensee has an economic or other relationship unrelated to the provision of Electronic Communications Services.

2. SPECIAL CONDITIONS

- 2.1** The Class Licensee may not be engaged in the provision of Electronic Communications as its principal line of business.
- 2.2** The Class Licensee shall conspicuously post on or near each telephone, data access point or television the charges, including surcharges, that will be incurred for domestic and international calls, operator-assisted calls, access to toll free numbers, Internet Access Service, and Subscription Audiovisual Services.
- 2.3** The Class Licensee may not knowingly charge for unanswered calls.
- 2.4** The Class Licensee shall immediately connect all calls to emergency services without charge.

ANNEX C -- PAY TELEPHONE SERVICES

1. LICENSED SERVICES

The provision of Electronic Communications Services, limited to domestic and international voice, data or teletext calls, from stationary pay telephones. Payment can be made either with currency, commercial credit cards or calling cards (pre-paid or otherwise) issued by the Class Licensee.

2. SPECIAL CONDITIONS

- 2.1** The Class Licence may operate stationary pay telephones only in private locations, *e.g.*, a retail establishment or guest house.
- 2.2** The Class Licensee shall conspicuously post on or near each pay telephone and data access point:
- (a) the charges, including surcharges, that will be incurred by End-Users for domestic and international calls, operator-assisted calls, and access to toll-free numbers; and
 - (b) the name, business address, email address and toll-free number of the Class Licensee.
- 2.3** The Class Licensee may not knowingly charge for unanswered calls.
- 2.4** The Class Licensee shall immediately connect all calls to emergency services without charge.
- 2.5** Notwithstanding the provisions of Conditions 3, 4 and 5 of this Licence, a Person that operates a single pay telephone shall not be required to register with the Authority and shall be deemed a Class Licensee without regard to whether that Person appears on the Authorizations Register.

ANNEX D -- OPERATOR SERVICES

1. LICENSED SERVICES – CALLING CARDS

The provision of Electronic Communications Services, limited to the offering of domestic and international voice and teletext calls, through any telephone, either with the assistance of a human operator or on an automated basis. Payment can be made with a calling card (pre-paid or otherwise) issued by the Class Licensee.

1.1 SPECIAL CONDITIONS

- (a) The Class Licensee may only be a provider of Electronic Communications Services that holds a licence or other authorization to provide, and, in fact, provides, such services in its home country.
- (b) The Class Licensee may provide calling card services only to Subscribers who obtain service from, and are billed by, the Class Licensee in its home country.
- (c) The Class Licensee may not hold an Individual Licence in Bermuda.
- (d) The Class Licensee shall identify itself to the End-User, verbally for voice calls and otherwise for non-voice calls, at the beginning of each call before the call is connected and billed.
- (e) The Class Licensee may not knowingly charge for unanswered calls.
- (f) The Class Licensee shall immediately connect calls to emergency services without charge.

2. LICENSED SERVICES – TELECONFERENCING SERVICES

The provision of Electronic Communications Services, limited to the provision of on-demand and pre-scheduled multi-party conference calls including voice, data and video. Service can be provided either on a subscription basis or by payment with a commercial credit card or a calling card (pre-paid or otherwise) issued by the Class Licensee.

2.1 SPECIAL CONDITIONS

- (a) The Class Licensee shall identify itself to the End-User, verbally for voice calls and otherwise for non-voice calls, at the beginning of each call before the call is connected and billed.
- (b) The Class Licensee shall provide a mechanism to inform the End-User of the price of each call, including any surcharges, before the call is connected and billed.
- (c) The Class Licensee may not knowingly charge for unanswered calls.

- (d) The Class Licensee shall immediately connect all calls to emergency services without charge.

ANNEX E -- CYBER CAFES

1. LICENSED SERVICES

The provision of Electronic Communications Services, limited to Internet access and voice telephony, by Cyber cafes, Internet cafes and similarly situated Persons to End-Users from a fixed location.

2. SPECIAL CONDITIONS

The Class Licensee shall conspicuously post on or near each computer, data access point and telephone, or electronically within the initial log-on screen, the charges, including surcharges, that will be incurred for Internet Access Service and, if provided, domestic and international calls, operator-assisted calls, and access to toll free numbers.