

**Review of Consultation Responses  
and Draft Proposals for  
Regulatory Reform for Telecommunications  
in Bermuda**

**Ministry of the Environment,  
Telecommunications & e-Commerce**

**Revised Version - 19<sup>th</sup> January, 2007**

# Table of Contents

1	Summary of the Regulatory Reform Proposal .....	2
1.1	Introduction .....	2
1.2	General Comments .....	3
1.3	Regulatory Objectives .....	3
1.4	Regulatory Structure .....	3
1.5	Role and Responsibilities of METEC .....	3
1.6	Role and Responsibilities of the Independent Regulatory Authority .....	4
1.7	Licensing .....	5
1.8	Foreign Direct Investment.....	6
1.9	Competition Regulation .....	6
1.10	Access and Interconnection Regulation .....	7
1.11	Retail Price Regulation.....	7
1.12	Universal Service Regulation .....	7
1.13	Consumer Protection .....	8
1.14	Quality of Service Regulation.....	8
1.15	Numbering Regulation .....	8
1.16	Domestic Spectrum Management.....	8
1.17	Equipment and Type Approval .....	8
2	The Regulatory Reform Proposal .....	9
2.1	Introduction .....	9
2.2	General Comments .....	9
2.3	Regulatory Objectives .....	10
2.4	Regulatory Structure .....	10
2.5	Role and Responsibilities of METEC .....	13
2.6	Role and Responsibilities of the Independent Regulatory Authority .....	14
2.7	Licensing .....	20
2.8	Foreign Direct Investment.....	28
2.9	Competition Regulation .....	29
2.10	Access and Interconnection Regulation .....	31
2.11	Retail Price Regulation.....	32
2.12	Universal Service Regulation .....	33
2.13	Consumer Protection .....	34
2.14	Quality of Service Regulation.....	35
2.15	Numbering Regulation .....	36
2.16	Domestic Spectrum Management.....	37
2.17	Equipment and Type Approval .....	38

# 1 Summary of the Regulatory Reform Proposal

## 1.1 Introduction

On 15<sup>th</sup> August, 2006, the Ministry of Telecommunications and e-Commerce<sup>1</sup> (MTEC) issued a Consultation Document<sup>2</sup> to telecommunications licensees in Bermuda requesting feedback on and discussion of the outline proposal contained therein. To assist respondents in analyzing the contents of the Consultation Document, the Ministry also arranged a 1-day workshop at which the Ministry's advisors presented and discussed the main components of the regulatory reforms which were proposed in the Consultation Document. On 29<sup>th</sup> September, 2006, twelve parties<sup>3</sup> filed responses to the Consultation Document. On 1<sup>st</sup> December, 2006, five parties filed responses to the Ministry's Questions and Requests for Clarification.<sup>4</sup>

The present document is issued by the Ministry of the Environment, Telecommunications and e-Commerce (METEC) as a further consultation document to solicit feedback from licensees and the general public on the proposed reform initiatives. This document retains the structure of the prior Consultation Document, provides a brief summary and analysis of the parties' comments, and, consistent with prior industry consultations, further narrows the scope of discussion for each aspect of the proposed regulatory reform. Parties that submitted responses to the prior consultation document(s) may not see how their input has contributed to the current proposals as the Ministry has not attempted to attribute proposals to specific parties or comments. Despite the lack of attribution, METEC's current proposals are based on a thorough and deliberate consideration of all submissions.

To assist interested parties in preparing their responses Section 1 of this document provides a summary of the current proposals developed by METEC without any analysis or reference to responses received from prior consultations. For ease of reference Section 1 mirrors the structure of Section 2. Therefore, to read the comments and analysis of any topic covered in Section 1, the reader can simply turn to the corresponding topic in Section 2 of this paper. Readers who do not have a copy of the August Consultation Document may download it from the METEC web portal or request a copy in person from the Department of Telecommunications.<sup>5</sup>

While a number of statements in the parties' most recent responses pertain to specific and detailed regulations that remain to be developed, the Ministry must nonetheless refrain from responding to such comments in detail at this stage of the regulatory reform process. METEC wishes to emphasize, however, that the detailed regulations will continue to be developed in an open and transparent manner, including the use of consultation documents and workshops to ensure that the views

---

<sup>1</sup> On 30<sup>th</sup> October, 2006, the Ministry of Telecommunications and e-Commerce was combined with the Ministry of the Environment. As a result, the newly formed Ministry of the Environment, Telecommunications and e-Commerce ("METEC") now has jurisdiction over this process. Therefore, any references in this document to "Ministry" or "MTEC" should be considered as explicit references to the newly formed METEC as all of the aforementioned terms are used interchangeably.

<sup>2</sup> Document entitled: Reforming Telecommunications Regulation in Bermuda. (Hereafter: "Consultation Document")

<sup>3</sup> Bermuda Digital Communications Limited ("BDC"); Bermuda Telephone Company Limited ("BTC"); Cable and Wireless Bermuda ("C&W"); CableVision; Telecommunications (Bermuda and West Indies) Limited ("Digicel"); FKBN Limited ("Fort Knox"); Logic Communications Limited ("Logic"); M3 Wireless Limited ("M3"); North Rock Communications Limited ("North Rock"); Quantum Communications ("Quantum"); TeleBermuda International Limited ("TBI"); and Transact Limited ("Transact").

<sup>4</sup> This document (Hereafter: "METEC Questions") was issued by METEC on 15<sup>th</sup> November, 2006. The respondents were: BTC, Digicel, Logic, North Rock, and TBI.

<sup>5</sup> To download the Consultation Document entitled: Reforming Telecommunications Regulation in Bermuda (dated 15<sup>th</sup> August, 2006) go to <http://www.gov.bm/> then open the pull-down menu by clicking on the word "GOVERNMENT" in the upper left hand corner of the page. On the pull-down menu scroll down to highlight "Envt., Telecoms., & E-Com..." then scroll right and all the way down to click on the word "Telecommunications". The file is located on the right hand side of the Telecommunications home page under the heading "Telecommunications Regulatory Reform".

and concerns of all interested parties are taken into consideration before any regulations are implemented.

## **1.2 General Comments**

*INTENTIONALLY LEFT BLANK.*

## **1.3 Regulatory Objectives**

METEC proposes to retain the regulatory objectives set out in the consultation document with the addition of an objective focusing on encouraging Bermudian participation in the telecommunications industry as described below.

- To ensure that the people of Bermuda are provided with reliable and affordable access to quality public telecommunications services;
- To enhance Bermuda's competitiveness in the area of telecommunications so that Bermuda is well positioned to compete against its "real" global competitors in the tourism and international business markets;
- To encourage the development of a public telecommunications sector which is responsive to the requirements of users (both individuals and businesses) and which provides its users with choice, innovation, efficiency, and affordability;
- To encourage the development and rapid migration of innovative technologies to Bermuda;
- To promote the orderly development of Bermuda's public telecommunications sector;
- To encourage sustainable competition and create an invigorated public telecommunications sector which will lay the groundwork for the further development of telecommunications reliant industries;
- To encourage development and maintenance of resilient and fault-tolerant infrastructures;
- To promote investment in the public telecommunications sector and in telecommunications reliant industries thereby stimulating the economy and employment; and
- To promote Bermudian ownership and Bermudian employment at all levels of the Telecommunications industry.

## **1.4 Regulatory Structure**

### **1.4.1 Bifurcation**

METEC proposes to create an independent regulator and divide the Ministry's current telecommunications responsibilities between two separate bodies – METEC and the Regulatory Authority.

### **1.4.2 Appeals**

METEC proposes that decisions made by the Regulatory Authority will only be subject to judicial review by the Courts. The Courts will only be empowered to deny an appeal, or remand decisions (in whole or in part) for further analysis by the Regulatory Authority, based on questions of law.

## **1.5 Role and Responsibilities of METEC**

METEC proposes that its primary responsibility in the new regulatory structure will be to develop the legislation and policies that define the framework within which the Regulatory Authority will operate and the principles by which the Regulatory Authority must abide. METEC will be required to consult on proposed legislation and policy initiatives in order to provide a transparent environment which increase parties' confidence in the Bermudian regulatory framework and reduce regulatory uncertainty.

METEC will also be responsible for representing Bermuda in international contexts, including negotiations for satellite orbit slots, international spectrum assignment, and other similar international policy matters.

METEC, headed by the Minister of the Environment, Telecommunications and e-Commerce, will be supported by professional staff within the Department of Telecommunications.

## **1.6 Role and Responsibilities of the Independent Regulatory Authority**

The Regulatory Authority will be responsible for implementing METEC's policies and carrying out the daily tasks necessary to monitor and regulate the Bermudian telecommunications industry.

### **1.6.1 Rulemaking, Oversight, Monitoring, and Enforcement**

METEC proposes that the Regulatory Authority shall consult with affected parties before issuing written orders which document the evidence and/or analysis supporting the Regulatory Authority's decision.

The Regulatory Authority will also be responsible for developing and enforcing procedural rules, collecting and analyzing market data, conducting discovery, and issuing fines.

### **1.6.2 Structure of the Independent Regulatory Authority**

METEC proposes that the Regulatory Authority will consist of two main groups; a Commission which will be responsible for making all decisions for the Regulatory Authority, and a full-time professional and administrative staff to support the Commission.

The Regulatory Authority will be headed by a 3-person commission. Commissioners will work two full days per week and will be salaried at a senior professional level.

Positions on the Commission will be filled as follows:

- One Commissioner will be the head of staff of the Regulatory Authority, recruited based on a clear specification of technical skills and experience.
- The two remaining Commissioners will be nominated by representatives of business and labour, respectively, and confirmed by the Minister of the Environment, Telecommunications and e-Commerce.

Commissioners nominated by representatives of business and labour will be appointed for periods of three years with staggered terms to ensure continuity. The head of staff will remain on the Commission for the duration of his or her employment, but cannot hold the position as Chair of the Commission.

### **1.6.3 Staffing of the Regulatory Authority**

METEC proposes that the Regulatory Authority Staff will be comprised of seven to nine full-time professionals (including administrative staff) with skills in the fields of economics, accounting, engineering, and law. The Regulatory Authority Staff will be headed by a full-time head of staff.

### **1.6.4 Independence of the Regulatory Authority**

METEC proposes to stipulate policies and draft legislation which allows the Regulatory Authority to operate independent of undue political and/or stakeholder influence. Accordingly, the Regulatory Authority will be funded directly by the telecommunications industry based on a transparent projected annual work plan and budget.

## **1.7 Licensing**

### **1.7.1 Licensing Policy, Authority, and Procedure**

METEC proposes that the Regulatory Authority will be responsible for issuing licences, and monitoring and enforcing compliance with licence conditions. The Regulatory Authority's duties, responsibilities, and powers relative to licensing will be set out in the policies and legislation developed by METEC.

### **1.7.2 Licensing Regime**

METEC proposes to move towards a unified licensing framework in which all licences will be non-service-specific. This proposal will allow licensees to offer a full range of services, and thus, gain access to the economies of scope available to each firm based on their investments in technology and network infrastructure. License contents will differ only to the extent necessary to identify the licensee and other similar parameters. Carrier-specific aspects such as spectrum and number allocations will be covered separately from the licences.

### **1.7.3 Unified Domestic Licenses**

METEC proposes to offer all existing Class B, Class C, and Cable TV licensees a Unified Domestic Licence (UDL). All UDL holders will be able to offer all telecommunications services including international capacity and calls, separately or in bundles, to business and residential customers in Bermuda.

Initially, Class B, Class C, and Cable TV licensees who accept a UDL will not be licensed to operate international facilities, nor will they be permitted to purchase international capacity directly from Brasil Telecom. The restriction on UDL holders relative to operating international facilities and/or purchasing international capacity directly from Brasil Telecom will be reviewed by the Regulatory Authority, as discussed below in Section 2.7.6.

METEC also proposes to offer a UDL to each of the existing class A licensees (except Brasil Telecom, which currently holds a wholesale-only licence rather than a full Class A licence). The UDL offered to the Class A licensees will include a special provision mandating that they offer all other UDL holders non-discriminatory access to international capacity and services. This provision ensures that the existing Class A licensees cannot use their access to international facilities to compete unfairly against other UDL holders who do not have direct access to international facilities.

### **1.7.4 Domestic Market Entry**

METEC proposes that no new telecommunications licences be issued for a minimum of one (1) year after the implementation of the regulatory reform. However, no later than three (3) years after reforms are implemented the Regulatory Authority will be required to conduct a review of existing market conditions and provide a recommendation to the Minister regarding whether to maintain or repeal the restriction on domestic market entry. The Regulatory Authority's recommendation to the Minister will be non-binding, and thus, the Minister retains the discretion to permit or deny market entry.

### **1.7.5 The Transition Mechanism**

METEC proposes to offer a UDL to each of the existing Class B, Class C, and Cable TV licensees immediately upon the implementation of the regulatory reform. However, this offer will be subject to compliance with any applicable dominance remedies imposed by the Regulatory Authority (see also Section 2.9).

METEC also proposes to offer a UDL to the existing Class A licensees (except Brasil Telecom) upon the implementation of the regulatory reform provided they have

offered all other UDL holders non discriminatory access to international capacity and services.

### **1.7.6 International Licenses**

METEC proposes to make one new international licence available to a party or consortium that makes an irrevocable commitment to building a new international submarine cable facility connecting Bermuda with international destinations.

METEC is currently in the process of developing the tender process for the award of this new licence and METEC anticipates that the new international licence may be awarded prior to the implantation of the regulatory reform. If so, the successful 'tenderer' will be awarded a Class A licence and will be offered a UDL on the same terms as the current Class A licensees.

### **1.7.7 Fees**

METEC proposes to streamline the current multi-tiered and service specific licence fee structure into a standardized system which consists of a Licence Fee and a Regulatory Fee.

The Licence Fee, payable to the Accountant General, will be based on a percentage of each licensee's revenue using a transparent scale that is applicable to all licensees. The License Fee scale will be established by the Ministry of Finance based on Government budgetary requirements and published on both the Ministry of Finance and Regulatory Authority websites. The revenue percentage paid by each firm will be proportional to both the level of foreign ownership and the level of foreign employment in that firm. Thus, firms with high levels of foreign ownership and/or a high percentage of foreign employment will be required to pay a higher percentage of revenues in their License Fee.

The Regulatory Fee, payable directly to the Regulatory Authority, will be a straight percentage of revenue for all licensees. The amount of revenue collected each year will reflect the Regulatory Authority's agreed work plan and budget for the year in question. METEC also proposes to establish a cap on the percentage of industry revenue that may be collected to fund the Regulatory Authority.

## ***1.8 Foreign Direct Investment***

METEC proposes that telecommunications licensees receive a blanket exemption from the 60/40 foreign ownership rule so that all licensees may have non-discriminatory access to investment capital. METEC is of the opinion that the fee structure described above in Section 1.7.7 will encourage Bermudian ownership and employment where feasible, but will not restrict foreign owned licensees from investing in Bermuda.

## ***1.9 Competition Regulation***

METEC proposes to develop legislation and policies requiring that the Regulatory Authority implement dominance based regulations so that the Regulatory Authority's intervention in market affairs is kept to a minimum. METEC anticipates that regulatory intervention will only be initiated when a licensee is deemed dominant in one or more relevant markets.

METEC proposes that the Regulatory Authority will be required to conduct industry consultations on the detailed framework for determining dominance. However, the resulting framework must be based on the international best practice three-step process of defining relevant markets, determining dominance, and defining the remedies to be adopted by the licensees found to be dominant.

METEC proposes a policy framework in which a licensee with more than 65% market share in a relevant market is presumed to be dominant, although this must be supported by further (but limited) analysis. Licensees with at least 50% but less than 65% market share will be subject to detailed analysis to determine if dominance exists. Licensees with less than 50% market share will be presumed non-dominant, although this determination must also be supported by further (but limited) analysis. METEC notes that two or more licensees may be deemed jointly dominant in a relevant market even if each firm's market share is less than 50% of the total market.

As with other aspects of this reform initiative these proposals will be subject to further consultation in which more detailed evaluation parameters will be developed.

It is anticipated that the dominance analysis framework and the market analysis to identify dominant licensees will be conducted in parallel with drafting the necessary legislation to implement regulatory reform. Thus, at the inception of implementing regulatory reform, the market analysis should be completed, and dominant carrier(s) and appropriate remedies identified so that dominant licensees can ensure compliance with the remedies as quickly as possible and thus receive a UDL.

### ***1.10 Access and Interconnection Regulation***

METEC proposes to mandate interconnection for dominant licensees only. Typically, the services the dominant licensee is mandated to offer include transit facilities which enable all carriers to interconnect indirectly through the dominant carrier, if they so choose. Non-dominant licensees may also choose to interconnect directly if they find this to be commercially and technically viable.

The Regulatory Authority will be required to determine through transparent analysis whether regulated access should be imposed on dominant licensees.

The detailed provisions for regulated interconnection and access vary considerably, as do market conditions. METEC proposes that the Regulatory Authority will be instructed to regulate access and interconnection to encourage sustainable competition through specific remedies deemed to be proportionate to the specific market conditions in Bermuda, whilst also seeking to encourage investment in new technologies and infrastructure in Bermuda.

Access and interconnection regulations will ultimately require specification of costing and pricing parameters to be applied to regulated access and interconnection interfaces based on detailed analysis of the market conditions. METEC proposes to undertake transparent consultation on the detailed provisions for the regulation of access and interconnection in Bermuda. However, these details will be determined at a later stage.

### ***1.11 Retail Price Regulation***

METEC proposes that the Regulatory Authority will only apply retail price regulation to dominant licensees, and only for services in markets for which the licensee has been found dominant. Retail price regulation will be based on a notification system, rather than the present prior approval system.

### ***1.12 Universal Service Regulation***

METEC proposes to develop clear Universal Service objectives for Bermuda which the Regulatory Authority will be responsible to implement in a transparent manner through the development of competitively neutral funding and distribution mechanisms, as required.

### ***1.13 Consumer Protection***

METEC proposes that the UDL will include provisions applicable to all licensees covering basic consumer protection parameters, including data protection, and standard terms and conditions for the provision of services. METEC welcomes public input and industry initiatives for self-regulation in this area.

### ***1.14 Quality of Service Regulation***

METEC proposes that the Regulatory Authority will be required to implement a transparent quality of service regulation framework, based on the reporting and publication of a small number of key quality of service parameters.

METEC will aim to ensure that quality of service regulation does not interfere with the competitive process as the Ministry agrees that competitive markets provide the best incentive for licensees to increase the quality of service offered to customers.

### ***1.15 Numbering Regulation***

METEC proposes to implement a transparent numbering framework in which the Regulatory Authority manages Bermuda's numbering resources and publishes tables of existing and planned number allocations on its website. Issues including the numbering and naming conventions for future services categories will be managed by the Regulatory Authority, based on the principles stipulated by METEC in policies and legislation.

### ***1.16 Domestic Spectrum Management***

METEC proposes that the Regulatory Authority manage spectrum in a transparent manner which is consistent with international best practices and focuses on efficient utilisation of this scarce resource. The Regulatory Authority will be required to publish all existing and planned spectrum allocations on its website.

### ***1.17 Equipment and Type Approval***

METEC proposes to maintain its existing policies whereby Bermuda relies on the guidance of international organizations, such as the ITU and FCC, for equipment and type approval because it is cost effective and no problems have been identified in the current system.

## **2 The Regulatory Reform Proposal**

### **2.1 Introduction**

The prior Consultation Document described METEC's proposals for high-level policy on a number of different regulatory issues, and invited comments from the licensees on each topic. As noted above, this document retains the structure of the prior Consultation Document, provides a brief summary and analysis of the parties' comments, and, consistent with prior industry consultations, further narrows the scope of discussion for each aspect of the proposed regulatory reform.

To date, the Ministry has refrained from developing detailed regulations for discussion because the high-level regulatory framework needs to be defined and approved before the more detailed issues can be addressed. The regulatory framework will be solidified upon further public consultation, analysis of the responses received, and approval of the Cabinet. Thus, as noted above, even though a number of statements in the parties' most recent responses pertain to specific and detailed regulations that remain to be developed, the Ministry must nonetheless refrain from responding to such comments in great detail at this stage of the regulatory reform process. METEC wishes to emphasize, however, that the detailed regulations will continue to be developed in an open and transparent manner, including the use of consultation documents and workshops to ensure that the views and concerns of all interested parties, including those already expressed but not specifically addressed in this document, are taken into consideration before any regulations are implemented.

### **2.2 General Comments**

With the exception of North Rock, all of the respondents are generally supportive of the regulatory reform process and METEC's goals. North Rock believes that while there are currently some problems in the telecommunications market, this does not necessitate a full regulatory reform. North Rock also asserts that the regulatory review process has required a tremendous amount of its time and effort, and thus, the entire process is slanted against smaller carriers. However, North Rock expresses support for the creation of an independent regulatory authority, dominance regulation, and the collection of market data.

Digicel is pleased with the regulatory reform process so far, but expresses concern regarding the timelines involved. Digicel recommends that the planned reforms be completed in months rather than years. Digicel also recommends that the new regulatory framework be established based on a completely new Telecommunications Act because it believes that revising the old legislation will be problematic and simply prove to be a half solution.

#### **METEC RESPONSE**

METEC is encouraged by the general positive responses provided by the licensees and looks forward to working with all interested parties to develop an efficient telecommunications regulatory framework that will ensure Bermuda's continued success as an economic power. While individual aspects of the Ministry's proposals and parties' comments are addressed in the appropriate sections below, METEC will respond at this time to two general issues raised by Digicel. First, regarding the timeframe of the regulatory reform process, METEC acknowledges Digicel's concern and would like to assure all interested parties that the Ministry is intent on implementing the necessary reforms in a timely manner. Secondly, METEC agrees with Digicel that Bermuda's best interests will be served by implementing the necessary reforms through the adoption of a new Telecommunications Act rather than revising the existing legislation.

## **2.3 Regulatory Objectives**

The licensees are generally supportive of the regulatory objectives laid out by METEC. However, Fort Knox, M3 and North Rock, while agreeing with the proposal, reiterate their desire for an objective supporting Bermudian participation and ownership in the telecommunications Industry.

Logic asserts that the future shape of telecommunications in Bermuda should be determined by market forces and consumer demands. Thus, Logic proposes that the objectives explicitly recognize open market competition and making Bermuda attractive to new technologies.

### **METEC RESPONSE**

With few exceptions the parties' comments are generally supportive of the regulatory objectives enumerated in the Consultation Document. However, given the parties' recommendations and Government's longstanding policies, METEC proposes to amend the regulatory objectives outlined in the Consultation Document to include the following:

- To promote Bermudian ownership and Bermudian employment at all levels of the Telecommunications industry.

Although these goals have been an underlying theme since the inception of the regulatory reform process METEC now proposes to make them explicit with the addition of the aforementioned objective and with the revenue fee proposal which is discussed below in Section 2.7.7. METEC believes that Logic's concerns are already addressed by the current proposed objectives.

## **2.4 Regulatory Structure**

### **2.4.1 Bifurcation**

BDC supports the creation of an independent Regulatory Authority and, while appreciating the challenges presented by Bermuda's size, believes that it is important to establish a core group of suitably qualified and highly knowledgeable staff.

BTC offers its general support for METEC's proposal, and asserts that the principles of "transparency, consistency, and accountability" are critical to the success of the proposed regulatory structure. However, BTC believes it is important that the complexity of the regulatory structure, and any additional resources required, be commensurate with the size and the resources of Bermuda. BTC also calls for clarity in the roles between the Ministry and the Regulatory Authority.

C&W is also supportive of the proposal to create an Independent Regulatory Authority. C&W believes the separation of responsibilities whereby METEC sets policy but does not get involved in the day-to-day administration and implementation of that policy will help to ensure that the key principles of transparency, consistency, and accountability can be achieved, and done so in a timely manner.

Digicel, Logic, M3, Transact, and TBI also agree with the proposal to create an independent Regulatory Authority. According to Digicel, while the current set-up has not functioned poorly, an independent Regulatory Authority will bring additional benefits to Bermuda because it more readily encourages transparency, consistency, and accountability. Logic believes that the simplified two tier structure proposed in the Consultation Document is adequate given the size of the Bermudian market.

CableVision and Quantum offered no comments on regulatory structure and, although Transact failed to directly address this issue, it appears to support the proposed regulatory structure. North Rock offers no objections to this proposal.

Fort Knox is the only party that is not supportive of the proposed regulatory structure as its overriding concern is that the proposed regulatory structure will not be cost effective.

#### **METEC RESPONSE**

With the exception of Fort Knox, the parties generally agree that separating the Ministry from the day-to-day activities of the Regulatory Authority is consistent with international best practices, and the appropriate means to facilitate transparency, consistency, and accountability in the regulatory process. METEC agrees with BTC that the manner in which the principles of transparency, consistency, and accountability are implemented will have a significant impact on the success of the proposed reforms. Thus, it is METEC's intention to draft legislation that clearly delineates the roles and responsibilities of both the Ministry and the Regulatory Authority.

The Ministry also agrees with parties comments regarding the proportionality and cost of the proposed reforms. As noted above, METEC has every intention of promoting efficiency as well as transparency, consistency, and accountability in the regulatory process because it is well understood that neglecting any of these principles will increase regulatory risk and cause harm to providers and consumers alike. Thus, METEC would like to reassure all of the licensees that any increase in regulatory costs will be more than justified by performance of the Regulatory Authority.

METEC proposes to create an independent regulatory authority (RA) and divide the Ministry's current telecommunications regulatory responsibilities into two separate bodies – METEC and the Regulatory Authority.

#### **2.4.2 Appeals**

BTC expresses concern that allowing Regulatory Authority's decision to stand pending appeal may result in unlawful orders remaining in effect for many months. Thus, BTC recommends that parties be permitted to apply to the court for a stay of an order in cases where enforcement of the order pending appeal would result in a significant hardship.

C&W agrees with the principle of Commission decisions remaining in full force until such time as they are overturned – or accepted – by the appellate court. C&W requests, however, that provisions should be made for the retrospection of decisions.

Fort Knox is concerned that the proposal to have the Regulatory Authority's decisions appealed to the courts will leave a licensee with no meaningful recourse because the cost of filing and supporting such an appeal may be prohibitive. Furthermore, Fort Knox suggests that if other Government Ministries followed the appeals precedent proposed by METEC, it could overburden the courts, delay the time before decisions are rendered, and negatively impact the ability of firms to do business in Bermuda.

Logic also recommends that the courts be permitted to set aside Regulatory Authority decisions that are considered unjust rather than requiring them remain in force until the full appeals procedure has run its course. A similar point is made by M3, who believes that stays of the Regulatory Authority's decisions and orders should be permitted, but only in certain circumstances in order to discourage tactical appeals.

TBI believes that Bermuda will benefit from the proposal to utilize the judicial system to address appeals of decisions made by the Regulatory Authority. TBI suggests that the Regulatory Authority's decisions stand pending court adjudication in order to avoid tactical delays by carriers. However, TBI avers that under extreme circumstances, the courts should be able to stay any decision of the Regulatory Authority if and when deemed appropriate.

BTC, C&W, Digicel, and Logic all state their reservations regarding the creation of a specific telecommunications appeals body in addition to the courts. Again, BTC asserts that it is important that the complexity of the regulatory structure, and any additional resources acquired, be commensurate with the size and the resources of Bermuda. C&W questions the value and need to introduce another step into the process and believes that it could result in unnecessary costs and delays. C&W does, however, appreciate that many industry members do not have in-house expertise readily at their disposal so these parties will be keen to avoid the need to hire external advisers for litigation purposes. Thus, according to C&W, this suggests that there could be some role for an independent mediator in relatively simple disputes between two or more parties.

Digicel notes that while the creation of a specialist telecommunications appeals body is not unusual, it believes that this may only lead to opportunities for parties to obstruct fair competition through delay and tactical appeals.

North Rock offers no objections and Transact supports the proposal to subject Regulatory Authority decisions to judicial appeal. BDC, CableVision and Quantum make no comment on this issue.

### **METEC RESPONSE**

Regarding C&W's suggestion to engage an independent mediator, it is METEC's position that parties will be permitted to resolve disputes in any way the parties deem appropriate. The Regulatory Authority will neither participate in, nor obstruct, any private agreement reached between parties provided said agreement is consistent with the requirements of the Telecommunications Act, and the Regulatory Authority's rules. However, the Ministry would like to emphasize that such agreements, with or without the services of an independent mediator, are private matters between the parties. METEC notes that parties will be encouraged to negotiate settlements prior to approaching Regulatory Authority to resolve a complaint. Thus, METEC also proposes that the Regulatory Authority be required to strongly encourage market forces and negotiated agreements as opposed to contested regulatory proceedings.

METEC does not agree with Fort Knox's argument that directing appeals to the courts will leave a licensee with no meaningful recourse because the cost of filing and supporting an appeal will be prohibitive. Unlike the existing system in which appeals to the Minister are effectively costless, and therefore common, METEC's current proposal is specifically designed to limit frivolous and wasteful appeals. However, as discussed in greater detail below in Section 2.6, in the proposed regulatory regime the decisions of the Regulatory Authority will be the result of a fully transparent process in which interested parties are given the opportunity to provide input and argue positions at a number of intermediate stages prior to the Regulatory Authority issuing a final order. Moreover, Regulatory Authority rules often require that draft decisions be issued to parties so that they may be reviewed for obvious errors of fact or law.

METEC notes that the notion of a telecommunications appeal body was included in the Consultation Document merely as an additional option to meet potential concerns over the proposal to direct the appeal of a Regulatory Authority decision to the courts. METEC agrees that creating an intermediate specialist telecommunications appeals body is disproportionate to Bermuda's needs. Therefore, going forward, METEC proposes that decisions made by the Regulatory Authority will only be subject to judicial review by the Courts. The Courts will only be empowered to deny an appeal, or remand decisions (in whole or in part) for further analysis by the Regulatory Authority, based on questions of law. Under this proposal all decisions of the Regulatory Authority will remain in full effect pending the final resolution of the appellate court. However, consistent with the arguments noted above, METEC proposes that the Courts be permitted to stay decisions of the Regulatory Authority in limited circumstances, such as if the court determines that the appeal is likely to

be granted, and/or if the enforcement of the order pending appeal would result in a significant and irreparable hardship to one or more parties.

## **2.5 Role and Responsibilities of METEC**

BDC finds the proposals acceptable but asks how broadcast regulation will be handled given the growing influence of convergence between broadcasting and telecommunications. It suggests that broadcast licensing should form part of the new regulatory framework.

BTC is supportive of the proposal to restructure the role of the Ministry so that it establishes telecommunications policy through legislation and policy statements. Although C&W is supportive of the Ministry being properly staffed it expresses concern about the possible duplication of resources that will also be held by the newly created Regulatory Authority, and the extra costs that may fall on the industry. C&W believes that this potential duplication could be minimized by ensuring that the METEC and Regulatory Authority staffs maintain a full dialogue during the policy development process to ensure that any policy recommendations are practical and can be implemented. C&W suggests that regulatory costs could be minimized if they were shared across other sectors, such as the broadcasting industry.

Digicel generally agrees with the proposed role and responsibilities for METEC. However, Digicel asks if the proposal to have METEC be responsible for acting on Bermuda's behalf during international negotiations and disputes will preclude the Regulatory Authority from also having its role to play, for example, in contacting and liaising with international bodies such as the International Telecommunications Union ("ITU"). Digicel also notes that the proposal calls for the Regulatory Authority to potentially have jurisdiction over broadcasting matters. Digicel agrees in principle with this proposal but expresses concern over the ability to implement this portion of the proposal because in the United Kingdom, for example, it took twenty years of separate development and building up of expertise before broadcasting and communications were merged under one regulatory body, the UK Office of Communications (OFCOM).

Logic notes that while the role proposed for METEC is considerably different from what exists today, the proposal ensures that Bermuda is in lock step with other international organisations that set policy and regulations for worldwide telecommunications. M3 and TBI also agree with the role proposed for METEC.

Quantum asked that the role and responsibility of Ministry staff be clearly delineated prior to the creation of the new Regulatory Authority.

North Rock offered no objection to this proposal. CableVision, Fort Knox and Transact did not directly address this issue although CableVision emphasised the need for transparency.

### **METEC RESPONSE**

The parties generally agree with the role proposed for METEC in the Consultation Document as it is consistent with international best practice. However, a number of parties have expressed concern that there will be a duplication of resources and costs in the proposed regulatory structure if the Ministry and the Regulatory Authority are separated. METEC wishes to assure the licensees that any duplication of resources will either be eliminated, or minimized to the greatest extent possible.

METEC agrees with C&W that the potential duplication of resources could be minimized by sharing costs with other sectors, such as broadcasting, and ensuring that the Ministry and Regulatory Authority staffs maintain a full and transparent dialogue during the policy development process to ensure that any policy recommendations are practical, and can be implemented. METEC looks forward to investigating these proposals as the regulatory reform process moves forward.

METEC agrees with BDC's comments regarding convergence and, if its proposals to bring together broadcast and telecommunications regulation are adopted, then there will be further consultation to determine how broadcast licensing should be brought into the framework. Although Digicel is correct that broadcasting and communications were regulated by separate bodies prior to being merged under OFCOM, the Ministry disagrees with the suggestion that decades of development are required prior to merging these disciplines under one authority. METEC does not anticipate any significant difficulties for the Regulatory Authority to handle both communications and broadcasting.

METEC proposes that the Ministry headed by the Minister of the Environment, Telecommunications and e-Commerce, will be supported by professional staff within the Department of telecommunications.

METEC's primary responsibility in the new regulatory structure will be the development of the policy and legislation which set the framework within which the Independent Regulatory Authority will function, and the principles by which the Independent Regulatory Authority must abide. METEC will be required to consult on its proposed policy and legislation, providing a transparent environment to increase carriers' confidence in the regulatory framework in Bermuda to reduce regulatory uncertainty.

Additionally, while METEC will be responsible for representing Bermuda in international contexts, including negotiations for satellite orbit slots, international spectrum assignment, and other similar international policy matters, we anticipate that the Regulatory Authority will liaise with international bodies when necessary.

## ***2.6 Role and Responsibilities of the Independent Regulatory Authority***

### **2.6.1 Rulemaking, Oversight, Monitoring, and Enforcement**

BDC, CableVision, Quantum and TBI do not directly address these issues. M3 supports the proposals in this area while North Rock has no objections. Comments received from other parties are summarised under the sub-headings below.

#### ***Procedural Rules***

BTC recommends that the Regulatory Authority adopt rules of procedure that: require public notice in advance of rulemaking and other directives; that permit meaningful opportunity for public comment on proposed actions; and that require the Regulatory Authority to provide a specific explanation of its decisions that addresses all substantial issues identified in the public comments. BTC also suggests that consideration be given to the creation of a system where parties could gain limited and controlled access to each other's confidential submissions.

C&W also recommends that the Regulatory Authority consider feedback from licensees and consumers on rules and directives before they are finalized. C&W recommends that the Regulatory Authority's rules allow licensees access to Staff's recommendations to the Commission/Director General. That is, C&W would like the industry to see not only the reasoned recommendations and decisions of the Regulatory Authority, but also the process and underlying analysis.

C&W is supportive of the general principle that ex parte communications with the Regulatory Authority should be discouraged. However, C&W notes that there may be circumstances where it would be helpful for parties to have informal, non-binding discussions with the Regulatory Authority on specific matters, including, for example, the likely treatment of certain price proposals or product launches. In such situations, to ensure that transparency is maintained, the fact that any such discussions had taken place should be revealed on the Regulatory Authority's website, provided that

care is taken to ensure that this does not involve the release of any commercially sensitive plans.

Although C&W is supportive of the general principle of keeping the use of confidential exhibits to a minimum, it notes that there may be circumstance where it will be necessary to file both a confidential and a redacted version of certain documents to avoid revealing commercially sensitive information. C&W asserts that this is common practice in other jurisdictions, and similarly, there should be specific confidentiality regulations which set out the circumstances under which a company can request that certain information is kept confidential to the regulatory authority.

Logic expresses dissatisfaction regarding the proposal to provide the Regulatory Authority oversight over competition regulation, retail price regulation, and quality of service. Logic is concerned that this will provide the Regulatory Authority with the opportunity to meddle in market affairs. Logic recommends that the role of the Regulatory Authority should be limited to ensuring that licensees meet their license requirements because intervention at the retail, quality, or competitive level will stifle innovation and new services.

### **METEC RESPONSE**

The specifics regarding the Regulatory Authority's procedural rules will be determined at a later date and be the result of public and industry consultation. However, consistent with international best practice METEC anticipates the Regulatory Authority's rules will require public notice in advance of rulemaking and other directives; and permit meaningful opportunity for the public and the industry to comment on proposed actions. METEC also anticipates that the Regulatory Authority will be required to provide detailed decisions that address all substantial issues identified in the public comments. Thus, METEC does not believe it will be necessary for the public to be given access to the workpapers and advice provided to the Commission by Staff or outside experts, because the written decisions of the Regulatory Authority will be comprehensive and based on the record developed in each proceeding.

METEC agrees with the parties that it is appropriate to establish procedures by which competitors can obtain limited access to other parties' confidential data through a protective order which allows access for purposes of proceedings before the Regulatory Authority but prohibits public or private disclosure or use of the confidential data for any other purpose. This is a standard practice in many jurisdictions. This policy is consistent with the goal to keep confidential submissions to a minimum as it is anticipated that confidential submissions will only be permitted in cases when absolutely necessary to ensure complete disclosure of relevant information. With the aim of transparency in mind, METEC has simply articulated its desire that its decisions should be transparent and thus arguments received by carriers should, where possible, be available for other carriers to analyze.

With regard to Logic's concern as to the Regulatory Authority's role in areas such as retail pricing, service quality, and competition, consistent with international best practices METEC proposes that the Regulatory Authority only intervene in instances of market failure. Thus, there is absolutely no suggestion that the Regulatory Authority will attempt to micro-manage the telecommunications industry as such decisions are best left to the market participants. The Regulatory Authority's power to intervene will be founded on a licensee's failure to comply with the terms of its license, the Telecommunications Act, and/or the Regulatory Authority's rules. The nature and extent of these conditions will be determined through a future consultative process.

### **Data Collection**

C&W suggests that the Regulatory Authority implement a regular and mandated process for data collection. C&W notes that the Regulatory Authority will need to ensure that any data requests are relevant and not overly burdensome to carriers.

C&W suggests that it would be appropriate for the results of the data collection and analysis performed by the Regulatory Authority to be shared with the carriers, to the extent that this is possible, without disclosing proprietary data.

Digicel requests that the administrative costs of providing and maintaining market data be given careful scrutiny. Digicel argues that collecting data on a quarterly basis would be burdensome, especially given the size of the Bermudian Telecommunications market.

#### **METEC RESPONSE**

While METEC's goal is to minimize regulatory intervention and allow market forces to govern, METEC does not believe that collecting data quarterly will impose a undue burden so long as the parameters are relevant. Furthermore, while METEC anticipates the publication of selected data and analysis, this proposal, and the parameters and level of detail will be determined through a future public consultation process.

#### ***Discovery***

C&W notes the reference to "discovery" in the Consultation Document and presumes that this relates to the ability of the Regulatory Authority to enter a carrier's premises and seize relevant documents for the purposes of an investigation. C&W believes that there needs to be specific legislation in place regarding the power of the Regulatory Authority to enter premises and these will need to be clear to all industry participants so that they are aware of their rights and obligations. In this respect, C&W refers to rules established by the European Commission, regarding the investigative powers of individual national regulatory authorities (NRAs); specifically Regulation 1/2003.

#### **METEC RESPONSE**

METEC would like to clarify that the term discovery was used to indicate that parties will be provided a mechanism by which they can request relevant information from opposing parties during a regulatory proceeding. However, the scope of a party's request will be limited by the administrative rules developed by the Regulatory Authority. While the Regulatory Authority may be provided the ability to conduct 'dawn raids' this mechanism will also be limited by the administrative rules of the Regulatory Authority and the relevant legislation.

#### ***Fines***

C&W maintains that there should be full transparency of the fines that could be levied on licensed operators and the circumstances under which such fines could be applied; especially to ensure that ad hoc fines are not administered on industry members in order to close any funding gap that may exist.

C&W also refers to practice in the European Community where Regulatory Authorities have the ability to impose fines up to 10% of relevant turnover for contraventions of the competition rules. C&W avers that the actual amount of any fine imposed should depend on a number of factors, including the seriousness of the offence and the extent to which a party found to have breached the rules co-operates with the authorities' investigations.

Logic avers that clearly defined fees or administrative charges that are transparent and can be anticipated are fair to the industry.

Transact supports the proposals and emphasizes the importance of the Regulatory Authority being able to enforce compliance and issue penalties.

#### **METEC RESPONSE**

METEC would like to assure the parties that there will be full transparency regarding the fines that could be levied on licensed operators and the circumstances under

which such fines could be applied. Similarly, fines will not be administered as a means to close any funding gap that may exist.

### **2.6.2 Structure of the Independent Regulatory Authority**

BDC supports the proposal that the leadership of the Authority should rest with a chairperson rather than a Director General and that their term of office should be no more than three years. Tenure for other commission members should be no more than 4 years.

BTC also supports the collegial body for the Regulatory Authority and suggests that representative(s) selected by the opposition party may be desirable.

C&W expresses concern regarding the suggestion that the collegial body approach could be implemented with a commission comprised of individuals with no telecommunications expertise. C&W believes that a lack of understanding of the economics of the telecoms industry could undermine the ability of the Regulatory Authority to reach sound decisions that are consistent with international best practice and promote the Government's policy objectives.

As an alternative, C&W refers to the Bermuda Monetary Authority (BMA) model where the board of directors includes members with experience in relevant sectors of the economy. C&W suggests that the Regulatory Authority board could follow a similar make-up but with commissioners drawn from industries that are technology-based and/or heavily dependent on telecommunications. C&W also offers a "hybrid" option in which a Director General or Head of the Regulatory Authority, would have the necessary expertise and experience to interpret the advice and recommendations of the Regulatory Authority staff. Under this proposal the Head of Regulatory Authority staff could then present the recommendations to a Board of commissioners, who under such an arrangement may have less need to have specific telecommunications expertise.

According to C&W, if the proposal to engage part-time commissioners is adopted, it will be important for the commissioners to have set days of the week when they all meet in order to reduce regulatory delays.

CableVision would like the commissioners to be full-time so that issues could be dealt with in a timely manner.

Digicel finds the proposed regulatory structure is acceptable; however, it believes that establishing a Commission of three or five part-time members will prove to be a difficult task because the combination of people with the right background and availability to do part-time work may narrow the pool of possible candidates down considerably. Digicel also suggests that an appointment of the Commissioners by the Minister and ratification of such appointment by the Senate seems the best way to secure an appointment procedure with the necessary checks and balances.

Logic supports the proposal for a commission and urges that members be specifically chosen to provide a broad mix of views and expertise including active participants from the international telecommunications community. However, Logic also expresses concern that the proposal to require commissioners to work 1 or 2 days a week is too onerous and will limit the field of suitable candidates.

M3 believes that a collegial body would be advantageous and that the Authority's remit should be carefully drafted to ensure that decision-making is informed, efficient and transparent.

North Rock has no objection to the proposed structure but suggests that at least one member of the Commission should be a full-time telecommunications expert in order to encourage a prompt regulatory response.

TBI supports the adoption of the collegial body approach with a commission of at least three members, because it believes that the commission approach provides greater assurance of impartiality as opposed to having a single Director General of

Telecommunications. TBI also maintains that the collegial body approach will result in a more considered and balanced decision making process.

Fort Knox, Quantum and Transact did not directly address this issue.

### **METEC RESPONSE**

METEC would like to reassure the parties that their concerns have been noted and will be addressed when plans are developed for the precise make-up and operating regime for the commission.

METEC proposes that the Regulatory Authority will consist of two main groups; a Commission which will be responsible for making all decisions for the Regulatory Authority, and a full-time professional and administrative staff to support the Commission.

The Regulatory Authority will be responsible for implementing the METEC's policies and carrying out the daily tasks necessary to monitor and regulate the telecommunications industry in Bermuda.

After considering the parties' comments METEC proposes that the Regulatory Authority will be headed by a 3-person commission, tasked with making all decisions required by the Regulatory Authority. A 3-person commission has been proposed in order to balance the efficiency of the collegial body with the potentially limited pool of qualified and willing applicants within Bermuda. METEC shares CableVision's desire to see issues dealt with in a timely manner but it does not believe that its proposal for a full-time commission is a viable alternative and is unlikely to make a significant difference to response times. Instead, METEC anticipates that the Commissioners will work two full days per week and will be salaried at a senior professional level.

It is proposed that the Commissioners will be selected as follows:

- One Commissioner will be the head of staff of the Regulatory Authority, recruited based on a clear specification and technical skills and experience. This person will have the skill and experience necessary to direct the Regulatory Authority Staff and act as a liaison between staff and the Commission, as necessary;
- The two remaining Commissioners will be nominated by representatives of business and labour, respectively. These two Commissioners will be confirmed by the Minister of the Environment, Telecommunications and e-Commerce. These individuals need not have specific telecoms experience. However, candidates must have a pool of professional skills that can be used to apply a disciplined and structured approach to analysing and implementing METEC's policies.
- 

Commissioners nominated by representatives of business and labour will be appointed for periods of three years with staggered terms to ensure continuity. The head of staff will remain a Commissioner for the duration of his or her employment, but cannot hold the position as Chair of the Commission.

### **2.6.3 Staffing of the Regulatory Authority**

BDC emphasises that, while Bermuda's size presents certain challenges, it is important to have a core staff of full-time employees that are well-qualified and highly knowledgeable.

BTC expresses concern that full-time professional staff for the Regulatory Authority may cause costs to be incurred disproportionate to the benefits which are derived.

C&W believes that the effectiveness of the Regulatory Authority will be entirely dependent on the capabilities of the staff, and that the use of external consultants

may be required for specific issues, especially in the early days of the Regulatory Authority.

Digicel also believes that staffing of the Regulatory Authority is extremely important and recommends that the Regulatory Authority acquire people that are well known in their field of expertise. Digicel believes that a mix of economists, lawyers, engineers, and accountants is a good start but the costs of hiring such staff will be high and should be considered very carefully.

Fort Knox maintains that the responsibilities outlined for the Regulatory Authority can be more efficiently covered by METEC with an expansion of its staff that will be far less expensive than creating a separate authority.

Logic believes that the skills emphasis within the core staff should be on telecommunications and consumer behaviour rather than law, economics, engineering and accountancy. Similarly, M3 believes it is essential that the staff should include a cross-section of related industry expertise.

North Rock supports METEC's proposals.

TBI believes that the success of the Regulatory Authority in managing the new regulatory structure will reside in the skill sets and resources within the Regulatory Authority.

CableVision and Quantum had no comment on this issue.

#### **METEC RESPONSE**

Regarding Logic's suggestion to include consumer behaviour specialists in the Regulatory Authority's skill set, METEC is of the opinion that this is unnecessary as the Regulatory Authority should not unduly interfere in the process of allowing market forces to determine what products and services are available to customers.

METEC proposes that the Regulatory Authority will be staffed by full-time professionals, covering skills including, but not limited to telecommunications, economics, accounting, engineering, and law. It is expected that the Regulatory Authority's full time staff will be proportionate to Bermuda's needs, and consist of approximately seven to nine people, including administrative support. The Regulatory Authority Staff will be headed by a full-time head of staff.

#### **2.6.4 Independence of the Regulatory Authority**

BTC supports the principle of an independent Regulatory Authority assuming that the financing burden is distributed between licensees on an equitable basis. C&W is also generally supportive of the separation of Regulatory Authority and METEC staff but repeats its concerns regarding costs and the potential duplication of resources. C&W also asserts that the proposal to have the Minister nominate commission posts, including the post of Chairperson may conflict with the independence of the Regulatory Authority. However, C&W also notes that the vast majority of BMA board appointments are made by the Minister of Finance without degrading the effectiveness of the BMA.

Digicel and M3 agree that the independence of the Regulatory Authority, from both market and political influence, is very important. Digicel believes that the proposed structure, funding, and accountability measures are adequate to achieve the stated goals. M3 states that funding should be sought exclusively through fees; administrative charges and fines should not be relied on as a source of income.

In recognising the changing role of METEC and the power that would be transferred to the Regulatory Authority, Logic expresses some concern over the potential for the Regulatory Authority to be prone to lobbying.

North Rock does not object to this portion of the proposal. TBI and Transact believe that Bermuda's new regulatory structure will stand to gain from an independent

Regulatory Authority. BDC, CableVision, Fort Knox and Quantum did not directly address this issue.

### **METEC RESPONSE**

METEC agrees with the licensees that it is important for the Regulatory Authority to be independent from the political process and work in accordance with transparent objectives, powers, and responsibilities. The specifics of this framework will be stipulated by the policies and legislation developed by METEC at a later date. As described in greater detail below, the Regulatory Authority will be funded directly from industry based on its projected annual work plan and budget. Similarly, the funding issues concerns by BTC, C&W and M3 are also addressed below in Section 2.7.7.

Logic correctly identifies the importance of ensuring that the Regulatory Authority operates in a fully transparent manner to counter the effects of lobbying. METEC is of the opinion that the proposal to retain a commission with several members who are nominated by organizations with diverse political views (as proposed in Section 2.6.2), rather than a single Director General, will also help to diminish the effects of any inappropriate lobbying.

## ***2.7 Licensing***

### **2.7.1 Licensing Policy, Authority, and Procedure**

BDC supports the proposals and, in addition, argues that licence applicants and the public have an opportunity to submit comments prior to any licensing decision.

BTC recommends that the proposed licensing procedure be based on criteria developed by METEC and that execution, enforcement, and monitoring be a function of the Regulatory Authority.

In the interests of transparency C&W recommends that METEC specify and publish the principles that the Regulatory Authority will need to adhere to when designing and awarding licenses.

Digicel maintains that the proposal to provide the Regulatory Authority power to issue licenses in line with the Telecommunications Act is appropriate and consistent with international best practices. Digicel is in also favour of the proposal to create a transparent licensing process which includes public consultations.

TBI also welcomes the proposal to ensure that the licensing process is based on public consultations. TBI agrees that amendments to (or any revocation of) a carrier's license be carried out based on established criteria which is published on the Regulatory Authority's website.

M3 and North Rock do not object to this portion of the proposal with M3 awaiting release of detailed proposals for further comment. Other parties did not directly address this issue.

### **METEC RESPONSE**

Consistent with the proposal in the Consultation Document METEC proposes to establish and publish clearly defined licensing legislation under which the Regulatory Authority will operate. The Regulatory Authority will be responsible for issuing licences and for the monitoring of compliance with all licence conditions. The Regulatory Authority's duties, responsibilities, and powers relative to licensing will be set out in the policies and legislation developed by METEC. As with other aspects of this reform initiative the licensing process will be transparent and include public consultation.

## **2.7.2 Licensing Regime**

C&W states that it is inappropriate for Bermuda to introduce an open entry licensing regime because it could seriously undermine the Government's policy objectives for the sector, particularly the need to develop a sustainable level of competition.

Digicel, M3 and TBI agree with the proposal to continue the use a formal licensing process to control market entry. No other party directly addressed this issue.

### **METEC RESPONSE**

Consistent with the proposal in the Consultation Document the Ministry will continue to use a formal licensing process to control market entry, exit, and consolidation. The Regulatory Authority's duties, responsibilities, and powers relative to licensing will be set out in the policies and legislation developed by METEC.

More generally, METEC is proposing to move towards a unified licensing framework in which all licences will be non-service-specific, allowing licensees to offer all services and thus gain access to any economies of scope available based on investments in technology and network infrastructure. The contents of licences will only differ to the extent necessary to identify the licensee and other similar parameters. Carrier-specific aspects such as spectrum and number allocations will be covered separately from the licences. A more detailed discussion of how METEC proposes to transition from the current system to a fully unified licensing framework can be found in the following four sections.

## **2.7.3 Unified Domestic Licenses (UDLs)**

BDC agrees that the proposed approach is probably the best way to meet the Government's stated objectives.

BTC supports the proposed policies with regards to the principle of the UDL and its voluntary adoption. BTC does however express concern regarding the limitation of the UDL to the domestic market. BTC maintains that an overall Unified License should be introduced. BTC suggests that international licensees will have three different routes of entering the domestic market, whilst domestic licensees would potentially have only one route to enter the international market because only one new international license is to be awarded. BTC also argues that the UDL's limitation to the domestic market prevents the introduction of a regulatory regime that is consistent for all licensees. Finally, BTC is concerned that a dominant carrier in the domestic market may be subject to more stringent requirements than a similarly situated international carrier.

C&W believes that a unified licensing system is appropriate and in line with the latest best international practice.

CableVision favours the UDL concept, as does M3, who wishes to reserve further judgement until details of the licensing scheme have been issued.

Digicel agrees with the view that all carriers should hold individual, but largely identical licenses, and that any difference between licenses should be clearly justified and not structural in nature. Digicel also agrees that licenses should be public documents, accessible on the Regulatory Authority's website.

Digicel welcomes the proposal to allow holders of UDLs to provision international retail services to all customer segments; however, it is concerned about an alleged inequality in the positions of UDLs and existing Class A licensees. According to Digicel, although UDLs will be able to purchase international capacity from the existing Class A carriers (except Brasil Telecom) on fair, reasonable and non-discriminatory terms, Digicel is concerned about the potential for collusion, delay, and other anti competitive practices by the Class A carriers.

Fort Knox generally agrees with the concept of UDLs, but believes that Bermudian providers, such as itself should be given conditional protections. Fort Knox

characterizes 'Bermudian' as those companies with at least 60 percent Bermudian ownership, and Bermudian management and staff. Fort Knox proposes that 'non-Bermudian' companies be allowed to operate within their current market segments only, and that these firms not be offered a UDL until after Bermudian companies have had a grace period in which to build-out their businesses.

Logic supports the proposed move to Unified Domestic Licenses but not the differential treatment that it believes would be extended to the two current international (Class A) licensees.

North Rock believes that under the proposed licensing regime market forces will cause consolidation between service providers resulting in either a monopoly or duopoly serving Bermuda.

Quantum and TBI support the introduction of the UDL; however, TBI recommends that the Government impose a number of provisions to ensure that the value of the current international Class A license is maintained.

Transact supports the UDL in principle, but has a number of concerns and reservations. For example, Transact perceives an inequity between the licenses available to current domestic carriers and international carriers because the Consultation Document proposes that international carriers retain their exclusive rights to purchase capacity from Brasil Telecom, whilst domestic carriers can buy only from the international carriers. Similar to Fort Knox's proposal, Transact also recommends that UDLs be issued to different carrier classes at different times.

#### **METEC RESPONSE**

BTC's arguments relating to dominance regulation will be addressed in below in Section 2.9. It is, however, helpful to confirm at this point that all dominant carriers will be subject to the same dominance regulation regime. There will not be two separate dominance and competition regulation regimes for domestic and international carriers. Regarding the ability to offer international retail services, METEC wishes to assure BTC and all other interested parties that UDL holders will be able to offer all services, including domestic services, ISP services, and international services. The difference between holders of UDLs and holders of UDLs and International licenses will be the ability to offer self-provision international wholesale services, and the ability to purchase wholesale international connectivity from Brasil Telecom. The rationale for this distinction is to encourage the investment in a new international cable facility, as discussed below in Section 2.7.6.

METEC proposes that any carrier found to be dominant must first comply with any and all relevant remedies established by the Regulatory Authority prior to being offered a UDL.

METEC proposes to offer all holders of Class B, Class C, and Cable TV licences in Bermuda a new Unified Domestic Licence (UDL). The UDL offered to each existing Class B, Class C, and Cable TV licensees will be identical to the extent possible. Carrier-specific aspects such as allocation of numbers and frequency will be covered separately from the licences. All UDL holders will be able to offer all telecommunications services, separately or in bundles, to business and residential telecommunications users in Bermuda, including international capacity and calls.

Initially, Class B, Class C, and Cable TV licensees who accept a UDL will not be licensed to operate international facilities, nor will they be authorised to purchase international capacity directly from Brasil Telecom. However, this restriction will be reviewed by the Regulatory Authority going forward.

METEC is also proposing to offer UDLs to all existing class A licensees (except Brasil Telecom, which holds a wholesale-only license rather than a full Class A licence). The UDL's offered to the Class A licensees will include an additional provision mandating that they offer non-discriminatory access to international capacity and services to all other UDL holders. This restriction is independent from any finding of

dominance. This will ensure that current Class A licensees cannot use their access to international facilities to compete unfairly against the UDL holders who do not have direct access to international facilities.

#### **2.7.4 Domestic Market Entry**

BDC strongly supports the proposal to not issue any new domestic licences for a period of up to three years, thus allowing for an orderly transition and the opportunity for existing licensees to adjust their business plans.

BTC argues that the 3-year timeframe for a consultation on domestic market entry should be removed or that, as a minimum, it should be stated that there is no presumption that the consultation will result in the market being opened at that time.

Digicel believes that it is reasonable to allow current licensees a period to adjust to the new regulatory regime before applications for new market-entrants are considered. However, Digicel believes that the Government should indicate the minimal period that will be allowed to the current Licensees.

M3 is in favour of a three-year moratorium on new licences but is concerned that firms may be able to enter the market through acquisition, especially by overseas investors. It suggests that one solution might be for changes in ownership above a certain threshold to require the approval of the Regulatory Authority. The threshold would be set at perhaps 30% so that small holdings can be traded and liquidity maintained.

TBI agrees with the proposal to restrict entry in the domestic market for a time period to allow licensees to adjust to the new regime. TBI suggests that clearly defined licensing procedure must be in place prior to considering additional entry in the domestic market. Furthermore, to ensure stability within the market during the transition period, TBI recommends that firms that are not current licensees be restricted from entering the Bermuda market through acquisition of an existing license holder. TBI believes that if any consolidation is to take place during the transition period it must be amongst the current licensees.

North Rock has no objections to the three-year moratorium and Transact supports the proposal.

No other party directly addressed this issue.

#### **METEC RESPONSE**

Bermuda has a comparatively large number of telecommunications licensees relative to its market size and METEC therefore proposes that no new licences will be issued initially after the implementation of the regulatory reform. However, the Ministry does not intend to unduly constrain the commercial flexibility of the current licensees with a blanket restriction on acquisitions. Once the market and its licensees have adapted to the new regulatory framework, the Regulatory Authority will review whether the market should be opened for issuing new licences. This review will be undertaken at a time to be decided by the Regulatory Authority, but no earlier than one year after the implementation of the regulatory reform and no later than three years after the implementation of the regulatory reform. Depending on the result of the Regulatory Authority's review, the Minister may decide to either permit or deny further market entry. METEC can confirm that there is no presumption that the market will be opened to new licensees at the completion of the review.

#### **2.7.5 The Transition Mechanism**

Digicel believes that all current licensees should be given the opportunity to amend their existing license(s), but that this only take place after a transition period which must be more precisely defined. Digicel suggests that in order to level the playing field firms that are not dominant should be permitted to enter additional market segments prior to allowing dominant firms to expand their services into new markets.

Digicel believes that permitting firms with dominance to enter new market segments is a recipe for disaster.

Quantum believes that, before the regulatory reform is implemented, all outstanding complaints before METEC or the Commission should be resolved. Also, it believes that new complaints should be resolved within a reasonable time period (it suggests a period of 120 days).

According to TBI, in order to effectively transition into the proposed regulatory structure and ensure that a level playing field is created, the newly formed Regulatory Authority must be established and properly staffed, and the requirements with respect to unbundled access, number portability, and the identification of dominant carriers need to be addressed prior to implementation of any of the proposed regulatory reforms.

As part of the transition arrangements, Transact believes that current Class C licences should be provided with a two or three year window to adjust to the new regime, during which time no Class A or Class B licensee would be allowed to offer Class C internet services or Voice Over Internet Protocol services.

M3 reserved its position, pending further details. No other party directly addressed this issue.

#### **METEC RESPONSE**

METEC is intent on doing everything possible, both now and in the future, to resolve disputes as quickly as possible. However, it would not wish to unduly delay the reform programme pending the resolution of all outstanding complaints. Instead, any outstanding issues will, if necessary, be carried forward and dealt with under the new regime.

After considering the parties' comments METEC proposes that current Class B, Class C, and Cable TV licensees will be offered UDLs immediately upon the implementation of the regulatory reform. This will, however, depend on any licensee deemed dominant in a relevant market (see section below on Competition Regulation) complying with the remedies imposed on that licensee by the Regulatory Authority.

Current Class A licensees will be offered UDL's upon the implementation of the regulatory reform, but conditional upon them having created a non-discriminatory product and pricing proposition based on which they will offer international connectivity and services to other UDL holders, and based on which they will develop their own retail service offerings.

#### **2.7.6 International Licenses**

Both BDC and BTC question the "protected" status of current Class A carriers. BDC recognises the need for additional infrastructure investment to address the redundancy concerns of international service users but believes that this can be achieved by limiting the number of service providers, both in the short and long term. It anticipates a situation where licensees in all three existing categories would have identical licences and the opportunity to consolidate and partner between themselves.

BTC interprets the consultation document to discriminate between domestic and international carriers with regards to the dominance provisions that would be applied. BTC also suggests that the existing Class A carriers will have three ways of entering the local market, namely:

1. To build new domestic infrastructure/facilities,
2. To purchase all or part of a domestic service provider, and
3. To request domestic Access and interconnection from dominant domestic provider(s).

However, BTC argues that only a "soft version" of option 3 will potentially be available to domestic carriers, especially since a maximum of one new international license will be awarded.

C&W expresses interest in learning more about the proposal to encourage a firm or consortium to build and operate additional international transmission capacity for Bermuda. Furthermore, C&W believes that the limited protections proposed in the "Managed Competition Period" should not restrict the ability of existing Class A licensees to implement any future price changes that cover their costs, or constrain existing Class A licensees from making additional investments in infrastructure. C&W also believes that it would be discriminatory if the new licensee were to be offered incentives to invest if such incentives were not also made available to the existing international licensees who may need to refresh existing investments now or in the near future.

Digicel disagrees with the proposal to limit entry into the international market segment to a single carrier or consortium who will install an additional international cable. Digicel suggests that the offer of UDLs to the existing Class A carriers should be mirrored by the offering of International Licenses to all existing Class B, Class C, and Cable TV carriers. Transact would similarly like Class C licensees to have the opportunity straightaway to build and operate international capacity. While Digicel argues that only unfettered competition will drive investment, it paradoxically notes that the business case for a new international cable is weak as the existing Class A licensees are perfectly situated to disable entry in this market segment if allowed to do so.

Fort Knox generally agrees with METEC's analysis regarding the business case for an additional international cable. For example, Fort Knox recognizes that while additional connectivity is critically important from a redundancy perspective, it remains unattractive to the industry because the existing submarine cables that serve Bermuda have ample capacity to serve the island, possibly for the next decade. However, Fort Knox disagrees with METEC's proposed method of encouraging this investment as it believes this provides unnecessary protection for the Class A licensees and/or requires the Ministry to negotiate extended agreements (presumably with the Class A licensees) which Fort Knox claims will inevitably undermine competition and innovation in the marketplace.

Fort Knox submits that if METEC accepts that the telecom industry is a key driver for the development of Bermuda then the Ministry must control this resource as it does other national resources, such as the airport, roads, and the water supply. Therefore, Fort Knox suggests that a new tax should be created and levied on all telecommunications operators with the proceeds of this tax being used to maintain and/or create redundancy in the national telecommunications infrastructure.

M3 also has concerns about the commercial viability of a new international cable and supports the proposals to regulate international prices at the wholesale level as a way of addressing these concerns. It endorses the principle that international licensees must provide fair and equal access to its capacity to all UDL holders.

Logic and North Rock believe that it is unfair to provide differential treatment to the two Class A licensees as purportedly proposed in the Consultation Document. North Rock also does not believe that the government would effectively regulate international wholesale prices.

TBI recommends that, to ensure that the current Class A licensees are not disadvantaged by the provision of a third international license, the proposed regulatory reforms include a number of restrictions designed to provide Bermuda with redundant international capacity while allowing the existing Class A carriers an opportunity to compete effectively with this new licensee.

CableVision and Quantum offer no comment on this issue.

## **METEC RESPONSE**

As noted by Digicel, Fort Knox and M3, the business case for a new international cable may be weak given the level of investment required and the fact that the existing Class A licensees are well positioned to disable entry in this market segment if allowed to do so. Thus, METEC remains of the opinion that it may be necessary to provide limited protections to the firm or consortium that prevails in the tender process to gain the proposed international license. However, METEC is not proposing to guarantee the profitability of the new cable with any protections that may be provided or to indefinitely restrict licensees' direct access to the facilities of Brasil Telecom.

METEC notes that Fort Knox's proposal essentially calls for the Government act as the lead operator in a consortium to build a new transatlantic cable. This proposal would require a new tax, significant Government involvement, and an industry wide bureaucracy to provide a facility that a number of parties have already expressed interest in building. This would not be a preferred option for METEC.

METEC proposes to make one new international licence available to a party committing to building a new international submarine cable facility connecting Bermuda with international destinations. METEC is currently developing the tender process for the award of this new licence. It is anticipated that the new international licence may be awarded prior to the completion of the regulatory reform. If so, then the successful 'tenderer' will be awarded a Class A licence and will be offered a UDL on the same terms as the current Class A licensees.

### **2.7.7 Fees**

BTC sees merit in the proposal to establish a "series of incentives for local Bermudian investment" such as license fees that are variable with the level of Bermudian investment.

C&W believes it is important that the two-tier fee structure not be overly burdensome to industry participants. Furthermore, it recommends that the regulatory fees for funding the independent Regulatory Authority should be set in advance for the relevant year, and should be directly related to the budgeted costs of the Regulatory Authority, so that all licensees are not faced with unanticipated costs at the end of the year. C&W believes that the publication of an annual report by the Regulatory Authority will help to ensure that the funding needs of the Regulatory Authority are clearly identified and justified.

Digicel is concerned that the current proposal fails to adequately cap the level of spending by the Regulatory Authority.

Fort Knox supports the proposal for separate fee structures, specifically if fees can be used to reinvest in infrastructure that private industry has shunned because it is uneconomic.

Logic is generally supportive of funding the Regulatory Authority through license fees to provide independence from government but is concerned that there may be no constraint on the Regulatory Authority's ability to charge licensees unfairly, either discriminately or excessively.

M3 welcomes the prospect of a streamlined fee structure.

North Rock is opposed to a two-tiered license fee structure primarily because of a perception that this will cause an increase in overall license fees. North Rock points out that increases in license fees will eventually be born by consumers and should therefore be kept as low as possible.

North Rock also argues that the future (reduced) requirements for financing METEC should be met out of the Consolidated Fund rather than to have a license fee in addition to the proposed regulatory fee. According to North Rock,

Telecommunications is the only industry that is required to pay a revenue based fee to support Ministerial activities. North Rock asserts that this inequitable.

TBI is encouraged by the prospect that all carriers will face similar regulatory and licensing fees. However, TBI recommends that the Government be mindful that any increase in regulatory costs will either be passed on to the consumer or the bottom line of the licensees. TBI suggests that the Government quantify the required regulatory resources, and in the spirit of transparency, table its annual budget with the licensees as this is consistent with what takes place in other jurisdictions.

BDC, CableVision, Quantum and Transact do not directly address this issue.

### **METEC RESPONSE**

While the parties are generally supportive of implementing a more unified fee structure there appears to be significant confusion regarding the fee structure proposal already outlined in the Consultation Document, and apprehension regarding what may be proposed (or permitted) going forward. Thus, METEC will clarify the proposal offered in the Consultation Document and provide a more detailed description of the fee structure it proposes to implement going forward.

METEC proposes to streamline the current multi-tiered and service specific licence fee structure into a standardized system which consists of a Licence Fee and a Regulatory Fee.

The Licence Fee, payable to the Accountant General, will be based on a percentage of each licensee's revenue using a transparent scale that is applicable to all licensees. The License Fee scale will be established based on Government budgetary requirements and published on the Ministry of Finance, METEC, and Regulatory Authority websites. The revenue percentage paid by each firm will be proportional to both the level of foreign ownership and the level of foreign employment in that firm. Thus, firms with high levels of foreign ownership and/or a high percentage of foreign employment will be required to pay a higher percentage of revenues in their License Fee.

The Regulatory Fee, payable directly to the Regulatory Authority, will be a straight percentage of revenue for all licensees. The amount of revenue collected each year will reflect the Regulatory Authority's agreed work plan and budget for the year in question.

Both of the aforementioned fees will be levied based on each licensee's revenue over and above a minimum threshold. This threshold, applicable to all licensees, will ensure that smaller firms are not unduly burdened by the fees.

METEC notes that the newly proposed fee structure will result in changes to the fees payable by individual licensees as the fees will no longer be linked to the type of license each firm holds and/or the services they offer. Instead, each licensee's total fee will reflect the firm's level of foreign ownership and employment, and a proportionate amount of the cost incurred to provide regulatory oversight.

Many of the parties express concern that the newly proposed fee structure will result in significant and unchecked cost increases to industry participants. However, as noted above, any increase in total fees due to the establishment of an Independent Regulatory Authority will be linked directly to the costs incurred by the Independent Regulatory Authority. It is proposed that the budget for the Regulatory Authority will be set in advance for the relevant year so that licensees are not faced with unanticipated costs at the end of the year. Similarly, fines and administrative charges will not be used as a means to close budgetary gaps. To ensure transparency, the Ministry will publish an annual report detailing costs and revenues of the Independent Regulatory Authority. The annual report will also discuss the agenda of events and proceedings anticipated for the following year. METEC also proposes to establish a cap on the percentage of industry revenue that may be collected to fund the Regulatory Authority.

## **2.8 Foreign Direct Investment**

BDC accepts that a block exemption to the 60/40 rule is consistent with other aspects of the regulatory reform proposals and urges that, in the absence of this block exemption, the rules of Foreign Direct Investment (FDI) must be stable and applied consistently.

BTC notes that the current system of special exemptions to the FDI rule for specific carriers is clearly not competitively neutral or symmetrical. While the existing FDI rules may constrain investment, BTC believes that this effect must be balanced against the advantages of Bermudian investment in Bermuda. Thus, while BTC argues against lifting all restrictions on FDI, it is open to reducing the restriction, provided there is an incentive structure in place that is sufficiently strong as to actively encourage Bermudian investment in Bermuda's telecommunications industry and infrastructure.

A particular argument put forward by BTC against lifting FDI restrictions is that capital for maintenance and innovation may not be allocated to the Bermudian entity of a multinational corporation if the anticipated return on that capital is greater in another part of that multinational organization's operations. BTC suggests that Brasil Telecom is an example of this situation.

C&W agrees that the existing 60/40 ownership regime would be unsustainable under the proposed unified licensing regime and supports the removal of this restriction. C&W is generally supportive of replacing the prohibition on foreign investment with a positive incentive scheme to encourage 'Bermudianisation'. C&W recommends a wider interpretation of what it means to be a Bermudian firm, including, for example, employing a certain proportion of local employees (with more "credit" being given for local employees in senior positions); investing in recognized community projects, etc.

Digicel believes that FDI restrictions should be lifted completely and that any attempt to encourage Bermudian ownership through a sliding scale of license fees will merely drive investment capital to other jurisdictions.

Fort Knox notes that this Government has a policy to promote 'Bermudianisation'. Fort Knox believes that the proposal to implement an industry wide exception to the 60/40 rule is irrational and flies in the face of the 'Bermudianisation' policy. Fort Knox claims that the Class A carriers' profits leave Bermuda, while the profits of the local carriers remain in Bermuda, and it maintains that the net economic effect of removing the FDI restriction would be negative because any lowering of costs would be offset by capital flight.

According to Fort Knox, under the current policy, Government has refused proposals for acquisitions within the telecommunications industry that breached the 60/40 rule. Fort Knox claims that reversing that policy now would disadvantage the current 60/40 companies. Fort Knox does not believe that it is possible to provide adequate economic incentives for companies to remain 60/40 because only a confiscatory tax would provide adequate incentive to resist foreign ownership.

Fort Knox avers that it is impossible for smaller local companies to compete with the Class A carriers in raising capital because lower cost capital will always be easier for large international firms to obtain. Fort Knox claims that local firms will only be able to compete with large international firms if and when the BSX grows sufficiently to attract significant amounts of foreign capital.

While Logic generally is neutral about the proposed foreign ownership liberalization, it warns that the impact on complementary sectors such as Information Technology may become a serious issue in Bermuda if such providers (including 100% foreign owned firms and/or foreign franchises) attain the ability to offer many of the services telecommunications companies currently offer.

M3 believes that a block exemption to the 60/40 rule is unnecessary since difficulties in raising capital are only cyclical and should continue to be dealt with on a case by

case basis. A complete exemption could jeopardise the long-term sustainable development of the industry.

North Rock argues that there is no demonstrable need for foreign capital in the Bermudian telecommunications industry, and therefore, it argues that the current 60/40 rule should be maintained. It further argues that if the 60/40 rule should be abandoned then it should be reviewed for all industries, not just telecommunications. North Rock does, however, agree that if the UDL system is introduced it will be necessary to establish a block exemption for the whole telecommunications industry.

According to TBI, the Ministry has previously varied the ownership rule to stimulate investment within the telecommunications sector. TBI supports lifting the restriction on FDI for all carrier classes as it will better meet the financial needs of the telecommunications industry in Bermuda.

Transact favours the removal of all present exemptions to the 60/40 rule. If this is deemed impossible then it believes that all carriers should enjoy the same exemption.

Quantum does not directly address this issue.

### **METEC RESPONSE**

METEC agrees with parties' arguments that continuation of the existing FDI restrictions is not sustainable under the proposed unified licensing regime as it would not be possible to require existing licensees to divest foreign ownership so that their ownership structure is in line with the 60/40 rule. Furthermore, retaining existing FDI restrictions would place firms with lower foreign ownership limits at a competitive disadvantage as they would likely face higher capital costs and/or significant delays in obtaining capital as they petitioned Government for individual exemptions to the 60/40 rule. Although Logic and North Rock suggest that firms are not hampered by the existing FDI restriction, BTC notes that, its investments were likely made at a higher cost of capital than competing firms who have unlimited access to FDI. Thus, METEC is taking a forward-looking view of possible investment requirements under a new licensing regime. Without wishing to try to second-guess what investments might be appropriate in future, METEC is keen to ensure that all licensees have the same opportunities to raise additional capital, hence the proposal to remove existing restrictions. However, as a means to encourage Bermudian ownership, the Licence Fee proposal (explained above) requires licensees to pay higher fees based on the level of foreign ownership and employment.

METEC proposes that telecommunications licensees receive a blanket exemption from the 60/40 foreign ownership rule so that all licensees may have non-discriminatory access to investment capital. METEC is of the opinion that the fee structure described above in Section 2.7.7 will encourage Bermudian ownership and employment where feasible, but will not restrict foreign owned licensees from investing in Bermuda.

## **2.9 Competition Regulation**

BDC supports the concept of dominance-based regulation and emphasises the importance of obtaining public input before reaching any conclusions or introducing regulations in this area. It also believes that data collection requirements should be limited primarily to those carriers that are found to be dominant.

C&W is supportive of the introduction of a dominance-based regulatory regime in Bermuda because it helps to ensure that regulation is targeted where it is most needed and removed where it is not. C&W asserts that a properly implemented dominance-based regulatory regime should allay any concerns that the introduction of a unified domestic licensing regime in Bermuda could result in one or more operators obtaining a near-monopoly position and help to ensure that there is diversity in the type of competitors that serve telecoms markets.

CableVision emphasises that a company that does not have dominance in a particular market should not be a scheduled carrier for the product. It also expresses specific concerns with one of the remedies that the Regulatory Authority might adopt in situations where a service provider is deemed to be dominant in a particular service market, namely the requirement to offer wholesale/regulated access to other providers prior to launching a new retail service. CableVision believes that this particular remedy has not always proved successful in other jurisdictions and that the cost of implementing it outweighs the benefits.

Digicel favours a dominance-based regulatory regime for Bermuda, similar to and based on that of the dominance or Significant Market Power ("SMP") regime as was developed in the European Union ("EU"). Digicel agrees that the abuse of dominance, rather than dominance in itself, is what regulation should try to prevent.

Logic is concerned that licensees that are deemed to be dominant, regardless of whether they are engaged in anti-competitive behaviour, stand to be punished by the regulator and that this will deter innovation and/or growth.

M3 believes that ex-ante regulation, such as the use of dominance-based regulation, can be "too heavy a hand" in a dynamic market and that an ex-post approach is to be preferred. It also argues that markets should be defined according to consumption behaviour in Bermuda and, in particular, on forward-looking trends.

North Rock does not believe that the benefits will outweigh the costs of introducing a dominance-based regulatory regime because it anticipates consolidation in the market to the extent that only a few carriers will remain. It would however support dominance-based regulation if the current licence structure were to be maintained.

TBI claims that a key factor to the success of the proposed regulatory structure is in relation to developing an effective dominance based regulatory framework that will ensure that Bermuda's telecommunications market remains competitive.

Transact supports the principle of regulation of dominant carriers but states that vertically integrated international carriers must also be regulated to ensure cost-based access to international infrastructure and imputation of non-discriminatory wholesale charges into the vertically integrated international carrier's retail prices.

Quantum does not directly address this issue.

#### **METEC RESPONSE**

As with other aspects of this reform initiative these proposals will be subject to further consultation in which more detailed evaluation parameters will be developed, including how markets should be defined and the appropriateness of particular remedies. METEC looks forward to additional input from interested parties at that time.

METEC proposes to develop legislation and policies requiring that the Regulatory Authority implement dominance based regulations so that the Regulatory Authority's intervention in market affairs is kept to a minimum. In response to CableVision's concerns, METEC anticipates that regulatory intervention will only be initiated when a licensee is deemed dominant in one or more relevant markets.

METEC proposes that the Regulatory Authority will be required to conduct industry consultations on the detailed framework for determining dominance. However, the resulting framework must be based on the international best practice three-step process of defining relevant markets, determining dominance, and defining the remedies to be adopted by the licensees found to be dominant.

METEC proposes a policy framework in which a licensee with more than 65% market share in a relevant market is presumed to be dominant, although this must be supported by further (but limited) analysis. Licensees with at least 50% but less than 65% market share will be subject to detailed analysis to determine if dominance exists. Licensees with less than 50% market share will be presumed

non-dominant, although this determination must also be supported by further (but limited) analysis. METEC notes that two or more licensees may be deemed jointly dominant in a relevant market even if each firm's market share is less than 50% of the total market.

It is anticipated that the dominance analysis framework and the market analysis to identify dominant licensees will be conducted in parallel with drafting the necessary legislation to implement regulatory reform. Thus, at the time of introducing the regulatory reform, the market analysis should be completed, and dominant carrier(s) and appropriate remedies identified so that dominant licensees can ensure compliance with the remedies as quickly as possible and thus receive a UDL.

## **2.10 Access and Interconnection Regulation**

BTC believes that the obligation to provide access and interconnection should be applied to all carriers because all carriers have dominance in the market of call termination to their directly connected customers. BTC recommends that "common Carrier Meet-Me Rooms" be established in Bermuda to facilitate future access and interconnection requirements.

C&W believes that the proposal whereby an obligation to interconnect will only be placed on dominant licensees is a sensible and proportionate move, and in line with best international practice.

Digicel recommends that firms not be allowed to act as free riders on another licensee's network due to mandated access to wholesale versions of their current retail services.

Logic supports the proposal set out in the Consultation Document.

M3 expresses some concern that the access and interconnection regime in Bermuda could become unnecessarily complex and be detrimental to those players who have invested in infrastructure.

According to North Rock, while the existing system provides the consumer with a variety of service combinations and choices the Ministry's current proposal to only require dominant firms to offer interconnection is a step backwards. North Rock believes that current proposal will decrease consumer choice and potentially lead to the wasteful duplication of facilities as carriers will have no choice but to build duplicate facilities if access to other firms' networks is not available.

Quantum supports the development of access and interconnection regulation as an important means of allowing customers to gain access to new and cheaper services. However, it is strongly opposed to the use of transiting agreements because it believes they favor the incumbent carrier and stifle competition.

TBI recommends that all carriers should be required to interconnect with each other.

Transact proposes access and interconnection obligations be applied to all wireless and wireline infrastructure owners. Transact argues that under the UDL all infrastructure providers will likely launch bundled services including ISP services, and that only directly regulated access and interconnection will prevent such bundled services from squeezing out unaffiliated ISPs.

BDC, CableVision and Fort Knox did not directly address this issue.

### **METEC RESPONSE**

Access and interconnection are internationally recognised as critical enablers of a competitive telecommunications market. As interconnection enables carriers to exchange messages and to use each others' facilities to create competitive services, it theoretically is in all carriers' interest to ensure interconnection on fair and reasonable terms. However, experience shows that dominant carriers typically resist interconnection and competing carriers seek interconnection. Mandated

interconnection services, terms and conditions are therefore typically part of regulatory remedies imposed on dominant telecommunications carriers.

METEC proposes to mandate interconnection for dominant licensees only. Typically, the services the dominant licensee is mandated to offer include transit facilities which enable all carriers to interconnect indirectly through the dominant carrier, if they so choose. METEC notes Quantum's concerns and wishes to emphasise that the details of the arrangements will require further consideration once the general policy has been determined. Non dominant licensees may also choose to interconnect directly if they find this to be commercially and technically attractive.

Access regulation is broader than interconnection regulation and can cover access to a wide range of network components and interfaces. Regulated access services, terms, and conditions may be mandated for dominant licensees to facilitate competition in areas where it may be technically or commercially infeasible to replicate certain services or network components. Thus, the Regulatory Authority will be required to determine through transparent analysis whether regulated access should be imposed on dominant licensees.

The detailed provisions for regulated interconnection and access vary considerably, as do market conditions. METEC proposes that the Regulatory Authority will be instructed to regulate access and interconnection to encourage sustainable competition through specific remedies deemed to be proportionate to the specific market conditions in Bermuda, whilst also seeking to encourage investment in new technologies and infrastructure in Bermuda.

Access and interconnection regulations will ultimately require specification of costing and pricing parameters to be applied to regulated access and interconnection interfaces, based on detailed analysis of the market conditions. METEC proposes to undertake transparent consultation on the detailed provisions for the regulation of access and interconnection in Bermuda.

## **2.11 Retail Price Regulation**

BTC believes that the proposed retail price notification approach would be a step forward. However, if METEC were to adopt some of its more far reaching proposals regarding mandatory wholesale pricing and interconnection, BTC believes that even retail price notification would be unnecessary. This is because, in BTC's opinion, with mandatory wholesale access there would effectively be no barriers to entry in the retail market and therefore no opportunity for any provider to abuse a dominant position in a relevant retail market.

BTC recommends that the ability of the regulator to impose a more stringent price regulation framework with mandatory price reductions should be designed only as a backstop to use under extraordinary circumstances where the operation of market forces has failed.

BTC claims that there are a few items not discussed in the Consultation Document that must be addressed in the short term. First, BTC asserts that all carriers should be allowed to negotiate Custom Bid contracts with customers that reflect the specific volume, products, and length of contract of the customer. Second, BTC believes that the rules for bundling should be clearly specified, but flexible enough to allow Bermudians the benefit of bundle discounts.

C&W welcomes the proposals for retail pricing regulation and agrees that it is entirely appropriate that regulation is only applied in those markets where analyses has identified that one or more licensees hold a dominant position.

C&W notes references to the possibility of rate of return or price cap regulation being introduced should the market analyses indicate such measures are warranted. C&W maintains that these measures would impose huge resource implications for the

Regulatory Authority and for licensees, so a full cost benefit analysis should be conducted before the introduction of such measures.

Digicel agrees that retail price regulation is a complex area and asserts that the Ministry should continue to consult on any further development of the telecommunications retail price regulation framework before it is introduced in Bermuda.

Digicel questions the degree to which the Regulatory Authority will be empowered to retroactively withdraw or amend retail prices. Digicel suggests that retroactive price adjustments would create economical insecurity on the retail market and a huge administrative burden to a licensee required to refund revenues to consumers. However, Digicel does believe that there should be measures in place to undo ill-gotten revenue obtained through anti-competitive pricing.

TBI agrees with the proposal that dominant carriers will be subject to price regulation and that non-dominant carriers will not be required to request tariff approvals.

Logic and North Rock offer no opposition to the proposal outlined in the Consultation Document. Other parties did not directly address this issue.

#### **METEC RESPONSE**

METEC thanks the parties for their comments and looks forward to their ongoing participation in this discussion when the issue is revisited by the Regulatory Authority after the high level policy issues have been solidified. METEC proposes that the Regulatory Authority will only apply retail price regulation to dominant licensees, and only for services in markets for which the licensee has been found dominant. Retail price regulation will be based on a notification system, rather than the present prior approval system.

### ***2.12 Universal Service Regulation***

According to BTC, universal service is a social policy that should be funded through tax revenues like other social goals. Thus, BTC maintains that any universal service obligations placed upon licensees – whether the dominant carrier or others – should be matched by sufficient funding to support these obligations, and should be imposed on a non-discriminatory basis.

BTC suggests that there is a distinction between Universal Service obligations and a “Carrier of Last Resort” (“COLR”) obligation, which is the mandatory provision of services to potentially unprofitable customers or customer groups. BTC asserts that it alone is likely to be burdened with this responsibility. As such, BTC claims that without a sufficient and predictable Universal Service Fund (USF) system to fund these high cost, low revenue customers, it may be forced to cross subsidise the costs of these customers from other customers and services. However, BTC maintains that such cross-subsidies are unsustainable in the face of open entry as the high margin products providing the cross subsidy attract entry and dissipate the source of cross-subsidy.

C&W avers that a number of jurisdictions have considered adding basic broadband access to their universal service frameworks. Regardless of the form of the universal service policy, C&W believes it will be important for it to adhere to certain internationally accepted principles. According to C&W, first and foremost amongst these will be ensuring that the financial cost of meeting the universal service obligation is shared amongst all licensed operators in a competitively neutral way, rather than being borne solely by the designated universal service provider(s).

Digicel asserts that it is not in favour of imposing Universal Service obligations on non-incumbent operators. Digicel believes that operators should only be required to subsidize the services they provide and that licensees should not be required to pay into some fund over from which other carriers receive payments. By ensuring that

operators only subsidise their own services, Digicel believes that this will result in market forces - and not the government - determining which service technologies to invest in.

Fort Knox recommends that only dominant providers be required to provide service to the entire Island because placing a universal service requirement on all providers would make smaller licensees financially unviable.

While Logic favours the introduction of a Universal Service Fund (USF), it recommends that any such fund be clearly segregated from, and accounted for separately from, the Government's Consolidated Fund. Logic also recommends that the distribution of funds be competitively neutral and purely for the benefit of consumers, but not as a tool to subsidise inefficient firms.

M3 reserves comment on the main proposals but does suggest that the USF could be used to pursue alternative international routes should a new international cable licence not be awarded.

North Rock does not see the need for a Universal Service requirement in Bermuda given the relatively uniform demographics of the Island.

TBI generally agrees with the proposal to introduce universal service requirements provided that the Regulatory Authority addresses a number of issues such as who incurs the cost of universal services, and who actually provides the service in question.

BDC, CableVision, Quantum and Transact did not directly address this issue.

#### **METEC RESPONSE**

METEC thanks the parties for their comments and looks forward to their ongoing participation in this discussion when the issue is revisited by the Regulatory Authority after the high level policy issues have been solidified. However, METEC anticipates that its Universal Service policies and the Regulatory Authority's remedies will be proportional to Bermuda's needs. Consistent with other aspects of the reform initiative, METEC will develop Universal Service objectives for Bermuda which the Regulatory Authority will be responsible for implementing in a transparent manner

METEC proposes to develop clear Universal Service objectives for Bermuda which the Regulatory Authority will be responsible to implement in a transparent manner through the development of competitively neutral funding and distribution mechanisms, as required.

### ***2.13 Consumer Protection***

BTC supports reliance on industry self-regulation to the maximum extent, with regulatory intervention only when these efforts fail to protect consumers' rights. BTC believes that the focus of consumer protection rules should be on ensuring the customer's right to full disclosure of information about their service, rather than on dictating the substantive terms of service.

C&W agrees that it will be important to ensure that consumers remain protected under the proposed new framework. For example, C&W believes that consumers should have access to the terms and conditions on which their services are provided and should also expect to receive accurate billing information. C&W asserts that it would be surprised if any current licensees do not already meet these requirements. To the extent that a review shows that more measures are needed to ensure consumer protection, C&W would be supportive of the principles suggested in the Consultation Document, including industry self-regulation.

Digicel notes that the discussion of consumer protection in the Consultation Document focused on pricing concerns. However, Digicel believes it is also important to stress the confidentiality of customer information, protection from unsolicited messages (spam), and preventing children from being exposed to adult content as

these issues are typically an integral part of consumer protection regulations. Digicel agrees with the proposal to establish self regulation.

Logic maintains that it has no objection to consumer protection regulations as long as they do not impose unnecessary burdens on licensees or dictate service offerings. Logic also suggests that regulations should not impinge on the ability of companies to check on, cut off, or seek prepayment due to credit risk.

Similarly, M3 is in favour of a "light but firm" approach by the regulator with self-regulation wherever possible.

TBI supports the proposal for consumer protection measures. North Rock does not oppose the consumer protection proposals outlined in the Consultation Document. Other parties did not directly address this issue.

#### **METEC RESPONSE**

METEC proposes that the UDL will include provisions applicable to all licensees covering basic consumer protection parameters, including data protection, and standard terms and conditions for the provision of services. METEC welcomes public input and industry initiatives for self-regulation in this area.

Additional consumer protection provisions may be applied to dominant licensees, such as non-discrimination requirements and published service level agreements. However, consistent with other aspects of this reform process, the finalisation of the Consumer Protection framework will be done in an open and transparent manner so that concerns expressed by the licensees above, as well as other issues, may be fully debated.

### ***2.14 Quality of Service Regulation***

While BTC agrees that monitoring retail service quality may be an appropriate regulatory activity, it argues that the benefits need to be weighed against the burdens imposed by the reporting and measurement requirements. According to BTC, the Regulatory Authority should not be empowered to review and approve the specific level of retail service offered by carriers in competitive markets, although it may seek to ensure proper disclosure of this information.

C&W agrees that the potential introduction of quality of service parameters would need to be assessed through industry consultation to ensure that the benefits of introducing such measures outweigh the costs.

Digicel questions if the quality of service data of each licensee will be accurate and up to date unless the Regulatory Authority randomly checks the quality of the information submitted. According to Digicel, even without malicious intent, reports for the same specific type of data over the same time period can be different from the one licensee to the next, if only because of the use of different software and hardware, different time settings, or simply systems of measurement. Digicel avers that gathering quality of service data on a regular basis can be burdensome and should be avoided if at all possible.

Logic contends that quality of service is an aspect that need not be regulated by the Regulatory Authority because while there is currently minimal regulation in this area, Logic is unaware of any problems. Logic believes that quality of service is governed by customers; should a company fall short of expectations, customers will respond by escalating or switching suppliers. Logic claims that more and more business customers are insisting on service level agreements so it is unnecessary for the Regulatory Authority to insert an additional layer of governance. Logic believes that all carriers in Bermuda have been treated equally so special provisions for dominant carriers are unnecessary. Lastly, Logic claims that some of the metrics outlined in the proposal are subjective and certainly open to interpretation. For example, Logic questions the ability of the Regulatory Authority to measure billing accuracy and timeliness.

M3 similarly believes that the Regulatory Authority's involvement should be minimal with tailored service level agreements being determined by the trading partners and filed with the RA.

TBI supports the proposal for quality of service standards. North Rock offers no objection to this section of the Ministry's proposal. Other parties did not directly address this issue.

#### **METEC RESPONSE**

METEC proposes that the Regulatory Authority will be required to implement a transparent quality of service regulation framework, based on the reporting and publication of a small number of key quality of service parameters. The Ministry understands that quality of service is a parameter by which firms in competitive markets vie for market share and it does not intend to interrupt this process. However, METEC is of the opinion that it would be beneficial to develop and publish a number of service quality metrics so that consumers have objective measures with which to judge the quality of competing service providers. As with other aspects of the regulatory reform process, the detailed analysis necessary to implement the proposed quality of service framework will be undertaken by the Regulatory Authority in a transparent manner at a later date.

### **2.15 Numbering Regulation**

BDC supports the formation of a Telecommunications Committee to address numbering issues.

BTC believes that METEC should provide the Regulatory Authority with specific policy guidance on VoIP numbering issues; in particular, whether it is appropriate for Bermuda telephone numbers to be used by persons outside Bermuda, and whether it is appropriate for persons in Bermuda to use non-Bermuda numbers.

C&W notes that while consumers may benefit from implementing local number portability ("LNP") in Bermuda, there should be a full and detailed cost benefit analysis and industry consultation prior to any action by the Regulatory Authority.

Digicel notes that VoIP telephony is causing issues on a global scale with respect to numbering resources. Digicel recommends that a simple and swift procedure for requesting and obtaining numbers be implemented because slow and bureaucratic numbering processes adversely affect the time to market new products. The proposal to establish a Telecommunications Committee is welcomed and actively endorsed by Digicel, as is the proposal to publish numbering resources on the Regulatory Authority's website. However, Digicel thinks that it would be even better if standard forms for requesting numbers and/or spectrum could be downloaded and submitted via such a web portal.

M3 believes that the most pressing issue is the treatment of VOIP telephony.

Quantum emphasises the importance of number portability to the development of a competitive telecommunications environment and asks for it to be introduced forthwith. Likewise, TBI recommends the implementation of both local number portability and ENUM.<sup>6</sup>

North Rock does not object to the proposals in this section of the consultation document. CableVision, Fort Knox, Logic and Transact did not directly address this issue.

---

<sup>6</sup> ENUM is an international initiative on electronic numbering in which a traditional telephone number is converted into an IP address. The purpose of this initiative is to introduce a fully neutral approach to numbering that addresses technological convergence.

## **METEC RESPONSE**

As with many aspects of this regulatory reform specific regulations regarding Numbering issues (such as LNP, ENUM, and the impact of VoIP telephony) have not yet been determined. Thus, METEC thanks parties for their comments and recommendations, and looks forward to their additional contributions on these topics as the regulatory reform process moves forward. However, the Ministry would like to assure all interested parties that finalization of the numbering regulation framework will be handled in an open and transparent manner so that concerns expressed by the licensees above, as well as other pending issues, may be fully debated.

METEC proposes to implement a transparent numbering framework in which the Regulatory Authority manages Bermuda's numbering resources and publishes tables of existing and planned number allocations on its website. Issues including the numbering and naming conventions for future services categories will be managed by the Regulatory Authority, based on the principles stipulated by METEC in policies and legislation.

### ***2.16 Domestic Spectrum Management***

BDC believes that spectrum allocation should be technology neutral and that the identities of all licensed holders of allocated spectrum should be made public.

BTC offers no specific comments at this time, other than to support the proposal to post spectrum usage data on METEC's website to provide transparency to the allocation of spectrum amongst carriers.

C&W believes that both the newly constituted METEC and Regulatory Authority must consider the potential impact of a number of UDL licensees each seeking to provide a range of mobile and wireless services, and the resulting pressure on key segments of bandwidth.

Digicel agrees that spectrum is a national resource that should be closely administered by the Regulatory Authority. Digicel also notes that in many jurisdictions worldwide, the spectrum previously used for television broadcasting is now becoming available for other uses, such as WiFi and WiMAX, because of the massive switching of consumers towards Digital broadcasting (on different spectrum) and cable television deployment. Digicel agrees with the proposal to embrace technological neutrality regarding spectrum allocations and expresses an interest with regards to spectrum trading.

Logic maintains that it is important for Bermuda to manage spectrum (such as WiFi) in a manner that is consistent with international standards so that firms may provide both Bermudians and visitors the connectivity that is available elsewhere. Logic also recommends that regulations not preclude carriers from accessing satellite capacity.

M3 support a technology neutral approach to spectrum allocation and believes that licence fees should reflect the spectrum allocated (rather than hold auctions). It would also like to see more emphasis on premium spectrum being shared equally and provisions for dealing with situations where allocated spectrum remains dormant for an extended period.

North Rock expresses its general support for the Ministry's spectrum management proposal and welcomes the initiative to publish existing spectrum allocations on the Regulatory Authority web page. However, North Rock does not support any future spectrum auctions as it believes they would only serve to increase the end price to the consumer and will ultimately act as a barrier to entry for new market entrants.

Quantum is also concerned over allocated spectrum lying dormant and proposes that any current licence holder that has failed to deploy its allocated spectrum for a period of three or more years should have its licence revoked.

Transact recommends that the Government's frequency management policy foster additional competition in this market segment. According to Transact, the Government of Bermuda has managed frequency to date so that only one block of spectrum is available for assignment to new commercial wireless carriers or for expanded service offerings from the existing Class B wireless licensees. Transact asserts that the limited available spectrum band, the requirement that carriers share towers for their antennae, and the existing environmental policy restricting the construction of new towers are all working in concert to constrain additional entry into the wireless market segment. As such, Transact recommends that wholesale pricing regimes should apply equally to wireless carriers so that entities like the existing Class C carriers can operate as Mobile Virtual Network Operators ("MVNOs"). According to Transact, MVNOs in Europe and the United States have brought valuable competition to their respective markets, to the benefit of those consumers, despite spectrum scarcity.

CableVision, Fort Knox and TBI did not directly address this issue.

#### **METEC RESPONSE**

As with many aspects of this regulatory reform the specific regulations regarding domestic spectrum management issues (such as spectrum reallocations, auctions, and trading) have not yet been determined. METEC thanks parties for their comments and recommendations, and looks forward to their additional contributions on these topics as the regulatory reform process moves forward.

METEC proposes that the Regulatory Authority manage spectrum in a transparent manner which is consistent with international best practices and focuses on efficient utilisation of this scarce resource. The Regulatory Authority will be required to publish all existing and planned spectrum allocations on its website.

### ***2.17 Equipment and Type Approval***

C&W suggests that the scope of the Independent Regulatory Authority's involvement in this area not be so wide-ranging as to unnecessarily limit the equipment that operators can use as this would only serve to restrict consumer choice. C&W agrees with the proposal to continue with the current arrangements, albeit under the authority of the newly formed independent Regulatory Authority.

Digicel also recommends that Bermuda continue to rely on international organizations for equipment and type approval because adhering to internationally recognized standards facilitates the uptake and availability of equipment in the Bermudian market. BTC, Logic, and North Rock, also support the continuation of existing practices.

M3 would like equipment that already has FCC or similarly-recognised approval to be "rubber stamped" in Bermuda in order to improve efficiency.

Other parties did not directly address this issue.

#### **METEC RESPONSE**

The Ministry proposes to maintain its existing policies whereby Bermuda relies on the guidance of international organizations, such as the International Telecommunication Union (ITU) and the US Federal Communications Commission (FCC), for equipment and type approval. Consistent with the parties' comments, METEC seeks to continue on the current course as it is unaware of any deficiencies in the existing regime and because adhering to internationally recognized standards facilitates the uptake and availability of equipment in Bermuda. Moreover, consistent with other aspects of this reform initiative, it is proposed that any future adjustments to existing policies will be determined by the Regulatory Authority in a fully transparent manner.