



Via Electronic Submission

Regulatory Authority
Cumberland House
3rd Floor
1 Victoria Street
Hamilton HM 11
Bermuda

July 8, 2013

Attn: Philip Micallef, Chief Executive Officer

Re: **LinkBermuda Ltd. (“LinkBermuda” or “Company”) Response to Consultation Document C13/847: Communications Operating Licences: Exemption for Passive Infrastructure Providers (“Consultation”)**

Dear Mr. Micallef:

Subject to LinkBermuda’s proposed changes discussed in our Comments below, the Company is supportive of the RA’s preliminary determinations set out in the Consultation. As the RA is aware, LinkBermuda’s affiliate, Quantum Communications Ltd., is currently a defendant in a lawsuit filed by Cablevision relating to its “trial” installation of fiber optic network on Belco poles in two Bermuda neighborhoods. As a result, Belco and all joint pole users including Quantum are currently prevented from installing or permitting to be installed any further attachments onto electricity poles in contravention of certain rules. We reiterate the Company’s comments to Question 42 of the recent Consultation: Obligations for Operators with Significant Market Power (“**SMP Remedies Consultation**”):

*“Our experience has shown that there will be serious competitive, legal and practical challenges for new entrants to overcome in the context of obtaining access to fixed infrastructure in a timely and efficient manner. ... **However, more importantly it is access itself that must first be achieved, which can be made exceedingly difficult where access must be shared with competing operators.** To that end, active RA involvement may be needed. We are encouraged by the RA’s issuance of the Passive Infrastructure consultation in which it appears that the RA is seeking timely market access information to assist its regulation of this market. **As we believe the RA could be instrumental in facilitating resolution if not altogether preventing escalation of access issues, we propose the RA adopt a process that enables timely intervention and assistance.** Otherwise future investment in network infrastructure could be effectively stymied as it would be reduced to a pole by pole or meter by meter negotiation.” (Emphasis added)*

The preliminary determinations set out in this Consultation as well as the SMP Remedies Consultation are important to ensuring fair and timely access to fixed infrastructure in Bermuda. In addition, in light of the pending “pole access” litigation and notwithstanding current efforts to engage in meaningful dialog to resolve various joint

use issues on a commercial basis, we strongly encourage the RA take swift action to form an Industry “Joint Use” Working Group as a necessary first step to facilitate dealing with joint use access issues.

LinkBermuda remains committed to working closely with the RA, its advisors and other industry participants to implement the Electronic Communications Act 2011 (“ECA”) and its new licensing regime in a timely and successful manner. Should there be any questions regarding this submission please direct them to the undersigned.

Yours sincerely,



Lin Gentemann
Chief Legal Counsel

LinkBermuda

**LINKBERMUDA LTD. COMMENTS TO CONSULTATION –
COMMUNICATIONS OPERATING LICENCES: EXEMPTION FOR PASSIVE INFRASTRUCTURE PROVIDERS**

Consultation Question 1: Whether Passive Infrastructure Providers should be exempt from the obligation to hold a COL?

Consultation 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?

Consultation Question 3: Whether the conditions of the exemption for Passive Infrastructure Providers are appropriate or should be amended or supplemented?

Consultation 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?

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

Subject to our proposed changes below, we agree that Passive Infrastructure Providers should be exempt from the obligation to hold a COL.

We propose certain changes to the definition of “Passive Infrastructure” to expressly incorporate for the avoidance of doubt the passive infrastructure identified in the ECA defined term “associated facilities.” The changes are reflected in red font below:

“**Passive Infrastructure**” means ducts, **conduits**, poles, **antennae**, towers, masts, **manholes, cabinets**, shelters **and other supporting constructions**, 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.”

We agree with the RA’s proposed exemption criteria for who will qualify as a Passive Infrastructure Provider:

“A Person who provides Passive Infrastructure, provided that such:

- (a) Person’s principle 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.¹”*

The Company acknowledges that pursuant to proposed Condition 7(a) exemption criteria neither BCV nor BTC will fall within the Condition 3.5 obligations imposed on all other Passive Infrastructure Providers. We now propose in supplement to our previously filed SMP Remedies Consultation response, that the obligations established below under proposed Condition 3.5 (b) and (d) be listed as additional “compliance triggers” on the designated SMP Operators in the “market for the Wholesale supply of access to facilities used to construct fixed local access networks.” If so listed, then these important ongoing requirements would extend to BCV and BTC as well as Belco, BLDC and other Passive Infrastructure Providers. We see no basis for excluding BCV or BTC from such requirements and firmly believe these requirements will be important tools to help the RA achieve its stated policy objectives.

¹ Condition 7, Attachment A “Exemption From Requirement to Hold a Communications Operating Licence,” to Passive Infrastructure Providers COL Exemption Consultation.

We agree with RA's proposed continuing obligations on Passive Infrastructure Providers. However, we believe the RA should add two further obligations as follows in red font below:

“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.”²

(c) upon the Regulatory Authority's request, submit terms of access to the RA for approval in a Reference Offer and allow fixed infrastructure access seekers and suppliers the right to petition and seek a rate investigation if they considered that prices did not reflect cost.

(d) upon the Regulatory Authority's request, participate in any Industry formed licenced carrier group for the purpose of promoting coordination among Licensees with Individual COLs that wish to utilise Passive Infrastructure, including the creation of joint user rules and procedures to facilitate access to Passive Infrastructure and timely resolution of issues as they arise.

We believe the proposed new section 3.5 (c) is a necessary addition to ensure that the RA reserves for itself the right and ability to assert appropriate obligations on all Passive Infrastructure Providers to facilitate fair and timely access to such infrastructure, and not just SMP Operators. As currently contemplated under the SMP Remedies Consultation,³ SMP Operators BCV, BTC, Belco and BLDC are required to submit terms of access to the RA for approval in a Reference Offer and allow fixed infrastructure access seekers and suppliers the right to petition and seek a rate investigation if they believe that prices do not reflect cost. For clarity, the Company does not propose that this obligation be automatically imposed on all Passive Infrastructure Providers. Rather, we propose that the RA expressly reserve the right to make such request in the future if circumstances warrant.

With respect to new section 3.5 (d), the Company proposes that the RA reserves for itself the authority to require participation by Passive Infrastructure Providers in any Industry “Joint Use” Working Group that may be formed to establish appropriate technical and operational standards to facilitate cooperation among multiple users of Passive Infrastructure as well as agree upon dispute resolution procedures to encourage fair and timely resolution of joint use disputes. Further, we strongly encourage the RA act swiftly following completion of this Consultation to require formation of this Industry “Joint Use” Working Group. We believe such an approach would be welcome by many Industry participants, including both SMP Operators and Passive Infrastructure Providers.

Finally, as noted above, in supplement to the Company's SMP Remedies Consultation response we propose that Condition 3.5 (b) and (d) be added to the list of ongoing “compliance triggers” such that these important compliance mechanisms also expressly extend to BCV and BTC. Clearly they share many of the same attributes as the Passive Infrastructure Providers when it comes to providing non-discriminatory access to infrastructure the RA has determined should be made available to other licensed operators, and therefore the information and cooperation that is being encouraged by the proposed Conditions in 3.5 should apply equally to BTC and BCV.

² Id. Condition 3.5

³ See SMP Remedies Consultation, section 5.6.1.3 at paragraphs 336-339. See also, Section 5.6 at paragraphs 328-342.