



Radiofrequency 5G Safety

**Consultation on the “Regulatory Authority
(Exposure to 5G Radiofrequency Electromagnetic
Fields) Emergency General Determination 2020”**

Consultation Document

Matter: 20201023

Date: 23 October 2020

Responses Due: 23 November 2020

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I INTRODUCTION

1. The purposes of this consultation document (the "Consultation Document") are for the Regulatory Authority of Bermuda (the "RA") to:
 - a. Consult on the "Regulatory Authority (Exposure to 5G Radiofrequency Electromagnetic Fields) Emergency General Determination 2020" (the "EGD");
 - b. Consult on the concerns expressed by members of the public during the ICOL/COL licensing process in 2019/20 regarding:
 - i. General concerns about alleged health impacts from the use of Radiofrequency ("RF") devices and antennae;
 - ii. Particular concerns about alleged health impacts from the use of small cell technologies;
 - iii. Particular concerns about the use of millimeter wave spectrum (30-300 GHz) ("mmWave");
 - iv. General concerns regarding 5G Safety in Bermuda; and
 - c. Consult on if 5G networks are allowed to operate, whether there should be a restriction on the number of networks that may be deployed.
2. At the conclusion of the consultation process, the RA will:
 - a. Extend, modify or remove the Moratorium as established in the EGD;
 - b. Make a General Determination to establish new guidelines, if deemed necessary, for the deployment of antennae;
 - c. Consider whether a publicly accessible national RF field intensity monitoring network (the "Monitoring Network") should be deployed; and
 - d. Consider whether fees should be levied on spectrum users, both providers and end-users, for the development and maintenance of the Monitoring Network.
3. This Consultation Document is structured as follows:
 - **Section I** provides the introduction to purposes of the Consultation Document;
 - **Section II** outlines key definitions
 - **Section III** outlines the background and consultation procedure;
 - **Section IV** sets out the legislative context;
 - **Section V** sets out the proposed decision;
 - **Section VI** provides the next steps;
 - **Appendix A** sets out the Consultation Questions;
 - **Appendix B** sets out the draft General Determination on antennae registration.

II DEFINITIONS

“Authority” means the Regulatory Authority of Bermuda established under the Regulatory Authority Act 2011;

“Broadband” means an Internet service or connection generally defined as being “always on”, providing a bandwidth greater than narrowband;

“Consultation Document” means the Consultation Document entitled “Radiofrequency 5G Safety”

“Communications operating licence (“COL”) means an individual or class licence granted for the provision of some or all regulated electronic communications services;

“Communications provider” means an entity that constitutes a sectoral provider pursuant to the Regulatory Authority Act 2011, and provides electronic communications;

“ECA” means the Electronic Communications Act 2011;

“Electronic communications” means electronic communications networks or electronic communications services, or both, as the context requires;

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

“Electronic Communications Network” means as defined in section 2(1) of the ECA;

“Electronic Communications Service” means as defined in section 2(1) of the ECA;

“Integrated Communications Operating Licence” means a licence granting the licensee the right to establish, construct and operate one or more electronic communications networks and to provide electronic communications services, on an integrated basis, within the territorial limits of Bermuda and between Bermuda and other countries;

“Internet” means the global information system that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions or follow-ups and other IP-compatible protocols;

“Minister” means the Minister responsible for telecommunications;

“RA” means the Regulatory Authority of Bermuda established under the Regulatory Authority Act 2011;

“RAA” means the Regulatory Authority Act 2011;

“Radiofrequency” means an electromagnetic wave frequency or band of frequencies in the range of 3kHz to 300GHz suitable for the use of telecommunications;

“User” means any person using an electronic communications service, for residential or business purposes, whether or not the person has subscribed to such service;

For purposes of interpreting this Consultation Document:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA and the ECA;
- (b) where there is any conflict between the provisions of this Consultation Document 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 the GD;
- (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 the GD and a reference to such document is to the document as modified from time to time;
- (g) expressions cognate with those used herein shall be construed accordingly;
- (h) use of the word "include" or "including" is to be construed as being without limitation; and
- (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

III BACKGROUND AND CONSULTATION PROCEDURE

III.A. BACKGROUND

4. The RA began the public consultation on the “Grant of new Integrating Communications Operating Licences (‘ICOL’)”. The purposes of the RA's consultation were to:
 - (a) Implement the decision of the Minister responsible for electronic communications to end the moratorium on the grant of ICOLs and other types of COLs ;
 - (b) Pursuant to the Minister's direction and delegation of authority to the Authority of 5 April 2019 (the "Delegation"), consult on and recommend post-moratorium procedures for the grant of ICOLs and other types of COLs, to be adopted by Regulation in accordance with section 18(2) of the Electronic Communications Act 2011 ("ECA");
 - (c) Pursuant to the Delegation, to consult on and make recommendations on a general policy which will be established in accordance with section 13 of the ECA;
 - (d) Consult on the criteria, conditions, requirements and procedures for the grant of other public COLs as a basis for making a GD on the post-moratorium licensing framework in accordance with section 16(2) of the ECA; and
 - (e) Ensure a smooth, efficient and orderly transition to the new licensing regime for ICOLs and other types of COLs, so as to facilitate the opening of Bermuda's electronic communications sector to new entrants and make the sector more competitive.
5. The RA further launched the public consultation “Applications for Integrated Communications Operating Licences (‘ICOLs’); Application for Other Communications Operating Licence (‘COL’)”
6. During the commenting phase of the consultation, several comments were received regarding objections to the issuance of a new ICOL to Wave Bermuda Ltd. specifically due to concerns about the potential deployment of 5G technologies.
7. The major comments were addressed toward concerns regarding:
 - a. Potential increase in levels of wireless technology radiation, posing significant harm to the health and well-being of the community;
 - b. Concerns that insufficient peer reviewed research has been carried out to prove the safety of potential 5G network implementation; and
 - c. An increase of involuntary exposure.

8. The RA noted the concerns and issued the EGD to temporarily impose a moratorium (the “Moratorium”) prohibiting service providers from deploying 5G networks until the RA has issued a final determination regarding the use of 5G in Bermuda
9. The RA also plans to launch a public hearing on the use of Radiofrequency and 5G technology on November 19, 2020 at 12:30 PM, which will form part of the broader public consultation effort on this topic. The public meeting will allow members of the public who have submitted written comments in advance to present their views and evidence to a special advisory panel which will be appointed by the Board of Commissioners.
10. This Consultation Document sets out the preliminary issues as understood by the RA regarding the appropriate use of Radiofrequency with respect to human health. The purpose of this Consultation Document is to:
 - (i) solicit evidence for Radiofrequency 5G related human-health issues;
 - (ii) solicit input on appropriate RF exposure limits; and
 - (iii) determine whether the temporary Moratorium imposed by the EGD should be retained, modified or removed.

III.B. CONSULTATION PROCEDURE

11. This consultation is being undertaken in accordance with sections 69 to 73 of the Regulatory Authority Act 2011 ("RAA") and section 5 of the Electronic Communications Act 2011 ("ECA"). The procedure and accompanying timelines (as set out in section 72 of the RAA), under which this consultation is taking place, are outlined below.
12. Written responses should be submitted before 11:59 PM (Bermuda time) on 23 November 2020.
13. The RA invites comments from members of the public, electronic communications sectoral participants and electronic communications sectoral providers, and other interested parties. The RA requests that commenting parties, in their responses, reference the numbers of the relevant questions, as set forth in this Consultation Document, to which they are responding. A complete list of questions presented by this Consultation Document appears in Appendix A.
14. Responses to this Consultation Document should be filed electronically in MS Word or Adobe Acrobat format. Parties wishing to file comments should go to the RA's website www.ra.bm and follow this link:

15. Sectors page for Public Consultations: <https://www.ra.bm/public-consultations/>

The screenshot shows the RA website's public consultation form. At the top, there is a navigation bar with the RA logo and links for HOME, ABOUT US, CONSULTERS, SECTORS, and CONTACT US. Below this is a banner for 'Submit a Response Form'. The main content area is titled 'Submit Your Response' and includes a welcome message. The form fields are: First Name, Last Name, Your Email, and Company Name (if applicable). There is a dropdown menu for 'Open Consultation List' with 'Work Plan 2022-23' selected. Below this is a text area for 'Submit details of your response'. There is also a 'Choose Files' button with the text 'No file chosen'. A 'Submit' button is at the bottom. To the right, there is a 'Subscribe for Updates' sidebar with a 'CLICK HERE TO SUBSCRIBE' button.

16. All comments should be clearly marked "Radiofrequency 5G Safety" and should otherwise comply with Rules 18 and 30 of the RA's Interim Administrative Rules, which are posted on the RA's website.
17. The RA intends to make responses to this Consultation Document available on its website. If a commenting party's response contains any information that is confidential in nature, a clearly marked "Non-Confidential Version", redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version". Redactions should be strictly limited to "confidential information", meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA's Interim Administrative Rules.
18. In accordance with section 73 of the RAA, any interested person may make an *ex parte* communication during this consultation process, subject to the requirements set forth in paragraph 13.
19. An *ex parte* communication is defined as any communication to a Commissioner or member of staff of the RA regarding the matter being consulted on in this Consultation Document, other than a written submission made pursuant to section 73(2) of the RAA. Within two (2) business days after making an *ex parte* communication, the person who made the *ex parte* communication shall submit the following to the RA: (i) a written description of the issues discussed and positions espoused; and (ii) a copy of any written materials provided. This will be posted on the RA's website, along with a notice of the *ex parte* communication.

20. The principal point of contact at the Authority for interested persons for this Consultation Document is Craig Davis. He may be contacted by email, referencing "Radiofrequency 5G Safety" at consultation@rab.bm or by mail at:

Craig Davis
Matter: 20201023 – Radiofrequency 5G Safety
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda

21. In this Consultation Document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the ECA, the RAA and the Interpretation Act 1951.
22. This Consultation Document is not a legally binding document and does not contain legal, commercial, financial, technical or other advice. The RA is not bound by this Consultation Document, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Consultation Document and the due exercise by the RA of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the RA.
23. The RA intends to issue a Final Report, Decision and Order (the "Final Report") on this matter by 1 February 2021, in which the RA will decide whether to extend, modify or remove the temporary Moratorium on 5G, including, if necessary, the development of an associated General Determination to establish any additional parameters that may be warranted.

IV. LEGISLATIVE CONTEXT

24. Section 12 of the RAA states that, the principal functions of the Authority, in relation to any regulated industry sector, are—

- (1) to promote and preserve competition;
- (2) to promote the interests of the residents and consumers of Bermuda;
- (3) to promote the development of the Bermudian economy, Bermudian employment and Bermudian ownership;
- (4) to promote innovation; and
- (5) to fulfil any additional functions specified by sectoral legislation.

25. Section 13 of the RAA states that the RA may:

- (e) make administrative determinations, adjudicative decisions and rules;
- (f) provide advisory guidance to sectoral participants;
- (g) establish external advisory panels and take appropriate actions to foster industry self-regulation and co-regulation;
- (j) grant, modify and revoke authorizations;
- (n) establish technical standards for the provision of covered services;
- (p) establish and enforce quality of service standards applicable to covered services;
- (w) conduct public consultations and adjudications;
- (z) take any other action, not expressly prohibited by law, that is necessary and proper to perform its duties under this Act and sectoral legislation.

26. Section 15 of the RAA sets the scope of the RA's Authority as:

- (1) The Authority shall have the power to supervise, monitor and regulate any regulated industry sector, in accordance with this Act, sectoral legislation and any regulations or policies made by a Minister.
- (2) The Authority, when acting within the scope of its authority, may make administrative determinations that are binding on sectoral participants, including general determinations to implement this Act, sectoral legislation and regulations and policies made by a Minister.

- (3) The Authority, following an adjudication, shall have the power to issue an adjudicative decision as to whether a specific person satisfies the criteria specified in sectoral legislation and, therefore, is a sectoral participant.
- (4) The Authority, when acting pursuant to sections 85 and 86, may make adjudicative decisions and orders that are binding on persons that are not sectoral participants, if the Authority determines that an action taken by any such person unreasonably restricts, or is likely to unreasonably restrict, competition in a regulated industry sector.

27. Section 35 of the RAA establishes that:

- (1) The Authority may appoint advisory panels, consisting of knowledgeable persons from outside the Authority, to provide information and recommendations regarding any matter within the competence of the Authority.
- (2) In any case in which the Authority appoints an advisory panel, the Authority shall publish on its official website a statement setting out—
 - (a) the purpose for which the panel has been established;
 - (b) the membership of the panel, including a brief statement setting out the current employment or other significant information regarding each member;
 - (c) any financial, staffing or other resources that the Authority will provide to the panel;
 - (d) any procedures to be used, or deliverables to be provided, by the panel; and
 - (e) the duration of time in which the panel will remain in existence.
- (3) In considering candidates for appointments to any advisory panel, the Authority shall give due regard to— the
 - (a) qualifications and experience of the candidates; and
 - (b) the need to ensure representation of diverse views.
- (4) Each advisory panel shall provide a report to the Authority regarding its work, at such times as the Authority may specify, which the Authority shall publish on its official website.

28. Section 51 of the RAA establishes that:

- (1) The Authority, when authorized by sectoral legislation, on its own motion or at the request of an authorization holder, may modify or vary any term or condition of a licence, permit or other authorization if the Authority concludes that such modification or variation is necessary in the public interest.

- (2) Before taking any action pursuant to subsection (1), the Authority shall give the authorization holder reasonable notice and an opportunity to comment, and shall take into account any representations made by or on behalf of the authorization holder.
- (3) The Authority may issue a decision and order suspending or revoking any licence, permit or other authorization where the authorization holder has—
 - (a) made false statements of material facts, committed fraud or made a misrepresentation in the application for the licence, permit or other authorization or in any subsequent statement to the Authority;
 - (b) failed to comply with—
 - (i) any applicable requirements contained in this Act or in sectoral legislation;
 - (ii) any regulations made by a Minister or any administrative determination made by the Authority; or
 - (iii) the terms or conditions of the licence, permit or other authorization; or
 - (c) failed to pay to the Authority any authorization fees, regulatory fees or any other required payment.
- (4) The Authority may suspend or revoke any licence, permit or other authorization in—
 - (a) any other circumstances provided for in sectoral legislation; or
 - (b) any case in which the authorization holder has breached a condition in the authorization.
- (5) Before the Authority issues a decision and order suspending or revoking a licence, permit or other authorization, the Authority shall provide written notice to the authorization holder.
- (6) The notice specified in subsection (5) shall include—
 - (a) the action that the Authority proposes to take;
 - (b) the basis on which the Authority proposes to take the action;
 - (c) the time frame within which the authorization holder may submit written comments regarding the proposed action; and
 - (d) the actions that the authorization holder must take to avoid suspension or revocation, and the time frame in which such actions must be taken.
- (7) The Authority shall specify the date on which any revocation shall occur, which shall be at least ten days after the effective date of the decision and order.

29. Section 61 of the RAA states that:

- (1) Except where this Act or sectoral legislation expressly requires the use of a specific administrative procedure, the Authority may choose whether to conduct either—
 - (e) a public consultation; or
 - (f) an adjudication.
- (2) The Authority shall make rules, consistent with the provisions of this Act, setting out the procedures applicable to public consultations and adjudications.
- (3) In making administrative determinations in accordance with this Act, the Authority shall base its conclusions on the best evidence that is reasonably available.
- (4) The Authority shall have the power to access, review and rely on all relevant information in the possession of a Minister or any regulatory body previously authorized by law to supervise, monitor or regulate a regulated industry sector.
- (5) In the absence of sufficient evidence that is specific to Bermuda, the Authority may consider and rely on international best practices, benchmarks and data from countries that the Authority concludes are relevant to Bermuda.

30. Section 66 of the RAA establishes the establishes RA's interim and emergency determination making powers as set out:

- (1) The Authority may make a general determination on an interim basis, pending the completion of the public consultation, provided that the Authority—
 - (a) issues a statement explaining the basis on which it has issued the general determination on an interim basis; and
 - (b) files the interim general determination with the Cabinet Secretary for publication in the Gazette, at which point it will become effective.
- (2) The Authority may make a general determination on an emergency basis without complying with the public consultation procedures specified in this Act whenever the Authority concludes that the urgency of a particular case requires that it do so.
- (3) The Authority shall promptly publish on its official website any general determination made pursuant to subsection (2).
- (4) Any general determination made pursuant to subsection (2) shall be effective, as applied to a specific sectoral participant, at the earlier of the date on which—
 - (i) the sectoral participant has actual notice of the general determination; or

- (ii) the general determination is published in two newspapers of general circulation in Bermuda, one of which shall be the Gazette.
- (5) In any case in which the Authority makes a general determination pursuant to subsection (2), the Authority shall— file
 - (a) the emergency general determination with the Cabinet Secretary for publication in the Gazette as promptly as possible; and
 - (b) within 14 days after the day on which the Authority makes the emergency general determination, or any longer period approved by the Minister responsible for the regulated industry sector, commence a public consultation.
- (6) Any general determination adopted on an interim or emergency basis pursuant to this section shall remain in effect for no more than six months, unless the Authority, with the approval of the Minister, causes a notice to be published in the Gazette extending the effective period for up to an additional six months.
- (6A) For the avoidance of doubt, a Schedule to a general determination is not required to be included in a publication pursuant to this section, whether in the Gazette or in a newspaper, if—
 - (a) the Schedule is published on the Authority’s official website;
 - (b) the Schedule is available for inspection at the offices of the Authority; and
 - (c) the general determination gives notice that the Schedule—
 - (i) is published on the Authority’s official website; and
 - (ii) is available for inspection at the offices of the Authority.
- (7) Any general determination under this section shall not be subject to section 6 of the Statutory Instruments Act 1977.

31. Section 5(1) of the ECA sets out the purposes of the Act. These include:

- (a) ensuring that the people of Bermuda are provided with reliable and affordable access to quality communications services;
- (b) enhancing Bermuda’s competitiveness in the electronic communications sector so that Bermuda is well-positioned to compete in the international business and global tourism markets;

- (c) encouraging the development of an electronic communications sector that is responsive to the requirements of users (both individuals and businesses) and provides them with choice, innovation, efficiency and affordability;
- (d) encouraging the development of and rapid migration of innovative electronic communications technologies in the electronic communications sector;
- (e) promoting the orderly development of Bermuda's electronic communications sector;
- (f) encouraging sustainable competition and create an invigorated electronic communications sector that will lay the groundwork for the further development of communications-reliant industries;
- (g) encouraging the development and maintenance of resilient and fault-tolerant communications infrastructures;
- (h) promote investment in the electronic communications sector and in communications-reliant industries, thereby stimulating the economy and employment; and
- (i) promoting Bermudian ownership and Bermudian employment at all levels of the electronic communications sector.

V. PROPOSED DECISION

32. The RA proposes to lift the Moratorium as established by the EGD, by order (the “Order”), effective on the date of the publication of the Order.
33. The RA further proposes to implement the draft General Determination regarding Antennae registration as outlined in Appendix B.

VI. NEXT STEPS

34. Following the Response Due Date, the Advisory Panel will review and consider any responses that are timely received and make recommendation to the Board of Commissioners of the RA (the “BOC”) via a draft Preliminary Report and Draft Decision and Order (the “Recommendation”). The BOC will review the Recommendation and issue a Preliminary Report and Draft Decision and Order (the “Preliminary Report”), which may accept, modify or reject the Recommendation, for public comment.
35. Following the deadline for responses to the Preliminary Report, the Advisory Panel will review and consider any responses received and issue a further recommendation (the “Further Recommendation”) via a draft Final Report, and Decision and Order to the BOC. The BOC will review the draft Final Report, and Decision and Order and issue a Final Report and Decision and Order, which may accept, modify or reject the Further Recommendation.
36. The following is an indicative timeline:
 - Public Consultation commences on 23 October 2020;
 - Public consultation period closes 11:59 p.m. on 23 November 2020;
 - Issuance of recommendations to be presented to the BOC from Advisory Panel on 7 December 2020;
 - BOC to issue the Preliminary Report, Decision and Order on 21 December 2020;
 - Comment period on Preliminary Report, Decision and Order closes 11:59 PM on 8 January 2021;
 - Advisory Panel to issue Draft Final Report to the BOC for consideration on 18 January 2021; and
 - BOC to Issue its of Final Report, Decision and Order on 1 February 2021.

APPENDIX A

CONSULTATION QUESTIONS

1. Do you agree that the Federal Communications Commission, which regulates interstate and international communications by radio, television, wire, satellite and cable within the United States, RF Exposure standards¹ are appropriate for Bermuda? If not, what is a suitable alternative and why?
2. Do you agree that all antennae used by licensed sectoral providers should be registered with the RA? If not, what if anything should be registered with the RA e.g. location, direction (if applicable) and power level?
3. Do you agree that the Moratorium established by the EGD should be removed? If not, should it be modified and how should it be modified and why?
4. Do you agree that a real-time, publicly accessible Radiofrequency field intensity monitoring network should be deployed and a dedicated fee be levied on relevant sectoral providers and end-users that use Radiofrequency spectrum to cover the cost of the deployment and ongoing maintenance?
5. Should mmWave networks and small-cell technologies be restricted or prohibited in Bermuda? If so, why and what alternatives should be used?

¹ <https://www.fcc.gov/general/fcc-policy-human-exposure>

APPENDIX B

DRAFT GENERAL DETERMINATION ON ANTENNAE INSTALLATION

Regulatory Authority (Antennae Deployment for Electronic Communications) General Determination

BR /2020

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The Regulatory Authority, in the exercise of the power conferred by section 62 of the Regulatory Authority Act 2011, as read with sections 12 and 13 of that Act and 9, 10, 13, 14, 16, 17 and 18 of the Electronic Communications Act 2011, makes the following General Determination:

Citation

- 1 This General Determination may be cited as the Regulatory Authority (Antennae Deployment for Electronic Communications) General Determination.

Interpretation

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

General Purpose

- 3 This General Determination establishes the criteria, conditions, requirements and procedures for the deployment of antennae and the submittal of the relevant information to the Regulatory Authority.

Determination

- 4 (1) This General Determination is made pursuant to the Consultation Document entitled "Radiofrequency 5G Safety" dated 23 October 2020 and the Regulatory Authority's Decision on it.

(2) Taking into account the responses received to the Consultation Document and for the reasons given in the Decision, the Authority determines that:

- (i) All antennae using licensed spectrum must be registered with the Regulatory Authority;
and

Effective Date of General Determination

- 6 This General Determination shall become effective on the day it is published in the Official Gazette.