



GOVERNMENT OF BERMUDA

Ministry of Energy, Telecommunications and E-Commerce

The Department of Telecommunications

**Communications Assistance For Law
Enforcement
(Telecommunications Amendment Act 2010)**

Draft Consultation Paper

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**Ministry of Energy, Telecommunications &
E-Commerce**

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Closing Date for Responses April 23, 2010

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1. Introduction

In an ongoing effort to improve the governance of the Island's respective agencies, the Department of Telecommunications has been mandated to amend the telecommunications Act 1986 to allow local law enforcement agencies to be given access to public telecommunications services that would assist them in the execution of any lawfully authorized surveillance and interception of communications in support of national security or law enforcement. Carriers will be aware of these ongoing efforts as far back as 2005.

The need to update Bermuda's lawful access legislation is being driven by, not only national realities (rapid improvements in technology is empowering criminals in mounting criminal activities that evades detection by enforcement agencies) , but in support of our international obligation against global crime and especially the mandate of the Council of Europe's Convention on Cyber crime. This proposed legislation is also a step in the right direction to regularize the behaviour of law enforcement in their methods currently used in the lawful interception of communications.

2. Scope of Consultation

Subsequent chapters of this informal consultation paper address the following:

- Background to Communications Assistance for Law Enforcement in Bermuda
- Potential extent of industry's obligation under Lawful Intercept legislation
- Factors pertaining to Capacity for simultaneous intercept
- Concerns of privacy rights and confidentiality.

3. Consultation Procedure

This urgent and informal consultation is being run in accordance with the Consultation Process documented in the Department's publication of the same name dated 28 November 2008 (available on the Department's web portal¹).

The consultation period will run from 7 April, 2010 to 23 April, 2010. Written comments should be submitted before 5pm on 23/04/2010. Additionally, a meeting to include the Police, Industry and the Department is scheduled to be held on Friday 16th April, 2010 to discuss the applicability of the provisions contained in the attached Annex.

Please submit your responses in MS Word or Adobe Acrobat format by email to gtelecom@gov.bm and a hard copy delivered by hand to:

Hiram Edwards

¹ http://www.gov.bm/portal/server.pt?open=512&objID=330&mode=2&in_hi_userid=2&cached=true

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All comments should be clearly marked “Comments on Communications Assistance for Law Enforcement: Consultation Document”

The Minister intends to make responses to this consultation available on the Government of Bermuda website. Any material that a respondent considers to be commercially sensitive should be put into an Annex and clearly marked “IN COMMERCIAL CONFIDENCE. Further details on the submission of confidential information are provided in the Consultation Process document available on the web portal.

The Minister regrets that he is not in a position to respond individually to the responses to this consultation.

This document does not constitute legal, technical or commercial advice; the Minister is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Minister to regulate the market generally.

4. Background

The current Telecommunications Act 1986 (the “Act”) contains the following provisions relating to Communications Assistance:

While section 61(1) of the Act uphold privacy of communication i.e. “*Privacy of communications shall be inviolable except as provided in section 62*” it gives the Police, in section 62, under the authority of the Governor the power to intercept, detain or disclose any class of messages brought for transmission through telecommunications, that is reasoned to be in the public interest.

Changes in technology create time constraints, technical resource challenges and other impediments to support the agencies mandates in its authorized lawful interception and enforcement.

Bermuda is experiencing an escalating rate in serious crimes and a high level of undetected or failed prosecution due to insufficient evidence before the courts. This is further exasperated by a lack of assistance from witnesses or other persons with information that could help the police in their investigations.

5. Potential extent of Industry's Obligations

5.1. *Who are affected by this amendment*

All Telecommunications Carriers that provides telecommunications services to the public includes:

- Fixed Wire line services;
- Fixed Wireless voice and data services;
- Commercial Mobile Services;
- Competitive Access Suppliers;
- Specialized Mobile radio services (SMRS);
- Paging Services;
- Any service which could be used as a replacement for a substantial portion of the local exchange; and
- Facilities based broadband internet access & interconnected VOIP providers

5.2. *Capacity*

Along with the ability to expeditiously isolate all wire and electronic communications of a target transmitted by the carrier, simultaneous intercepts of multiple targets shall be made available to law enforcement agencies. This number of capacity for simultaneous intercepts will be decided through consultation on a periodic basis.

5.3. *CALEA Costs*

It should be noted that costs for the implementing CALEA will remain the responsibility of the Carrier in question. However, the Government is prepared to impose a 0 % duty tariff on equipment designated as CALEA interfaces or other apparatus specifically imported for enabling CALEA compliancy. The Department of Telecommunications remains the adjudicator in the approving such classification.

6. Factors pertaining to Privacy and Rights

Of main concerns is to ensure that all rights are preserved as given under the constitution. This amendment has considered tried and tested legislation that applies both to the United States of America and the provisions contained in the legislation of the Parliament of Canada. These models provide Bermuda with compatible legislative tools which benefit the telecommunications equipment used by our local carriers and the legislation of Canada mirrors similar concerns of privacy for Bermuda.

7. Annex A

Attached is the proposed Bill entitled Telecommunications Amendment Act 2010; this includes the entirety of the provision of the legislations proposed for tabling in the house on the first sitting of the third session. *Please review and give open responses of areas of concerns or other comment as you see fit.*