



BERMUDA

**REGULATORY  
AUTHORITY**

**Consultation:**

**Communications Operating  
Licences: Exemption for Passive  
Infrastructure Providers**

Consultation Document

Matter: C13/847

Date: 6 June 2013

Responses Due: 8 July 2013

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## 1 EXECUTIVE SUMMARY

1. Section 12 of the Electronic Communications Act 2011 (“ECA”) requires all operators of electronic communications networks and providers of electronic communications services (collectively, “electronic communications”) to secure a licence, unless the Regulatory Authority makes a general determination expressly granting an exemption from the ECA’s licensing requirement.
2. Section 16(2)(c) of the ECA addresses the circumstances in which the Regulatory Authority may exempt a person from the requirement to hold a communications operating licence (“COL”).
3. On 29 April 2013, the Regulatory Authority made a General Determination exempting certain providers of Electronic Communications from the requirement to hold a COL.<sup>1</sup>
4. In that same General Determination, the Regulatory Authority established procedures governing the creation of additional licence exemptions.
5. In accordance with those procedures, the Regulatory Authority proposes to make a general determination exempting persons that provide on a commercial basis “network elements that are not active,” as that term is used in the definition of “electronic communications network” in Section 2 of the ECA, from the requirement to obtain a COL if they operate within the requirements and limitations of the exemption.
6. A person that meets the requirements of the proposed exemption (a “Passive Infrastructure Provider”) will not require a COL for the provision of the electronic communications set out in the exemption determination. The proposed terms and conditions of the exemption are set forth in the attachment to the draft General Determination which appears as Appendix A to this consultation document.
7. An exemption from the requirement to obtain a COL does not relieve a Passive Infrastructure Provider of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.
8. As a communications provider, a Passive Infrastructure Provider will remain subject to the provisions of Part 4 of the ECA.
9. Passive Infrastructure Providers will be required to register with the Regulatory Authority and provide the Authority with such information as the Authority may require to monitor and ensure compliance with the terms of the exemption and to promote coordination among licensees that use such infrastructure.
10. The Regulatory Authority invites interested parties to comment on the proposed exemption, as well as any other matters raised by this consultation document.

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<sup>1</sup> The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013 (the “Exemptions and Class Licences General Determination”).

## 2 CONSULTATION PROCEDURE

11. This consultation is being undertaken in accordance with Sections 69 to 73 of the Regulatory Authority Act 2011 (“RAA”).

12. Written comments should be submitted before 5:00 PM (Bermuda time) on 8 July 2013.

13. The Regulatory Authority invites comments from members of the public, operators of electronic communications networks and providers of electronic communications services, and other interested parties. The Regulatory 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 Appendix B.

14. Responses to this consultation document should be filed electronically in MS Word or Adobe Acrobat format. Parties filing comments should go to the Regulatory Authority’s website, [www.rab.bm](http://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 13/847: Comments on Communications Operating Licences: Exemption for Passive Infrastructure Providers,” and should otherwise comply with Rules 18 and 30 of the Authority’s Interim Administrative Rules, which are posted on the Regulatory Authority’s website.

15. The Regulatory Authority intends to make responses to this consultation 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 Regulatory Authority’s Interim Administrative Rules.

16. The Chief Executive is the principal point of contact at the Regulatory Authority for interested persons during this consultation. He may be contacted by email at [pmicallef@rab.bm](mailto:pmicallef@rab.bm) or by mail at:

Philip Micallef  
Chief Executive  
Regulatory Authority  
Cumberland House – Third Floor South  
1 Victoria Street  
Hamilton, Bermuda

17. In this document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA, ECA and the Interpretation Act 1951.

18. This consultation document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The Regulatory Authority is not bound by the consultation document, nor does it necessarily set out the Regulatory Authority's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by the Regulatory 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 Regulatory Authority.

### 3 LEGISLATIVE FRAMEWORK: LICENCE EXEMPTIONS

19. Section 12 of the ECA requires all operators of electronic communications networks and providers of electronic communications services (collectively referred to in the ECA as “electronic communications”) to secure a licence:

No person may establish, construct or operate an electronic communications network or provide an electronic communications service within the territorial limits of Bermuda or between Bermuda and another country, without a valid COL authorizing such activities, unless the Authority has made a general determination expressly authorizing a licence exemption for the provision of the particular type or types of electronic communications that the person is operating or providing, in accordance with section 16(2)(c).

20. The definitions of “electronic communications network” and “electronic communications service” set forth in Section 2 of the ECA establish the broad reach of Section 12’s licencing requirement:

“electronic communications network” means a transmission system and, where applicable, switching or routing equipment and other resources, including network elements that are not active, which permit the conveyance of signals by wire, radio, optical or other electronic means, irrespective of the type of information conveyed . . .

“electronic communications service” means a service normally provided for remuneration which consists wholly or mainly of the conveyance of signals by means of electronic communications networks, including the provision of subscription audiovisual services.

21. Sections 16(1)(c) and 16(2)(c) of the ECA authorize the Regulatory Authority to exempt persons from the requirement to obtain a COL if:

- (i) no conditions, or only limited conditions, need apply to the exempted group of communications providers or the provision of the exempted type or types of electronic communications; and
- (ii) no Regulatory Authority fees or Government authorization fees are required in respect of the exempted providers of electronic communications.

22. During the Moratorium Period,<sup>2</sup> the Regulatory Authority may grant exemptions from the requirement to obtain a licence in any or all of the following circumstances, as set forth in Section 16(2)(d)(i)-(iii) of the ECA:

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<sup>2</sup> At the end of the Moratorium Period, the Regulatory Authority may grant exemptions in “any other circumstances in which the Authority deems the authorization of a class licence or the grant of a licence exemption to be appropriate and administratively efficient . . . .” Section 16(2)(d)(iv) of the ECA.

- (i) cases in which electronic communications are provided on a private rather than a public basis;
- (ii) cases in which electronic communications are provided on other than a commercial basis;
- (iii) cases in which electronic communications are self-provided by a natural person or legal entity whose principal line of business does not include the provision of electronic communications.

## **4 COMMUNICATIONS OPERATING LICENCE EXEMPTION: PASSIVE INFRASTRUCTURE PROVIDERS**

### **4.1 Introduction**

23. As noted above, the Regulatory Authority is empowered to grant exemptions from the requirement to obtain a COL.

24. In accordance with the procedures adopted in the General Determination dated 29 April 2013,<sup>3</sup> the Regulatory Authority proposes to make a general determination exempting persons that provide on a commercial basis “network elements that are not active,” as that term is used in the definition of “electronic communications network” in Section 2 of the ECA, from the requirement to obtain a COL, if they operate within the requirements and limitations of the exemption.

25. A person that meets the requirements of the proposed exemption (a “Passive Infrastructure Provider”) will not require a COL for the provision of the electronic communications set out in the exemption determination.

26. An exemption from the requirement to obtain a COL does not relieve a Passive Infrastructure Provider of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.

27. As a communications provider, a Passive Infrastructure Provider will remain subject to the provisions of Part 4 of the ECA.

28. The proposed terms and conditions of the exemption are set forth in the attachment to the draft General Determination which appears as Appendix A to this consultation document. If interested parties wish to propose specific changes to the exemption, the Regulatory Authority requests that the proposed edits clearly indicate all additions and deletions. (A Word version of the exemption is being provided for this purpose.)

29. The Regulatory Authority invites interested parties to comment on the proposed exemption, as well as any other matters raised by this consultation document.

### **4.2 Passive Infrastructure Providers**

30. Passive Infrastructure Providers are persons<sup>4</sup> that provide on a commercial basis electronic communications network elements that are not active (“Passive Infrastructure”), on a shared or dedicated basis, to persons that hold an individual COL, including an Integrated Communications Operating Licence (“ICOL”). As used in this consultation

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<sup>3</sup> The Exemptions and Class Licences General Determination.

<sup>4</sup> As defined in the Exemption attached to the draft General Determination appearing as Appendix A to this consultation document, a person is “a natural person or company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person.”



document and in the proposed exemption, Passive Infrastructure means ducts, poles, towers, masts, shelters, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements. Passive Infrastructure does not include the other electronic communications network elements identified in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio apparatus and radio stations. The defining characteristic of Passive Infrastructure is that, while it may be used in the provision of electronic communications, Passive Infrastructure cannot, standing alone, be used for the conveyance of signals without the addition of electronic communications network elements that are active.

31. The Regulatory Authority tentatively concludes that the provision of Passive Infrastructure on a commercial basis for the purpose of facilitating the provision of electronic communications constitutes the operation of an electronic communications network within the meaning of Section 2 of the ECA. The Regulatory Authority further tentatively concludes that the provision of Passive Infrastructure does not require active regulation by the Authority as such infrastructure may only be provided to, and used by, persons with individual COLs (including ICOLs), whose electronic communications networks and services are subject to regulation by the Authority.

32. The Regulatory Authority therefore tentatively concludes that an exemption satisfies the requirements of Section 16(2)(c)(i) of the ECA. Only the limited conditions set forth below need apply to Passive Infrastructure Providers, as the ultimate users of Passive Infrastructure are subject to regulation by the Authority. The Regulatory Authority also tentatively concludes that an exemption satisfies the requirements of Section 16(2)(c)(ii) of the ECA. No Regulatory Authority or Government authorization fees are required of Passive Infrastructure Providers as such fees will be paid by the operators with COLs that use such Passive Infrastructure in the provision of electronic communications.

33. The Regulatory Authority further tentatively concludes that an exemption satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given that Passive Infrastructure may only be provided to operators with COLs, the provision of Passive Infrastructure can be characterized as being provided on a private rather than a public basis.

34. The Regulatory Authority recognizes that Passive Infrastructure Providers, unlike other persons who have been granted an exemption from the requirement to hold a COL, own infrastructure that extends beyond their premises and, if relevant, campus.<sup>5</sup> Because Passive Infrastructure cannot, standing alone, be used for the conveyance of signals, the concerns which led the Regulatory Authority to prohibit private networks operators, value-added service providers and Wi-Fi service providers from self-provisioning network facilities outside their premises or campus do not apply here. Passive Infrastructure Providers, however, will be required to register with the Regulatory Authority and provide the Authority with such information as the Authority may require to monitor and ensure

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<sup>5</sup> As defined in the Exemption attached to the draft General Determination appearing as Appendix A to this consultation document, a “campus” is a contiguous parcel of land, not separated by public or private land, on which one or more structures may be located.”

compliance with the terms of the exemption. In addition, Passive Infrastructure Providers will be required to provide the Authority with quarterly reports identifying the Passive Infrastructure that is currently being provided to licensees with COLs and any planned works relating to Passive Infrastructure under their control.

35. In order to ensure that Passive Infrastructure Providers operate as outlined above, the Regulatory Authority proposes to make a further determination that an exemption for such providers should be subject to the following conditions:

Condition 1. Passive Infrastructure Providers subject to this exemption may only include persons “whose principal line of business does not include the provision of electronic communications.”

Condition 2. Passive Infrastructure Providers may only provide Passive Infrastructure to licensees with an individual COL or ICOL.

Condition 3. Passive Infrastructure Providers shall provide the Regulatory Authority with such quarterly reports identifying the Passive Infrastructure that is currently being provided to licensees with individual COLs and any planned works relating to Passive Infrastructure under their control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, *etc.*, as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among holders of individual COLs that wish to utilise such Passive Infrastructure.

Interested parties are invited to comment on:

1. Whether Passive Infrastructure Providers should be exempt from the obligation to hold a COL?
2. Whether the definition and description of Passive Infrastructure Providers accurately describes the persons that should be exempt from the obligation to hold a COL?
3. Whether the conditions of the exemption for Passive Infrastructure Providers are appropriate or should be amended or supplemented?
4. Whether the format, terms and conditions of the revised exemption set forth in Appendix A are appropriate or should be amended or supplemented?

## **5 CONCLUSION**

36. In furtherance of the proposals set forth above, the Regulatory Authority proposes to adopt the General Determination set forth in Appendix A to this consultation document.

5. Interested parties are invited to comment on the format and content of the draft General Determination set forth in Appendix A.

# Appendix A



BERMUDA  
**REGULATORY  
AUTHORITY**

**Draft General Determination Exempting  
Passive Infrastructure Providers From the  
Requirement to Hold a Communications  
Operating Licence**

This General Determination is made by the Regulatory Authority pursuant to Section 62(1) of the Regulatory Authority Act 2011 and, in accordance with Sections 16(1)(c) and 16(2) of the Electronic Communications Act 2011, and establishes: an Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence, as set forth in Attachment A; and amends The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013.

## I. DEFINITIONS

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

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

“**Exemptions and Class Licences Determination**” means The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013.

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

“**Passive Infrastructure**” means ducts, poles, towers, masts, shelters, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements. For the avoidance of doubt, Passive Infrastructure does not include the other electronic communications network elements identified in the definition of Electronic Communications Network in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio apparatus and radio stations;

“**Person**” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person; and

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

## II. INTERPRETATION

2. For the purpose of interpreting this General Determination:

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

(b) where there is any conflict between the provisions of this General Determination and the ECA or RAA, the provisions of the ECA or RAA, as the case may be, shall prevail;

(c) terms defined herein and in the ECA and RAA have been capitalised;

(d) headings and titles used herein are for reference only and shall not affect the interpretation or construction of this General Determination;

(e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;

- (f) a document referred to herein shall be incorporated into and form part of this General Determination and a reference to a document is to a document as modified from time to time;
- (g) expressions cognate with those used herein shall be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3. This General Determination shall be construed by reference to the Consultation Document and Final Decision issued in the Public Consultation entitled “Communications Operating Licences: Exemption for Passive Infrastructure Providers,” Matter C13/1. Where there is any conflict between the Consultation Document and the Final Decision, the provisions of the Final Decision shall prevail. Where there is any conflict between the Final Decision and this General Determination, the provisions of this General Determination shall prevail.

### **III. LEGISLATIVE BACKGROUND AND PURPOSE**

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

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

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

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

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

8. In accordance with Section 70(1) of the RAA, the Regulatory Authority published a consultation document entitled “Communications Operating Licences: Exemption for Passive Infrastructure Providers” on 6 June 2013, thereby initiating a Public Consultation inviting stakeholders and interested parties for their comments on a draft General Determination establishing an Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence that appeared as Appendix A to the consultation document. The Public Consultation was closed on 8 July

2013. In accordance with Section 72(4) of the RAA, the Regulatory Authority published a Final Decision in the Public Consultation, setting out its conclusions regarding the issues raised during the Public Consultation process.

9. This General Determination adopts the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence that appears as Attachment A and amends the Exemptions and Class Licences General Determination.

#### **IV. MAIN PROVISIONS**

##### **1. Determination on the adoption of the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a COL and the amendment of the Exemptions and Class Licences General Determination.**

10. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 16(1)(c) and 16(2) of the ECA, the Regulatory Authority hereby determines that the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence, and the amendment of the Exemptions and Class Licences General Determination, as set forth in Attachment A are adopted.

##### **2. Procedures that apply with respect to the registration of Persons who provide Passive Infrastructure**

11. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 16(1)(c) and 16(2) of the ECA, the Regulatory Authority determines that the following procedures shall apply with respect to the registration of Persons who provide Passive Infrastructure.

12. A registration requirement will enable the Regulatory Authority to monitor compliance with the conditions of the Exemption of Persons who provide Passive Infrastructure.

13. Therefore, Persons who provide Passive Infrastructure that satisfy Condition 7 of the Exemption will be subject to a registration requirement.

14. A Person who provides Passive Infrastructure will be required to register with the Regulatory Authority electronically, using a form posted on the Official Website.

15. When registering, such Person will provide the following information:

- (a) name;
- (b) address;
- (c) telephone number, fax number and/or email address;
- (d) a certification that the Person satisfies the conditions of the Exemption; and
- (e) a certification that the Person will comply with the conditions of the Exemption.

16. In addition to the information required pursuant to Paragraph 15, a Person who provides Passive Infrastructure will provide the Regulatory Authority with such quarterly reports identifying the Passive Infrastructure that is currently being provided to licensees with COLs and any planned works relating to the Passive Infrastructure under their



control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, *etc.*, as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among holders of COLs that wish to utilise such Passive Infrastructure.

**V. EFFECTIVE DATE; COMPLIANCE**

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

18. No later than 90 days after the effective date of this General Determination, Persons who provide Passive Infrastructure pursuant to the Exemption must:

- (a) register with the Regulatory Authority; and
- (b) be in compliance with the Conditions of the Exemption.

# **Attachment A**



BERMUDA

**REGULATORY  
AUTHORITY**

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

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## 1 DEFINITIONS

In this Exemption, unless the context otherwise requires:

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

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

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

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

**“Passive Infrastructure”** means ducts, poles, towers, masts, shelters, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements. For the avoidance of doubt, Passive Infrastructure does not include the other Electronic Communications Network elements identified in the definition of Electronic Communications Network in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio apparatus and radio stations;

**“Person”** means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person;

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

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

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

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

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

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

## **2 INTERPRETATION**

For purposes of interpreting this Exemption:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in this Exemption, the ECA, the RAA, and the Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Exemption and the ECA or RAA, the provisions of the ECA and RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalised;
- (d) headings and titles used in this Exemption are for reference only and shall not affect its interpretation or construction;
- (e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (f) a document referred to in this Exemption shall be incorporated into and form part of the Exemption and a reference to a document is to a document as modified from time to time;
- (g) expressions cognate with those used in this Licence shall be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall include a reference to any part unless explicitly limited.

## **3 EXEMPTION**

**3.1** Persons are exempt from the requirement of Section 12 of the ECA to hold a communications operating licence to the extent that they meet the criteria set forth in Conditions 4, 5, 6 and 7.

**3.2** Nothing in Conditions 4, 5 and 6 of this Exemption shall be deemed to:

- (a) relieve any Person of any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate an Electronic Communications Network or provide an Electronic Communications Service, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus;

- (b) grant any Person any authorization to self-provision Electronic Communications other than within such Person's premises or Campus; or
- (c) waive, modify or otherwise limit, either directly or indirectly, any Ex Ante Remedies imposed on an ICOL holder that meets the criteria set forth in, and is exempt from the requirement to hold a communications operating licence pursuant to, Conditions 4, 5 and 6.

**3.3** Nothing in Condition 7 of this Exemption shall be deemed to relieve any Person of the obligation to comply with:

- (a) any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate an Electronic Communications Network, other than Passive Infrastructure, or provide an Electronic Communications Service, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus; or
- (b) the provisions of Part 4 of the ECA.

**3.4** Persons exempt from the requirement to hold a communications operating licence pursuant to Conditions 4, 5 and 6 of this Exemption shall comply with such notification, registration or certification requirements as may be established by the Regulatory Authority.

**3.5** Persons exempt from the requirement to hold a communications operating licence pursuant to Condition 7 of this Exemption shall:

- (a) register with the Regulatory Authority; and
- (b) provide the Regulatory Authority with such quarterly reports identifying the Passive Infrastructure that is currently being provided to licensees with Individual COLs and any planned works relating to the Passive Infrastructure under their control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, *etc.*, as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among Licensees with Individual COLs that wish to utilise such Passive Infrastructure.

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

#### **4 PRIVATE NETWORKS**

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

- (a) does not carry third-party communications;

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

## **5 VALUE-ADDED SERVICES**

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

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

## **6 WI-FI SERVICES**

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

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

## **7 PASSIVE INFRASTRUCTURE**

A Person who provides Passive Infrastructure, provided that such:



- (a) Person's principal line of business does not include the provision of Electronic Communications; and
- (b) Passive Infrastructure is provided solely to Licensees with an Individual COL, including an ICOL.

# Appendix B

## **QUESTIONS PRESENTED IN CONSULTATION DOCUMENT**

1. Whether Passive Infrastructure Providers should be exempt from the obligation to hold a COL?
2. Whether the definition and description of Passive Infrastructure Providers accurately describes the persons that should be exempt from the obligation to hold a COL?
3. Whether the conditions of the exemption for Passive Infrastructure Providers are appropriate or should be amended or supplemented?
4. Whether the format, terms and conditions of the revised exemption set forth in Appendix A are appropriate or should be amended or supplemented?
5. Interested parties are invited to comment on the format and content of the draft General Determination set forth in Appendix A.