



BERMUDA
**REGULATORY
AUTHORITY**

Email Mobility

Preliminary Report
Preliminary Decision and Order
Date: 8 December 2015
Responses by: 22 December 2015

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1 DEFINITIONS

1. In this Preliminary Report and Preliminary Decision, unless the context otherwise requires:

“ECA” means the Electronic Communications Act 2011.

“Email” means electronic mail service, a method of exchanging digital messages using an Internet-based message delivery service.

“Email Address” identifies an Email box to which Email messages are delivered. An Email Address is made up of three elements: the local part; the @ symbol; and the domain part. For example, in the Email Address info@rab.bm, “info” is the local part, which is followed by the @ symbol, and “rab.bm” is the domain part. The local part identifies the particular recipient within the mail system and the domain part identifies the domain within which the Email box and system are hosted.

“Email Mobility” means the ability of an end-user to change Internet Access Service Providers whilst continuing to receive Emails addressed to the Email Address hosted by a prior Internet Access Service Provider.

“Internet Access Service Provider (IASP)” means a holder of an Integrated Communications Operating Licence (“ICOL”) or individual Communications Operating Licence (“COL”) that provides Internet access service and Email service, either as a stand-alone offering or as integrated component of the Internet Access Service.

“RAA” means the Regulatory Authority Act 2011.

2 INTRODUCTION

2. On 6 August 2013, the Regulatory Authority (“Authority”) issued a Consultation Document entitled “Consultation: Email Mobility” in Matter C13/1000 (the “Email Mobility Consultation”).

3. The Email Mobility Consultation sought stakeholder feedback on a proposal to “facilitate subscribers switching” between Internet Service Providers (“ISPs”) “by ensuring that Email services do not act as a barrier to switching.” More specifically, the Authority proposed that ISPs be required to provide “temporary, free-of-charge Email forwarding services” to subscribers that choose to move their service from one ISP to another.

4. Four parties submitted comments in response to the Authority’s Email Mobility Consultation in August and September 2013. Copies of those comments are available on the Authority’s website, www.rab.bm.

5. Upon review of those comments and having given further consideration to the proposed requirements set forth in the Email Mobility Consultation, the Authority has prepared this Preliminary Report on the comments received in response to the Email Mobility Consultation, as well as a Preliminary Decision and Order that the Authority proposes to adopt in this proceeding.

6. Interested parties are invited to comment on the Authority’s Preliminary Report and Preliminary Decision, the Proposed Order appearing in Annex B and the Proposed General Determination appearing in Annex C, as well as any other issues raised by the Authority’s proposed Email Mobility requirements. The Authority requests that commenting parties, in their responses, reference the numbers of the relevant questions as set forth in this Preliminary Report and Preliminary Decision. A complete list of questions presented appears in Annex A.

3 CONSULTATION PROCEDURE

7. This consultation is being undertaken in accordance with Sections 69 to 73 of the RAA.

8. The consultation period will run from 8 December 2015 to 22 December 2015, during which time the Authority welcomes the participation of all interested parties. Written comments should be submitted to the Authority no later than 5:00 PM on 22 December 2015.

9. Responses to this Preliminary Report and Preliminary Decision and Order should be filed electronically in MS Word or Adobe Acrobat format. Parties filing comments should go to the Authority's website, www.rab.bm, follow the link to the Consultations and Responses page, and click the "Click here to submit a response" icon that appears at the top of the page. **All comments should be clearly marked "Responses to Preliminary Report and Preliminary Decision and Order: Email Mobility"** and should otherwise comply with the Authority's Administrative Rules, which are posted on the Authority's website.

10. The Authority intends to make responses to this consultation available on its website. If a commenting party's response contains any information that is confidential, a clearly marked "Non-Confidential Version," redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version." Redactions should be strictly limited to "confidential information," meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the Authority's Administrative Rules.

11. The Interim Chief Executive is the principal point of contact at the Authority for interested persons during this consultation. He may be contacted by email at kmasters@RAB.bm or by mail at:

Kyle Masters
Interim Chief Executive
Regulatory Authority
Cumberland House – Third Floor South
1 Victoria Street
Hamilton, Bermuda

12. This Preliminary Report and Preliminary Decision and Order is not a binding legal document and does not contain legal, commercial, financial, technical, or

other advice. The Authority is not bound by this Preliminary Report and Preliminary Decision and Order, nor does this document necessarily set out the Authority's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of the Preliminary Report and Preliminary Decision and Order and the due exercise of the Authority of its functions and powers, or the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Authority.

4 LEGISLATIVE CONTEXT

13. Section 2 of the ECA defines “Internet access service” as:

“an electronic communications service that provides an end-user with the ability to access and send information by means of the Internet.”

14. Section 2 of the ECA defines a “public electronic communications service” as:

“an electronic communications service that is offered, and is generally available, to members of the public and, where a general determination has been made under section 14(d), is classified as such in accordance with the general determination.”

15. Section 14(d) of the ECA provides that the Authority is responsible for:

“making general determinations to establish or clarify the distinction between public and private electronic communications networks and services, as necessary, in accordance with this Act and any applicable policies or regulations made by the Minister.”

16. Section 9(2) of the ECA sets forth the functions of the Authority. Section 9(2)(c)(iv) provides that these functions include:

“(c) the making of administrative determinations to provide for the control and conduct of public electronic communications, including—

(iv) procedures to be followed in transferring a customer from one communications provider to another to effectuate customer requests for a change of provider.”

17. Section 26 of the ECA authorises the Authority to make general determinations:

“governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the Authority to protect the rights of customers, subscribers, users and consumers, having due regard for the vulnerability of certain categories of consumers.”

18. The Authority tentatively concludes and proposes to make a General Determination that Internet access service, when provided by a holder of an Integrated Communications Operating Licence (“ICOL”) or individual Communications Operating Licence (“COL”), is a public electronic communications service and that Email Mobility requirements are necessary to remove barriers and thereby “effectuate customer requests for a change of provider” and to protect consumers.

5 EMAIL MOBILITY

5.1. Introduction

19. In the Email Mobility Consultation, the Authority noted that consumers and businesses depend as heavily on Email Addresses as their phone numbers and physical addresses as points of contact with the larger world. Because an Email Address is such a critical point of contact, the loss or change of an Email could be a significant setback to a person's personal or professional life.
20. The Authority also noted that, in the absence of a mechanism for Emails to be forwarded to a new Email Address, individuals and businesses who obtain an Email account from their ISP may be forced to remain with their existing service provider, or to pay for the retention of a stand-alone Email account, thus creating a barrier to changing one's service provider.
21. The Authority also concluded that there did not appear to be any technical barriers that would prevent the Emails sent to a subscriber's original Email Address to be automatically forwarded to the subscriber's new Email Address. Email forwarding services are widely available in the Email marketplace.
22. The Authority therefore proposed to require undertakings providing electronic communications services that also provide electronic mail services, upon termination by a subscriber of the electronic communications service and at the request of the subscriber, to forward all Emails to an Email Address designated by the subscriber for a period of six months at no charge to the subscriber.
23. The Authority also invited comment on its proposals to require such undertakings to:
- provide the subscriber with the option to extend the initial six month period for an indefinite period for a charge;
 - issue an automated notification message informing the sender that the intended recipient has migrated to an alternative Email account and providing the intended recipient's new Email Address; and
 - retain the subscriber's Email Address "unused" for a minimum period of one year following the migration of the subscriber to another service provider.

5.2. Preliminary Report on Email Mobility Consultation Responses

24. Four parties filed comments in response to the Email Mobility Consultation: Digicel Bermuda Limited ("Digicel"); Logic Communications ("Logic"); and two members of the general public. Digicel and Logic are authorised to provide electronic communications services, including Internet access services, pursuant to ICOLs.

25. The substantive responses raise four primary concerns regarding the proposals in the Authority's Email Mobility Consultation, which can be briefly summarized as follows:

- The market for Email service is already competitive, as a result, there is no need for the Authority to adopt the proposed forwarding requirement.
- Consumers do not view the lack Email Mobility as a barrier to changing service providers.
- Email Mobility might impose costs on service providers that would ultimately be passed on to consumers.
- Automatically forwarding a subscriber's new Email Address could have adverse consequences for the subscriber. The subscriber's consent should therefore be required.

Each of these concerns is addressed separately below.

26. In their responses, Logic and Digicel argue that Email Mobility requirements are not necessary because the market for email service is already competitive. Digicel, for example, asserts that "email is seen for what it is: a fully (near perfectly) competitive market."¹ Logic similarly argues that "market forces are working to provide a variety of Email services that clearly satisfy the vast majority of customers."² Both commenters also point to the ubiquitous availability of web-based Email services, such as Google's Gmail and Yahoo's Yahoo Mail, as well as customized domain registry services offered by companies such as GoDaddy and Lunarpages, as evidence that the Authority's intervention into the Email services marketplace is unwarranted.

27. These arguments misapprehend the Authority's concerns. Whatever the merits of the parties' claims with respect to the state of competition in the market for Email service, the Authority's goal is to enhance consumer choice in the market for Internet access services. The proposed Email Mobility requirements are intended to prevent the loss of an Email Address – a critical point of contact for many individuals and businesses – from deterring consumers from changing Internet access service providers should they choose to do so.

28. Logic's suggestion that whatever Email Mobility requirements are adopted in this proceeding be extended to web-based Email Addresses and Email Addresses provided by schools, workplaces, and other organizations is therefore misplaced.³ The Authority finds that these services are readily

¹ Digicel Response to Consultation C13/1000: Email Mobility, at 2, 30 September 2013.

² Logic Response to Consultation Email Portability C13/1000, at 3, 30 September 2013.

³ *Id.* at 2.

distinguishable from the Email services provided by IASPs. Consumers may access Email services such as Gmail or Yahoo Mail without regard to their choice of IASP. By contrast, an Email service provided by an IASP is an inextricable component of the Internet access service. If a subscriber chooses to change IASPs, the subscriber – without Email Mobility – loses access to the subscriber’s Email Address. A requirement that IASPs implement the Authority’s proposed Email Mobility requirements will, by eliminating a barrier to consumer choice, enhance the ability of consumers to change from one IASP to another.

29. Logic also argues that the data gathered by the Authority during the Broadband Survey indicate that consumers do not view the loss of their Email Address as an impediment to changing their service providers.⁴ Logic, for example, notes that when respondents were asked whether they would switch providers if the monthly cost could decrease by 20 percent, eight respondents said they would not switch because they did not want to change their Email Address. When respondents were asked whether they thought switching providers was difficult, 45 respondents thought it was difficult to switch providers, and 24 respondents stated that the reason it was difficult to switch was that they would not be able to keep their Email Address.
30. The Authority disagrees with the conclusion Logic draws from the results of the Broadband Survey. A not insignificant number of those surveyed find it difficult to change service providers, more than half of which identified the loss of their Email Address as the reason. Extrapolating those numbers to the broader population of end-users in Bermuda, the Authority concludes that the inability to retain an Email Address inhibits the ability of consumers to change from one IASP to another and therefore impedes competition in the provision of such services.
31. Again pointing to the results of the Broadband Survey, Logic also notes that only six percent of the respondents thought that the Authority’s purpose was to “simplify internet service.”⁵ As noted above, that is not the purpose of this proceeding. Rather, the Authority’s goal is to enhance consumer choice in the selection of, and promote competition among, IASPs.
32. The third issue raised by the responses to the Email Mobility Consultation, exclusively by a member of the general public, is a concern about the potential cost to consumers of an Email Mobility requirement.⁶ This argument, as set forth by one respondent, is as follows: Emails consume bandwidth; bandwidth is paid for by service providers and then resold to end-users; and therefore the more bandwidth that an Email uses the greater the cost to providers and

⁴ *Id.*

⁵ *Id.*

⁶ Member of the Public Response, Consultation Email Portability C13/1000, at 1, 11 August 2013.

therefore the greater the costs to be passed through by providers to subscribers.

33. In the absence of data demonstrating the contrary, the Authority is not persuaded that its proposed Email Mobility requirements would have a material impact on the costs of IASPs. In this regard, the Authority finds it significant that neither Digicel nor Logic raised this issue.

34. The final issue raised by a member of the general public concerns the forwarding of a subscriber's new Email Address in an automatic response message.⁷ More specifically, the respondent notes that automatically generated Emails could be abused to create spam and adversely impact the delivery of Email. The Authority appreciates this concern and concludes that a subscriber should have the ability to prohibit IASPs from including the subscriber's new Email Address in the automatic response message contemplated by the Authority's proposed Email Mobility requirements.

5.3. Preliminary Decision and Order

35. The Authority proposes to adopt the Proposed Order contained in Annex B and make the Proposed General Determination contained in Annex C to this Preliminary Report and Preliminary Decision. The Authority invites interested parties to comment on the Authority's conclusions with respect to the responses to the Email Mobility Consultation, the proposed Email Mobility requirements set forth below, the Proposed Order, and the Proposed General Determination.

5.3.1 Internet Access Service

36. Section 2 of the ECA defines Internet access service as an electronic communications service. The Authority concludes and proposes to make a general determination pursuant to Section 14(d) of the ECA that Internet access services provided by holders of ICOLs and individual COLs are public electronic communications services.

Consultation Question 1: Are there any reasons why the Authority should not find Internet access services to be public electronic communications

⁷ *Id.*

5.3.2 Email Mobility Requirements

37. The Authority further concludes and proposes to make a general determination in accordance with Sections 9(2)(c)(iv) and 26 of the ECA that the Email Mobility requirements set forth below are necessary to remove the potential barriers to customer requests “to effectuate customer requests for a change of provider” and to protect consumers. These obligations shall apply to IASPs, which are licensees with ICOLs or individual COLs that provide Internet access service and that provide Email service, either as a stand-alone offering or as integrated or bundled component of the Internet access service.

Consultation Question 2: Should the proposed Email Mobility requirements apply only to IASPs or should these requirements also apply to other Email service providers? If so, describe the other Email service providers to which the Email Mobility requirements should apply?

4.3.3 Forwarding of Emails

38. Upon termination of Internet access service by a subscriber, an IASP shall, at the request of the subscriber, forward to an Email Address designated by the subscriber all Emails addressed to the subscriber’s IASP-provided Email Address for a period of 180 days from the date of termination of the subscriber’s service. The IASP shall provide such forwarding service at no charge or cost to the subscriber.

Consultation Question 3: Will the proposed Email forwarding requirement remove a barrier to a subscriber’s ability to change IASPs? Is such a requirement necessary?

Consultation Question 4: Is 180 days an appropriate period to require IASPs to forward a subscriber’s Email to a new Email address?

Consultation Question 5: Is it reasonable to require an IASP to forward a subscriber’s Email at no cost to the subscriber?

39. The IASP’s obligation to forward Emails does not require the IASP to provide the subscriber with direct access to the subscriber’s electronic mailbox hosted by the IASP.

Consultation Question 6: Do you agree that an IASP should not be required to provide a subscriber with direct access to the subscriber’s electronic mailbox hosted by the IASP during the 180-day forwarding period?

40. The subscriber’s request for forwarding service shall be honored by the IASP if the request is made no later than the date on which the IASP terminates

service. The IASP shall be obligated to provide the forwarding service and ensure that it is fully operational within 24 hours of the IASP's receipt of the subscriber's request for forwarding service.

Consultation Question 7: Do you agree that a subscriber should be required to request forwarding service no later than the date on which the IASP terminates service?

Consultation Question 8: Is 24 hours sufficient time to enable an IASP to comply with a subscriber's request for forwarding service?

4.3.4 Notification of Forwarding

41. During the 180-day period during which Emails are forwarded, the IASP shall generate an automatic response message to all Email senders (those sending Emails to the subscriber's IASP-provided Email Address) as follows:

Subject: Your Email Has Been Forwarded

Email Address [INSERT ORIGINAL EMAIL ADDRESS] is now inactive. Your Email has been automatically forwarded to the recipient's new Email Address.

**The new Email Address of the recipient is as follows:
[INSERT DESIGNATED EMAIL ADDRESS]**

Kindly update the recipient's contact details accordingly as forwarding from this Email Address may be discontinued.

42. At the subscriber's request, the IASP shall not disclose the subscriber's new Email Address in the automatic response message.

Consultation Question 9: Should an automatic response message be an Email Mobility requirement and, if so, is the proposed language of the automatic response message appropriate?

Consultation Question 10: Should the ISAP be required to give a subscriber the option whether or not to include their new address in this automatic response?

Consultation Question 11: Should a subscriber requesting forwarding service have the ability to request that its new Email Address not be included in the automatic response message?

4.3.5 Forwarding Beyond the Initial 180-Day Period

43. Thirty days prior to the end of the initial 180-day period during which the IASP is required to forward the subscriber's Emails free of charge to the subscriber's new Email Address and provide an automatic response message, the IASP shall offer the subscriber an option to extend the forwarding service and automatic response message so long as is mutually agreed for a reasonable fee. The IASP shall offer the subscriber an option to further extend the forwarding service and automatic response message 30 days prior to the end of the extended forwarding service.
44. The IASP shall inform the subscriber at the outset of the initial 180-day forwarding period that the forwarding service may be extended for a reasonable fee and must disclose the amount of that fee.
45. The IASP's fee for the forwarding service and automatic response message shall be set in accordance with the reasonable costs incurred in providing the service. The Authority reserves the right to review the amount of such fee.

Consultation Question 12: Is it necessary or desirable to require IASPs to provide forwarding service after the initial 180-day period? If so, should such an extended forwarding service be provided at the subscriber's expense?

Consultation Question 13: Are there other issues that the Authority should consider before adopting a requirement that IASPs provide forwarding service beyond the 180-day period?

4.3.6 Reallocation of the Subscriber's Email Address

46. The IASP shall not reallocate a subscriber's Email Address to another subscriber prior to the end of the 180-day forwarding period or as extended at the request of the subscriber. The IASP shall thereafter be free to reallocate the Email Address to another subscriber.

Consultation Question 14: Is the proposed requirement that an IASP not reallocate the subscriber's email address reasonable? Should it be modified in any way?

6 CONCLUSION

47. In furtherance of the proposals set forth above, the Authority proposes to adopt the Proposed Order contained in Annex A to this Preliminary Report and Preliminary Decision, and to make the Proposed General Determination contained in Annex B.

Consultation Question 15: Are there any other issues raised by this Preliminary Report, Preliminary Decision and Order, and Proposed General Determination that the Authority should consider before making a final decision?

ANNEX A

CONSULTATION QUESTIONS

Question 1: Are there any reasons why the Authority should not find Internet access services to be public electronic communications services?

Question 2: Should the proposed Email Mobility requirements apply only to IASPs or should these requirements also apply to other Email service providers? If so, describe the other Email service providers to which the Email Mobility requirements should apply?

Question 3: Will the proposed Email forwarding requirement remove a barrier to a subscriber's ability to change IASPs? Is such a requirement necessary?

Question 4: Is 180 days an appropriate period to require IASPs to forward a subscriber's Email to a new Email address?

Question 5: Is it reasonable to require an IASP to forward a subscriber's Email at no cost to the subscriber?

Question 6: Do you agree that an IASP should not be required to provide a subscriber with direct access to the subscriber's electronic mailbox hosted by the IASP during the 180-day forwarding period?

Question 7: Do you agree that a subscriber should be required to request forwarding service no later than the date on which the IASP terminates service?

Question 8: Is 24 hours sufficient time to enable an IASP to comply with a subscriber's request for forwarding service?

Question 9: Should an automatic response message be an Email Mobility requirement and, if so, is the proposed language of the automatic response message appropriate?

Question 10: Should the ISAP be required to give a subscriber the option whether or not to include their new address in this automatic response?

Question 11: Should a subscriber requesting forwarding service have the ability to request that its new Email Address not be included in the automatic response message?

Question 12: Is it necessary or desirable to require IASPs to provide forwarding service after the initial 180-day period? If so, should such an extended forwarding service be provided at the subscriber's expense?

Question 13: Are there other issues that the Authority should consider before adopting a requirement that IASPs provide forwarding service beyond the 180-day period?

Question 14: Is the proposed requirement that an IASP not reallocate the subscriber's email address reasonable? Should it be modified in any way?

Question 15: Are there any other issues raised by this Preliminary Report, Preliminary Decision and Order, and Proposed General Determination that the Authority should consider before making a final decision?

ANNEX B



BERMUDA
**REGULATORY
AUTHORITY**

Email Mobility

Proposed Order

Matter: C /

Date: [ISSUE DATE]

1. The Regulatory Authority, pursuant to Section 62 of the Regulatory Authority Act 2011 and Sections 9, 14 and 26 of the Electronic Communications Act 2011, hereby:
 - (a) Adopts the General Determination, attached hereto, determining that Internet Access Services provided by Internet Access Service Providers are Public Electronic Communications Services and establishing requirements for Email Mobility as set forth therein.
 - (b) Directs the Interim Chief Executive of the Regulatory Authority to forward the General Determination to the Cabinet Secretary; for Gazetting and
 - (c) Authorises the General Determination to be effective on the date of its publication in the Official Gazette.
2. So ordered this ___ day of _____ 2015.

ANNEX C



BERMUDA
**REGULATORY
AUTHORITY**

Email Mobility

Proposed General Determination

Matter: C /

Date: [ISSUE DATE]



BERMUDA

REGULATORY AUTHORITY (EMAIL MOBILITY) GENERAL DETERMINATION 2015

BR [X] / 2015

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The Regulatory Authority, in the exercise of the power conferred by Section 62 of the Regulatory Authority Act 2011 and in accordance with Sections 9, 14(d) and 26 of the Electronic Communications Act 2011 makes the following General Determination:

Citation

1. The General Determination, the terms and conditions of which are contained in the Schedule, may be cited as the Regulatory Authority (Email Mobility) General Determination 2015.

Interpretation

2. In this General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011 ("the RAA"), the Electronic Communications Act 2011 ("the ECA"), and the Schedule.

General Purpose

3. This General Determination provides for a determination that Internet Access Services provided by licensees with Integrated Communications Operating Licences and individual Communications Operating Licences are Public Electronic Communications Services, and for the adoption and implementation of Email Mobility.

Determination

4. (1) This General Determination is made pursuant to the Consultation entitled "Email Mobility" (Matter C13/1000), and the Regulatory Authority's decision on it.

(2) Taking into account the responses to the Consultation and for the reasons given in the Decision, the Regulatory Authority finds that a determination that Internet Access Services provided by licensees with Integrated Communications Operating Licences and individual Communications Operating Licences are Public Electronic Communications Services and that the adoption and implementation of Email Mobility are in the public interest and would benefit consumers of Electronic Communications Services.

Terms and Conditions of General Determination

5. (1) The Schedule to this General Determination has effect.

(2) The Schedule is published on the Regulatory Authority's website (www.rab.bm), and is also available for inspection at the offices of the Regulatory Authority (Cumberland House, 1 Victoria Street, Hamilton) during ordinary business hours.

Effective Date of General Determination

6. This General Determination shall become effective on the day it is published in the Official Gazette.

Signed this ___ day of _____ 20[15]



BERMUDA
**REGULATORY
AUTHORITY**

**Schedule to Regulatory Authority
(Email Mobility) General
Determination 2015**

Schedule

Matter: C /

Date: [ISSUE DATE]

This General Determination is made by the Regulatory Authority pursuant to Section 62 of the Regulatory Authority Act 2011, and in accordance with Sections 9, 14(d) and 26 of the Electronic Communications Act 2011, and determines that Internet Access Services provided by holders of Integrated Communications Operating Licences and individual Communications Operating Licences are Public Electronic Communications Services and establishes requirements to effectuate the transfer of customers from one electronic communications service provider to another.

1. **DEFINITIONS**

1. In this General Determination, unless the context otherwise requires:

“ECA” means the Electronic Communications Act 2011.

“Email” means electronic mail service, a method of exchanging digital messages using an Internet-based message delivery service.

“Email Address” identifies an Email box to which Email messages are delivered. An Email Address is made up of three elements: the local part; the @ symbol; and the domain part. For example, in the Email Address info@rab.bm, “info” is the local part, which is followed by the @ symbol, and “rab.bm” is the domain part. The local part identifies the particular recipient within the mail system and the domain part identifies the domain within which the Email box and system are hosted.

“Email Mobility” means the ability of an end-user to change Internet Access Service Providers whilst continuing to receive Emails addressed to the Email Address hosted by a prior Internet Access Service Provider.

“Internet Access Service Provider (IASP)” means a holder of an Integrated Communications Operating Licence (“ICOL”) or individual Communications Operating Licence (“COL”) that provides Internet Access Service and Email service, either as a stand-alone offering or as integrated component of the Internet Access Service.

“RAA” means the Regulatory Authority Act 2011.

2. INTERPRETATION

2. For purposes of interpreting this General Determination:
 - (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in this General Determination, the ECA, the RAA, and the Interpretation Act 1951;
 - (b) where there is any conflict between the provisions of this General Determination and the ECA or the RAA, the provisions of the ECA and RAA, as the case may be, shall prevail;
 - (c) terms defined herein and in the ECA and RAA have been capitalised;
 - (d) headings and titles used in this General Determination are for reference only and shall not affect its interpretation or construction;
 - (e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
 - (f) a document referred to in this General Determination shall be incorporated into and form part of the General Determination and a reference to a document is to a document as modified from time to time;
 - (g) expressions cognate with those used herein shall be construed accordingly;
 - (h) use of the word “include” or “including” is to be construed as being without limitation;
 - (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall include a reference to any part unless explicitly limited; and
 - (j) this General Determination shall be construed by reference to the Consultation Document, Preliminary Report and Preliminary Decision and Order, and Decision issued in the Consultation entitled “Email Mobility,” Matter C / . Where there is any conflict between the Consultation Document and the Preliminary Report and Preliminary Decision and Order, the provisions of the Preliminary Report and Preliminary Decision and Order shall prevail. Where there is any conflict between the Preliminary Report and Preliminary Decision and Order and the Decision, the provisions of the Decision shall prevail. Where there is any conflict between the Decision and the General Determination, the provisions of the General Determination shall prevail.

3. **LEGISLATIVE BACKGROUND AND PURPOSE**

3. Section 62(1) of the RAA authorises the Regulatory Authority to make General Determinations in order to carry out the provisions and purposes of the RAA and the ECA.

4. Section 14(d) of the ECA authorises the Regulatory Authority to make General Determinations regarding Public Electronic Communications Services.

5. Section 9(2)(c)(iv) of the ECA authorises the Regulatory Authority to make Administrative Determinations regarding Public Electronic Communications, including procedures to be followed in transferring a customer from one communications provider to another to effectuate customer requests for a change of service provider.

6. Section 26 of the ECA authorises the Regulatory Authority to make General Determinations to protect the interests of consumers.

7. In accordance with Sections 62(2) and 69(1) of the RAA, the Regulatory Authority is required to conduct a Public Consultation in order to adopt an Administrative Determination.

8. In accordance with Section 70(1) of the RAA, the Regulatory Authority published a Consultation Document entitled "Email Mobility" on 6 August 2013, thereby initiating a Public Consultation inviting interested parties to comment on Email Mobility proposals. On [REDACTED] October 2015, the Regulatory Authority issued a Preliminary Report and Preliminary Decision and Order also entitled "Email Mobility," which invited interested parties to comment on the Regulatory Authority's Email Mobility proposals, Proposed Order and Proposed General Determination.

4. DETERMINATION

9. The Regulatory Authority determines that Internet Access Services provided by IASPs are Public Electronic Communications Services.

10. The Regulatory Authority further determines that IASPs that provide Email service, either as a stand-alone offering or as integrated or bundled component of Internet Access Service, shall comply with the following Email Mobility requirements and procedures:

4.1. Forwarding of Emails

11. Upon termination of Internet Access Service by a subscriber, an IASP shall, at the request of the subscriber, forward to an Email Address designated by the subscriber all Emails addressed to the subscriber's IASP-provided Email Address for a period of 180 days from the date of termination of the subscriber's service. The IASP shall provide such forwarding service at no charge or cost to the subscriber.

12. The IASP's obligation to forward Emails does not require the IASP to provide the subscriber with direct access to the subscriber's email box hosted by the IASP.

13. The IASP shall honor a subscriber's request for Email forwarding service if made no later than the date on which the subscriber terminates service. The IASP shall be obligated to commence the Email forwarding service and ensure that it is fully operational within 24 hours of the IASP's receipt of the subscriber's request for forwarding service.

4.2. Notification of Forwarding

14. During the 180-day period during which Emails are forwarded, the IASP shall generate an automatic response message to all Email senders (those sending emails to the subscriber's IASP-provided Email Address) that identifies the subscriber's new Email Address and advises the sender that its Email has been forwarded to the subscriber's new Email Address.

15. The subject line of the automatic response message shall read "Your Email Has Been Forwarded." The text of the automatic response message shall read as follows:

Email Address [INSERT ORIGINAL EMAIL ADDRESS] is now inactive. Your Email has been automatically forwarded to the recipient's designated Email Address.

**The designated Email Address of the recipient is as follows:
[INSERT DESIGNATED EMAIL ADDRESS].**

Kindly update the recipient's contact details accordingly as forwarding from this Email Address may be discontinued.

16. At the subscriber's request, the IASP shall not disclose the subscriber's new Email Address in the automatic response message, and shall delete the following language from the automatic response message: "The designated Email Address of the recipient is as follows: [INSERT DESIGNATED EMAIL ADDRESS]."

4.3. Forwarding Beyond the Initial 180-Day Period

17. Thirty days prior to the end of the initial 180-day period during which the IASP is required to forward the subscriber's Emails free of charge to the subscriber's new Email Address and provide an automatic response message, the IASP shall offer the subscriber an option to extend the forwarding service and automatic response message for an additional period at a reasonable fee. The IASP shall offer the subscriber an option to further extend the forwarding service and automatic response message 30 days prior to the end of the extended forwarding service.

18. The IASP shall inform the subscriber at the outset of the initial 180-day forwarding period that the forwarding service may be extended for a reasonable fee and shall disclose the amount of that charge at that time.

19. The IASP's charge for the forwarding service and automatic response message shall be set in accordance with the reasonable costs incurred in providing the service. The RA reserves the right to review the amount of such fee for reasonableness.

20. The extended forwarding service must be made available for such period as is mutually agreed.

4.4. Reallocation of the Subscriber's Email Address

21. The IASP shall not reallocate the subscriber's email address to another subscriber prior to the end of the 180-day forwarding period or as extended at the request of the subscriber. The IASP shall thereafter be free to reallocate the email address to another subscriber.

5. **EFFECTIVE DATE; COMPLIANCE**

22. This General Determination will become effective on the date on which it is published in the Gazette.

23. IASPs shall be in compliance with the Email Mobility requirements of this General Determination no later than 30 days after its publication in the Gazette.

Signed this ____ day of _____ 2015.

Commissioner
Regulatory Authority