



November 6, 2012

**Ministry of Environment, Planning and Infrastructure Strategy**

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58 Court Street  
Hamilton HM 12, Bermuda  
Attn: The Hon. Marc A. Bean JP, MP

**Department of Telecommunications**

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**Re: Response to Pre-Consultation Document PC12/01: Comments on Integrated Communications Operating Licences and Associated Spectrum Licences; and Response to Pre-Consultation Document PC12/03: Comments on Market Review Process**

Dear Minister Bean:

WestStar TV, Ltd. ("WestStar") hereby submits these comments on the above-referenced pre-consultation documents issued by the Ministry on October 10, 2012 towards the implementation of the Electronic Communications Act 2011 ("ECA") and the creation of a new regulatory framework for the electronic communications sector in Bermuda.

WestStar provides facilities-based, digital cable television and telecommunications services in the Cayman Islands. The company provides a wide selection of entertainment, news, children's, sports, and HD programming as well as world-class Internet and telecommunications services to residential and enterprise customers in the Cayman Islands. WestStar is also a minority shareholder in Bermuda CableVision, the island's leading provider of digital cable TV, including today's top-rated and most in-demand networks, along with high-speed, reliable broadband services. Additional information about WestStar is available at: [www.weststartv.com](http://www.weststartv.com).

WestStar applauds the Ministry's actions in implementing the ECA. The ECA will ensure that the people of Bermuda obtain reliable and affordable access to quality electronic communications networks and services, and will enhance competition in Bermuda in these sectors. Bermuda's long-ranging reforms will undoubtedly benefit the people of Bermuda through increased competition, better quality of service, and the promotion of innovative electronic communications technologies.



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WestStar believes that the reform process that has been implemented by the Ministry in these regards will serve the people of Bermuda well. The new method of issuing integrated communications operating licences ("ICOLs") will enable the forthcoming Regulatory Authority ("RA") to meet the stated goals of the ECA. WestStar believes that the ICOL licence system will enable new competitive service providers to enter and operate in the Bermudian market to the benefit of the people of Bermuda.

Of course, regulatory oversight is still required to ensure that operators with significant market power ("SMP") retain those regulatory obligations necessary to prevent anti-competitive conduct and to promote effective competition. As the RA begins the migration of existing sectoral licences towards ICOL licences, the agency must carefully review the SMP of the players in the various Bermudian electronic communications sectors to ensure that competition is fully realized under the ECA.

Section 2 of the ECA defines SMP to be: "a position of economic strength in the relevant market or markets that affords an undertaking, *either individually or jointly with others*, the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, which may provide the basis for the imposition of *ex ante remedies*." (*emphasis added*) Section 23 of the ECA provides the criteria that the agencies should consider when assessing SMP designations.

With particular respect to Pre-Consultation Documents PC12/01 and PC12/03, WestStar believes that the RA should review licencees to determine if they retain SMP in the relevant markets in a manner that ensures that the RA takes a holistic view towards the licencee. In that regard, WestStar believes that the RA's SMP review should include not only the operations of the licenced entity, but also that of its parent companies, affiliates, and officers and directors. Determining whether the licencee is vertically or horizontally integrated with other entities that offer electronic communications services or electronic communications networks in Bermuda is critical towards understanding the licencee's "control over infrastructure," "technological advantages or superiority," and "ability to access capital and financial markets relative to that of its competitors," pursuant to Section 23 of the ECA.

Further, reviewing the entirety of the licencee's owners and affiliates, and its cross-ownership with other Bermudian electronic communication service providers (including the affiliation of its officers and directors with other such entities), would inform the RA of the "existence of economics of scale or scope," "diversification of products or services," and importantly, "the relative advantages of vertical integration enjoyed by the sectoral provider." ECA, § 23. Failure to fully review these issues may leave the RA



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with less than a full picture of the SMP of the relevant market participants, which could in turn hinder competition to the detriment of the people of Bermuda if adequate remedies are not imposed on the relevant market participants' and their owners.

Of particular importance to the RA's review of existing operators in the Bermuda market, is reviewing KeyTech Limited's ("KeyTech") operations and subsidiaries. As the Ministry is aware, KeyTech currently has controlling interests in multiple existing licencees providing local exchange services (BTC), international telecommunications services (Cable Co.), cable television services (CableVision), Internet access services (Logic), mobile services (CellularOne) and directories (Yellow Pages). In conducting its review and deciding whether any KeyTech subsidiary may exchange its existing operating authority for an ICOL, the RA should consider the SMP of the KeyTech group as a whole and the dominant position it holds over the entire Bermudian market. Moreover, the RA should carefully consider the public convenience of having KeyTech retain control over two of the island's most robust electronic communications networks (BTC and CableVision).

WestStar thanks the Ministry for the opportunity to provide these comments. Please do not hesitate to contact the undersigned should you have any questions regarding these comments or require further information concerning the issues raised herein.

Respectfully submitted,

  
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Robert Taylor  
CEO/Chairman