



REGULATORY
AUTHORITY

Bermuda

Decommissioning of Electronic Communications Price Comparison Website

Consultation Document

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I. DEFINITIONS

“Access Service Provider” means a company or companies engaged in the business of providing Internet Access Services to Consumers by means of an electronic communications network. ;

“Add-on/Value Added Service” means an additional Electronic Communications Service provided or offered to a Consumer, without the requirement of additional terms and conditions by the Service Provider providing the original service;

“Authority” means the Regulatory Authority of Bermuda;

“COL” means a communications operating licence granted under section 16(1) of the ECA and, for the avoidance of doubt, includes an ICOL;

“Consumer” means any person who has entered, or seeks to enter, into a Contract for the receipt of residential services from a service provider;

“Contract” means an agreement, whether it be written, oral, some combination of written and oral or implied by the circumstances, which sets out the terms and conditions by which a Service Provider will offer a specified Electronic Communications Service(s) or product(s) to the consumer, as well as, the Consumer’s acceptance of said Service Provider’s offer;

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

“Electronic Communications Service” means a service, that is normally provided for remuneration, which consists wholly, or primarily of the conveyance of signals by means of electronic communications networks, including the distribution and provision of subscription audiovisual services;

“Electronic Communications Service Provider” means an Integrated Communications Operations Licence (“ICOL”) holder or a Communications Operations Licence (“COL”) holder, as defined by the ECA, which is, or intends to be, in the business of providing the Electronic Communications Service(s) defined by the ECA;

“ECA” means the Electronic Communications Act 2011;

“ICOL” means an integrated communications operating licence described in section 18(1) of the ECA;

“Monthly Cost” means the monthly subscription fee that the carrier charges the consumer for a specific service;

“RAA” means the Regulatory Authority Act 2011;

“Service Provider(s)” means, for the purposes of this Consultation Document, those ICOL and COL licensees who provide Electronic Communications Service(s) to the retail residential market for a fee.

“Tariff Information” means, for the purposes of this Public Consultation, all relevant information about a retail residential tariff that is required for inputting into the Price Comparison Website to enable that site to make price comparison calculations and to provide information concerning the various retail residential services being offered by all Relevant Electronic Communications Service Providers;

“Telecommunication” means a message, signal, or any other information that is transmitted by means of electronic communications; and

“Telecommunications Price Comparison Website” means an interactive website that enables consumers to review and compare pricing for residential Electronic Communications Services.

II. INTRODUCTION

1. Under section 12 of the RAA the principal functions of the Authority include: to promote competition, the interests of residents and consumers of Bermuda, the development of the Bermudian economy, Bermudian employment and Bermudian ownership and innovation. Furthermore, section 9(2)(c)(ii) of the Electronic Communications Act (“ECA”) stipulates that the Authority’s functions include the making of administrative determinations to provide for the control and conduct of public electronic communications services, including the imposition of transparency measures and notice requirements relating to the rates, charges and other terms and conditions for the benefit of consumers.

2. The purpose of this Consultation Document is for the Authority to consult with the public on the Authority’s proposed decision regarding the decommissioning of the Authority’s Telecommunications Price Comparison Website (“Website”) and determine whether such a tool is necessary to promote transparency in the electronic communications sector. At the conclusion of this consultation process, the Authority will enact a General Determination setting forth the Authority’s decision regarding the decommissioning of the Website.

III. CONSULTATION PROCEDURE

3. This consultation is being undertaken in accordance with sections 9(2)(c)(ii) and 26 of the ECA, and sections 55(2)(a) -(b) and (e), 56, 62 and 69 to 73 of the RAA. The procedure and accompanying timelines (as set out in section 70 of the RAA), under which this consultation is taking place have been set out below.

4. Written comments should be submitted before 5:00 PM (Bermuda time) on 11th April 2019.

5. The Authority invites comments from members of the public, electronic communications sectoral participants and sectoral providers, and other interested parties. The Authority 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 Section VIII.

6. Responses to this Consultation Document should be filed electronically in MS Word or Adobe Acrobat format. Parties filing comments should go to the Authority's website, www.rab.bm, follow the link to the Consultations and Response page, and click the "Click here to submit a response" icon which appears at the top of the page. All comments should be clearly marked "Response to Consultation Document: Decommissioning of Electronic Communications Price Comparison Website" and should otherwise comply with Rules 18 and 30 of the Authority's Interim Administrative Rules, which are posted on the Authority's website.

7. The Authority 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 Authority's Interim Administrative Rules.

8. 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. An *ex parte* communication is defined as any communication to a Commissioner or member of staff of the Authority regarding the matter being consulted on in this Consultation Document, other than a written submission made pursuant to this section. Within two business days after making an *ex parte* communication, the person who made the *ex parte* communication shall submit the following to the Authority: (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 Authority's website, along with a notice of the *ex parte* communication.

9. The principal point of contact at the Authority for interested persons for this Consultation Document is Jordan Cutts. He may be contacted by email, referencing "Responses to Consultation Document: "Decommission of Electronic Communications Price Comparison Website" at consultation@rab.bm or by mail at:

Consultation
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda

10. In this Consultation Document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the EA, the RAA and the Interpretation Act 1951.

11. This Consultation Document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The Authority is not bound by this Consultation Document, nor does it necessarily set out the Authority'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 Authority 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 Authority.

IV. LEGISLATIVE CONTEXT

12. The Authority's principal functions under section 12 of the RAA include ensuring that the regulation of the electronic communications sector promotes the interests of residents and consumers of Bermuda. In support of its principal functions the RAA established a cross-sectoral independent and accountable regulatory body "to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda's position in the global market".

13. The ECA is the applicable sectoral legislation governing the electronic communications sector and received royal assent on 18th December 2011 and commenced on 28th January 2013.

14. Section 9(2)(c)(ii) of the ECA states that:

(2) The functions of the Authority shall include –

(c) the making of administrative determinations to provide for the control and conduct of public electronic communications, including –

(ii) transparency measures and notice requirements relating to the rates, charges and other terms and conditions for the provision of public electronic communications services for the benefit of consumers;

15. To enable the Authority the ability to carry out its regulatory functions specified under section 9(2)(c)(ii) of the ECA, section 26 of the ECA authorizes the Authority to make general determinations:

- (i) Governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the Authority to protect the rights of customers, subscribers, users and consumers, having due regard for the vulnerability of certain categories of consumers; and
- (ii) Issuing or approving codes of practice relating to such practices.

16. In summary, section 9(2)(c)(ii) and section 26 of the ECA empowers the Authority to make administrative determinations to impose statutory obligations on sectoral providers to provide consumers of electronic communications services with a degree of transparency regarding the rates, charges and other terms and conditions that are associated with any services made available by electronic communications services providers.

17. In accordance with sections 9(2)(c)(ii) and 26 of the ECA, to ensure transparent information regarding the rates, charges and other conditions associated with the services provided by licensed sectoral providers is readily available and easily accessible, on 18th February 2015 the

Authority issued the *Regulatory Authority (Electronic Communications Price Comparison Website) General Determination 2015* (the “Website General Determination”).

18. Upon completing the Sectoral Review of the Electronic Communications Sector on 30th November 2018, the Authority identified that the Website General Determination may require further review or revocation due to sectoral developments that had occurred since 18th February 2015.

19. Section 62(2)(d) of the RAA states:

(2) Any general determination –

(d) may be revoked or modified by the Authority through the adoption of a subsequent general determination.

V. BACKGROUND

Initial Public Consultation

20. The introduction of the Website was first discussed in the Authority’s 2014-2015 Work Plan (the “Work Plan”). Following the completion of the Work Plan, the Authority began the public consultation process for the Website. In September 2014 the Authority issued an initial consultation document. The public comment period for the initial consultation document began 4th September 2014 and concluded 22nd September 2014. During the public comment period the Authority received 158 online responses and an additional 48 street survey responses from public consumers. Written responses were received from three sectoral providers.

Issuance of Website General Determination

21. While the term “transparency” is not defined in the ECA or RAA, a 2009 study issued by the European Regulators Group (“ERG”) defined transparency by suggesting what occurs in a regulated sector in its absence¹:

“Lack of transparency...may mean that end-users cannot easily make informed decisions and compare services. This may be because the information does not exist or is deceptive. It might also be because the information they are presented with is complex, not easy to interpret and/or compare. Transparency problems can be generated and amplified by a variety of factors, including the increasing number and diversity of offers, the complexity of tariff plans, the bundling of services and the deficient presentation of information by service providers”.

¹ ERG, “Report on Transparency of Tariff Information”, ERG (08) 59rev2 March 2009, p.4.

22. After considering the public comments provided by sectoral providers and consumers during the consultation period, the Authority arrived at the decision that it would be in the public interest to establish and develop a price comparison website that would ensure consumers are afforded transparent information regarding the rates, charges and other conditions associated with the services provided by licensed sectoral providers.

VI. AUTHORITY REVIEW OF PRICE COMPARISON WEBSITE

Market Developments from 2015 to Present

23. Prior to the establishment of the Website, the electronic communications sector was made up of a greater number of electronic communications service providers. In 2014, the electronic communications sector had ten service providers offering different pricing plans. The following table illustrates the number of electronic communications service providers that were operating in each electronic communications market at the time the Website was launched:

Electronic Communications Market Service Providers in 2015						
Name of Service Provider	Fixed Voice	Mobile	Broadband/Internet Service Provider	Television	Sub-sea Connectivity	Public Safety Network / Wireless Services
Bermuda Cablevision Ltd.				X		
Bermuda Telephone Company Limited	X					
Bermuda Digital Communications Limited		X				
Brasil Telecom Subsea Cable System (Bermuda) Globnet					X	
Cable Co. Ltd.					X	
Digital Mobile Television Limited				X		
Electronic Communications Limited						X
FKB Net Ltd.						X
Logic Communications Ltd.			X			
LinkBermuda Ltd.					X	
TeleBermuda International Ltd.			X		X	
TeleCommunications (Bermuda & West Indies) Ltd.		X				
Transact Ltd.			X			
Telecommunications Network Ltd.						X
WOW Ltd.				X		

24. In the absence of statutory reporting obligations, the Authority observed that due to the number of service providers operating in each electronic communications market it was difficult for consumers to obtain information on the various services and tariffs offered.

25. However, market developments have resulted in a reduction in the number of sectoral providers currently offering electronic communications services. Since 2015, some sectoral providers have actively undertaken corporate restructuring activities. Subsequently, these mergers and acquisitions have led to the emergence of two large groups of companies:

- i. BDB Ltd., Bermuda Digital Communications Ltd., Logic Communications Ltd. (formerly Bermuda Cablevision Limited), and Cable Co. Ltd are now operating under the brand name of One Communications Ltd.) (collectively “OneComm”); and
- ii. Telecommunications (Bermuda & West Indies) Limited (“Digicel”), Transact Limited, and Bermuda Telephone Company Ltd) (collectively part of the “Digicel Group”)

26. Given the market developments that have occurred since 2015, Consumers now have fewer options to choose from when canvassing the electronic communications sector for services. The mobile, television and broadband market share is now primarily serviced by two sectoral providers (OneComm and Digicel Group) who maintain comparable rates and plans. Subsequently, there has been a concentration of available service and tariff information as Consumers have fewer sectoral provider websites to visit when gathering service and tariff information prior to purchasing electronic communications services. Furthermore, the Authority has observed that sectoral providers have gone to great lengths to ensure that their service and tariff information is easily accessible on their websites.

27. Due to a reduced number of service providers, the similar pricing and plans for services available and the relative ease within which consumers may be able to obtain information on available services, the Authority now considers whether the administrative and financial costs associated with maintaining the Website are necessary to ensure transparency in the electronic communications sector.

28. By conducting this public consultation, the Authority will be able to assess whether the consumer confusion that existed within the electronic communications market, prior to the establishment of the Website, has subsided in response to activities undertaken by sectoral providers to ensure greater transparency in service and tariff information.

29. This public consultation document will assess whether the Website is an effective and efficient tool to assist consumers to gain reasonable access to transparent service and tariff information.

Utilization of Price Comparison Website

30. After issuing the Website General Determination on the 18th February 2015, the Authority officially launched the Website on 31st March 2015. During the first year of launch, the Website experienced 256 visits from 31st March 2015 to 31st December 2015. The utilization of the price comparison website increased significantly in 2016, as 4,437 consumers visited the Website between 1st January 2016 and 31st December 2016. Utilization of the Website peaked during the 2017 fiscal year, where it was observed that the Website experienced 5,014 visits between 1st January 2017 and 31st December 2017.

31. The statistics reported above reflect the number of visits to the Website, not the number of independent consumers who used the price comparison website prior to purchasing electronic communications services.

32. Consumer utilization of the Website decreased significantly in 2018. The Website only had 2,018 views between 1st January 2018 to 31st December 2018, a decrease in utilization of approximately 50% when compared against the prior calendar year.

Alternative measures to ensure transparency

33. Under the pending Market Review, sectoral providers that are deemed to be in possession of significant market power ("SMP") are expected to have various performance obligations imposed to ensure that information regarding rates, charges and other conditions associated with the services provided are easily accessible and regularly updated on their websites. Furthermore, the Authority is currently undergoing the process of developing a Consumer Protection General Determination which will also impose transparency obligations on all sectoral providers

34. The Authority is of the view that should the public provide comments to this consultation document indicating a need to provide a price comparison service, then such a service may be provided by the Authority through the incorporation of direct links to the sectoral providers' service tariff webpages on the Authority's website. This alternative will help to ensure that consumers are able to access current information.

35. The Authority takes the view that incorporating direct links to sectoral providers' websites is supplemented by the imposition of reporting obligations currently outlined in the proposed Consumer Protection General Determination. Under the proposed Consumer Protection General Determination, the Authority suggested imposing an obligation on sectoral providers to provide complete and accurate information regarding their services and tariffs on their respective websites and at their physical customer service locations. Subsequent to introducing such a stipulation, the RA believes that the Website will become redundant as a tool for ensuring transparency in the electronic communications sector.

Maintenance Costs of Price Comparison Website

36. Currently the Authority incurs maintenance costs of approximately \$26,000.00 per annum to maintain the price comparison website and associated database. The Authority is of the view that maintenance costs for the price comparison website are disproportionate to any “transparency” benefits that are achieved for Consumers.

37. Based on the number of complaints received by Consumers between 2015 and 2018, and the limited number of complaints received regarding service and tariff information, it was observed that most complaints received were specifically related to lack of transparency and clarity regarding the contractual terms and conditions associated with various electronic communications services, as opposed to lack of information on tariffs.

38. The Authority is of the understanding that with the available information on sectoral providers’ websites, Consumers can access tariff information for various electronic communications services.

VII. PROPOSED DECISION

39. The Authority proposes to adopt a final decision, order and general determination modifying the *Telecommunications Price Comparison Website Proposed Consultation Summary, Final Decision, Order and General Determination* (the “Price Comparison Website: General Determination”) to remove the obligation to maintain the Website.

VIII. CONSULTATION QUESTIONS

40. Interested parties are invited to comment on the Public Consultation, and in particular, to provide responses to the following questions.

- i. Question 1: On a scale from 1 to 5 (1 being the lowest, 5 being the highest), how easily are you able to access information from sectoral providers regarding service tariff rates?
- ii. Question 2: What suggestions would you recommend are implemented to ensure that information regarding service tariffs is clearer and more easily accessible on sectoral provider websites?
- iii. Question 3: In addition to the type of service provided and the associated tariff rate, what other information would you like disclosed to aid in your decision-making process prior to purchasing electronic communications services (e.g. roaming charges, extra charges, etc.)?
- iv. Question 4: In your opinion, do you feel it is necessary that an independent price comparison tool is made available to aid in your decision-making process prior to acquiring an electronic communications service?
- v. Question 5: In the event that the existing price comparison website is decommissioned, what other methods or ideas would help consumers make better-informed decisions about the telecommunications services?