

**REPLY COMMENTS REGARDING THE
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 cable system linking Bermuda, Brazil, Venezuela and the United States (“GlobeNet”), appreciates this opportunity to reply to comments made in 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”). Rather than focus on specific wording suggestions or provisions of the Draft Acts, Brasil Telecom will focus on key concepts raised by other interested parties.

Need for Reform and the Regulatory Structure. The Government of Bermuda has put a tremendous amount of time and effort to provide the Draft Acts. In contrast to the contentions of The Bermuda Telephone Company Limited (“BTC”) and Transact Ltd. (“Transact”),¹ Brasil Telecom believes that the Draft Acts are well written and provide enough guidance to allow the Minister and the Regulatory Authority to put in place a legal framework similar to that in almost every developed country. A legal framework consists of primary (legislative) and secondary (administrative) laws. It is not necessarily good public policy for the primary laws to be extremely detailed. Once in place, primary laws are difficult to amend. In a sector where there is rapid technological developments, it is better to address the detail in secondary legislation, such as regulations adopted by the Regulatory Authority. These can be amended and modified more easily to complement the pace of technological development without the intervention of the legislature.

¹ There are numerous references in BTC’s comments in this regard. *See, e.g.*, BTC Comments at 4 (bills are unworkable); 9 (framework suppresses competition); and 10 (draft legislation fails to create necessary regulatory certainty). Transact Comments at 3 (timing and approach of legislation create an unacceptable risk of short-term disruption and long-term consolidation and require an enormous leap of faith).

Brasil Telecom values the idea of an independent regulator. Though we are not in a position to comment on the constitutional issues raised by BTC,² we would make three points. Restricting the Regulatory Authority as proposed by BTC will render it totally redundant to the Minister and leaves one to wonder why bother creating it. In addition, it is not the Minister delegating authority to the Regulatory Authority, rather it is the Parliament that is assigning authority through adoption of the primary legislation. This assignment of authority is not a “wholesale delegation” of authority, as claimed by BTC.³ There are numerous provisions in the Draft Act providing for Ministerial policy direction and oversight. The system suggested by the Draft Acts is similar to that in almost every developed country. Brasil Telecom hopes that the Regulatory Authority will have sufficient power to regulate effectively as it is important to promoting competition.

Brasil Telecom also supports comments made by Bermuda Digital Communications Limited (“Bermuda Digital”) on the importance of transparency in the regulatory process and by North Rock Communications Ltd. (“North Rock”) on maintaining the integrity of the Ministry and Regulatory Authority.⁴ Notice of proposed regulatory actions and an opportunity for public comment are essential in developing the most suitable regulatory framework for Bermuda. Similarly, strict conflict of interest rules should be instituted which prohibit ministerial and regulatory staff (at all levels) at participating in any matter in which they have a direct or indirect financial interest.

Regulation of Submarine Cables Systems. Telecommunications (Bermuda & West Indies) Ltd. (“Digicel”) proposes that submarine cable system operators have a special

² See, e.g., BTC Comments at 3.

³ *Id.* at 11.

⁴ See, e.g., Bermuda Digital Comments at 3; North Rock Comments at 9-10.

interconnection obligation,⁵ while North Rock wants all operators of submarine cable systems to be automatically designated as having significant market power.⁶ Neither of these suggestions has merit. Any issues relating to access to submarine cable capacity arise from the current licensing structure in Bermuda and will be solved by implementing the new licensing system proposed in the Draft Acts.

There are now three submarine cable systems landing in Bermuda: GlobeNet, Gemini and Challenger. GlobeNet currently has capacity of 360Gbit/s, with additional capacity becoming available in the first quarter of 2011. Challenger has an initial capacity of 20 Gbit/s, which can be scaled up to 320 Gbit/s.⁷ Gemini has a capacity of up to 320 Gbit/s.⁸

Under the current licensing system, this tremendous amount of capacity is not all directly available to the operators who need the connectivity. GlobeNet is only permitted to sell to Class A Licensees (TBI, Cable & Wireless Bermuda, and recently CableCo). The Draft Acts, and particularly the adoption of an integrated license, will remove this bottleneck by allowing all operators to purchase submarine cable capacity directly from any of the three submarine cable operators. Brasil Telecom is keen to see issuance of integrated licenses in order to increase its customer base. We believe that when the reforms are enacted there will be increased competition among the three submarine cable operators and therefore no need for any regulatory intervention.

Fees. As with many of the other commenters,⁹ Brasil Telcom is concerned that the proposed fee structure goes beyond funding the Regulatory Authority. Any fee should be

⁵ Digicel Comments at ““ECA Section 23(1) (no page numbers provided).

⁶ North Rock Comments at 18.

⁷ “Bermuda Challenger Cable Up and Running,” Cable Co. Ltd. .press release dated Apr. 17, 2009, available at <http://www.keytech.bm/keytech/media/04-17-09>.

⁸ “Bermuda/US Cable,” Xtera Communications, Inc. press release dated August 31, 2007, available at <http://www.xtera.com/news/36>.

⁹ *See, e.g.*, Transact Comments at 17-19; Bermuda Digital Comments at 2; BTC Comments at 11.

proportional to the amount of regulation and effort expended by the Authority with respect to a particular service and cost-oriented. In this regard, transit traffic through a submarine cable system should not be subject to any fees since it is not subject to licensing in Bermuda and the Regulatory Authority will expend no effort in regulating such traffic.

Conclusion

Brasil Telecom welcomes the opportunity to contribute to the reform efforts of the Government of Bermuda. We look forward to contributing to the development of a vibrant communications market in Bermuda.