



GOVERNMENT OF BERMUDA

The Ministry of Finance

Office of the Minister of Finance

7th April, 2016

Our Ref: FS 10/1
(please quote in response)

Sent via Email

Mr. Matthew Copeland - Chief Executive
The Regulatory Authority of Bermuda
3rd Floor, Cumberland House
1 Victoria Street,
Hamilton, HM 11

Dear Mr. Copeland,

Regulatory Authority Proposed Work Plan (Fiscal Year 2016-2017)

Pursuant to Section 43(4)(c) of the Regulatory Authority Act 2011, I hereby approve the Regulatory Authority's ("RA") proposed expenditure budget totaling \$3,375,500.00 for the financial year 2016/2017 as submitted with the RA's 2016/2017 Proposed Work Plan and Budget on December 31, 2015.

A handwritten signature in black ink, appearing to read 'E.T. Richards', with a long horizontal flourish extending to the right.

The Hon. E.T. "Bob" Richards, JP. MP.
Minister of Finance

cc: The Hon. E. Grant Gibbons, JP, MP – Minister of Economic Development



BERMUDA

**REGULATORY
AUTHORITY**

**Preliminary Report to Minister of
Economic Development and Minister of
Finance**

Regulatory Authority
Proposed Work Plan
2016-17 Fiscal Year

Matter: WP-1617-2015
Date: 31 December 2015

TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	2
1.1	LEGISLATIVE CONTEXT	3
1.2	SCOPE OF THIS WORK PLAN	3
2	STRATEGIC GOALS	3
2.1	PROPOSED ACTIVITIES AND PROJECTS	4
2.1.1	<i>Striving for Organizational Excellence – Activities and Projects</i>	4
2.1.2	<i>Promoting and Facilitating Sustainable Competition – Activities and Projects</i>	5
2.1.3	<i>Promoting and Protecting the Interests of Consumers</i>	5
2.1.4	<i>Facilitating Innovation and Investment</i>	5
2.1.5	<i>Providing Timely Advice and Information to the Government</i>	5
2.1.6	<i>Other Administrative Functions</i>	6
2.2	CARRY OVER OF ACTIVITIES FROM 2015-16 WORK PLAN	6
2.2.1	<i>Establishment of Working Group for Access to Infrastructure</i>	6
2.3	ACTIVITIES FROM 2015-16 WORK PLAN YEAR THAT ARE NO LONGER RELEVANT	7
2.4	CONTEXTUAL OVERVIEW OF PROJECTS AND ACTIVITIES FOR 2016-17	8
3	PROPOSED BUDGET AND PROJECTED REVENUES	9
3.1	PROPOSED EXPENDITURE BUDGET FOR 2016-17	9
3.2	PROPOSED FEES AND PROJECTED REVENUE	9
3.3	DESCRIPTION OF BUDGET CATEGORIES	10
3.3.1	<i>Operational Expenses</i>	10
3.3.2	<i>Capital Expenditures</i>	11
4	CONCLUSION	ERROR! BOOKMARK NOT DEFINED.
	APPENDIX A	A1
	APPENDIX B	B1
	APPENDIX C	C1
	APPENDIX D	D1
	APPENDIX E	E1

1 EXECUTIVE SUMMARY

1. The purpose of this Preliminary Report is to comply with Section 43(3) of the Regulatory Authority Act 2011 (“RAA”) which requires the Regulatory Authority (“Authority”) submit to all Minister responsible for regulated industry sectors and to the Minister of Finance a preliminary report setting out the Authority’s proposed work plan for the 2016-17 financial year (which will run from 1 April 2016 through 31 March 2017), including its proposed budget. The Authority is required to make this Preliminary Report not later than 3 months before the commencement date of the next financial year and it must give due consideration to comments received in the public consultation.
2. The Authority received comments from three parties, one ICOL holder, one member of the public and the Consumer Affairs Board. After review and consideration of the comments received, a summary of which is provided at Appendix C below, the Authority has determined that no changes to the Work Plan were warranted as a result.
3. The Authority has, of its own volition, made the following material changes to the Work Plan and Budget after further consideration. Proposed expenditure on employees has been increased by \$200,000. This increase is designed to ensure that the Authority can recruit and retain the necessary staff to enable some key regulatory functions to be carried out “in-house”. The increased expenditure has been fully offset by a proposed corresponding decrease in expenditure on consulting services, and litigation and mediation resulting in no change to the total propose expenditure budget
4. The Authority proposes to adopt a work plan for financial year 2016-17 that is aligned with the following strategic goals: (a) Striving for Organizational Excellence; (b) Promoting and Facilitating Sustainable Competition; (c) Promoting and Protecting the Interest of Consumers; (d) Facilitating Innovation and Investment; and (e) Providing Timely Advice and Information to the Government.
5. The Authority requests that the Minister of Economic Development make a regulation to increase the Regulatory Authority fee from 1.50% to 1.75% of relevant (taxable) turnover on ICOL holders.
6. The Authority also recommends to the Minister of Economic Development that there be no increase in the current level of Government authorization fees imposed on the electronics communications industry under the Government Fees Act 1965.
7. The Authority hereby submits the Preliminary Report in support of its request that the Minister of Finance approve the Authority’s proposed budget of \$3,375,500 for the financial year 2016-17 and its request that the Minister of Economic Development make a regulation establishing the Regulatory Authority fees to be paid by ICOL holders.

INTRODUCTION

1.1 Legislative Context

RAA Section 43(3) requires the Authority to submit to the Ministers responsible for its regulated industry sectors (the Minister of Economic Development) a proposed work plan taking into account any comments submitted during the public consultation on its Work Plan.

1.2 Comments on Public Consultation

The Authority received several comments from one ICOL holder and the general public in response to the Public Consultation. After careful review, and for reasons highlighted in Appendix C below, the Authority has determined that no changes need to be made to the proposed work plan as a result of those comments.

1.3 Scope of this Work Plan

- 1.3.1 This document is the Authority's plan for the period April 2016 to March 2017. It includes a report on work likely to be held over from last fiscal year, the Authority's strategic goals, priorities, the major activities it anticipates undertaking for the upcoming fiscal year, and its proposed budget for the period.
- 1.3.2 This work plan assumes that electronic communications will continue to be the only sector that the Authority will have oversight of during the 2016-17 fiscal year. For the avoidance of doubt, the work plan does not include work to be undertaken or associated costs incurred by the Authority to prepare for the regulation of any other sector for which the Authority may be assigned by the Government.
- 1.3.3 The work plan reflects the Authority's current mandate, enunciates its strategic goals and sets out its strategic priorities and planned activities for the 2016-17 fiscal year.

2 STRATEGIC GOALS

The Authority has established the following strategic goals that will drive its priorities and activities for the ensuing years:

1. **Striving for Organizational Excellence:** to be a highly efficient and effective organization that supports and enables its staff to achieve the Authority's objectives.
2. **Promoting and Facilitating Sustainable Competition:** to apply effective and proportionate regulation to facilitate dynamic and sustainable competition within the sectors it regulates.
3. **Promoting and Protecting the Interests of Consumers:** to safeguard the interests of the consumers of electronic communications services by protecting and empowering them.
4. **Facilitating Innovation and Investment:** to provide regulatory certainty within the sectors under its responsibility. This will include the fair application of rules, market evaluation and enforcement of breaches of the rules of the game. This, in turn, will support investment into the relevant sectors.

5. **Providing Timely Advice and Information to the Government:** on policy and legislative changes which may be required to enhance the success of the electronic communications industry or its regulatory framework, and to promptly respond to legally mandated directives from the Minister of Economic Development.

2.1 Proposed Activities and Projects

The numbering sequence of the priorities listed below does not necessarily reflect their relevant importance.

2.1.1 Striving for Organizational Excellence – Activities and Projects

Priority 1 - the Authority will continue to strengthen the capacity, knowledge base and skills of its staff and will undertake the following activities and projects to address this priority:

1. Continue to provide targeted training to the Authority's members of staff to ensure they are well equipped to perform at the highest standard; and
2. Identify and fill resourcing gaps to ensure the Authority is able to meet its statutory mandates.

Priority 2 - the Authority will ensure the transparent preparation of its work plans (including budgets) and the timely reporting of its actual performance and will undertake the following activities to address this priority:

1. Issue a public consultation on its proposed Work Plan and Budget for the 2017-18 fiscal year by October 2016;
2. Submit its proposed work plan and budget for the 2017-18 fiscal year, together with recommended Regulatory Authority and Government Authorization Fees for the period, to the Minister of Economic Development and Education and the Minister of Finance by 1 January 2017;
3. Prepare and issue a report and financial statement covering the period 2015-16 by 31 July 2016; and
4. Develop a strategy statement that incorporates and clearly enunciates the Authority's mandate, mission, and values.

Priority 3 - the Authority will facilitate regular engagement of key stakeholders to keep up to date on their needs and issues and will undertake the following activities to address this priority:

1. Arrange regular meetings with ICOL holders and relevant stakeholders The Authority is minded to initiate discussions with entities including, but not limited to, the Bermuda Tourism Authority, The Bermuda Economic Development Corporation, the Chamber of Commerce and Consumer Affairs.

Priority 4 - the Authority will ensure that its internal governance and operations is continually improving and of a standard commensurate with its standing as a national regulatory body and will undertake the following activities to address this priority:

1. The Authority will continually review its internal policies and procedures.

Priority 5 - the Authority will ensure the appropriateness of its internal controls and will undertake the following activity to address this priority:

1. The Authority will ensure that its internal controls are reviewed and any identified deficiencies are corrected.

2.1.2 Promoting and Facilitating Sustainable Competition – Activities and Projects

Priority 1 - the Authority will promote innovation in the electronic communications sector through infrastructure and service based competition and will undertake the following activity to address this priority:

1. Assignment of the next tranche of high demand spectrum.

Priority 2 - the Authority will ensure compliance with and/or the effectiveness of any remedies, conditions and administrative determinations imposed by the Authority and will undertake the following activities to address this priority:

1. Monitor the compliance with and effectiveness of the conditions imposed on Digicel after its acquisition of Bermuda Telephone Company; and
2. Review other remedies and conditions imposed by the Authority since the Authority's existence to ensure their relevance and effectiveness.

2.1.3 Promoting and Protecting the Interests of Consumers

Priority 1 - the Authority will ensure that providers of electronic communications services treat their customers in a fair and transparent manner. To address this priority, the Authority will undertake the following activities:

1. Conduct a review of the delivery of advertised broadband speeds.= to determine the extent to which consumers receive the broadband speeds they have subscribed to, consider what, if any, powers the Authority has to address any issues uncovered as a result of the review and to make any Administrative Determinations deemed necessary to remedy any shortcomings in this regard.

2.1.4 Facilitating Innovation and Investment

Priority 1 - the Authority will promote Bermuda as an attractive place to set up and operate electronic communications businesses and will undertake the following activities to address this priority:

1. Continue to develop its relationship with the Business Development Agency with a view to sharing resources and advising where possible, on potential arrangements to allow testing and pilot programs within Bermuda for new and innovative technologies and services.

2.1.5 Providing Timely Advice and Information to the Government

Priority 1 – Ensure that the Minister of Economic Development is provided with adequate information to make key policy decisions for the electronic communications sector and the Authority will undertake the following activity to address this priority:

1. Review and determine the public interest in liberalizing the electronic communications sector including the lifting of the moratorium on the issue of additional ICOLs; and
2. Review of ICOL conditions.

2.1.6 Other Administrative Functions

Parallel to the key projects and activities planned for the upcoming year, there are other administrative functions the Authority is obliged to undertake in the fulfilment of its responsibilities on an as needed basis. These include, but are not limited to:

1. Consumer Awareness;
2. Collection and verification of ICOL, Government Authorization and other Sector related fees;
3. The management of spectrum resources for special events;
4. The issuance of class radio licences;
5. Consideration of applications for market concentrations within the regulated sector;
6. Handling and investigation of consumer and inter-carrier complaints; and
7. Monitoring compliance of ICOL holders with licence conditions and other regulatory obligations and taking any appropriate action warranted.

These activities have been taken into account when estimating the potential workload and budget expenditure for this work plan, however, unforeseen and particularly demanding tasks may impact on the Authority's ability to complete or even commence some the projects as planned.

2.2 Carry Over of Activities from 2015-16 Work Plan

Section 3.2 identifies the work streams that are included in the Authority's 2015-16 work plan and are likely to be carried over from the 2015-16 work plan into the 2016-17 year.

2.2.1 Establishment of Working Group for Access to Infrastructure

Third party access to electronic communications infrastructure (poles and ducts etc.) is an important part of developing sustainable competition. The ability to deliver certain services is dependent on license holders' ability to have access to such infrastructure. The Authority will look to ensure that access is granted in a way that is fair to both the seeker and the granter of infrastructure access, for the ultimate benefit of the consumer.

2.2.1.1 Over the Top Review

The Authority intends to review the state of Over the Top within the Bermuda context and undertake such a review in the upcoming financial year.

Over the Top services can be generally defined as the provision of content, audio, video or otherwise and services, to an end user without the involvement of a traditional network operator. Services like Netflix, WhatsApp, and Skype, all provide end users with electronic communications services over the internet or a mobile data network without the involvement of licenced electronic communications providers in Bermuda, save and except the fact that those services travel "over the top" of those networks. As the use of these services becomes more prolific within Bermuda and the various markets regulated by the Authority, the need to consider the impact of these services arises.

2.2.1.2 Billing Practices

During the 2015-16 work plan year, the Authority intended to conduct a review of the billing practices of ICOL holders in furtherance of its goal of protecting and promoting the interests of consumers, this review would have considered what practices ICOL holders offering residential electronic communications services engaged in when billing consumers and determined how, if any, some of these practices could be improved to benefit end users and the ICOL holders. This review is still an activity the Authority intends to undertake during the 2016-17 work plan year.

2.2.1.3 Net Neutrality

The Authority planned to seek the views of Bermuda's consumers and carriers on the treatment of data on the internet on a non-discriminatory basis. This review would have considered how, and to what extent, ICOL holders would be allowed to give priority to certain types of data on their network over other kinds of data. As can be appreciated, the issue of internet neutrality is both relevant and vital to the progression of internet based services in the future. A consultation on this issue will now take place during the 2016-17 financial year.

The Authority planned to consult on and issue guidelines to be used for the establishment of the amount of any financial penalty levied against an ICOL holder under the RAA. This activity will be included in the Authority's work plan for the upcoming financial year.

2.3 Activities from 2015-16 Work Plan Year that are no longer relevant

Section 3.3 contains work stream items contained in the 2015-16 work plan but will not be carried out by the Authority. These work stream items are no longer relevant and/or have been overtaken by recent market events.

2.3.1 Review Market for Access to Infrastructure

The Authority will have commenced a review of all markets (Market Review) by the close of the 2015-16 work plan year. The Market Review will include a review of the market for access to infrastructure rendering this particular work stream redundant.

2.3.2 Review of KeyTech Remedies

During the 2015-16 work plan year, the Authority intended to review the obligations placed on members of the KeyTech Group of companies to ensure they remain relevant and effective. The market movement which saw parts of the KeyTech Group sold off to third parties and other parts of the KeyTech Group merge with one and other has overtaken the need for this activity.

2.3.3 Monitor Compliance and Effectiveness of the Conditions Place on the Barrie Holdings / Bermuda Telephone Company: KeyTech / Bermuda Cablevision Transaction.

The Authority placed a number of conditions on KeyTech, Barrie Holdings and Bermuda Telephone Company prior to approving the transaction which saw KeyTech increase its shareholding in Bermuda Cablevision and Barrie Holdings Purchase Bermuda Telephone Company. Since then, Bermuda Cablevision has merged with

Logic and Barrie Holdings has sold on its interest in Bermuda Telephone Company to an unrelated third party. As such, there is no longer a need for a review of conditions.

2.4 Contextual Overview of Projects and Activities for 2016-17

A summary of the key projects and activities that will contribute to the achievement of the identified strategic goals during 2016-17 are shown in **Error! Reference source not found.7**.

- 2.4.1** The Authority will endeavour to ensure that these key activities are adequately resourced to ensure delivery of its planned objectives. However, in the event of unexpected developments, during the course of the year, priorities of these key activities may change.
- 2.4.2** The activities and outputs listed in Appendix 1 represent the Authority's current best view of the work that the Authority will be undertaking during 2016-17. However, there are a number of factors that may affect the scheduled work program, namely:
 - (a) External dependencies that may affect timing;
 - (b) Interdependencies between streams of work, that may entail knock-on effects in the event of delays; and
 - (c) External events that are difficult to predict to which the Authority will be required to respond.
- 2.4.3** The Authority intends to retain flexibility within the 2016-17 work program, in order to allow it to respond to changes and new issues as they arise.

3 PROPOSED BUDGET AND PROJECTED REVENUES

This section sets out the Authority's proposed expenditure budget proposed Regulatory Authority Fees and projected revenue for the work plan period 2016-17.

3.1 Proposed Expenditure Budget for 2016-17

- 3.1.1** Subject to the approval of the Minister of Finance, the Authority proposes to adopt an expenditure budget of \$3,375,500 for financial year 2016-17. The proposed budget is as set out in Table 1 below.
- 3.1.2** The Authority's proposed total expenditure budget for financial year 2016-17 is less than its approved expenditure budget for the financial year 2015-16 by approximately \$182,000. The major changes in the proposed budget for financial year 2016-17 when compared to the approved budget for 2015-16 are as follows:
1. an increase in staffing costs of \$296,400 in employee costs to make provision for an increase of staff;
 2. a decrease in IT equipment capital expenditure of \$75,000. The major planned IT projects have been completed;
 3. a decrease of \$247,000 in consultant fees. The activities proposed to be undertaken during 2016-17 will require a different mix and unit costs of consulting services than in the prior year
 4. A decrease of \$100,000 in the provision for litigation and mediation
 5. In addition, the proposed increase in staff levels should be able to reduce the Authority's reliance on outside consultants; and
 6. net total decreases in various other expenditure categories, totalling approximately \$56,400.

3.2 Proposed Fees and Projected Revenue

- 3.2.1** The Authority estimates that the ICOL holders' annual relevant (taxable) turnover during financial year 2016-17 will be approximately \$191 million which is significantly less than the amount that was projected for 2015-16. The Authority's revenue projections are based primarily on actual revenues received from ICOL holders for the first two quarters of the 2015-16 financial year.

In order to fully fund the Authority's proposed expenditure budget \$3,375,500, the Regulatory Authority fee would have to be increased from 1.50% to 1.77% of relevant (taxable) turnover. However, the Authority is proposing to cap the fee at 1.75%. This would generate revenues of approximately \$3,342,500 for the Authority and result in a net deficit of approximately \$33,000.

- 3.2.2** The Authority recommends that the Minister of Economic Development make a regulation providing for an increase in the Regulatory Authority Fee to be paid by ICOL holders during financial year 2016-17 to 1.75% of relevant (taxable) turnover.
- 3.2.3** The Authority also recommends to the Minister of Economic Development that there be no increase in the current level of Government authorization fees imposed on the electronics communications industry under the Government Fees Act 1965.

TABLE 1 Proposed budget 2016-17:

	PROPOSED 2016/17	APPROVED 2015/16	INC (DEC)
REVENUES	\$3,342,500	\$3,658,000	(\$315,500)
Employees	\$2,170,000	\$1,873,600	\$296,400
Training	\$43,000	\$80,000	(\$37,000)
Consulting services	\$453,000	\$700,000	(\$247,000)
Meetings & Conferences	\$12,000	\$35,000	(\$23,000)
Subscriptions	\$18,000	\$12,500	\$5,500
Public Relations	\$82,000	\$70,000	\$12,000
Office Space	\$220,000	\$258,600	(\$38,600)
Office Services	\$216,000	\$197,800	\$18,200
Provision for Mediation & Litigation	\$100,000	\$200,000	(\$100,000)
Travel	\$54,500	\$30,000	\$24,500
TOTAL OPERATING EXPENSES	\$3,368,500	\$3,457,500	(\$89,000)
ANTICIPATED OPERATING SURPLUS / (DEFICIT)	(\$26,000)	\$200,500	(\$226,500)
Furniture	\$1,000	\$10,000	(\$9,000)
Office Equipment	\$1,000	\$10,000	(\$9,000)
IT Equipment	\$5,000	\$80,000	(\$75,000)
TOTAL CAPITAL EXPENDITURE	\$7,000	\$100,000	(\$93,000)
TOTAL EXPENDITURE	\$3,375,500	\$3,557,500	(\$182,000)
ANTICIPATED TOTAL SURPLUS / (DEFICIT)	(\$33,000)	\$100,500	(\$133,500)

TABLE 2 The projected revenues for 2016-17 for the Authority and Government are:

REVENUE FORCAST	ELECTRONIC COMMUNICATIONS	SPECTRUM FEES	RADIO COMMUNICATION LICENSES	HANDSET FEES	TOTAL
Regulatory Authority	3,342,500				3,342,500
Government	4,297,500	1,497,500	395,000	5,337,000	11,527,000
TOTAL	7,640,000	1,497,500	395,000	5,337,000	14,869,500

NB: Revenues listed in line item "Government" are fees collected on behalf of Government and passed through to Government without any material deductions.

3.3 Description of Budget Categories

3.3.1 Operational Expenses

The following categories consist of recurring costs that the Authority is expected to incur each year (although the amount budgeted in any category is likely to vary from year-to-year):

1. **Employees:** This category includes the salaries and benefits for the staff and the honoraria paid to the three Commissioners.
2. **Training:** This category includes the costs of training and workshops for the Authority Commissioners and members of staff.
3. **Consulting Services:** This category includes the costs of the legal, regulatory, and technical support the Authority will require in connection with the tasks to be carried out in 2016-17 work plan.
4. **Meetings and Conferences:** This category includes the costs the Authority will incur to conduct and/or participate in on and off-site meetings, workshops and conferences with the industry and public.
5. **Subscriptions:** This category includes the cost of books, periodicals, and subscriptions the Authority will require to remain abreast of industry events and trends.
6. **Public Relations:** This category includes the cost to further develop and maintain the Authority's website, placement of notices in local publications and the conduct of a public relations program.
7. **Provision for Mediation & Litigation:** This category makes provision for litigation as well as the cost of any proceedings conducted by the Authority under the RAA.
8. **Office Space:** This category includes the rent, taxes, utilities, and insurance associated with leasing a 3,050 square foot office on the 3rd Floor South of Cumberland House, 1 Victoria Street, Hamilton. Also included are the associated telephone, internet, and mobile communications expenses.
9. **Office Services:** This category includes IT service support, payroll and accounts preparation, financial audit, human resources, maintenance and cleaning contracts, general office supplies, stationery and kitchen supplies.
10. **Travel:** This category includes the costs of travelling in relation to meetings, conferences, training and seminars attended by the Authority Commissioners and/or members of staff.

3.3.2 Capital Expenditures

The following categories consist of one-time expenses required to enable the Authority to begin its operations:

1. **Furniture and Fittings:** This category includes the costs of furniture and fittings for the Authority's offices. Included in this category is furniture for the staff, reception area and conference room.
2. **Office Equipment:** This category includes office equipment, such as a copier, projector and miscellaneous office equipment.
3. **IT Equipment:** This category includes the cost of an internal computer network for the Authority's offices, including workstations for the Commissioners and staff, associated software, and backup facilities.

APPENDIX A

**REQUEST TO APPROVE THE REGULATORY AUTHORITY'S BUDGET
FOR FINANCIAL YEAR 2016-17**

APPENDIX A

REQUEST TO APPROVE THE REGULATORY AUTHORITY'S BUDGET FOR FINANCIAL YEAR 2016-17

Pursuant to sections 43(3) and 43(4) of the Regulatory Authority Act 2011, the Regulatory Authority hereby requests that the Minister of Finance, after making "any modifications" to the budget proposed by the Regulatory Authority that he "deems necessary and proper" issue a decision approving the Regulatory Authority's proposed expenditure budget totalling \$3,375,500 for financial year 2016-17 as set out in Table 1 (Page 10).

APPENDIX B

KEY PROJECTS AND ACTIVITIES PLANNED FOR 2016-17

KEY PROJECTS AND ACTIVITIES PLANNED FOR 2016/17

STRATEGIC GOAL	ACTIVITY	OUTPUT
Striving for Organizational Excellence	Continuing/Ongoing Matters	
	Continue to provide targeted training to the Authority's members of staff to ensure they are equipped to perform at the highest standard	Improved skills and knowledge of Authority staff and management
	Arrange at least two in house training opportunities for staff	Authority staff to have participated in training activities
	Participation in relevant industry and regulatory forums and training	Attendance at industry and regulatory forums for each member of staff
	Arrange regular meetings between ICOL holders and the Authority as well as between Board and stakeholders	Improved relations between ICOL holders and the Authority staff and Board
	Commission an independent annual review of Authority internal controls	Completed independent review of internal controls and addressed any deficiencies uncovered
	Work Plan Consultation Submission of work plan and budget	Approved Work plan 2017 – 2018
Promoting and Facilitating Sustainable Competition	Matters Held Over	
	Investigate establishment of Industry Working Group for wholesale access to infrastructure	Working group report & Recommendations
	New Matters	
	Monitor compliance with conditions imposed on Digicel after its acquisition of BTC	Report on review implementation of any recommendations
Assignment of High Demand Spectrum (HDS-2)	Consultation of proposed spectrum for release Conduct comparative selection process Award Spectrum	

KEY PROJECTS AND ACTIVITIES PLANNED FOR 2016/17 (continued)

STRATEGIC GOAL	ACTIVITY	OUTPUT
Promoting and Protecting the Interest of Consumers	Matters Held Over	
	Consultation on Billing practices of electronic communications service providers	Establishment of an enforceable standard of service for the speed of broadband services.
	Seeking views of Bermuda Public on treatment of Data on Internet (Net Neutrality) Consultation on Treatment of Data on Internet	Consultation of net neutrality
	New Matters	
	Quality of service Investigation: Fixed Broadband / ISP Speed	Establishment of an enforceable standard of service for speed of broadband services
	Confidentiality of Consumer Data	
Facilitating Innovation and Investment	Matters Held Over	
	Investigate appropriate levels of financial penalties for breach of rules	Guidelines on financial penalties
	Continuing / Ongoing Matters	
Continue to develop relationship with the Business Development.	Ongoing discussions with BDA	
Providing Timely Advice / Information to Government	New Matters	
	Review and determine Public interest in allowing more ICOL holders to enter the market.	Consultation submission of recommendation to Minister responsible for Electronic Communications Sector
	Review of ICOL condition A 5.1 re: location of personnel, facilities and services outside of Bermuda.	Consultation Report General Determination

APPENDIX- C

SUMMARY OF RESPONSES TO WORK PLAN PLANNING CONSULTATION

Appendix- C

SUMMARY OF RESPONSES TO WORK PLAN PLANNING CONSULTATION

Introduction

1. The Regulatory Authority Act 2011 (RAA) section 42(2) requires the Regulatory Authority (the 'Authority') initiate a public consultation regarding its work plan for the upcoming financial year not later than six months before the commencement of each financial year. Pursuant to this obligation *Planning Consultation WP-1617-2015* ('the Work Plan Consultation') was published by the Authority on 30 October 2015. Interested third parties were invited to respond to the Consultation by 20 November 2015 (the 'Consultation Period').
2. During the Consultation Period the Authority received written non-confidential comments on the Work Plan Consultation from:

Telecommunications Bermuda & West Indies Limited (Digicel);

The Board Consumer Affairs Bermuda (Consumer Affairs); and

A Member of the General Public.
3. The Authority's Work Plan Consultation sets out a report on the activities carried over from the 2015-16 Work Plan, the Authority's Strategic Goals and its Proposed Budget and Revenues for the upcoming fiscal year.
4. A full text of the submissions made in response to the Work Plan Consultation can be found on the Authority's website at www.rab.bm.
5. The Authority is grateful for the responses received to this consultation. All comments have been carefully considered by the Authority as a part of its process to refine its Work Plan for 2016-17. The following table entitled "Summary of Responses" summarizes the key comments made by Digicel, Consumer Affairs and the Member of the Public and provides the Authority's responses to those comments.
6. For the avoidance of doubt, a failure to address, directly, or indirectly, any matter raised by a respondent to the Work Plan Consultation in this document is not an indication of the Authority's failure to take that matter into account or an acceptance or rejection of the position.
7. The Authority has determined that no changes to the Proposed Work Plan are required as a result of the comments received.

APPENDIX C

Summary of Responses

DIGICEL RESPONSES	CONSUMER AFFAIRS RESPONSES	MEMBER OF THE PUBLIC RESPONSES	AUTHORITY'S RESPONSE
Question 1: Do you agree with the proposed Strategic Goals?			
<ul style="list-style-type: none"> • Agreed that goals 2 and 4 were appropriate. • Stated that goal 3 (Promoting and Protecting the interest of consumers) is only appropriate in the absence of more general consumer protection legislation. Alternatively, argued that, even if it were appropriate for the Authority to take on, goal 3 should be less of a priority than goals 2 and 4; • Agreed that goals 1 and 5 are appropriate 	<ul style="list-style-type: none"> • Did not agree that the goals were appropriate. • Highlighted goal 3- Striving for Organizational Excellence and raised the following concerns: • The potential for the Authority to take on Electricity as an additional sector causing current resources to be stretched resulting in a need for additional resources; • The Authority's board's "fail[ure] to retain its [Chief Executives], so that dedicated leadership required of all departments inside the Authority may not meet the required demands placed on it by ICOLs and consumers" • 	<ul style="list-style-type: none"> • Did not agree with the Strategic Goals: • Highlighted Goal 4- stating "In the area of 'Facilitating Innovation and Investment', the priority lacks any goal to help Bermuda or advance Bermuda." • Suggested that the Authority welcome entrepreneurs and facilitate a review of business plans for electronic communications start-ups, that the Authority should make regular contact with the Bermuda Tourism Authority, the Bermuda Economic Development Corporation and the Bermuda Business Development Agency to enable the Authority to keep abreast of market activity, challenges and needs for support in and from the electronic communications sector in order to keep Bermuda competitive. • Reminded the Authority that it serves all of Bermuda and not just carriers and commented that the Authority should look to stimulate ongoing advancement in the market by (a) addressing market failures in a timely fashion by enacting regulation 	<ul style="list-style-type: none"> • The Comments from Digicel and the Member of the public are not relevant since, as specified in the Consultation document, "the number sequence of the priorities do not necessarily reflect their relative importance" • The comments from the Member of the public relating to meetings with specific stakeholders are noted, and although not deemed to be significant enough to highlight in the proposed Work Plan, will be addressed. • The comments from the Member of the public concerning the Authority's timeliness in addressing market impacts is noted. The Authority does point out, however, that the legislative process for dealing with such matters must be followed and is outside of the control of the Authority. • Consumer Affairs: The concern about the Authority's lack of resources for Electricity is noted. However, provision has not been made in the Workplan for the regulation of the Electricity because the Authority has not yet been given that mandate. • The Department of Consumer Affairs' concern that the Authority may not have a Chief Executive to

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		<p>through policy rather than through legislation; (b) addressing significant market gaps in a timely fashion-ensuring that Bermuda is not out of step with its main trading partners by addressing such gaps through Government.</p>	<p>provide the leadership to meet the required demands of the Authority does not seem to consider the fact that the Workplan covers the 2016/17 fiscal year during which the Authority expects to have a new Chief Executive in place</p>
<p>Question 2: Do you Agree that the proposed priorities and related activities will allow the Authority to Achieve the stated strategic goals?</p>			
<ul style="list-style-type: none"> Agreed that the “specific initiatives identified by the Authority are aligned with the Strategic Goals” Stating that the priorities identified in the Work Plan Consultation are “sufficiently material so as to be appropriate for selection” Noted that “announcement of the the proposed ATN CellOne [KeyTech] merger after the publication of the [Work Plan] consultation would require activities associated with this merger assessment to be included in the Authority’s work plan”. Stating that such a merger would be a “Priority Activity” <p>(1)</p>	<ul style="list-style-type: none"> Does not agree that the priorities are presented to allow the Authority to achieve its stated goals. Highlighted the following: Goal 3 Priority 1: Conduct a Review of delivery of advertised broadband speeds: “as it is presented fails to address the problem the Consumer Affairs Board discussed with the [Authority]”. Stated that Consumers are not getting the speed they are paying for in breach of the Consumer Protection Act 1999; and that there is “no justification for broadband prices to remain high for what is being sold to consumers when compared to other like jurisdictions” Recommended that the Authority: 		<ul style="list-style-type: none"> Digicel’s comment regarding the proposed merger of KeyTech and ATN is noted. However, it is not addressed in the 2016/17 Work Plan because all significant work associated with the merger is expected to be completed in the 2015/16 fiscal period. The Consumer Affairs Board’s comments regarding Broadband speed are noted. The proposed Work Plan item complained about in the comment proposes to meet a number of the objectives set out by Consumer Affairs. The Authority proposes to address the issue of broadband speed in a consistent, open and fair manner. Doing so requires investigation of the issue before reaching a conclusion(s) about how to remedy the perceived issue. Consumer Affairs concern regarding Broadband pricing is noted. The Authority has been actively seeking to address the issue of pricing

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	<ul style="list-style-type: none"> • (1) Redraft broadband service contracts based on agreed broadband service levels; • Obligate ICOL holders to deliver broadband service on a “consistent basis and at agreed service levels, less any transmission overhead” estimated to result in provision of no less than 85% of advertised speed. • The qualifying phrase “up to” found in service contracts for the provision of broadband speed be used only to apply to “transmission bandwidth needed to provide deliver the service” • Monitor the [broadband] market regularly (every 9 months); • Review ICOL broadband pricing, advise the public of which element of broadband pricing carries the most cost and then enact rules and regulations to “maintain consistent and realistic price controls in the market”. 		<p>though the facilitation of competition. A determination on what further actions to take in this regard will be made at the conclusion of the Market Review process which will be underway very shortly within the current fiscal year. Price controls are a draconian example of the kind of regulation that could be put in place. Generally, regulators will only impose such measures as a last resort after it has been determined that there is market failure and there are no other options to prevent harm to the public interest.</p>
<p>Question 3: Do you Agree with the Authority's Proposed Priorities:</p> <p>(a) If no, please state which priorities you disagree with and provide reasons for your disagreement together with any alternative priorities.</p>			
<ul style="list-style-type: none"> • Goal 1- Striving for Organizational Excellence: It Noted that of the 5 priorities listed, goals 1-3 “are more immediate than Priorities 4 		<p>Noted that Bermuda should look to adopt a Broadband Plan and/or a Telecommunications Roadmap. The commenter argued that some of the benefits of developing such a plan could</p>	<ul style="list-style-type: none"> • Digicel's comments are noted. Digicel is directed to the Authority's response to its comments regarding question 1 above

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<p>and 5” and requested that this be reflected in business decisions in the event of a resource conflict.</p> <ul style="list-style-type: none"> • Goal 2- Promoting and Facilitating Sustainable Competition: Agreed with the priority dealing with the allocation of High Demand Spectrum. Digicel also believed that the ATN/KeyTech/CellOne merger should be included as a priority within this goal. • Agreed with the Authority’s plan to assess current remedies and conditions imposed on certain ICOL holders for effectiveness noting that doing so “ensures that there is no undue regulatory burden on the sector”. • Goal 3- Promoting and Protecting the Interest of Consumers: Agreed that the Authority’s proposal to tackle broadband speed transparency is an initiative which is “an appropriate activity for the Authority to undertake”. • Goal 4- Facilitating Innovation and Investment: Inclusion of the Market Review intended to be commenced at the end of this fiscal year was requested to be included in the Work Plan for 2016/17. It was also requested that the HDS-1 		<p>be allow Government to be better informed of technical network and technology based innovations allow Government to make “sound policy decisions”</p>	<ul style="list-style-type: none"> • As regards Digicel’s request for the ATN/KeyTech deal to be included as a priority, Digicel is directed to the Authority’s response to question 2 above. • The Broadband plan proposed by the Member of the Public is also noted. The Authority notes that such plans are ordinarily Policy based initiatives driven entirely or primarily by the Government in other similar jurisdictions.

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<p>Spectrum allocation process should be completed by December 2015.</p> <ul style="list-style-type: none"> • Goal 5- Providing Timely Advice and Information to Government: Agreed that this was an appropriate priority for the Authority to undertake. A suggestion was made to expand this priority into a review of the convergence of traditional carriers and non-traditional, internet based platforms. 			
Carry Over Activities from 2015-16 Work Plan			
<ul style="list-style-type: none"> • Billing Practices: It was proposed no single set of billing practices of ICOL holders should be imposed “[a]s long as a licensee has the ability to discharge its obligation to the consumer, other licensees and the Authority” • Over the Top Review: It was proposed that the review take into account the financial impact such applications have on traditional operators including the decrease in revenue and the demand on the network resulting in the need for increased investment. • Net Neutrality: It was submitted that the first steps would be to develop a strategy from a policy perspective in 			<ul style="list-style-type: none"> • Billing: Digicel's comments are noted. As a general rule, the Authority does not intend to carry out any of the proposed activities without giving all parties (including ICOL holders) a say in the proposed action. Digicel's concerns about Billing must be counterbalanced against the Authority's mandate to ensure that consumers are protected from practices which obfuscate or in some way create uncertainty about how a service is being billed for. • Net Neutrality: The purpose of the Authority's work in this regard will be to identify and discuss any issues arising on the topic of net neutrality as it affects Bermuda.

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<p>order to test whether any proposed approach is “fit for purpose and [will] deliver the maximum overall benefits to the various stakeholders based on the actual conditions in their local market”. The need for urgency surrounding this issue was dismissed and a more “considered approach” to the matter is preferred allowing time to see where the various debates surrounding the issue lead.</p>			
<p>Question 4: Do you agree with the Authority’s proposal not to introduce service fees for Class Licensees or persons who hold licences under the Telecommunications Act 1986?</p>			
<ul style="list-style-type: none"> it would be “iniquitous, discriminatory and distortive” not to introduce fees for such licensees. A request was also more for the rationale for the Authority’s position on this issue. 			<ul style="list-style-type: none"> Digicel’s strong comments appear to be based on a misunderstanding of the basis of the Class Licence fees. The Authority is seeking not to introduce additional Authority fees for class licences. These persons already pay fees to the Bermuda Government. The Authority collects those fees on behalf of Government. Any additional fee would be designed to cover the Authority’s incremental costs for providing the service to Government. Because the current level of fees and costs are small in comparison to the fees charged to ICOL holders the Authority is not minded, at this stage, to carry out the assessment necessary to determine the appropriate amount to charge. This may change in future.

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Question 5: Do you agree with the proposed increase in the Regulatory Administrative Fee to 1.75% from 1.55%?			
<ul style="list-style-type: none"> This proposed increase was opposed. The Authority has been asked to clearly demonstrate why it is projecting a significant drop in revenues. It was suggested that other fees collected by the Authority should be used to offset the Authority's administrative costs of dealing with the corresponding management and administration the sector. In the case of spectrum, for example, it was argued that spectrum fees should be attributed to the cost of administering and managing spectrum. It was also argued that voice operators who operate on a regulated network operator's network should be considered for taxation purposes. 	<ul style="list-style-type: none"> Issue was taken with the \$82,000 budgeted for public relations. It was recommended that this amount be increased. A potential source of income for this increase in budget was Handset fees. The Authority was also advised to ensure that the projected revenue should cover the costs of recruiting additional staff so the authority does not remain under resourced. 		<ul style="list-style-type: none"> Digicel's comment on the change in revenues is noted. The Authority has based its revenue projections on the revenues it is currently receiving from ICOL holders based on taxable revenue after allowance for deductions and not on gross revenues derived from services regulated by the Authority. Digicel's suggestion that the Authority use some spectrum fees to cover costs related to the administration of that resource is not lawfully possible. The spectrum fee is a fee which is collected on behalf of, and passed through, to Government without deduction by the Authority. Consumer Affairs' comments regarding the budget is noted. The Authority has taken steps to ensure that the appropriate expenditure is allocated to the appropriate categories. It should be noted that the budget for public relations was increased over last year. The comments regarding recruitment of staff is noted. The Authority's proposed budget amounts have been adjusted to reflect the recruitment of an additional staff member.

APPENDIX D

**REQUEST AND RECOMMENDATION TO MAKE A REGULATION
REGARDING REGULATORY AUTHORITY FEES FOR FINANCIAL YEAR
2016-17**

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REQUEST AND RECOMMENDATION TO MAKE A REGULATION REGARDING REGULATORY AUTHORITY FEES FOR FINANCIAL YEAR 2016-17

1. Pursuant to Section 44(1) of the Regulatory Authority Act, the Regulatory Authority hereby recommends that the Minister make a regulation ensuring that the Regulatory Authority fees to be paid by Integrated Communications Operating Licence (ICOL) holders during financial year 2016-17 be increased from 1.55 per cent to 1.75 percent of Annual Relevant Turnover.
2. The Regulation made by the Minister should have the following effect;
 - a) During financial year 2016-17, ICOL holders shall pay general regulatory fees equal to 1.75 per cent of relevant turnover.
 - b) Relevant turnover shall be calculated by determining the ICOL holder's "total turnover" (i.e., the revenue that the ICOL holder receives from the provision of electronic communications services to end-users and other Communications Operating Licence ("COL") holders in Bermuda) and then subtracting the payments made by the ICOL holder to other licensees with Communications Operating Licences (COLs) in Bermuda only for wholesale electronic communications services related to the provision of the ICOL holder's electronic communications services.
 - c) ICOL holders shall make four payments quarterly in arrears.

APPENDIX E

**RECOMMENDATION REGARDING GOVERNMENT AUTHORIZATION FEES
FOR FINANCIAL YEAR 2016-17**

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RECOMMENDATION REGARDING GOVERNMENT AUTHORIZATION FEES FOR FINANCIAL YEAR 2016-17

Pursuant to Section 52(2) of the Regulatory Authority Act 2011, the Regulatory Authority hereby submits this recommendation to the Minister regarding the Government authorization fees to be adopted for financial year 2016-17. The Regulatory Authority recommends that there be no change to the Government Authorization fees related to the electronic communications sector for the 2016-17 year.