



PLEASE QUOTE OUR REF.

July 8, 2013

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

Dear Mr. Micallef,

**Response to Consultation Document 13/847: Comments on Communications Operating Licences: Exemption for Passive Infrastructure Providers**

We write in reference the aforementioned Consultation Document 13/847 and would like to take the opportunity to respond to the questions in the Consultation Document in reference to the “Draft General Determination Exempting Passive Infrastructure Providers From the Requirement to Hold a Communications Operating Licence” (the “Draft General Determination”) and the “Exemption From Requirement to Hold a Communications Operating Licence” (the “Exemption”) included therein.

**Question 1**

Whether Passive Infrastructure Providers should be exempt from the obligation to hold a COL?

**Response**

The Bermuda Electric Light Company Limited (“BELCO”) agrees with the determination of the Regulatory Authority to exempt persons who provide Passive Infrastructure as defined in the Draft General Determination and the Exemption. Although Section 12 of the Electronic Communications Act 2011 (“ECA”) requires all operators and providers of electronic communications networks and services (as defined in Section 2 of the ECA) to secure a Communications Operating License (“COL”) or an Integrated Communications Operating License (“ICOL”), BELCO concurs with the Regulatory Authority that Passive Infrastructure

alone cannot be used to convey any signals without the addition of active elements of an electronic communications network.

### **Question 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?

### **Response**

BELCO agrees that the Regulatory Authority's definition and description of Passive Infrastructure Providers accurately describes the persons that should be exempt from the obligation to hold a COL.

### **Question 3**

Whether the conditions of the exemption for Passive Infrastructure Providers are appropriate or should be amended or supplemented?

### **Response**

In order for Passive Infrastructure Providers to be exempt from the requirement to hold a communications operating license, the Regulatory Authority has proposed that such providers be subject to the following three 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."

BELCO agrees with this condition. Although Passive Infrastructure Providers should not be in the business of earning revenues from the provision of active electronic communications, the ability to earn revenue from the use of their Passive Infrastructure by licensees with a COL or ICOL should not require that they themselves must be a licensee. BELCO's principal line of business is the generation, transmission and distribution of electricity and not the provision of electronic communications. As BELCO views its relationship with licensees who utilize its Passive Infrastructure as that between a landlord (BELCO) and tenant (licensees), BELCO believes that it meets this condition.

**Condition 2.**

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

BELCO does not agree with the wording of this condition as currently drafted, as a strict interpretation of it would prevent BELCO from allowing anyone who is not a licensee with an individual COL or ICOL to attach anything to BELCO's Passive Infrastructure. Although BELCO is a significant provider of Passive Infrastructure to licensees, it also provides access to this infrastructure to other parties who are not licensed providers of electronic communications. Examples of these include the following:

- The Government of Bermuda's system of street lights which are currently affixed to many of BELCO's poles. Indeed some of those poles which do have street lights, currently have no licensees attached to them.
- Temporary meters for events such as the annual Bermuda Day and Labor Day celebrations are attached to BELCO's poles.

Therefore BELCO recommends that this condition be re-worded to accommodate the use of Passive Infrastructure by non-licensed entities.

**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 utilize such Passive Infrastructure.

BELCO maintains an extensive network of over 15,000 poles and several dozen miles of underground ducts – not all of which have any licensees attached. Throughout the year a significant amount of planned and unplanned work is performed on this network. In addition to this, Bermuda's geographical location and the likelihood of impacts from hurricanes and severe winter storms could result in an even greater amount of unplanned work. Also, since the downturn in the economy and due to Bermuda's finite amount of land, BELCO's network is not expanding. Therefore the level of reporting contemplated

by this condition could be quite extensive, time consuming and expensive to administer and could very well be of little practical use to the Regulatory Authority. While BELCO understands and appreciates the Regulatory Authority's stated objective for requiring this condition, and agrees that some level and frequency of reporting is necessary, careful thought must be given to the form and substance of the reporting required from Passive Infrastructure Providers.

#### **Question 4**

Whether the format, terms and conditions of the revised exemption set forth in Appendix A are appropriate or should be amended or supplemented?

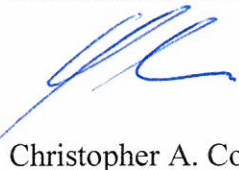
#### **Response**

Other than those instances where BELCO's comments and responses to other questions pertain to specific terms and conditions, BELCO believes that the format, terms and conditions of the revised exemption set forth in Appendix A are appropriate.

We trust that the responses provide the Regulatory Authority with an additional perspective on some of the effects of the proposed exemption, and in this regard BELCO looks forward to working with the Regulatory Authority in the spirit of transparency and cooperation. However, should you require additional information or further clarification on any of the above, please do not hesitate to contact the undersigned at 295-5111 ext. 1518 or at [ccoelho@belco.bm](mailto:ccoelho@belco.bm).

Yours sincerely

**BERMUDA ELECTRIC LIGHT COMPANY LIMITED**



Christopher A. Coelho  
Senior Vice President – Chief Financial Officer