



**REGULATORY
AUTHORITY**
OF BERMUDA

**ECA Section 78 Transitional
Spectrum Investigation SC-1222/2013
(SUESA)**

Ex- Parte Communication Notice

Date: 13 October 2014

On 11 September 2014, in anticipation of a meeting between Digicel Bermuda Limited (Digicel) and The Regulatory Authority (Authority) concerning several outstanding matters between Digicel and the Authority, Digicel CEO Alistair Beak sent an email containing a letter misdated 7 August 2014 outlining Digicel's concerns. On the same date Digicel were told by the Authority's legal advisor that they would be required to prepare a note of the upcoming 18 September 2014 meeting between themselves and the Authority for the purpose of meeting obligations under section 73 of the Regulatory Authority Act 2011 ('the RAA') which provides in part that where a party makes an ex parte communication to the RA during the course of a public consultation, within two business days after the date on which the ex parte communication occurred, the person who made the ex parte communication shall submit it to be published.

One such concern related to the SUESA Consultation. In particular Digicel sought updated timetables and wanted to have the Authority's written position in the event Bermuda Digital Communications Limited (CellOne) were to challenge the SUESA decision through Court proceedings.

Representatives from the Authority met with Alistair Beak and Neil Luspic of Digicel on 18 September 2014. And discussed all of the concerns raised by Digicel in its letter of 11 September 2014 including the concerns surrounding the SUESA.

Digicel has not produced the note requested for publication. The Authority has taken the extraordinary step of publishing redacted versions of the 11 September 2014 Digicel letter as well as the 18 September 2014 Authority letter to Digicel prepared after the meeting between the parties, which provides an accurate description of the issues discussed and the positions espoused by both Digicel and the Authority concerning the outstanding SUESA Consultation.

Of particular note is the correction by the Authority of Digicel's attribution to the Authority of CellOne's intention to challenge the Authority's SUESA decision in court. Also, the Authority was clear to point out that Digicel's concern surrounding CellOne's launching of particular technologies was hypothetical and as such the Authority was unwilling to engage it in any detail.

Kyle Masters
Regulatory Authority of Bermuda
3rd Floor, Cumberland House,
1 Victoria Street,
Hamilton HM 11

7th August, 2014

Dear Kyle,

To follow up on our recent meetings with the RA and our most recent conversation I wanted to document some of our concerns and issues that we have raised. I would appreciate it if we can have these points addressed at our meeting next week and written response in due course.

Spectrum reallocation

The RA has not yet indicated a timetable for the return of spectrum and the allocation of any future spectrum to Digicel (eg 850 or 700Mhz). Digicel has raised on three occasions now that while we appreciate that there is a process in place to determine the maximum capacity of any band that an ICOL can control and we are confident that the RA will meet its committed deadline by the end of October to issue the Determination, we remain concerned that a timetable has not been drawn up and shared with the operators to allow us to plan our network optimization post the Determination. Digicel understands that some of this is resting with the Minister in terms of the Policy being issued but we had hoped to have clear guidance by now on the timing of when we need to relinquish and have access to new spectrum. The process should be laid out and explained with clear milestones and Digicel needs to understand this very urgently to enable us to plan accordingly. Given we have requested this information on three previous occasions can we please address these questions specifically and in detail at our next meeting.

Digicel's second concern is that CellOne as indicated by the RA, will challenge the process legally and therefore delay the relinquishment of some of the 850Mhz spectrum. In parallel we envisage a scenario where CellOne is either allowed to utilize the 700 Mhz or continues with its existing 850 Mhz on which to launch LTE, while effectively blocking the process of spectrum re-allocation. Ultimately this would put CellOne in a superior competitive position, especially in relation to offering LTE services. While the RA has advised that there would be penalties and clauses in place which would not allow this scenario, Digicel would like to have this documented and categorically confirmed.

[redacted]

We look forward to meeting with you on the 18th of September.

Best regards,

Alistair Beak
CEO

BY EMAIL - Alistair.beak@digicelgroup.com

18 September 2014

Digicel (Bermuda) Limited
Washington Mall Phase II
22 Church Street
Hamilton

Attention: Alistair Beak- CEO

Dear Alistair,

Re: Digicel Outstanding Issues

Thanks for your letter dated 7 August 2014, received 11 September 2014 via email.

Spectrum reallocation

The timetable for spectrum reallocation is dependent on a number of factors not within the direct control of the Authority. The Minister's Spectrum Policy has yet to be released by the Department of Telecommunications. This Policy will dictate, amongst other things, the Authority's approach to the amount of spectrum issued to any given ICOL holder and the price of a spectrum license for a particular band. Additionally, World on Wireless Limited (WOW) will have to migrate out of the 700MHz band in order to allow mobile operators the opportunity to have use of that band for mobile services. WOW's migration strategy and timeline is largely dependent on the provision of funding and (after funding terms have been settled) the manufacture, delivery and installation of new equipment for WOW's use. The Authority has been working with WOW and the Government on this process and expects to have a clearer idea of when this process will begin, together with an updated estimated timeframe, in the coming weeks.

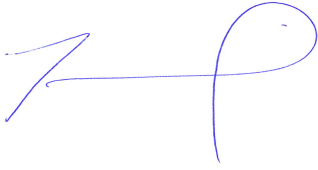
For the above reasons it is not possible to let Digicel or any other ICOL holder have clear milestones at this time. We anticipate that this will change very shortly. The Authority can agree to let Digicel have a clear idea of the plan and milestones just as soon as the matters set out above are settled.

Digicel's concern regarding CellOne is pre-mature. There has been no public declaration by CellOne or the Authority that CellOne will "*challenge the process legally and therefore delay the relinquishment of some of the 850MHz spectrum*". Digicel's attribution of such a position to the Authority is mistaken. The Authority does accept that the issue of spectrum reallocation will be contentious but we are keen to resolve disputes without challenge where possible and expect that all ICOL holders will be making a similar effort. The scenario envisaged by Digicel, which sees CellOne launching LTE whilst blocking the process of spectrum reallocation in another band by refusing to relinquish spectrum is hypothetical. It would be improper for the Authority to be drawn on such a scenario in any detail.

Speaking generally, however, the Authority anticipates a process for the reallocation of spectrum that is fair and in line with the principles set out in section 37 of the Electronic Communications Act which includes a duty to ensure that radio spectrum is managed in a manner that "*(e) preserves and promotes effective and sustainable competition in the provision of electronic communications services...*" Attempts by any ICOL holder to undermine this process and/or to gain a competitive advantage in the process will be dealt with sternly within the Authority's powers. This could include enforcement proceedings resulting in a fine of up to 10% of gross income.

[redacted]

Regards,



Kyle Masters

Legal Advisor