

REPLY TO CONSULTATION DOCUMENT
DRAFT REGULATORY AUTHORITY ACT 2010
DRAFT ELECTRONIC COMMUNICATIONS ACT 2010

**BRASIL TELECOM SUBSEA CABLE
SYSTEMS (BERMUDA) LTD.**

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Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on the Department of Telecommunications’ website. If I have sent my response by email, the Department of Telecommunications can disregard any standard email text about not disclosing email contents and attachments.

Names: Erick W. Contag

Signature: /s/ Erick W. Contag

Brasil Telecom Subsea Cable Systems (Bermuda) Ltd. (“Brasil Telecom”), owner of the GlobeNet fibre optic submarine system linking Bermuda, Brazil, Venezuela and the United States (“GlobeNet system”), appreciates this opportunity to respond to the Government Consultation relating to the Draft Regulatory Authority Act 2010 (“Regulatory Authority Act”) and the Draft Electronic Communications Act 2010 (the “EC Act” and together with the Regulatory Authority Act, the “Draft Acts”). Brasil Telecom believes that the Draft Acts represent an important step forward in the development of an already advanced telecommunications market. Brasil Telecom strongly supports the Government of Bermuda’s efforts to create a regulatory regime that reflects the new world of communications. We believe the Draft Acts will enable Bermuda’s communications market to meet the ever-increasing demands for competitive, well-priced, diversified and highly sophisticated services.

We briefly describe Brasil Telecom’s operations in Bermuda and then respond to the Consultation with comments on the EC Act and the Regulatory Authority Act.

Description of Brasil Telecom

Brasil Telecom has provided wholesale international connectivity to Bermuda since 2003 through the GlobeNet system. Brasil Telecom operates in Bermuda under a Public Telecommunications Services License granted on June 6, 2003, with a cable landing station at St. David’s, Bermuda.

The GlobeNet system consists of two separate cables in a ring configuration, connecting Brazil, Bermuda, the United States and Venezuela, a distance of more than 22,000 kilometers. This highly sophisticated submarine cable network system is fully redundant and offers the lowest latency available between the Americas. Brasil Telecom has been investing in the latest technology to improve the GlobeNet system’s capacity. By August of 2009 it had doubled the

lit capacity of the system, achieving 360Gbps. We are planning a new upgrade of the system capacity to be completed by the end of the first half of 2011.

Comments on the EC Act

Part III of the EC Act sets out the concept of a communications operator license (COL), which is very broad and covers all types of electronic communications services and networks. Section 15(1) envisions that there will be different kinds of individual COLs, including an integrated COL (“ICOL”) described in Section 17. Brasil Telecom applauds the opening of the Bermuda market signified by Section 17 of the EC Act. Granting current licensees an ICOL will remove the restrictions on access to the GlobeNet system and lift the cap on Brasil Telecom’s potential customers. This will allow service providers in Bermuda non-discriminatory access to international capacity and services.

Some licensees, however, such as Brasil Telecom, do not expect to expand the scope of services provided in Bermuda. Brasil Telecom strongly supports the creation of more than one kind of COL and, in particular, of an individual license limited to providing electronic communications services on an international basis (to and from Bermuda and another country/territory). Brasil Telecom believes that providing operators with a choice of obtaining an ICOL or a different kind of COL will more clearly reflect the specialization within the communications sector. Some players will limit themselves to a niche market, while others will provide a broad range of services. Creating licenses with a limited scope (either geographic or service specific) will make it easier for the Ministry and the new Regulatory Authority to tailor license conditions and fees to the type of service being provided.

Comments on the Regulatory Authority Fees

Brasil Telecom congratulates the Government of Bermuda for its decision to create an independent regulatory authority. We have long supported and urged this action, believing that it is in keeping with international best practices. We look forward to working with the Authority in the coming years. We welcome the provisions for transparency and public participation in the Regulatory Authority's decision-making and expect to participate actively in its public consultations.

Both the EC Act and the Regulatory Authority Act contain provisions regarding the fees to be charged by the Regulatory Authority. Section 10 of the EC Act sets out general principles for the scope of the fees, noting that "some or all sectoral participants shall pay regulatory fees, as determined by the Regulatory Authority." This concept is carried through in Section 10(2)(a) of the EC Act, which instructs the Regulatory Authority to give "due regard" to the "comparative costs of regulatory administration attributable to the different types of authorization holders." These provisions recognize that fees that are too high and not related to the costs of regulation raise prices to end users and inhibit investment.

Brasil Telecom suggests that the fee structure and its underlying justification should be clarified in the Regulatory Authority Act. The draft envisions both a service fee and a general regulatory fee. While the service fee is tied to the cost of performing the service, the general regulatory fee includes "a reasonable portion of the remaining operating costs of the Authority." If applied across the board, this regulatory fee could unfairly require licensees who utilize few of the regulator's resources to bear a disproportionate share of operating costs attributable to major wireless and wireline operators. In effect, the general regulatory fee contradicts the principles set forth in the EC Act. The Regulatory Authority Act should make clear that operating costs are

also proportional to the amount of regulation and effort expended by the Authority with respect to a particular service.

In addition, Section 10(2) of the EC Act should be amended to add another general principle to govern fee setting: “Only those services originating or terminating in Bermuda, and not those transiting through Bermuda, should be subject to Regulatory Authority Fees.” According to Section 11 of the EC Act, a license is required to provide “services within the territorial limits of Bermuda or between Bermuda and another country.” Brasil Telecom believes that the regulatory fee structure should reflect this licensing framework. The Regulatory Authority will not be expending effort to regulate transit traffic and therefore should not incur costs related to such traffic. In keeping with the principles enunciated in Section 10(2) of the EC Act, transit traffic should not be subject to regulatory fees.

Conclusion

For the reasons set forth above, Brasil Telecom suggests that the Government of Bermuda give existing licensees a choice of an ICOL license or an individual license with a narrower scope that better reflects the actual services to be provided. This will provide a regulatory framework that eliminates discriminatory business restrictions and does not create a burden on overseas activities of licensees. In addition, all fees imposed by the Regulatory Authority should reflect the actual cost of regulation and the scope of the licensed authority.