



Bermuda

Consultation:

Financial Year 2013-2014:

**Proposed Regulatory Authority Work
Plan (Including Budget)**

**Recommendation Regarding
Government Authorization Fees**

Consultation Document

Matter: C13/01

Date: 29 January 2013

Responses Due: 11 February 2013

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1 EXECUTIVE SUMMARY

1. Pursuant to Section 112 of the Regulatory Authority Act 2011 (“RAA”), the Regulatory Authority, subject to the approval of the Minister of Finance and the Minister of Economic Development (“Minister”), has adopted an expense budget of \$735,400 for the period from the initial meeting on 28 January 2013 until the end of the current financial year on 31 March 2013 (“initial period”). The Regulatory Authority also has adopted a statement setting out its primary goals during the initial period.
2. Section 43(2) of the RAA requires the Regulatory Authority to conduct a public consultation regarding its work plan for the 2013-14 financial year (which will run from 1 April 2013 through 31 March 2014), including its proposed revenue and expenses budget. During this period, the Authority’s costs are to be funded primarily through the payment of general regulatory fees by holders of Integrated Communications Operating Licences (“ICOLs”).
3. The Regulatory Authority proposes to adopt, subject to the approval of the Minister, a work plan for the 2013-14 financial year that seeks to achieve the following strategic priorities: (1) institutional capacity building; (2) completion of the transition from the Telecommunications Act 1986 (“TA 86”) regime to the new regulatory regime; (3) promotion of sustainable competition; (4) consumer protection; (5) ensuring efficient use of scarce resources; and (6) promoting Bermudian employment and Bermudian ownership.
4. The Regulatory Authority proposes to adopt, subject to the approval of the Minister of Finance, an expense budget for the 2013-14 financial year of \$3,557,600.
5. The Regulatory Authority proposes to request that the Minister make a regulation imposing a general regulatory fee of 1.75 per cent of “relevant turnover” on ICOL holders. The first payment would be due on 31 May 2013, based on relevant turnover during the first three months of calendar year 2013.
6. Section 52(2) of the RAA requires the Regulatory Authority to submit a recommendation to the Minister regarding the Government authorization fees to be established pursuant to the Government Fees Act 1965, as amended (“Government fees Act”).
7. The Regulatory Authority proposes to recommend to the Minister that, in lieu of the Carrier Fees currently paid by existing Class A, B and C Carriers and subscription television providers, ICOL holders be required to pay a Government authorization fee of 3.80 per cent of relevant turnover. The Authority also proposes to recommend that the handset fee remain \$7.00 per handset per month and that other Telecommunications Fees remain unchanged.
8. The Regulatory Authority proposes to recommend to the Minister that each ICOL holder be given a dollar-for-dollar credit towards its Government authorization fee for each dollar that it pays in Regulatory Authority fees during the 2013-14 financial year. Because the Government authorization fee would be 3.80 per cent of relevant turnover, and the general regulatory fee would be 1.75 percent of relevant turnover, this credit would effectively reduce the Government authorization fee to 2.05 per cent of relevant turnover.

9. Taken together, the Authority's proposals would result in the ICOL holders paying total fees of 3.80 per cent of relevant turnover (an effective Government authorization fee of 2.05 percent and a general regulatory fee of 1.75 percent). While some carriers' fees would rise, and others would fall, the total fees paid by industry would remain at approximately the same level during financial year 2013-14 as they were during financial year 2012-13.

10. The Regulatory Authority invites interested parties to comment on the Authority's proposed financial year 2013-14 work plan (including the proposed expense and revenue budgets), and on the Authority's recommendation regarding the Government authorization fees to be imposed during financial year 2013-14.

2 CONSULTATION PROCEDURE

11. This consultation is being undertaken in accordance with Sections 69 to 73 of the RAA.

12. Written comments should be submitted before 5:00 PM (Bermuda time) on 11 February 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 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 A.

14. Responses to this consultation document should be filed electronically in MS Word or Adobe Acrobat format, no later than 5:00 PM (Bermuda time) on 11 February 2013. Parties filing comments should go to the Authority's website, www.rab.bm, following 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 13/01: Comments on Regulatory Authority Work Plan (Including Budget)" and should otherwise comply with Rules 18 and 30 of the Authority's Interim Administrative Rules. Copies of both Rules are reprinted in Appendix B.

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.¹ The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect to the information submitted must provide a full justification for the claim.² Requests for confidentiality will be treated in the manner provided for in Rule 30 of the 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 or by mail at:

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

¹ RAA § 33(2).

² See *id.* § 33(3).

17. In this document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA, the Electronic Communications Act ("ECA") and the Interpretation Act 1951. For convenience, the Regulatory Authority provides definitions of some terms that are frequently used in this consultation document:

- "Authority" means the Regulatory Authority created by the RAA.
- "COL" means communications operating licence, which includes ICOLs, class licences and other authorizations granted by the Authority.
- "ECA" means the Electronic Communications Act 2011. The ECA contains the regulatory regime applicable to the electronic communications sector (other than broadcasting).
- "Financial year" means the twelve-month period beginning on 1 April.
- "Government authorization fee" means a fee, imposed pursuant to the Government Fees Act, in connection with the grant of a licence, permit or other authorization. Under the RAA, Government authorization fees are collected by the Regulatory Authority, but are paid to the Government's consolidated fund.
- "ICOL" means an Integrated Communications Operating Licence. Pursuant to the ECA, the Authority will convert existing Class A, B and C licences and subscription television licences to ICOLs. ICOL holders will be able to provide a full range of electronic communications services (other than broadcasting).
- "Initial period" means the period from the Authority's initial meeting on 28 January 2013 until the end of the current financial year on 31 March 2013.
- "Minister" means the Minister of Economic Development, who is the Minister responsible for telecommunications.
- "Regulatory Authority fee" means the fees that some or all sectoral participants must pay to the Regulatory Authority to cover the cost of performing its functions. There are two different types of Regulatory Authority fees: service fees and general regulatory fees. Service fees are charges designed to recover from a participant in a regulated industry sector the costs of performing a specific function. By contrast, general regulatory fees are designed to recover the Regulatory Authority's costs of supervising a regulated industry sector that are not recovered from service fees or other sources.
- "RAA" means the Regulatory Authority Act 2011. The RAA establishes the Authority and specifies the procedures that it is to use to supervise a regulated industry sector.
- "Relevant turnover" means the portion of an ICOL holder's total turnover (*i.e.*, the revenue that the ICOL holder receives from the provision of electronic communications services to end-users and other COLs in Bermuda) minus payments that the ICOL holder makes to other holders of communications operating licences for wholesale electronic communications services used to provide those services.

- “TA 86” means the Telecommunications Act 1986. TA 86 governed the electronic communications sector prior to the activation of the ECA. TA 86 remains in effect as applied to broadcasting. Certain provisions of TA 86 also remain in effect, as applied to telecommunications providers, on a transitional basis.

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 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 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.

3 INTRODUCTION

3.1 Background

19. A comprehensive legislative and regulatory framework for the electronic communications sector (other than broadcasting) came into effect on 28 January 2013, when the Minister fully activated the RAA and the ECA.³

20. The RAA created an independent regulator, the Regulatory Authority. The primary responsibility of the Authority is to supervise, monitor and regulate specified industrial sectors. The Authority is to be funded primarily by Regulatory Authority fees paid by participants in regulated industry sectors.

21. While RAA specifies the means by which the Regulatory Authority will operate, separate “sectoral legislation” grants the Authority’s power to supervise, monitor and regulate specific “regulated industry sectors”.

22. The ECA was the first – and to-date the only – sectoral legislation; it empowers the Regulatory Authority to regulate the electronic communications sector (other than broadcasting). In the future, the Government may propose sectoral legislation for other sectors – such as broadcasting, energy, postal or water – that would authorize the Authority to regulate participants in these sectors.

23. The RAA requires the Regulatory Authority to conduct an annual public consultation regarding its work plan for the upcoming financial year. The public consultation is to address the Authority’s strategic priorities, major activities to be undertaken, any performance indicators to be adopted and the proposed expense and revenue budgets. The consultation document is designed to solicit comments regarding the Authority’s proposed work plan (including budget) for financial year 2013-14, which will run from 1 April 2013 through 31 March 2014.

24. This consultation document is organized into six sections. Section 1 is the executive summary. Section 2 describes the procedures to be used to file comments. Section 3 explains the reasons why the Regulatory Authority is conducting this consultation, describes the budget that the Authority has adopted for the period from 28 January 2013 through 31 March 2013, describes the legislative framework governing the adoption of the Authority’s work plan and the establishment of Government authorization fees for financial year 2013-14. Section 4 contains the Authority’s proposed work plan for financial year 2013-14, including the Authority’s proposed expense and revenue budgets. Section 5 contains the Authority’s proposed recommendation to the Minister regarding the Government authorization fees that industry should be required to pay pursuant to the Government Fees Act. Finally, Section 6 describes the further actions that the Authority will take.

25. While this consultation addresses multiple issues, a significant goal is to seek industry input regarding the fees that sectoral participants will be required to pay under the new regime. Currently, Class A, B, and C carriers pay annual fees to the Government pursuant to the Government Fees Act. Those fees are now 6 per cent, 4.5 per cent, and 3 per cent of total revenue, respectively.⁴ Subscription television

³ The Regulatory Authority was established on 11 July 2012, when the Minister responsible for telecommunications activated Part 1, sections 11 to 14, sections 19 to 25, sections 28 to 30, sections 31(1), (2), (3) and (4), section 32, Part 4, Part 11, Part 12 and the Schedule of the RAA.

⁴ Class C carriers currently are exempted from paying fees on their first \$100,000 in revenue.

providers also pay 3 per cent of revenue. Under the new regulatory regime, these providers' licences will be converted to ICOLs, which will enable them to provide a full range of electronic communications services (other than broadcasting). The ICOL holders will continue to pay fees, established pursuant to the Government Fees Act, which will continue to go to the Government. In addition, these providers will be required to pay Regulatory Authority fees, which the Regulatory Authority will use to cover its capital and operating costs.

26. As discussed below, the Regulatory Authority proposes to recommend to the Minister that, for financial year 2013-14: (1) the Government authorization fee to be paid by ICOL holders be set at 3.80 per cent of relevant turnover; (2) the general regulatory fee to be paid by ICOL holders be set at 1.75 per cent of relevant turnover; and (3) that each ICOL holder be given a 100 per cent credit towards the Government authorization fee that it owes for each dollar that the ICOL holder pays in general regulatory fees. Taken together, the Authority's proposals would result in the ICOL holders paying total fees of 3.80 per cent of relevant turnover (an effective Government authorization fee of 2.05 percent and a general regulatory fee of 1.75 percent). While some carriers' fees would rise, and others would fall, the total fees paid by industry would remain at approximately the same level during financial year 2013-14 as they were during financial year 2012-13.

3.2 Regulatory Authority Budget and Government Authorization Fees from 28 January 2013 through 31 March 2013

27. Pursuant to Section 112 of the RAA, the Regulatory Authority, subject to the approval of the Minister of Finance and the Minister for Economic Development (who is the Minister responsible for telecommunications), has adopted an initial budget, in the amount of \$735,400, for the period from 28 January 2013 through 31 March 2013. A copy of the Initial Budget is attached as Appendix C.

28. The Regulatory Authority has adopted a Statement, which is attached as Appendix D, setting forth its priorities during its initial two months of operations. During this period, the Authority intends to: (1) begin the process of establishing a fully functioning, modern regulator and, in particular, set up its office, retain staff, establish the official website and establish the necessary funds and financial controls; (2) adopt interim Administrative Rules; (3) adopt a financial year 2013-14 work plan (including budget) and make a recommendation regarding the Government authorization fees to be paid by industry during the 2013-14 financial year; (4) conduct a public consultation regarding the basic terms and conditions of a standard form ICOL and associated spectrum licences; (5) conduct a public consultation regarding which operators possess significant market power in a relevant market; (6) initiate an investigation into whether licensees scheduled to receive ICOLs have paid all fees due under the Government Fees Act; (7) conduct a public consultation regarding licence exemptions and class licences; (8) enforce Sections 21, 23, 23A of TA 86; (9) assume responsibility for the resolution of all "matters relating to the electronic communications sector pending before the Minister or the Telecommunications Commission" on 28 January 2013; and (10) begin work on other matters of concern to the public including a spectrum investigation, interconnection, the implementation of local number portability and universal service.

29. Pursuant to Section 111 of the RAA, the Minister is required to make a capital payment in the amount of \$2,000,000 to fully fund the Regulatory Authority's operations until it "has collected sufficient revenues from Regulatory Authority fees to cover operating expenses on a going forward basis."

30. During the initial period, all Telecommunications Fees specified in the Government Fees Act will remain in effect.⁵ Thus, holders of Class A, B and C and subscription television licences will continue to pay fees to the Government at the existing rates, based on revenues generated during the final quarter of calendar year 2013. The \$7.00 per month handset fee also will remain in effect. While the Regulatory Authority – rather than the Department of Telecommunications – will collect these fees, they will continue to be paid into the Government's Consolidated Fund.

3.3 Legislative Framework for the Adoption of the Regulatory Authority's 2013-14 Financial Year Work plan

31. The RAA sets out the procedures that the Regulatory Authority is to use, starting with its first full financial year, to establish its work plan.

32. Section 43(2) provides that:

Not later than six months before the commencement of each financial year, the Authority shall initiate a public consultation regarding its work plan for the upcoming financial year, which shall include—

- (a) the Authority's strategic priorities for the upcoming financial year;
- (b) any major activities, such as public consultations, that the Authority anticipates undertaking during the upcoming financial year;
- (c) any quantitative indicators that the Authority has adopted to measure its performance during the upcoming financial year; and
- (d) a preliminary estimate of the Authority's budget for the upcoming financial year.

33. Section 43(3) further provides that “Not later than three months before the commencement of each financial year,” the Regulatory Authority, “after giving due consideration to the comments submitted in the public consultation,” is to submit to the Minister and to the Minister of Finance “a preliminary report setting out the Authority's proposed work plan for the next financial year” and “a proposed budget, with a request for approval.”

34. Pursuant to Section 43(4), the Minister of Finance, after making “any modifications” to the budget proposed by the Authority that he “deems necessary and proper,” is to “issue a written decision approving the budget.”

35. Section 44(1) provides that “[a]t the same time that the Authority submits a proposed budget” for approval, it is to submit a “request and recommendation” to the Minister to “make regulations establishing the Regulatory Authority fees that some or all sectoral participants . . . shall pay to the Authority during the upcoming financial year.” The Regulatory Authority fees must be “consistent with the Authority's budget.”⁶

⁵ See ECA § 81 (Transitional provisions relating to government authorization fees).

⁶ RAA § 44(2).

36. The Regulatory Authority may recommend the imposition of two different types of Regulatory Authority fees: service fees and general regulatory fees. Service fees are charges “designed to recover from a sectoral participant a reasonable estimate of the cost to the Authority of performing the function for which the fee is assessed.”⁷ By contrast, general regulatory fees are designed to recover “the estimated costs incurred by the Authority that are directly related to the supervision of [a] regulated industry sector that are not recovered from service fees or other sources.”⁸

37. The ECA provides that the Regulatory Authority must recommend that general regulatory fees be imposed on ICOL holders “based on a percentage of the relevant turnover of the licensee.”⁹ The ECA defines relevant turnover as “the portion of a licence holder’s total turnover minus payments to other COL holders, as specified by the Authority.”¹⁰

38. The ECA further provides that the Regulatory Authority may recommend that general regulatory fees also be imposed on other entities that hold a Communications Operating Licence (“COL”) (such as an entity that holds a class licence).¹¹ Section 11(2) of the ECA provides that, in determining “the types of COLs” (other the ICOL holders) that the Authority recommends be required to pay general regulatory fees, the Authority is to give “due regard” to:

- (a) the comparative costs of regulatory administration attributable to different types of authorization holders when proposing the applicable general regulatory fees for the various types of authorizations;
- (b) the cumulative effect of all sources of Regulatory Authority fees on each type of authorization holder;
- (c) the financial and commercial impact of the timing of the payment or payments for general regulatory fees on authorization holders, taking into account the financial requirements of the Authority; and
- (d) the efficient management of the Authority’s resources.¹²

39. Pursuant 44(8) of the RAA, the Minister is to make a regulation specifying “the means of calculating” the Regulatory Authority fee. The Minister’s regulation is subject to the affirmative resolution process (*i.e.*, it must be laid before, and approved by, the Parliament).

40. The Regulatory Authority was to have begun operations on 1 October 2012 – six months before the start of the 2013-14 financial year. However, the Minister deferred the date on which the RAA and ECA came fully into effect until 28 January

⁷ *Id.* § 44(3). For example, the Regulatory Authority could impose a fee for processing a licence application or providing photocopies of public records.

⁸ *Id.* § 44(4).

⁹ ECA § 11(4).

¹⁰ *Id.* § 2.

¹¹ See *id.* § 11.

¹² *Id.* § 11(2).

2012.¹³ As a result, in order for the budget to be in place, and for Parliament to approve the proposed Regulatory Authority fees, by the start of the Regulatory Authority's first full financial year on 1 April 2013,¹⁴ the Authority must compress the work plan and budget adoption process into two months.

3.4 Legislative Framework for the Adoption of the Regulatory Authority's Recommendation Regarding Government Authorization Fees for Financial Year 2013-14

41. Section 52 of the RAA allows for the imposition of Government authorization fees in connection with the grant of a licence, permit or other authorization. This provision generally preserves existing practice under the Government Fees Act. As in the past, the Minister of Finance, after consulting with the Minister, will submit the proposed fees to Parliament for adoption. While these fees now will be collected by the Regulatory Authority, rather than the Department of Telecommunications, they will continue to be paid to into the Government's Consolidated Fund.

42. The RAA does make one significant change to established practice. The Authority is to "submit a recommendation" to the Minister "regarding the Government authorization fees to be adopted."¹⁵

43. In preparing the recommendation, the Regulatory Authority must give "due consideration" to:

- (a) the Regulatory Authority fees imposed on the industry;
- (b) the likely effect of the proposed fees on investment and employment in the sector;
- (c) the extent to which the proposed fees will promote Bermudian ownership and employment; and
- (d) any other relevant factors.¹⁶

44. Section 19(1) of the ECA provides that the Regulatory Authority's recommendation is to address: (1) "the types" of COL holders that should be required to pay to Government authorization fees;¹⁷ (2) "the amount of, or the basis for, setting" the fees; and (3) the "timetable for payment" of the fees.

45. The Regulatory Authority's recommendation *must* provide that ICOL holders will pay Government authorization fees, and that those fees must be based on "relevant turnover".¹⁸ In developing its recommendation regarding the Government authorization fees to be paid by ICOL holders, the Regulatory Authority is to "take

¹³See Electronic Communications Act Commencement Notice, BR 3 / 2013 (22 Jan. 2013); Regulatory Authority Act Commencement Notice, BR 4 / 2013 (22 Jan. 2013).

¹⁴ The Regulatory Authority assumes that Parliament will consider the proposed Regulatory Authority fees during the annual budget session, customarily held in February.

¹⁵ RAA § 52(2).

¹⁶ ECA § 19(2).

¹⁷ The ECA identifies three types of COLs: ICOLs, other individual COLs and class COLs. See *id.* § 16(1).

¹⁸ *Id.* § 19(1)(b).

into consideration the combined relevant turnover of all licensees subject to Government authorization fees.”¹⁹

46. The Regulatory Authority *may* recommend that the Government authorization fees to be paid by individual ICOL be adjusted based on:

- (i) the degree to which each licensee is owned or controlled, directly or indirectly, by persons possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956; and
- (ii) the proportion of each licensee’s employees possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956.²⁰

47. Although neither the RAA nor the ECA specifies the date by which the Regulatory Authority must make its recommendation, or requires the Authority to conduct a public consultation before making its recommendation, the Authority has concluded that it should seek comments on this matter, and that any recommendation should be made at the same time the Authority makes its recommendations to the Minister regarding the Regulatory Authority fees to be paid by sectoral participants. This approach will ensure that the Authority, and the Minister, will consider the full financial impact on industry of the fees to be imposed.

¹⁹ *Id.* § 19(2)(a).

²⁰ *Id.* § 19(2)(b).

4 FINANCIAL YEAR 2013-14 FINANCIAL YEAR WORK PLAN

4.1 Strategic Priorities

48. The Regulatory Authority proposes to adopt six strategic priorities, which will guide its work plan during financial year 2013-14. They are: (1) institutional capacity building; (2) completion of the transition from the TA 86 regime to the new regulatory regime; (3) promotion of sustainable competition; (4) consumer protection; (5) ensuring efficient use of scarce resources; and (6) promoting Bermudian employment and Bermudian ownership.

49. **Institutional capacity building.** The Regulatory Authority will establish itself as an efficient, effective and independent regulator by employing and training a qualified permanent staff, using appropriate information technology, adopting transparent administrative procedures, preparing a reasonable expense and revenue budgets and imposing appropriate financial controls.

50. **Completion of the transition from the Telecommunications Act 1986 regime.** The Regulatory Authority will complete the transition from the regulatory regime that existed under TA 86 to the new regime created under the RAA and the ECA by continuing to enforce specific TA 86 provisions until they “sunset,” making any needed revisions to pre-existing administrative determinations and authorizations and by resolving matters transferred from the Ministry and the Telecommunications Commission.

51. **Promotion of sustainable competition.** The Regulatory Authority will promote sustainable competition for the purpose of enhancing consumer welfare by implementing the new licensing framework contained in the ECA, eliminating artificial barriers to competition among ICOL holders, requiring ICOL holders with significant market power to implement effective *ex ante* remedies, enforcing prohibitions against anti-competitive conduct, resolving interconnection and access disputes between providers and enhancing the ability of users to switch providers.

52. **Consumer protection.** The Regulatory Authority will protect the interests of Bermudian consumers by ensuring that all end-users have access to electronic communications networks and services, implementing requirements that ensure transparency, protecting consumers from unfair or abusive practices and resolving disputes between end users and service providers.

53. **Efficient use of scarce resources.** The Regulatory Authority will ensure that scarce resources, such as radio spectrum, are allocated and used efficiently by conducting investigations and, as necessary, requiring that inefficiently used resources be relinquished or shared.

54. **Promoting Bermudian employment and Bermudian ownership.** The Regulatory Authority will adopt policies that promote the growth of the Bermudian economy in a manner that creates employment and ownership opportunities for the people of Bermuda.

1. Interested parties are invited to comment on the Regulatory Authority's proposed strategic priorities. Parties that advocate the elimination of any of the proposed strategic priorities should provide a justification. Parties that advocate the addition or modification of any of the proposed strategic priorities should propose specific additions or modifications and provide a justification.

4.2 Major Activities to Be Undertaken

55. During financial year 2013-14, the Regulatory Authority proposes to undertake a number of major activities to implement its strategic priorities.

4.2.1 Institutional Capacity Building

56. **Staff.** The Regulatory Authority will recruit, retain and train a qualified permanent staff.²¹

57. **Official website.** The Regulatory Authority will upgrade the official website to allow for online filing and fee payments.²²

58. **Administrative Rules.** The Regulatory Authority will conduct a public consultation regarding its Administrative Rules,²³ and will adopt an administrative determination establishing permanent rules.

59. **Financial controls.** The Regulatory Authority will complete establishment of financial controls necessary to "keep proper accounts and records of its transactions and affairs"²⁴ and will to prepare and issue a report and financial statement, governing the initial period (28 January 2013 through 31 March 2013) by 31 July 2013.²⁵

60. **Work plan.** The Regulatory Authority will: conduct a public consultation regarding the financial year 2014-15 work plan (including the expense and revenue budgets),²⁶ submit a recommended budget to the Minister and the Minister of Finance;²⁷ submit a request to the Minister to make a regulation establishing the Regulatory Authority fees to be paid in financial year 2014-15;²⁸ and make a recommendation regarding the Government authorization fees to be paid by industry during the 2014-15 financial year.²⁹

²¹ See RAA § 28.

²² See *id.* § 18.

²³ *Id.* § 13(c).

²⁴ *Id.* § 46(1)(a).

²⁵ See *id.* § 112(2).

²⁶ See *id.* § 43(2).

²⁷ *Id.* § 43(3)(b).

²⁸ *Id.* § 44(1).

²⁹ *Id.* § 52(2).

4.2.2 Completion of the Transition from the Telecommunications Act 1986 Regime

61. Enforcement of Telecommunications Act 1986 transitional Provisions.

For as long as they remain in effect,³⁰ the Regulatory Authority will enforce Sections 21 (Duties of Carriers), 23 (Specified Carriers must give notice of charges) and 23A (Carriers to maintain lists of rates and charges) of TA 86, which, among of things, require all carriers to obtain approval prior to entering into or terminating an interconnection agreement, and requires specified carriers (*i.e.*, Bermuda Cablevision Limited, Bermuda Land Development Company Limited and Bermuda Telephone Company Limited) to obtain approval before initiating new telecommunications services or varying the charges for existing services.

62. Resolution of pre-existing matters. The Regulatory Authority will seek to resolve all “matters relating to the electronic communications sector pending before the Minister or the Telecommunications Commission” on 28 January 2013 that were transferred to the Authority.³¹

63. Revision of Regulations adopted under the Telecommunications Act 1986. The Regulatory Authority will conduct a public consultation and will revise regulations, previously adopted pursuant to TA 86, to conform to the ECA.³²

4.2.3 Promotion of Sustainable Competition

64. ICOL conversion. The Regulatory Authority will make a general determination converting the licences of existing Class A, B and C carriers and subscription television providers to ICOLs.³³

65. Determination of licensees with significant market power. The Regulatory Authority will make a general determination specifying those licensees that have significant market power in a relevant market.³⁴

66. Imposition of remedies. The Regulatory Authority will: conduct a public consultation; issue a general determination establishing the remedies with which ICOL holders found to have significant market power must comply, including minimum compliance milestones; assess compliance; and issue notices at such time

³⁰ The ECA establishes two triggers for the “sunset” of these statutory requirements, based on whether the Regulatory Authority, following the market review consultation, designates a provider as having significant market power in any relevant market (“SMP”). If the Authority does not designate a provider as having SMP, the provisions will remain in effect as applied to that provider until “one day after the date on which the Authority issues a general determination” designating the providers that have SMP. If the Authority designates a provider as having SMP, the provisions will remain in effect as applied to that provider until “the Authority publishes a written notice confirming that the communications provider has complied with all applicable *ex ante* obligations” imposed by the Authority.” ECA § 80(1)(a). The Authority expects to adopt its SMP determination early in the 2013-14 financial year, but does not expect that all licensees that are found to have SMP will fully implement the applicable *ex ante* remedies before the end of the 2013-14 financial year. As a result, the Authority expects to be required to enforce these provisions, at least as applied to some providers designated as having SMP, throughout the 2013-14 financial year.

³¹ *Id.* § 80(3).

³² See *id.* § 79(1).

³³ See *id.* § 73(3).

³⁴ See *id.* § 74(b)(i).

as it finds that an ICOL holder with significant market power has fully implemented the required remedies.³⁵

67. **Fees investigation.** The Regulatory Authority will conduct an investigation into whether ICOL holders have paid all fees due under the Government Fees Act and will issue a decision identifying any ICOL holder found to owe fees.³⁶

68. **Class licensing and licence exemptions.** The Regulatory Authority will make a general determination establishing class licences and granting any appropriate exemptions for the licensing requirement.³⁷

69. **Local number portability.** The Regulatory Authority will conduct a public consultation and will make a general determination establishing the procedures by which consumers will be able to retain their telephone numbers if they switch from one provider to another.³⁸

70. **Dispute resolution.** The Regulatory Authority will resolve disputes between sectoral providers, such as disputes regarding interconnection and access, within the timeframes specified in the RAA.³⁹

4.2.4 Consumer Protection

71. **Universal service.** The Regulatory Authority will “assist the Minister in formulating and implementing any general universal service policies and regulations.”⁴⁰

72. **Class licences and exemptions.** The Regulatory Authority will ensure compliance with applicable licence conditions, including conditions requiring disclosure of prices for consumer services.⁴¹

73. **Dispute resolution.** The Regulatory Authority will resolve disputes between sectoral providers and end-users, such as disputes regarding service price or quality, within the timeframes specified in the RAA.⁴²

³⁵ See *id.* § 74(b)(ii).

³⁶ See *id.* § 74(c).

³⁷ See *id.* § 16(2).

³⁸ See *id.* § 47(1) (“The Authority shall make a general determination to facilitate subscribers to retain a fixed or mobile telephone number assigned to them by their existing communications provider . . . ”).

³⁹ See RAA § 58(4)-(5) (“If the Authority is unable to facilitate an informal resolution of [a] dispute within 60 days after receiving [a] complaint” and “conducts an adjudication, it shall issue an adjudicative decision and order within four months after the commencement of the adjudication unless the Board, by unanimous vote, establishes a longer period.”).

⁴⁰ ECA § 33(1).

⁴¹ See *id.* §§ 16-17.

⁴² See RAA § 57(4)-(5) (“If the Authority is unable to facilitate an informal resolution of [a] dispute within 30 days after receiving [a] complaint” and “conducts an adjudication, it shall issue an adjudicative decision and order within three months after the commencement of the adjudication unless the Board, by unanimous vote, establishes a longer period.”).

4.2.5 Efficient Use of Scarce Resources

74. **Spectrum investigation.** The Regulatory Authority will: conduct a public consultation regarding the “efficient use” of spectrum and issue a final determination; issue a document regarding licensee self-assessments of efficient use; facilitate negotiation of industry tower sharing arrangements; and cooperate with the Ministerial consultation on policy with respect to assignment of currently vacant spectrum.⁴³

4.2.6 Promoting Bermudian Employment and Bermudian Ownership

75. **Bermudianisation.** The Regulatory Authority will conduct a public consultation to consider the ways in which its can be perform the statutory function of “promot[ing] the development of the Bermudian economy, Bermudian employment and Bermudian ownership” in the telecommunications sector.⁴⁴

2. Interested parties are invited to comment on the major activities that the Regulatory Authority proposes to undertake during financial year 2013-14. Parties that propose the elimination of any major activity should provide a justification. Parties that propose the addition or modification of any major activity should make a specific proposal and provide a justification.

4.3 Performance Indicators

76. The adoption of objective performance assessment indicators can provide a useful tool to evaluate the Regulatory Authority’s effectiveness. However, at the start of its operations, it is difficult for the Authority to develop a comprehensive list of performance measures. Therefore, the Authority proposes to adopt a small number of performance indicators, which it will use, at the time it adopts its first Annual Report, to assess “the results achieved” during financial year 2013-14.⁴⁵ The majority of these performance assessment indicators are based on the deadlines specified in the RAA or the ECA. The Authority expects that, based on experience during its initial months of operation, it will propose a more extensive list of performance assessment indicators as part of the financial year 2013-14 work plan consultation, which will be initiated in on or before 1 October 2013.⁴⁶

77. **RAA performance indicators.** The Regulatory Authority will meet all deadlines specified in the RAA. Specifically:

- As required by Section 43(2) of the RAA, the Authority will “initiate a public consultation regarding its work plan for the upcoming financial year” by 1 October 2014.

⁴³ See ECA § 78.

⁴⁴ RAA § 12(c).

⁴⁵ *Id.* § 47(1)(a)(iii). The Authority anticipates releasing its first Annual Report in late 2014 or early 2015. The Regulatory Authority is to submit its financial statements to the auditor appointed by the Auditor General within three months after the end of the financial year (*i.e.*, by 30 June 2014). See *id.* § 46(5). Within thirty days after receiving the auditor’s report, the Regulatory Authority is to publish its annual report. See *id.* § 47(1).

⁴⁶ See *id.* § 44(3).

- As required by Sections 43(3) and 44(1) of the RAA, the Authority will submit to the Minister and the Minister of Finance “a preliminary report setting out the Authority’s proposed work plan for the next financial year,” “a proposed budget, with a request for approval” and a “request and recommendation” regarding the Regulatory Authority fees to be established for financial year 2014-15 by 1 January 2014.
- As required by Section 46(5) of the RAA, the Authority will “submit to the auditor its financial statements for the year” by 30 June 2014.
- As required by Section 47(1)(a) of the RAA, the Authority will transmit to the Minister “a report on the operations of the Authority” during financial year 2013-14 within 30 days of receiving the auditor’s report.
- As required by Section 57(5) of the RAA, the Authority will issue an adjudicative decision and order resolving disputes between a sectoral provider and an end-user will within three months after the commencement of the adjudication.⁴⁷
- As required by Section 58(5) of the RAA, the Authority will issue an adjudicative decision and order resolving disputes between sectoral providers within four months after the commencement of the adjudication.⁴⁸
- As required by Section 87(8) of the RAA, the Authority will complete its review of any consolidation within four months after receiving a “completed notification.”⁴⁹

78. ECA performance indicators. The Regulatory Authority will meet all deadlines specified in the ECA. Specifically:

- As required by Section 24(3)(a) of the ECA, the Authority will complete its review of any filed interconnection agreement within sixty days of the date on which the agreement is submitted.
- As required by Section 73(1)(a) of the ECA, the Authority will initiate a consultation regarding the “basic terms and conditions of the ICOL” within five days of being directed to do so by the Minister.
- As required by Section 73(1)(b) of the ECA, the Authority will “submit to the Minister a proposal for a standard form of ICOL no later than 60 days following the date of initiation” of the ICOL consultation.
- As required by Section 74(a) of the ECA, the Authority will issue a notice designating any product or geographic markets in which it may impose *ex ante* remedies by 7 February 2013.
- As required by Section 74(a) of the ECA, the Authority will initiate a market review by 28 February 2013.

⁴⁷ The Board of Commissioners, by unanimous vote, may extend this deadline. See *id.* § 57(5).

⁴⁸ The Board of Commissioners, by unanimous vote, may extend this deadline. See *id.* § 58(5).

⁴⁹ The Minister may extend this deadline. See *id.* § 87(7).

- As required by Section 74(b)(ii) of the ECA, the Authority will “issue decisions and orders specifying any applicable *ex ante* remedies” by 28 September 2013.
- As required by Section 74(c) of the ECA, the Authority will “initiate an investigation . . . to determine whether all fees due and payable by any licence holder” eligible to receive an ICOL have been paid by 28 March 2013.
- As required by Section 73(d) of the ECA, the Authority will initiate a consultation regarding class licences and licence exemptions by 28 February 2013.
- As required by Section 47(2) of the ECA, the Authority will issue a general determination that identifies “the technical requirements and timetable for implementing number portability” by 28 July 2013.

79. **Performance indicators that exceed statutory requirements.** The Regulatory Authority will also meet the following performance indicators that provide a shorter timeframe for regulatory action than provided for in the ECA:

- The Authority will issue a general determination designating one or more operators as having significant market power by 28 April 2013.
- The Authority will issue a general determination regarding class licences and licence exemptions by 28 April 2013.
- The Authority will convert existing eligible licences to ICOLs by 28 April 2013.

3. Interested parties are invited to comment on the Regulatory Authority’s proposed performance indicators. Parties that propose the elimination of any proposed performance indicator should provide a justification. Parties that propose the addition or modification of any proposed performance indicator should make a specific proposal and provide a justification.

4.4 Proposed Expense Budget

80. Subject to the approval of the Minister of Finance, the regulatory Authority proposes to adopt a budget of \$3,557,600 for the 2013-14 financial year. The proposed budget is attached as Appendix E.

81. The proposed budget reflects the significant amount of work that the Regulatory Authority will be required to perform, pursuant to the RAA and ECA, during this period. The most significant expenses – constituting almost 85 per cent of the total budget – are: compensation for the Commissioners, the Chief Executive and the rest of the staff; payments to economic, legal, and technical consultants; and office rental costs.

82. The proposed budget is consistent with the costs incurred in comparable jurisdictions. For example, during its first year in operation, the Bahamian regulator had a budget of \$3.5 million, excluding consultancy services.⁵⁰ While The Bahamas

⁵⁰ See URCA 2010 Annual Report at 56. <http://www.urcabahamas.bs/download/096097600.pdf>.

is larger than Bermuda, the Bahamian telecommunications market has significantly fewer participants than the Bermudian market. The Bahamian legislation also pre-determined the various market definition and dominance issues, thereby reducing the regulator's initial workload. As a result, the amount of start-up regulatory work required in Bermuda is likely to be greater than in The Bahamas.

83. By the end of financial year 2013-14, the Regulatory Authority should have completed several complex "start-up" proceedings, such as implementation of remedies to be imposed on ICOL holders with significant market power, and will be well on its way to completing other proceedings, such as the spectrum investigation. In addition, by that time, the Regulatory Authority staff should be in place and fully trained, thereby reducing consultancy support.⁵¹

4. Interested parties are invited to comment on the Regulatory Authority's proposal to adopt an expense budget for financial year 2013-14 of \$3,557,600. Parties that advocate a different expense level should specify the proposed level and provide a justification.
5. Interested parties are invited to comment on the specific items in the Regulatory Authority's expense budget. Parties that advocate reducing or eliminating any line items should propose a specific level of funding and provide a justification. Parties that advocate increasing or adding any line items should propose a specific level of funding and provide a justification. Parties are encouraged to provide comparisons to relevant jurisdictions.

4.5 Proposed Revenue Budget

84. The Regulatory Authority proposes to rely primarily on general regulatory fees paid by ICOL holders to fund its operations during the 2013-14 financial year. Specifically, as discussed further below, the Authority proposes to request that the Minister make a regulation setting the general regulatory fee to be paid by ICOL holders during the 2013-14 financial year at 1.75 per cent of relevant turnover. The proposed request to make a regulation is attached as Appendix F. The Authority does not propose to request the Minister to make a regulation imposing service fees "designed to recover from a sectoral participant a reasonable estimate of the cost to the Authority of performing the function for which the fee is assessed."⁵² The Authority also does not propose to request the Minister to require class licensees or persons that hold licences issued pursuant to TA 86 for specialized uses of spectrum to pay general regulatory fees.

85. **Service fees.** As a general matter, requiring entities that impose identifiable costs on the Regulatory Authority to compensate the Authority for those costs is sound policy. This approach deters entities from "over-consuming" services while shifting the cost to others, thereby promoting the efficient use of the Authority's resources. Nonetheless, the Authority does not propose at this time to request the adoption of service fees. Because the Regulatory Authority has just begun to operate, it lacks reliable information regarding the services to be provided, the demand for each service and the cost of providing the service. Therefore, the

⁵¹ The Regulatory Authority expects that its consultants will provide knowledge transfer to the permanent staff.

⁵² RAA § 44(3).

Authority is not yet in a position to make “a reasonable estimate” of the cost of providing various services or to assess the impact of imposing fees on the demand for different services. The Authority intends to carefully monitor service costs during the 2013-14 financial year and will revisit this issue during the financial year 2014-15 work plan consultation.

86. Class licensees. The Regulatory Authority will soon initiate a separate public consultation regarding class licensing. While the Authority expects to issue class licences to several categories of communications providers,⁵³ the Authority does not propose to request the Minister to require class licensees to pay general regulatory fees. In reaching this preliminary conclusion, the Regulatory Authority has considered the factors specified in Section 11(2) of the ECA. The Regulatory Authority recognizes that establishment of the class licensing regime will impose some costs on the Authority. For example, the Authority will need to review registration requests, maintain an authorizations register and enforce applicable licensing conditions. Nonetheless, when compared to the significant amount of regulatory activity related to the ICOL holders, “the comparative costs of regulatory administration attributable to” class licensees is likely to be relatively small. At the same time, because many class licensees are small business, “the financial and commercial impact” of requiring them to pay general regulatory fees could be significant. Finally, especially during its initial year of operation, when staff resources will be very limited, “the efficient management of the Authority’s resources” requires that the Authority focus its efforts on collecting revenue from the ICOL holders, who generate the vast majority of the relevant turnover. The Authority will revisit the issue during the 2014-15 financial year work plan consultation and, based on experience, may propose that some or all class licensees should be required to pay general regulatory fees.

87. Specialized licensees. The Regulatory Authority also does not propose to request that the Minister impose general regulatory fees on persons that hold licences issued pursuant to TA 86 for specialized uses of spectrum, such as amateur, marine small craft and maritime operators (“specialized licensees”).⁵⁴ As with class licensees, the regulation of these providers will impose relatively minor costs on the Authority. Moreover, many of the authorization holders are individuals and small businesses, who will continue to pay the Government authorization fees specified in the Government Fees Act. Thus, for some of these licensees, the impact of imposing general regulatory fees could be significant. At the same time, many of these licensees do not derive revenue from the provision of electronic communications services to others and, therefore, will not have any “relevant turnover”. Finally, as noted above, during its initial year of operation, the Authority’s

⁵³ During the pre-consultation process – which was conducted after to the establishment of the Regulatory Authority, but prior to the initial meeting of the Board of Commissioners – comments were sought regarding a proposal to issue class licences to providers of the following categories of electronic communications: closed user groups; electronic communications services provided by hotels, hospitals, prisons, schools and similarly situated institutions; pay telephone services; operator services; and cyber cafes. See Class Licensing Pre-Consultation: Communications Operating Licences: Exemptions and Class Licences ¶¶ 61-104 (10 October 2012). For purposes of this Consultation, the Regulatory Authority assumes that the final list of class licences will be substantially similar to those proposed during the pre-consultation.

⁵⁴ Pursuant to Section 79(1) of the ECA, the regulations applicable to these specialized licensees will “remain in full force and effect until their disposition is determined by the Minister or the Authority.” The Regulatory Authority anticipates conducting a consultation during the 2013-14 financial year regarding the disposition of these regulation and authorizations issued thereunder.

limited resources can be used most efficiently by focusing on collecting revenues from ICOL holders.

88. **ICOL holders.** Because the Regulatory Authority does not propose to request the Minister to impose service fees, or to require class licensees to pay general regulatory fees, the cost of operating the Authority during the 2013-14 financial year will need to be recovered through the imposition of general regulatory fees on ICOL holders.

89. Pursuant to Section 12(4) of the ECA, the general regulatory fees that the Regulatory Authority recommends must be based on “a percentage of the relevant turnover of the licensee.” The ECA defines relevant turnover as “the portion of a licence holder’s total turnover minus payments to other COL holder, as specified by the Authority.”⁵⁵ The Regulatory Authority proposes to define “total turnover” as revenue from the provision of electronic communications services to end-users and other COLs in Bermuda. Thus, a licensee’s relevant turnover would be calculated by determining the licensee’s “total turnover” and then subtracting payments that the licensee made to other COL holders for wholesale electronic communications services used to provide those services.

90. As noted above, the Regulatory Authority proposes to adopt a financial year 2013-14 expense budget of \$3,557,600. The Authority estimates that the ICOL holders’ annual relevant turnover during financial year 2013-14 will be approximately \$210 million.⁵⁶ In order to ensure sufficient funds to meet its expected expenses, the Authority proposes to recommend that the Minister make a regulation requiring ICOL holders to pay a general regulatory fee for the 2013-14 financial year of 1.75 per cent of relevant turnover.

91. The Regulatory Authority proposes that ICOL holders be required to make the first payment to the Authority by 31 May 2013, based on relevant turnover during the period January through March 2013. ICOL holders would be required to make three subsequent quarterly payments, at the 1.75 percentage rate. In each case, payment would be due two months after the end of the quarter (*i.e.*, 31 August, 2013, 30 November 2013 and 28 February 2014), based on relevant turnover during the prior quarter. This schedule (quarterly payments, in arrears, due two months after the end of the quarter) has long been used by the Government in connection with Carrier Fees due under the Government Fees Act.

6. Interested parties are invited to comment on the Regulatory Authority’s proposal not to request the Minister to impose service fees during financial

⁵⁵ ECA § 1.

⁵⁶ Carriers reported total revenues of approximately \$223 million for the 2011-12 financial year. However, this includes approximately \$23 million in wholesale revenues that must be excluded from the calculation of the relevant turnover under the ECA, leaving relevant turnover of \$200 million. Increased competition between ICOL holders should drive down retail prices. However, the provision of new services, such as video-on-demand, as well as higher speed data services, should increase industry revenues by \$10 million, resulting in relevant turnover of \$210 million during the 2013-14 financial year.

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| | <p>year 2013-14. Parties that advocate imposition of service fees should identify specific services for which a fee should be imposed, propose a methodology to develop a reasonable estimate of the cost of providing the service and provide a justification.</p> <p>7. Interested parties are invited to comment on the Regulatory Authority's proposal not to request the Minister to impose general regulatory fees on class licence holders or specialized licensees during financial year 2013-14. Parties that advocate imposition of general regulatory fees on class licence and/or specialized licensees should identify the specific class licensees and/or specialized licensees that should be required to pay general regulatory fees, should propose a reasonable fee and should provide a justification.</p> <p>8. Interested parties are invited to comment on the Regulatory Authority's proposal to calculate relevant turnover in the manner described in paragraph 89. Parties that advocate adoption of a different means of determining relevant turnover should propose a specific methodology and provide a justification.</p> <p>9. Interested parties are invited to comment on the Regulatory Authority's estimate that ICOL holders' relevant turnover for financial year 2013-14 will be approximately \$210 million. Parties that believe that this is not a reasonable estimate should provide an alternative estimate along with an explanation of the basis on which they derived that estimate.</p> <p>10. Interested parties are invited to comment on the Regulatory Authority's proposal to request the Minister to impose a regulatory fee of 1.75 per cent of relevant turnover. Parties that advocate a different percentage should propose a specific percentage and provide a justification.</p> <p>11. Interested parties are invited to comment on the Regulatory Authority's proposal to require ICOL holders to make their first general regulatory fee payment on 31 May 2013, based on "relevant turnover" during January through March 2013, and to have three subsequent quarterly payments, each due two months after the end of the quarter. Parties that advocate a different payment schedule should propose a specific alternative and provide a justification.</p> |
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5 RECOMMENDATION REGARDING GOVERNMENT AUTHORIZATION FEES

92. The Regulatory Authority proposes to recommend to the Minister that, during financial year 2013-14: (1) ICOL holders be required to pay Government authorization at the rate of 3.80 per cent of “relevant turnover,” regardless of their prior regulatory classification or level of Bermudianisation; (2) that ICOL holders be given a dollar-for-dollar credit towards their Government authorization fees for all general regulatory fees paid during the 2013-14 financial year; and (3) that payments be made quarterly, at the same times the ICOL holder pays its general regulatory fee. The Regulatory Authority’s proposed recommendation is attached as Appendix F.

93. As required by section 19(2) of the ECA, in developing its Recommendation, the Regulatory Authority has given due consideration to: the Regulatory Authority fees imposed on the industry; the likely effect of the proposed fees on investment and employment in the sector; the extent to which the proposed fees will promote Bermudian ownership and employment.

5.1 Types of COL Holders That Should Be Required to Pay Government Authorization Fees

94. While Section 19 of the ECA requires the Regulatory Authority to recommend that ICOL holders pay Government authorization fees, it gives the Authority discretion to decide whether to recommend that other providers be required to do so as well.

95. The Regulatory Authority does not propose to recommend that class licensees be required to pay Government authorization fees. As noted above, the Authority is considering granting class licences to providers of the following communications services: closed user groups; electronic communications services provided by hotels, hospitals, prisons, schools and similarly situated institutions; pay telephone services; operator services; and cyber cafes. Providers of these services have not previously been required to pay Government authorization fees. These providers may be required to comply with registration and other regulatory requirements for the first time. Imposing additional burden on these providers – many of whom are small and Bermudian-owned businesses – could be unreasonably burdensome at this time.

96. The Regulatory Authority proposes to recommend that the Government maintain the current Government authorization fees imposed on specialized licensees. As noted above, the Authority anticipates initiating a public consultation regarding the disposition of those licences. Pending resolution of that matter, the most prudent course of action is to maintain the status quo.

5.2 Basis for Setting ICOL Holders’ Government Authorization Fees

97. The Regulatory Authority proposes that all ICOL holders be assessed at the rate of 3.80 per cent of relevant turnover, regardless of their prior licensing classification or level of Bermudianisation, but that they be given a dollar-for-dollar credit towards their Government authorization fees for all general regulatory fees paid during the 2013-14 financial year.

98. During the initial period (*i.e.*, 28 January 2013 through 30 March 2013), holders of Class A, B and C licences will continue to pay fees to the Government at the existing rates of 6, 4.5 and 3 per cent of revenue respectively, based on retail

revenues generated during the final quarter of calendar year 2012. Subscription television providers also will continue to pay fees to the Government at the existing 3 per cent rate of revenue rate during this period. However, once these licences have been converted to ICOLs, there will no longer be any legal distinction among these providers. Therefore, the Regulatory Authority proposes that the new ICOL holders be required to pay the same percentage of relevant turnover in Government authorization fees, regardless of their former status as Class A, B or C carriers or subscription television providers.

99. Section 19(1)(b) of the ECA requires that general regulatory fees for ICOL holders "be based on a percentage of the relevant turnover of each licensee." As noted above, the Regulatory Authority propose to determine relevant turnover for purposes of assessing the general regulatory fees that ICOL holders will be required to pay using the methodology described in paragraph 89. The Regulatory Authority proposes to recommend that the same methodology be used to determine the relevant turnover for purposes of assessing the Government authorization fees that ICOL holders will be required to pay. This approach will minimize the burden, on both Regulatory Authority and industry, of calculating the fees to be paid by ICOL holders.

100. The Regulatory Authority proposes to recommend imposition of a Government authorization fee of 3.80 per cent of relevant turnover during financial year 2013-14. During the 2011-12 financial year (which ended on 31 March 2012), the carriers paid approximately \$8 million in revenue-based fees. As noted above, the Regulatory Authority estimates that, during financial year 2013-14, the ICOL holders will have relevant turnover of \$210 million. Imposition of a uniform fee of 3.80 per cent of relevant turnover would generate approximately the same level of revenue-based fees as in the last full financial year.⁵⁷

101. During the 2011-12 financial year, carriers also paid a \$7.00 per month per handset fee, which generated an additional \$5.6 million. The Regulatory Authority proposes to recommend that the handset fee remain unchanged.

102. The Regulatory Authority is mindful of the financial impact on industry. As the Regulatory Authority implements the ECA, operators will be allowed to enter new markets for the first time. While this will provide significant new opportunities, it will also require significant investment. As discussed above, the Regulatory Authority proposes to request the Minister to impose a Regulatory Authority fee of 1.75 per cent of "relevant turnover." These fees are expected to generate \$3,675,000 in revenue during the 2013-14 financial year. Requiring industry to continue pay \$8 million in revenue-based Government authorization fees, and \$5.6 million in handset fees, while imposing \$3,675,000 in new fees, could have an adverse effect on investment and employment in the sector during this critical period.

103. In order to "smooth the transition" to the new regime, the Regulatory Authority proposes to recommend that, during the 2013-14 financial year, the Government give each ICOL holder a 100 per cent credit towards their Government authorization fee for the amount it pays in general regulatory fees. For example, if an ICOL holder has \$1 million in relevant turnover, it would owe \$38,000 in Government authorization fees, but would be given a credit of \$17,500 for the general regulatory fees paid to the Regulatory Authority and, therefore, would need to pay only \$20,500 in

⁵⁷ An individual ICOL holder may pay more or less than it did in previous years depending on its current regulatory classification.

Government authorization fees. In effect, this would reduce the Government authorization fee to 2.05 per cent of relevant turnover.⁵⁸ This credit could be phased-out over time.

104. Taken together, the Authority's proposal would result in ICOL holders paying an effective Government authorization fee of 2.05 percent of relevant turnover, and a general regulatory fee of 1.75 percent of relevant turnover, for a total fee of 3.80 percent of relevant turnover. While some carriers' fees would rise, and others would fall, the total fees paid by industry would remain at approximately the same level during financial year 2013-14 as they were during financial year 2012-13.

105. The Authority has prepared a series of charts, which is attached as Appendix H, that show the fees that hypothetical carriers would have paid under the old regime, and the fees that the Authority proposes the carrier pay under the new regime.

106. The Regulatory Authority has considered whether, in order to promote Bermudian ownership and employment, it should recommend that the Government authorization fees to be paid by an ICOL holder be adjusted based on the degree to which the ICOL holder is "owned or controlled . . . by persons possessing Bermudian status" and "the proportion of each licensee's employees possessing Bermudian status."⁵⁹ The Authority does not propose to do so at this time. The Authority intends to initiate a public consultation to consider a range of issues related to Bermudianisation. As part of that proceeding, the Authority will seek comments regarding whether, in future years, it should recommend adoption of a fee adjustments based on an operator's level of Bermudian ownership and employment. Pending completion of a comprehensive review of this issue, recommendation of a "Bermudianisation adjustment" to the Government authorization fees paid by ICOL holders would be premature.

5.3 Timetable for Payment of ICOL Holders' Government Authorization Fee

107. The Regulatory Authority proposes to recommend that ICOL holders be required to make Government authorization fee payments to the Authority at the same time they make their general regulatory fee payments. Thus, by 31 May 2013, ICOL holders would make a payment based on relevant turnover during the period January through March 2013. ICOL holders would be required to make three subsequent quarterly payments. In each case, payment would be due two months after the end of the quarter (*i.e.*, 31 August, 2013, 30 November 2013 and 28 February 2014), based on relevant turnover during the prior quarter.

108. The Regulatory Authority believes that having ICOL holders pay both general regulatory fees and Government authorization fees at the same time would reduce the burden on both the Authority and industry. In particular, if the Government gives each ICOL holder a credit towards its Government authorization fee for the amount the ICOL holder pays in general regulatory fees, having ICOL holders submit both payments simultaneously will facilitate calculation of the correct amount of the Government authorization fee.

⁵⁸ The 3.80 per cent Government authorization fee would effectively be reduced by the amount of the general regulatory fee, which would be 1.75 per cent, resulting in an effective rate of 2.05 per cent.

⁵⁹ ECA § 19(2)(b).

12. Interested parties are invited to comment on the Regulatory Authority's proposal not to recommend that class licensees be required to pay Government authorization fees. Parties that advocate imposition of Government authorization fees on class licensees should identify the specific class licensees that should be required to pay Government authorization fees, should propose a reasonable fee and should provide a justification.
13. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that no change be made in the handset fee or in the Government authorization fees currently paid by specialized licensees. Parties that advocate any change in the current fees should identify the specific fees that should be changed, propose a reasonable fee and provide a justification.
14. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that same methodology used to calculate relevant turnover for purposes of calculating an ICOL holder's general regulatory fees be used to calculate the ICOL holder's relevant turnover for purposes of calculating its Government authorization fee. Parties that advocate adoption of a different methodology to calculate the ICOL holder's relevant turnover for purposes of calculating its Government authorization fee should propose a specific methodology and provide a justification.
15. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that all ICOL holders be required to pay the same percentage of relevant turnover in Government authorization fees, regardless of their prior status as Class A, B or C carriers or subscription television providers. Parties that advocate imposition of different percentages on different categories of ICOL holders should propose specific percentages and provide a justification.
16. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend imposition of a Government authorization fee of 3.80 per cent of each ICOL holder's relevant turnover during financial year 2013-14. Parties that advocate a different percentage should propose a specific percentage and provide a justification.
17. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that, during the 2013-14 financial year, the Government give each ICOL holder a 100 per cent credit towards their Government authorization fee for the amount it pays in general regulatory fees. Parties that advocate a different approach to "smooth the transition" to the new regulatory regime should propose a specific alternative and provide a justification.
18. Interested parties are invited to comment on the Regulatory Authority's proposal not to recommend that, during the 2013-14 financial year, an ICOL holder's Government authorization fee be adjusted based on an operator's level of Bermudian ownership and employment. Parties that advocate imposition of a "Bermudianisation adjustment" should propose a specific methodology and provide a justification.

19. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that ICOL holders be required to make Government authorization fee payments to the Authority at the same time they make their general regulatory fee payments. Parties that advocate adopting a different payment schedule from the one proposed for general regulatory fees should propose a specific alternative and provide a justification.

6 CONCLUSION

109. Pursuant to Section 43(3) of the RAA, “after giving due consideration to the comments submitted in [this] public consultation,” the Regulatory Authority will submit to the Minister and to the Minister of Finance “a preliminary report setting out the Authority’s proposed work plan” for financial year 2013-14 and “a proposed budget, with a request for approval.” At the same time, pursuant to Section 44(1) of the RAA, the Authority will submit a request and recommendation that the Minister make a regulation establishing the Regulatory Authority fees to be paid by ICOL holders during financial year 2013-14.

110. Pursuant to Section 52(2) of the RAA, following this public consultation, the Regulatory Authority will “submit a recommendation to the Minister[] regarding the Government authorization fees to be adopted” for financial year 2013-14.

20. Interested parties are invited to raise any matters, not addressed herein, regarding the Regulatory Authority’s proposed financial year 2013-14 strategic priorities, major activities, performance indicators, expense budget, revenue budget and Government authorization fee recommendation.

APPENDIX A:
LIST OF CONSULTATION QUESTIONS

CONSULTATION QUESTIONS

1. Interested parties are invited to comment on the Regulatory Authority's proposed strategic priorities. Parties that advocate deletion of any of the proposed strategic priorities should provide a justification. Parties that advocate addition or modification of any of the proposed strategic priorities should propose specific additions or modifications and provide a justification.
2. Interested parties are invited to comment on the major activities that the Regulatory Authority proposes to undertake during financial year 2013-14. Parties that propose the elimination of any major activity should provide a justification. Parties that propose the addition or modification of any major activity should make a specific proposal and provide a justification.
3. Interested parties are invited to comment on the Regulatory Authority's proposed performance indicators. Parties that propose the deletion of any proposed performance indicator should provide a justification. Parties that propose the addition or modification of any proposed performance indicator should make a specific proposal and provide a justification.
4. Interested parties are invited to comment on the Regulatory Authority's proposal to adopt an expense budget for financial year 2013-14 of \$3,557,600. Parties that advocate a different expense level should specify the proposed level and provide a justification.
5. Interested parties are invited to comment on the specific items in the Regulatory Authority's expense budget. Parties that advocate reducing or eliminating any line items should propose a specific level of funding and provide a justification. Parties that advocate increasing or adding any line items should propose a specific level of funding and provide a justification. Parties are encouraged to provide comparisons to relevant jurisdictions.
6. Interested parties are invited to comment on the Regulatory Authority's proposal not to request the Minister to impose service fees during financial year 2013-14. Parties that advocate imposition of service fees should identify specific services for which a fee should be imposed, propose a methodology to develop a reasonable estimate of the cost of providing the service and provide a justification.
7. Interested parties are invited to comment on the Regulatory Authority's proposal not to request the Minister to impose general regulatory fees on class licence holders or specialized licensees during financial year 2013-14. Parties that advocate imposition of general regulatory fees on class licence and/or specialized licensees should identify the specific class licensees and/or specialized licensees that should be required to pay general regulatory fees, should propose a reasonable fee and should provide a justification.
8. Interested parties are invited to comment on the Regulatory Authority's proposal to calculate relevant turnover in the manner described in paragraph 89. Parties that advocate adoption of a different means of determining relevant turnover should propose a specific methodology and provide a justification.
9. Interested parties are invited to comment on the Regulatory Authority's estimate that ICOL holders' relevant turnover for financial year 2013-14 will be approximately \$210 million. Parties that believe that this is not a reasonable estimate should provide an

alternative estimate along with an explanation of the basis on which they derived that estimate.

10. Interested parties are invited to comment on the Regulatory Authority's proposal to request the Minister to impose a regulatory fee of 1.75 percent of relevant turnover. Parties that advocate a different percentage should propose a specific percentage and provide a justification.
11. Interested parties are invited to comment on the Regulatory Authority's proposal to require ICOL holders to make their first general regulatory fee payment on 1 May 2013, based on "relevant turnover" during January through March 2013, and to have three subsequent quarterly payments. Parties that advocate a different payment schedule should propose a specific alternative and provide a justification.
12. Interested parties are invited to comment on the Regulatory Authority's proposal not to recommend that class licensees be required to pay Government authorization fees. Parties that advocate imposition of Government authorization fees on class licensees should identify the specific class licensees that should be required to pay Government authorization fees, should propose a reasonable fee and should provide a justification.
13. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that no change be made in the handset fee or in the Government authorization fees currently paid by specialized licensees. Parties that advocate any change in the current fees should identify the specific fees that should be changed, propose a reasonable fee and provide a justification.
14. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that same methodology used to calculate relevant turnover for purposes of calculating an ICOL holder's general regulatory fees be used to calculate the ICOL holder's relevant turnover for purposes of calculating its Government authorization fee. Parties that advocate adoption of a different methodology to calculate the ICOL holder's relevant turnover for purposes of calculating its Government authorization fee should propose a specific methodology and provide a justification.
15. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that all ICOL holders be required to pay the same percentage of relevant turnover in Government authorization fees, regardless of their prior status as Class A, B or C carriers or subscription television providers. Parties that advocate imposition of different percentages on different categories of ICOL holders should propose specific percentages and provide a justification.
16. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend imposition of a Government authorization fee of 3.80 percent of each ICOL holder's relevant turnover during financial year 2013-14. Parties that advocate a different percentage should propose a specific percentage and provide a justification.
17. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that, during the 2013-14 financial year, the Government give each ICOL holder a 100 percent credit towards their Government authorization fee for the amount it pays in general regulatory fees. Parties that advocate a different approach to "smooth the transition" to the new regulatory regime should propose a specific alternative and provide a justification.

18. Interested parties are invited to comment on the Regulatory Authority's proposal not to recommend that, during the 2013-14 financial year, an ICOL holder's Government authorization fee be adjusted based on an operator's level of Bermudian ownership and employment. Parties that advocate imposition of a "Bermudianisation adjustment" should propose a specific methodology and provide a justification.
19. Interested parties are invited to comment on the Regulatory Authority's proposal to recommend that ICOL holders be required to make Government authorization fee payments to the Authority at the same time they make their general regulatory fee payments. Parties that advocate adopting a different payment schedule from the one proposed for general regulatory fees should propose a specific alternative and provide a justification.
20. Interested parties are invited to raise any matters, not addressed herein, regarding the Regulatory Authority's proposed financial year 2013-14 strategic priorities, major activities, performance indicators, expense budget, revenue budget and Government authorization fee recommendation.

APPENDIX B:
INTERIM ADMINISTRATIVE RULES 18 AND 30

INTERIM ADMINISTRATIVE RULE 18

General requirements

- (1) Persons must file all written submissions electronically with the Authority using the Authority's official website, unless:
 - (a) a person certifies that he or she is unable to do so, in which case the person may make the submission by any other means authorized in this Rule; or
 - (b) a statute requires, or the Authority directs, that the filing be made in a different manner.
- (2) An electronic filing must comply with the following requirements:
 - (a) Electronic versions of all written submissions must be filed in .pdf format, supplemented by the original separate file in .doc (MS Word), .xls (Excel), or .ppt (Power Point) format, and must not include locked, password protected or hidden data.
 - (b) The following documents need only be submitted in .pdf format:
 - (i) documents not created by, for, or on behalf of the person submitting it for which no version in the required formatting is available; and
 - (ii) published, copyrighted material and voluminous material not originally prepared in the required format.
 - (c) Redacted versions of electronic documents that mask information for which confidential treatment is sought or has been granted must be filed exclusively in .pdf format.
 - (d) Electronic files must be named in a consistent manner that identified the matter number, the nature of the submission, the party submitting it and the date of the submission.
 - (e) If a person submits multiple files at the same time, the person must provide a list of all documents submitted.
- (3) An electronic submission is deemed received only when the sender receives notification from the Authority that the document has been received.
- (4) A person who certifies that he or she is unable to make a submission electronically may make the submission by e-mail or fax transmission. An e-mail or fax submission is deemed received only when the entire submission reaches the Secretary's electronic mailbox or fax machine.
- (5) A person who certifies that he or she is unable to make a submission either electronically, by e-mail, or by fax may make the submission by mail or by hand delivery (e.g., courier delivery service). A submission by mail or hand delivery is deemed received or filed when physically received by the Secretary and stamped with the date and time.
- (6) Written submissions received by the Authority after 5:00 p.m., regardless of the means of submission, are considered officially received on the next business day.
- (7) Each written submission to the Authority should include only one subject.
- (8) Persons making a written submission to the Authority must include the person's full name, mailing address, telephone and e-mail address and, if communicating on behalf of a business, organization, or other entity, their title or position, and the name of the entity on whose behalf the communication is sent.
- (9) A person who communicates with the Authority concerning a public consultation or an adjudication must identify the proceeding, including the matter number and name of the proceeding.

- (10) A person who communicates with the Authority about an authorization must identify the authorization number (if any), and the name under which the authorization is held.
- (11) The Authority's receipt of a submission for filing, or its assignment of a matter number to a submission, does not mean that the Authority has accepted the submission, or waived any deficiencies that would allow the Authority to reject the submission.
- (12) After a receiving a submission, the Authority may require the submission to be resubmitted with deficiencies corrected, or may reject the submission.

INTERIM ADMINISTRATIVE RULE 30

Confidential information

- (13) The Authority provides special handling and limited access to confidential information.
- (14) Confidential information includes:
 - (a) a trade secret of any person;
 - (b) information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure;
 - (c) other information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates;
 - (d) information that is given to the Authority by a third party (other than another public authority) in confidence on the understanding that it would be treated as confidential, the disclosure of which would be likely to prevent the Authority from receiving further similar information required by the Authority to properly fulfil its functions;
 - (e) information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of law; and
 - (f) information protected under the terms of a protective order in an adjudication.
- (15) A provider seeking confidential protection must submit the claim of confidentiality in writing, in the same form and at the same time the provider submits the information claimed to be confidential. The provider must state the basis upon which the information is claimed to be confidential.
- (16) The provider must submit a complete version of the document as to which confidentiality is claimed (unredacted version) and a complete version of the document with the information claimed to be confidential masked (redacted version).
 - (a) The redacted version must be labelled "redacted version". The redacted version will be available for public disclosure if requested.
 - (b) Each page of the unredacted version that includes information claimed to be confidential must have the confidential information clearly designated (e.g., by legibly highlighting text).
 - (c) The redacted and unredacted versions must have the same pagination and numbering.
- (17) Any party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the Authority will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure.
- (18) If the Authority concludes that the justification offered by the submitting party meets the standard for confidential treatment, the Authority will issue an order granting the request.
- (19) In any case in which the Authority grants a request for confidential treatment, the information may only be disclosed:
 - (a) to the Minister responsible for the regulated industry sector;
 - (b) to the Commissioners;
 - (c) to the staff;
 - (d) to the Ombudsman;
 - (e) to a court of competent jurisdiction; or

- (f) where necessary to conduct a public consultation or adjudication, to specific parties pursuant to a non-disclosure agreement or protective order.
- (20) If the Authority concludes that the justification offered by the provider does not meet the standard for confidential treatment, the Authority will issue an order denying the request and either:
 - (a) return the information to the provider, in which case the Authority will not consider or rely on the information; or
 - (b) after giving the provider notice and an opportunity to comment, disclose the information, if doing so would be in the public interest.
- (21) The Authority will provide written notice of any request for information that the Authority previously designated confidential to the provider and any person who might be directly affected by release of the information.
 - (a) If the provider consents in writing to the release of the information, or does not submit a written objection to the request within ten (10) days following notice, the Authority will release the information to the requester.
 - (b) If the provider does not consent to the disclosure, the Authority will either:
 - (i) deny access; or
 - (ii) disclose the information, if the Authority concludes that doing so would be in the public interest.
- (22) Except as provided in sub-section (11), the Records Officer will make the initial determination of confidentiality, which may be appealed to the Board.
- (23) In any adjudication in which information is submitted subject to a claim of confidentiality, the presiding officer will make the initial determination of confidentiality, which may be appealed to the Board.

APPENDIX C:

**REGULATORY AUTHORITY INITIAL BUDGET (28 JANUARY 2013 THROUGH 31
MARCH 2013)**

REGULATORY AUTHORITY INITIAL BUDGET
(28 JANUARY 2013 THROUGH 31 MARCH 2013)

| Expenses | | |
|--------------------|--------------------------------------|------------------|
| Operational | Employees | \$146,600 |
| | Training | \$14,800 |
| | Consulting Services | \$400,000 |
| | Meetings & Conferences | \$5,000 |
| | Subscriptions | \$1,800 |
| | Public Relations | \$28,100 |
| | Office Space | \$26,000 |
| | Office Services | \$51,500 |
| | Travel | \$3,500 |
| | | |
| Capital | Furniture and Fittings | \$2,000 |
| | Office Equipment and Supplies | \$18,100 |
| | IT equipment | \$38,000 |
| Total | | \$735,400 |

APPENDIX D:

**STATEMENT OF THE REGULATORY AUTHORITY REGARDING PRIORITIES FOR THE
INITIAL PERIOD**

Statement of the Regulatory Authority Regarding Priorities for the Initial Period

Whereas, the Regulatory Authority was established by the Regulatory Authority Act 2011 to supervise, monitor and regulate specific “regulated industry sectors”;

And, whereas, the Electronics Communications Act 2011 empowers the Regulatory Authority to regulate the electronic communications sector, other than broadcasting;

And, whereas, the Minister has caused both of these Acts to come into full force and effect on 28 January 2013;

And, whereas, the Regulatory Authority Act and the Electronic Communications Act specify numerous functions that the Regulatory Authority is to undertake during its first months of operation;

And, whereas, pursuant to Section 112 of the Regulatory Authority Act, the Regulatory Authority, subject to the approval of the Minister responsible for telecommunications and the Minister of Finance, has adopted a budget for the periods from the initial meeting on 28 January 2013 through the end of the current financial year on 31 March 2013;

And, whereas, the Regulatory Authority, consistent with its priorities for the initial period, by unanimous vote of the Board of Commissioners, has adopted the following statement:

During the period between 28 January 2013 and 31 March 2013, the Regulatory Authority intends to perform the following functions:

- (1) **Organization building.** The Regulatory Authority will begin the process of establishing an independent, modern regulator. The Regulatory Authority began this process at its initial meeting, with the appointment of the Chief Executive, who is “the principal administrative officer of the Authority” and is “responsible, subject to the direction of the Board, for carrying out the functions of the Authority.”⁶⁰ During the initial period, the Regulatory Authority expect to: set-up its office; retain staff;⁶¹ establish the official website;⁶² and establish necessary funds and financial controls.⁶³
- (2) **Administrative Rules.** The Regulatory Authority will adopt interim Administrative Rules, subject to a public consultation during the 2013-14 financial year.⁶⁴
- (3) **Work plan.** The Regulatory Authority will: conduct a public consultation regarding the financial year 2013 work plan (including the expense and revenue budgets);⁶⁵

⁶⁰ RAA § 29(4).

⁶¹ See *id.* § 28.

⁶² See *id.* § 18

⁶³ See, e.g., *id.* § 39 (“The Authority shall establish and maintain a fund, to be known as the Regulatory Authority Operating Fund.”); *id.* § 40 (“The Authority shall establish a fund to be known as the Regulatory Authority Reserve Fund.”); § *id.* 42 (“The Authority may bank accounts, and purchase [specified] financial instruments” in which to invest the Operating and Reserve Funds); *id.* § 46(b) (“The Authority shall . . . do all things necessary to ensure that all payments out of its moneys are properly authorized and correctly made, and that adequate control is maintained over its assets . . . and its expenditure.”).

⁶⁴ *Id.* § 13(c).

submit a recommended budget to the Minister and the Minister of Finance;⁶⁶ submit a request to the Minister to make a regulation establishing the Regulatory Authority fees to be paid in financial year 2013-14,⁶⁷ and make a recommendation regarding the Government authorization fees to be paid by industry during the 2013-14 financial year.⁶⁸

- (4) **ICOLs.** The Regulatory Authority will conduct a public consultation regarding the terms of the Integrated Communications Operating Licences (“ICOLs”) to be granted by the Authority.⁶⁹
- (5) **Market review.** The Regulatory Authority will: issue a notice specifying markets susceptible to *ex ante* regulation⁷⁰ and conduct a public consultation regarding market definition and market power.⁷¹
- (6) **Fees investigation.** The Regulatory Authority will initiate an investigation into whether licensees scheduled to receive ICOLs have paid all fees due under the Government Fees Act 1976.⁷²
- (7) **Class licences and exemptions.** The Regulatory Authority will conduct a public consultation regarding class licences and licence exemption.⁷³
- (8) **Enforcement of Telecommunications Act 1986 Transitional Provisions.** For as long as they remain in effect,⁷⁴ the Regulatory Authority will enforce sections 21 (Duties of Carriers), 23 (Specified carriers must give Notice of charges) and 23A (Carriers to maintain lists of rates and charges) of the Telecommunications Act 1986, which, among of things, requires all carriers to obtain approval prior to entering into or terminating an interconnection agreement, and requires specified carriers (*i.e.*, Bermuda Cablevision Limited, Bermuda Land Development Company Limited and Bermuda Telephone Company Limited) to obtain approval before initiating new telecommunications services or varying the charges for existing services.

⁶⁵ *Id.* § 43(2).

⁶⁶ *Id.* § 43(3).

⁶⁷ *Id.* § 44(2).

⁶⁸ *Id.* § 52(2).

⁶⁹ See ECA § 73(1).

⁷⁰ See *id.* § 74(a).

⁷¹ See *id.* § 74(b).

⁷² See *id.* § 74(c).

⁷³ See *id.* § 74(d).

⁷⁴ The ECA establishes two triggers for the “sunset” of these statutory requirements, based on whether the Authority, following the market review consultation, designates a provider as having significant market power in any relevant market (“SMP”). If the Regulatory Authority does not designate a provider as having SMP, the provisions will remain in effect until “one day after the date on which the Authority issues a general determination” designating the providers that have SMP. If the Regulatory Authority designates a provider as having SMP, the provisions will remain in effect until “the Authority publishes a written notice confirming that the communications provider has complied with all applicable *ex ante* obligations” imposed by the Authority. *Id.* § 80(1)(a).

(9) **Resolution of pre-existing matters.** The Regulatory Authority will assume responsibility for the resolution of all “matters relating to the electronic communications sector pending before the Minister or the Telecommunications Commission” on 28 January 2013.⁷⁵

(10) **Other matters.** The Regulatory Authority will also begin work on other matters of concern to the industry, including: the spectrum investigation;⁷⁶ the implementation of local number portability;⁷⁷ and universal service.⁷⁸

In witness whereof, this statement has been signed by the Chairman of the Regulatory Authority

/s/ [Name]

Date: 28 January 2013

⁷⁵ *Id.* § 80(3).

⁷⁶ *Id.* ECA § 78 (“The Authority shall conduct an investigation of the spectrum assignments . . . for the purpose of determining whether the frequencies assigned are being utilized efficiently . . . ”).

⁷⁷ See *id.* § 47(1) (“The Authority shall make a general determination to facilitate subscribers to retain a fixed or mobile telephone number assigned to them by their existing communications provider . . . ”).

⁷⁸ See *id.* § 33(1) (“The Authority shall assist the Minister in formulating and implementing any general universal service policies and regulations.”).

APPENDIX E:

PROPOSED EXPENSE BUDGET FOR THE 2013-14 FINANCIAL YEAR

**The Regulatory Authority's Proposed Expense Budget
for Financial Year 2013-14**

| Expenses | | |
|--------------------|--------------------------------------|--------------------|
| Operational | Employees | \$1,687,200 |
| | Training | \$85,000 |
| | Consulting Services | \$960,000 |
| | Meetings & Conferences | \$30,000 |
| | Subscriptions | \$10,000 |
| | Public Relations | \$95,000 |
| | Office Space | \$244,300 |
| | Office Services | \$111,100 |
| | Travel | \$40,000 |
| | | |
| Capital | Furniture and Fittings | \$62,200 |
| | Office Equipment and Supplies | \$65,500 |
| | IT equipment | \$72,300 |
| | Spectrum equipment | \$95,000 |
| Total | | \$3,557,600 |

DESCRIPTION OF BUDGET CATEGORIES

Operating Expenses

The following categories consist of recurring costs that the Regulatory Authority is expected to incur each year (although the size of any category is likely to vary from year-to-year):

Employees – This category includes the salaries and benefits for the three Commissioners (who will serve on a part-time basis, currently estimated at three to four days per week during the first financial year), the Chief Executive, four professional staff and three administrative positions. While staff from the Department of Telecommunications will be seconded to the Regulatory Authority on an interim basis, the Regulatory Authority will conduct a search for permanent staff, which may include a mix of Bermudian and foreign professionals. Therefore, recruiting and relocation expenses are also included in this category.

Training – This category includes the cost of on-site training and workshops for the Regulatory Authority staff.

Consulting Services – This category includes the costs of the legal, regulatory, and technical support the Regulatory Authority will require in connection with the following work-streams: adoption of the financial year 2013-14 budget and work plan; issuance of ICOLs; adoption of the class licensing and exemption regime; designation of providers with significant market power and adoption and implementation of *ex ante* remedies; implementation of local number portability; review and revision of regulations adopted under the Telecommunications Act; adoption of final Administrative Rules; conducting the spectrum investigation; and conducting the investigation of fees due under the Telecommunications Act 1986. The Regulatory Authority expects that, after the first financial year, the level of funding required for consultancy services will decline as a result of the completion of several major consultations mandated by the ECA, the retention of permanent staff and knowledge transfer undertaken by the consultants.

Meetings & Conferences – This category includes the cost the Regulatory Authority will incur to conduct and/or participate in on and off-site meetings and conferences with the industry and public.

Subscriptions – This category includes the cost of books, periodicals, and subscriptions the Regulatory Authority will require to remain abreast of industry events and trends.

Public Relations – This category includes the cost to further develop and maintain the Regulatory Authority's website, place notices in local publications and conduct a public relations program. The official website currently has only rudimentary functionality. The Regulatory Authority expects that, during the upcoming financial year, it will develop a more feature-rich website, which will allow for easier access to information and on-line payment of fees.

Office Space – This category includes the rent, taxes, utilities, and insurance associated with leasing a 3,050 square foot office on the 3rd Floor South of Cumberland House, 1 Victoria Street, Hamilton. Also included are the associated telephone, internet, and mobile communications expenses.

Office Services – This category includes IT service support, payroll and accounts preparation, financial audit, human resources, startup assistance, and maintenance and cleaning contracts.

Travel – This category includes the cost for meetings, conferences, and seminars attended by the Regulatory Authority Commissioners and/or members of the staff.

Capital Expenses

The following categories consist of one-time expenses required to enable the Regulatory Authority to begin its operations:

Furniture and Fittings – This category includes the costs of renovating the Authority's offices to adapt the space for its needs. Also included in this category is furniture for the staff, reception area and conference room.

Office Equipment and Supplies – This category includes office equipment, such as a copier, smart-board, projector and miscellaneous office equipment. This category also includes general office supplies, stationary with the Authority's logo and basic cleaning and kitchen supplies.

IT Equipment – The category includes the cost of an internal computer network for the Authority's offices, including workstations for the Commissioners and staff, associated software and backup facilities.

APPENDIX F:

**PROPOSED REQUEST TO MAKE A REGULATION REGARDING REGULATORY
AUTHORITY FEES FOR THE 2013-14 FINANCIAL YEAR 2013**

**REQUEST TO MAKE A REGULATION REGARDING REGULATORY AUTHORITY FEES
FOR THE 2013-14 FINANCIAL YEAR 2013**

Pursuant to Section 44(1) of the Regulatory Authority Act, the Regulatory Authority hereby requests and recommends that the Minister make a regulation establishing the Regulatory Authority fees to be paid by ICOL holders during financial year 2013-14.

The Regulatory Authority requests and recommends that the regulation provide that:

1. During financial year 2013-14, holders of Integrated Communications Operating Licences ("ICOLs") shall pay general regulatory fees equal to 1.75 per cent of relevant turnover.
2. Relevant turnover shall be calculated by determining the licensee's "total turnover" (*i.e.*, the revenue that the licensee receives from the provision of electronic communications services to end-users and other Communication Operating Licence ("COL") holders in Bermuda) and then subtracting payments that the licensee made to other COLs for wholesale electronic communications services used to provide those services.
3. ICOL holders shall make four quarterly payments to the Regulatory Authority. The payments shall be due by: 31 May 2013 (based on relevant turnover for the period from 1 January 2013 through 31 March 2013); 31 August 2013 (based on relevant turnover for the period from 1 April 2013 through 30 June 2013); 30 November 2013 (based on relevant turnover for the period from 1 July 2013 through 30 September 2013); and 28 February 2014 (based on relevant turnover for the period from 1 October 2013 through 31 December 2013).

APPENDIX G:

**PROPOSED RECOMMENDATION REGARDING GOVERNMENT AUTHORIZATION FEES
FOR THE 2013-14 FINANCIAL YEAR**

RECOMMENDATION REGARDING GOVERNMENT AUTHORIZATION FEES FOR FINANCIAL YEAR 2013-14

Pursuant to Section 52(2) of the Regulatory Authority Act, the Regulatory Authority hereby submits this recommendation to the Minister regarding the Government authorization fees to be adopted for financial year 2013-14. The Regulatory Authority recommends that the Government Fees Act 1965 be amended to provide that:

1. During financial year 2013-14, in lieu of the fees previously paid by Class A, Class B and Class C carriers, and by subscription television licensees, holders of Integrated Communications Operating Licences (“ICOLs”) shall pay general regulatory fees equal to 3.80 per cent of relevant turnover.
2. Relevant turnover shall be calculated by determining the licensee’s “total turnover” (*i.e.*, the revenue that the licensee receives from the provision of electronic communications services to end-users and other Communications Operating Licence (“COL”) holders in Bermuda) and then subtracting payments that the licensee made to other COLs for wholesale electronic communications services used to provide those services.
3. ICOL holders shall make four quarterly payments to the Regulatory Authority. The payments shall be due by: 31 May 2013 (based on relevant turnover for the period from 1 January 2013 through 31 March 2013); 31 August 2013 (based on relevant turnover for the period from 1 April 2013 through 30 June 2013); 30 November 2013 (based on relevant turnover for the period from 1 July 2013 through 30 September 2013); and 28 February 2014 (based on relevant turnover for the period from 1 October 2013 through 31 December 2013).
4. At the time an ICOL holder makes its quarterly Government authorization fee payment, the ICOL holder shall be entitled to claim a credit towards its payment equal to 100 per cent of the general regulatory fee that, pursuant to Section 44 of the Regulatory Authority Act, the ICOL holder is paying for that quarter.
5. All other Government authorization fees related to the telecommunications sector specified in the Government Fees Act 1965, including the \$7 per month handset fee, shall remain unchanged.

APPENDIX H:

FEES PAID BY HYPOTHETICAL CARRIERS UNDER THE CURRENT AND PROPOSED REGIMES

CHART A: CURRENT CARRIER FEES

| Licence Class | Service | Existing Government Rate | Total Revenue | Exemption | Existing Carrier Fee |
|-----------------|----------|--------------------------|---------------|-----------|----------------------|
| A | Int'l | 6.0% | \$24,000,000 | | \$1,440,000 |
| B | Domestic | 3.0% | \$100,000,000 | | \$3,000,000 |
| C | ISP | 3.0% | \$10,000,000 | \$100,000 | \$297,000 |
| C | VoIP | 4.5% | \$4,000,000 | | \$180,000 |
| C | Pager | 3.0% | \$300,000 | \$100,000 | \$6,000 |
| Subscription TV | Cable TV | 3.0% | \$25,000,000 | | \$735,400 |

This chart shows the Carrier Fees that six hypothetical carriers pay to the Government under the current regime. For example, a Class A carrier with \$24 million in revenue would pay \$1,440,000, which represents six per cent of its total revenues. Other carriers' fees would be based on their classification and revenues. This chart does not include other payments to the Government, such as the \$7 per month handset fee or customs duties.

CHART B: PROPOSED GOVERNMENT AUTHORIZATION FEES

| | | [e] [b]-[e] | [f] | [g] | [h] [f]x[g] | [i] [h]- d] |
|----------------------|-------------|-----------------------------|-------------------|--|---------------------------------------|--------------------------------------|
| Former Licence Class | New Licence | Payments To Other Licensees | Relevant Turnover | Proposed Government Authorization Fee Rate | Proposed Government Authorization Fee | Difference from Existing Carrier Fee |
| A | ICOL | \$2,500,000 | \$21,500,000 | 3.80% | \$817,000 | (\$623,000) |
| B | ICOL | \$5,500,000 | \$94,500,000 | 3.80% | \$3,591,000 | \$591,000 |
| C –ISP | ICOL | \$3,000,000 | \$7,000,000 | 3.80% | \$266,000 | (\$31,000) |
| C – VoIP | ICOL | \$1,500,000 | \$2,500,000 | 3.80% | \$95,000 | (\$85,000) |
| C - Pager | ICOL | \$50,000 | \$250,000 | 3.80% | \$9,500 | \$3,500 |
| Subscription TV | ICOL | \$1,450,000 | \$23,550,000 | 3.80% | \$894,900 | \$144,900 |

This chart shows the fees that the same hypothetical carriers (whose licences will be converted to ICOLs) would pay to the Government under the Regulatory Authority's proposal. The former Class A carrier would pay \$817,000, which represents 3.80 per cent of its relevant turnover (*i.e.*, its retail revenue minus wholesale payments to other Bermuda carriers), a reduction of \$623,000. Some other ICOL holders' fees would also be reduced, while others ICOL holders' fees would be increased.

CHART C: PROPOSED GENERAL REGULATORY FEES

| Former Licence Class | New Licence | Proposed General Regulatory Fee Rate | Relevant Turnover | Proposed General Regulatory Fee |
|----------------------|-------------|--------------------------------------|-------------------|---------------------------------|
| A | ICOL | 1.75% | \$21,500,000 | \$376,250 |
| B | ICOL | 1.75% | \$94,500,000 | \$1,653,750 |
| C –ISP | ICOL | 1.75% | \$7,000,000 | \$122,500 |
| C – VoIP | ICOL | 1.75% | \$2,500,000 | \$43,750 |
| C - Pager | ICOL | 1.75% | \$250,000 | \$4,375 |
| Subscription TV | ICOL | 1.75% | \$23,550,000 | \$412,125 |

This chart shows the general regulatory fees that the same hypothetical carriers (whose licences will be converted to ICOLs) would pay to the Regulatory Authority under the Authority's proposal. The former Class A carrier would pay a fee of \$376,250, which represents 1.75 per cent of its relevant turnover. Other ICOL holders would pay the same rate, based on their relevant turnover.

CHART D: ADJUSTED GOVERNMENT AUTHORIZATION FEES

$$[m] \\ [h]=[f] \times [g]$$

$$[n] \\ [l]=[j] \times [k]$$

$$[o] \\ [m]-[n]$$

| Former Licence Class | New Licence | Proposed Government Authorization Fee | Proposed General Regulatory Fee Credit | Adjusted Government Authorization Fee |
|----------------------|-------------|---------------------------------------|--|---------------------------------------|
| A | ICOL | \$817,000 | \$376,250 | \$440,750 |
| B | ICOL | \$3,591,000 | \$1,653,750 | \$1,937,250 |
| C – ISP | ICOL | \$266,000 | \$122,500 | \$143,500 |
| C – VoIP | ICOL | \$95,000 | \$43,750 | \$51,250 |
| C – Pager | ICOL | \$9,500 | \$4,375 | \$5,125 |
| Subscription TV | ICOL | \$894,900 | \$412,125 | \$482,775 |

This chart shows the adjusted Government authorization fees that the same hypothetical carriers (whose licences will be converted to ICOLs) would pay if the Government accepts the Regulatory Authority's proposal to grant ICOL holders a 100 per cent credit towards the Government authorization fee for every dollar the ICOL holder pays in general regulatory fees. The former Class A carrier would have its Government authorization fee reduced from \$817,000 to \$440,750, reflecting the 100 percent credit for the carrier's \$376,250 Regulatory Authority fee payment. In effect, the carrier's Government Authorization fee would be reduced to 2.05 per cent of relevant turnover (the 3.80 Government authorization fee rate minus the 1.75 per cent general regulatory fee rate). Each of the other ICOL holders' Government authorization fees also would be reduced by an amount equal to the general regulatory fees that it paid.

CHART E: DIFFERENCE BETWEEN CURRENT FEES AND PROPOSED FEES

| | | [p] | [q] | [r] | [s] | [t] |
|----------------------|-------------|----------------------|--------------------|--------------------------|------------------------|-------------|
| | | $[d]=[a]x([b]-[c])$ | $[l]=[j]\times[k]$ | $[o]=[m]-[n]$ | $[q]+[r]$ | $[p]-[s]$ |
| Former Licence Class | New Licence | Existing Carrier Fee | Proposed RA Fee | Proposed Adjusted GA fee | Proposed Total Payment | Difference |
| A | ICOL | \$1,440,000 | \$376,250 | \$440,750 | \$817,000 | (\$623,000) |
| B | ICOL | \$3,000,000 | \$1,653,750 | \$1,937,250 | \$3,591,00 | \$591,000 |
| C –ISP | ICOL | \$297,000 | \$122,500 | \$143,500 | \$266,000 | (\$31,000) |
| C – VoIP | ICOL | \$180,000 | \$43,750 | \$51,250 | \$95,000 | (\$85,000) |
| C - Pager | ICOL | \$6,000 | \$4,375 | \$5,125 | \$9,500 | \$3,500 |
| Subscription TV | ICOL | \$735,400 | \$412,125 | \$482,775 | \$894,900 | \$144,900 |

This chart shows the total fees that the same hypothetical carriers (whose licences will be converted to ICOLs) would pay if general regulatory fees are set at 1.75 per cent of relevant turnover, Government authorization fees are set at 3.80 per cent of relevant turnover, and the Government accepts the Regulatory Authority's proposal to grant ICOL holders a 100 per cent credit towards the Government authorization fee for every dollar the ICOL holder pays in general regulatory fees. The former Class A carrier would have its total fees reduced from \$1,440,000 (6 percent of revenue) to \$817,000 (3.80 percent of relevant turnover), a reduction of \$623,000. Some other ICOL holders' fees would also be reduced, while others ICOL holders' fees would be increased. Overall, however, the fees paid by the carriers as a group would remain approximately the same under the old and new regimes.