



**GOVERNMENT OF BERMUDA**  
**Ministry of Energy, Telecommunications and E-Commerce**  

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**Telecommunication Commission**

**Our ref: TC203/01/39/08**  
**Date: December 8, 2009**

**By Mail and Email**

Mr. Alan Smith  
Bermuda Cablevision Ltd.  
19 Laffan Street  
Hamilton HM 09

Dear Mr. Smith

**Re: Bermuda Cablevision's Tariff Filings for Economy Tier**

**BACKGROUND**

We refer to a letter dated 13<sup>th</sup> March, 2009 from Conyers Dill & Pearman, on behalf of its client Bermuda Cablevision Ltd. ("BCV"), attaching tariff filings for a proposed new tier, the 'Broadcast Tier', and for the re-pricing of BCV's existing Economy Tier, respectively. BCV requested that the Telecommunications Commission ("Commission") set a price for the Broadcast Tier (stated as X) and to re-price its Economy Tier at \$30.00 minus X.

The Commission was made aware of a mediated agreement between the Bermuda Broadcasting Company ("BBC") and BCV dated 11<sup>th</sup> February, 2009 resolving a number of issues between the parties, including an agreement relating to this issue, i.e. the proposed value of BBC's syndicated rights to broadcast ABC and CBS networks, and its own copyright programs.

The Commission requested cost data from BCV in letters dated 9<sup>th</sup> June, 2009 and 24<sup>th</sup> June, 2009 which letters were subsequent to requests for information made in letters dated 22<sup>nd</sup> January and 31<sup>st</sup> March 2009.

The Commission received a costing spreadsheet from BCV on 3<sup>rd</sup> July, 2009.



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The Commission wrote to BBC on 17<sup>th</sup> August, 2009 requesting cost data, a “broadcast content profile” and related viewership ratings relating to BBC’s local broadcast operations and received the same on 9<sup>th</sup> September, 2009

The Commission considered the pricing of certain cable services in other jurisdictions.

The Commission received information from its advisors on trends relating to the value of syndicated rights to broadcast ABC and CBS networks and on local broadcast content licensing fees for cable TV networks in other jurisdictions.

The Commission accepts that it is an industry standard that cable broadcasters have costs associated with the purchase of channel content.

The Commission reviewed the tariff filings and, as required by the Telecommunication Act 1986, also considered the following:-

- (i) the cost to the Carrier of the service in question;
- (ii) the desirability and need to subsidize other non-profitable services offered by the Carrier in the public interest;

The applicant did not submit any information indicating that the Economy Tier is subsidizing any of its other tiers or service offerings.

- (iii) the needs of the Carrier for adequate working capital and to establish reasonable reserves;

Based on financial data provided by BCV, it does not suffer from inadequate working capital and/or a lack of reasonable reserves.

- (iv) international accounting standards where applicable and modifications thereto;

International accounting standards do not directly affect the tariff filings.

- (v) technological advances;

Technological advances have minimal impact on the tariff filings.

- (vi) market conditions in Bermuda and overseas including the likely impact of a new service on other Carriers;



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The Commission determined that an excessive rate covering the full production costs of BBC would adversely affect the local market.

(vii) regulatory changes where applicable;

There were no applicable regulatory changes that impacted the tariff filings.

(viii) the need to afford investors a reasonable rate of return on their investment;

In the Commission's view, it is unlikely that the applicant's investors, will beyond the short term, experience a decline in their rate of return.

(ix) the question whether in the light of the foregoing, any proposed tariff is just and reasonable and any rates and charges contained therein are applied equally to all persons in substantially similar circumstances and conditions;

The Commission has no evidence before it that the applicant intends to apply for re-balancing of its rates and charges.

(x) the question whether the Carrier, in respect of the application of rates and charges, the provision of services and the use of its facilities—  
(a) gives any preference or advantage to any person or to any particular description of telecommunication;  
(b) subjects any person or any particular description of telecommunication to any disadvantage;

The Commission has no evidence before it that the applicant gives any preference or advantage to any person nor subjects any person to be disadvantage by the tariff filings.

(xi) the public interest.

The Commission found that it is in the public interest to retain the "Economy Tier", as to content and pricing, as is and to leave it unchanged.

The Commission carefully examined the BCV spreadsheet and specifically reviewed the Economy Tier costs provided by BCV for 2008 and for the period ending May 2009. The Commission also examined BCV's financial results for 2008 and examined its management reports for the period ending May 2009.



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The Commission considered the effect on both BCV and BBC of a “pass through” fee that would be imposed on BCV for payment to BBC for BBC’s original and licensed copyright provided to BCV for retransmission / diffusion (“License Fee”).

The Commission considered and examined the potential effect on BCV of a License Fee to BBC that would not be recoverable from an increase in its Economy Tier tariff. The Commission considered the effect on the public of a possible increase in BCV’s higher tiers (not Economy Tier) pricing to offset the License Fee.

The Commission reviewed the possible effect to the local market of BCV’s current rates and reviewed the possible effect to the local market of either higher or lower rates than current pricing.

The Commission reviewed the local broadcast fee paid by World On Wireless Ltd. to BBC pursuant to their agreement dated 1<sup>st</sup> February 2004, renewed 15<sup>th</sup> August 2008 (such agreement was provided to the Commission as confidential information pursuant to section 61B of the Telecommunications Act 1986).

The Commission reviewed and considered cost information provided by BBC.

BBC’s copyright consists of two parts, that which is original content developed and owned by BBC and that which is licensed from ABC and CBS and for which BBC has the right to sub-license.

The Commission then considered the question of what would be a reasonable rate of return on the BBC copyright content. The Bermuda "cable" market is a mature market. Therefore, a return that provides a fair premium on the "risk-free rate" is reasonable. The risk-free rate is the rate the market demands for Government-backed securities and financial instruments. Recently, the Bermuda Government backed a preferred share offering with a coupon rate of eight (8) percent per annum; local bank financing being offered between 5.5% and 8%; local 5-year deposit rates are approximately 2.5%.

#### **REASONINGS/FINDINGS**

The Commission accepts diversity of local broadcasting is in the public interest over the air and/or over BCV’s cable infrastructure.

The Commission finds that BBC has a license to broadcast ABC and CBS exclusively in Bermuda. BBC also has the copyright in certain original material authored by it and delivered over ZFB and ZBM.



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The Commission determined that an increase in fee of BCV's Economy Tier was not in the public interest, at this time.

The Commission determined that it is not in the public interest to have a separate tier that allows the public to elect not to receive the local channels 7 and 9. The cost of managing a separate tier and, particularly, the confusion that would be created, the cost of managing the transition and the fact that local content should be available in the basic tier were all considered important factors.

The Commission reasons that public freedom of choice is not hindered if these channels remain in the Economy Tier as the public has a choice whether or not to watch them.

The Commission determined nearly all of BCV's cable subscribers watch BBC broadcast content and expressed a desire to continue to do so.

The Commission determined the License Fee can reasonably be in the range of \$.31 to \$.40 per subscriber per channel, per month.

The Commission determined BBC is entitled to receive its direct costs plus profit. The direct costs per subscriber per channel for local and non-locally produced copyright content are \$.36 and \$.31, respectively. The total, including a return of 8% would be \$ .72 per subscriber per channel, per month. This amount is grossed-up for the 3% government tariff. However, as there is no separate Broadcast Tier, it was determined that there would not be a need for a provision for bad debts. Hence, no gross-up was made for this amount. Therefore, the maximum tariff for inclusion in the Economy Tier relating to the BBC copyrighted content is \$0.75 per channel.

The Commission determined such a fee can be absorbed by BCV without hindering its present operations, working capital, or long-term profitability, and need not be passed through to its subscribers.

**DIRECTION**

The Commission hereby directs that:

- 1) BCV continues to provide its Economy Tier, with no diminution to the current channel lineup, at \$ 30.00 per subscriber, per month;



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- 2) The price to the public for the BBC copyright content be \$0.75 per channel if provided on a stand-alone basis. The \$0.75 fee per channel is bundled in the \$30 per month subscriber fee for the Economy Tier and, hence, there is no cause for establishing a separate BBC channel charge.

Sincerely,



Ronald E. Simmons, JP, CA  
Chairman, Telecommunications Commission