



BERMUDA
**REGULATORY
AUTHORITY**

Communications Operating Licences: Exemption for Passive Infrastructure Providers

Consultation Summary, Order, General Determination
and Final Decision

Matter: C13/847

Date: 6 August 2013

TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	1
2	LEGISLATIVE FRAMEWORK.....	2
3	COMMUNICATIONS OPERATING LICENCE EXEMPTION FOR PASSIVE INFRASTRUCTURE PROVIDERS	3
4	COMPLIANCE.....	8
5	CONCLUSION.....	9
	APPENDIX – ORDER, GENERAL DETERMINATION AND FINAL DECISION	10

1 EXECUTIVE SUMMARY

1. Section 12 of the Electronic Communications Act 2011 (“ECA”) requires all operators of electronic communications networks and providers of electronic communications services (collectively, “electronic communications”) to secure a licence, unless the Regulatory Authority makes a general determination expressly granting an exemption from the ECA's licensing requirement. Sections 16(2)(c) and 16(2)(d) of the ECA address the circumstances in which the Regulatory Authority may exempt a person from the requirement to hold a communications operating licence (“COL”).

2. On 29 April 2013, the Regulatory Authority made a General Determination exempting certain providers of electronic communications from the requirement to hold a COL.¹ In that same General Determination, the Regulatory Authority established procedures governing the creation of additional licence exemptions.

3. In accordance with those procedures, the Regulatory Authority initiated this public consultation on 6 June 2013 by issuing a Consultation Document that proposed the creation of an additional licence exemption for Passive Infrastructure Providers. More specifically, the Regulatory Authority proposed to make a general determination exempting persons that provide on a commercial basis “network elements that are not active,” as that term is used in the definition of “electronic communications network” in Section 2 of the ECA, from the requirement to obtain a COL

4. The consultation concluded on 8 July 2013. Three parties filed responses to the Consultation Document. Upon consideration of those responses, the Regulatory Authority has prepared this Final Decision, and hereby makes a general determination establishing an exemption from the requirement to hold a COL for Passive Infrastructure Providers if they operate within the requirements and limitations of the exemption.

5. Passive Infrastructure Providers will be required to register with the Regulatory Authority and provide the Authority with such information as the Authority may require to monitor and ensure compliance with the terms of the exemption and to promote coordination among licensees that use such infrastructure.

6. The exemption from the requirement to obtain a COL does not relieve Passive Infrastructure Providers of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.

7. Passive Infrastructure Providers will also remain subject to the provisions of Part 4 of the ECA, as well as Part 7 of the Regulatory Authority Act 2011 (“RAA”), notwithstanding their exemption from the requirement to obtain a COL.

¹ The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013 (the “Exemptions and Class Licences General Determination”).

2 LEGISLATIVE FRAMEWORK

8. In the Consultation Document, the Regulatory Authority reviewed the provisions Section 12 of the ECA that require all operators of electronic communications networks and providers of electronic communications services (collectively referred to in the ECA as “electronic communications”) to secure a licence.

9. The Regulatory Authority also reviewed the definitions of “electronic communications network” and “electronic communications service” set forth in Section 2 of the ECA that establish the broad reach of Section 12’s licencing requirement.

10. Finally, the Regulatory Authority considered the requirements of Sections 16(1)(c), 16(2)(c) and 16(2)(d) of the ECA that authorize the Regulatory Authority to exempt persons from the requirement to obtain a COL.

11. None of the parties responding to the Consultation Document took issue with the Regulatory Authority’s analysis of the relevant provisions of the ECA.

3 COMMUNICATIONS OPERATING LICENCE EXEMPTION FOR PASSIVE INFRASTRUCTURE PROVIDERS

3.1 Introduction

12. In the Consultation Document, the Regulatory Authority proposed to make a general determination exempting Passive Infrastructure Providers from the obligation to obtain a COL. More specifically, the Regulatory Authority proposed to exempt persons that provide on a commercial basis “network elements that are not active,” as that term is used in the definition of “electronic communications network” in Section 2 of the ECA, from the requirement to obtain a COL, if they operate within the requirements and limitations of the exemption.

13. The Regulatory Authority tentatively concluded that Passive Infrastructure Providers should be required to register with the Authority and provide such information as the Authority may require to monitor and ensure compliance with the terms of the exemption and to promote coordination among licensees that use such infrastructure.

14. The Regulatory Authority also tentatively concluded that the exemption from the requirement to obtain a COL would not relieve a Passive Infrastructure Provider of the obligation to secure radio spectrum licences or permits for radio apparatus, where permitted or required.

15. Finally, the Regulatory Authority tentatively concluded that Passive Infrastructure Providers, as communications providers within the meaning of Section 2 of the ECA, would remain subject to the provisions of Part 4 of that Act.

16. The comments filed in response to the Consultation Document were supportive of the proposed exemption. The commenting parties, however, urged the Regulatory Authority to clarify the definition of Passive Infrastructure and to modify several conditions of the proposed exemption. These suggestions are discussed below.

3.2 Passive Infrastructure Providers

17. Passive Infrastructure Providers are persons² that provide, on a commercial basis, electronic communications network elements that are not active (“Passive Infrastructure”) on either a shared or dedicated basis. In the Consultation Document, the Regulatory Authority defined Passive Infrastructure as “ducts, poles, towers, masts, shelters, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements.” The Regulatory Authority also made clear that Passive Infrastructure does not include the other electronic communications network elements identified in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio

² As defined in the Exemption attached to the General Determination appearing as an Appendix to this Final Decision, a person is “a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person.”

apparatus and radio stations. As the Regulatory Authority explained, the defining characteristic of Passive Infrastructure is that, while it may be used in the provision of electronic communications, Passive Infrastructure cannot, standing alone, be used for the conveyance of signals without the addition of electronic communications network elements that are active.

18. Bermuda Electric Light Company Limited (“BELCO”) concurs in the Regulatory Authority’s proposed definition of Passive Infrastructure Provider and, by implication, the definition of Passive Infrastructure. Quantum Communications Limited (“Quantum”) and LinkBermuda Ltd. (“LinkBermuda”) also concur in the Regulatory Authority’s proposed definitions, but request that the definition of Passive Infrastructure be aligned with the definition of “associated facilities” in Section 2 of the ECA. The Regulatory Authority finds merit in their suggestion and the definition of Passive Infrastructure has been modified accordingly.

19. In the Consultation Document, the Regulatory Authority tentatively concluded that the provision of Passive Infrastructure on a commercial basis for the purpose of facilitating the provision of electronic communications constitutes the operation of an electronic communications network within the meaning of Section 2 of the ECA. None of the commenting parties disagreed and the Regulatory Authority affirms that conclusion here.

20. In the Consultation Document, the Regulatory Authority also tentatively concluded that the provision of Passive Infrastructure need not be regulated through the licensing of Passive Infrastructure Providers as such infrastructure may only be provided to, and used by, persons with individual COLs (including Integrated Communications Operating Licences (“ICOLs”)), whose electronic communications networks and services are subject to regulation by the Authority. Although BELCO agrees that Passive Infrastructure Providers should be exempt from the obligation to obtain a COL, BELCO notes that it also provides “other parties who are not licensed providers of electronic communications” with access to its Passive Infrastructure. By way of example, BELCO points to the access provided to the Government of Bermuda for street lights and for temporary meters for events such as the annual Bermuda Day and Labor Day celebrations.

21. It is not the Regulatory Authority’s intent to prevent Passive Infrastructure Providers from providing such access to persons who are not engaged in the provision of electronic communications. Accordingly, the Regulatory Authority affirms its tentative conclusion and makes a general determination that Passive Infrastructure Providers should be exempt from the requirement to hold a COL. Such infrastructure, however, may be provided to, and used by, persons engaged in electronic communications only if they hold individual COLs (including ICOLs). Such infrastructure may also be provided to class licensees and other persons exempt from the obligation to hold a COL, but only within their respective premises or campus.³ Given the very different nature of providing access for street lights and temporary meters, on the one hand, and access for transmission facilities, on the other, the Regulatory Authority expects strict compliance by Passive Infrastructure Providers with this requirement.

³ As defined in the Exemption attached to the General Determination appearing as an Appendix to this Final Decision, a campus is “a contiguous parcel of land, not separated by public or private land, on which one or more structures may be located.”

22. The Regulatory Authority therefore concludes that an exemption satisfies the requirements of Section 16(2)(c)(i) of the ECA. Only the limited conditions set forth below need apply to Passive Infrastructure Providers, as the ultimate users of Passive Infrastructure engaged in the provision of electronic communications are subject to regulation by the Authority. The Regulatory Authority also concludes that an exemption satisfies the requirements of Section 16(2)(c)(ii) of the ECA. No Regulatory Authority or Government authorization fees are required of Passive Infrastructure Providers as such fees will be paid by the operators with COLs that use such Passive Infrastructure in the provision of electronic communications.

23. The Regulatory Authority further concludes that an exemption satisfies the requirements of Section 16(2)(d)(i) of the ECA. Given that Passive Infrastructure will be of interest to only a limited group of potential subscribers, the provision of Passive Infrastructure can be characterized as being provided on a private rather than a public basis.

24. The Regulatory Authority recognizes that Passive Infrastructure Providers, unlike other persons who have been granted an exemption from the requirement to hold a COL, own infrastructure that extends beyond their premises and, if relevant, campus. Because Passive Infrastructure cannot, standing alone, be used for the conveyance of signals, the concerns which led the Regulatory Authority to prohibit private networks operators, value-added service providers and Wi-Fi service providers from self-provisioning network facilities outside their premises or campus do not apply here. Accordingly, Passive Infrastructure Providers may self-provision network facilities outside their premises or campus.

25. Passive Infrastructure Providers will be required to register with the Regulatory Authority, using the form posted on the Authority's website. Passive Infrastructure Providers will also be required to provide the Regulatory Authority with such information as the Authority may require to monitor and ensure compliance with the terms of the exemption. In addition, Passive Infrastructure Providers will be required to provide such reports as the Regulatory Authority may require that identify the Passive Infrastructure currently being provided to licensees with individual COLs and any planned works relating to Passive Infrastructure under their control. Although BELCO "understands and appreciates the Regulatory Authority's stated objective for requiring" such reports, "and agrees that some level and frequency of reporting is necessary," BELCO requests that "careful thought" be given to the form and substance of such a reporting requirement. The Regulatory Authority appreciates BELCO's concerns and will work with Passive Infrastructure Providers to develop periodic reporting requirements that satisfy the Authority's needs without unnecessarily burdening industry.

26. In order to ensure that Passive Infrastructure Providers operate as outlined above, the Regulatory Authority makes a further general determination that an exemption for such providers should be subject to the following conditions:

Condition 1. Passive Infrastructure Providers subject to this exemption may only include persons “whose principal line of business does not include the provision of electronic communications.”⁴

Condition 2. Passive Infrastructure Providers may provide Passive Infrastructure to persons engaged in the provision of electronic communications only if such persons are identified on the Regulatory Authority’s website as holders of individual COLs and ICOLs. Such infrastructure may also be provided to class licences (identified as such on the Regulatory Authority’s website) and to other persons exempt from the requirement to hold a COL, but only within their respective premises or campus.

Condition 3. Passive Infrastructure Providers shall provide the Regulatory Authority with such periodic reports identifying the Passive Infrastructure that is currently being provided to licensees with individual COLs and any planned works relating to Passive Infrastructure under their control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, etc., as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among holders of individual COLs that wish to utilise such Passive Infrastructure.

27. In their comments, LinkBermuda and Quantum suggest that two additional conditions be imposed on Passive Infrastructure Providers. First, they propose that the exemption be conditioned on a requirement that, at the request of the Regulatory Authority, Passive Infrastructure Providers “submit terms of access to the RA for approval in a Reference Offer and allow fixed infrastructure access seekers and suppliers the right to petition and seek a rate investigation if they considered that prices did not reflect cost.” The proposed condition would permit the Regulatory Authority to impose such an obligation without regard to whether a Passive Infrastructure Provider has significant market power, as that term is defined by the ECA. The Regulatory Authority concludes that such a condition is neither proportionate nor necessary at this time. As LinkBermuda and Quantum recognize, *ex ante* remedies are currently the subject of a separate consultation.⁵ Should the need arise for additional remedies, the Regulatory Authority, subject to the constraints of the ECA, can consider them at that time, as Passive Infrastructure Providers remain subject to the provisions of Part 4 of the ECA. The Regulatory Authority may also take appropriate action pursuant to Part 7 of the RAA.

28. Second, LinkBermuda and Quantum propose that the exemption be conditioned on a requirement that, at the Regulatory Authority’s request, Passive Infrastructure Providers be required to “participate in any Industry formed licenced carrier group for the purpose of promoting coordination among Licensees with Individual COLs that wish to utilise Passive Infrastructure, including the creation of joint user rules and procedures to facilitate access to Passive Infrastructure and timely resolution of issues as they arise.”

⁴ The Regulatory Authority notes that BELCO, LinkBermuda and Quantum agree with this condition.

⁵ See Further Consultation: Obligations for Operators with Significant Market Power – Final Draft General Determination, RM01/13-999.

The Regulatory Authority finds substantial merit in the suggestion that an industry group be established to address Passive Infrastructure access issues. The Regulatory Authority, however, concludes that it would be inappropriate to make participation in a yet-to-be formed industry group a condition of the exemption. The Regulatory Authority anticipates soliciting industry input on the formation of such a group and, if and when formed, has the ability to encourage or direct the participation of the relevant parties in such an organization, including through a modification of the conditions of the exemption.

4 COMPLIANCE

29. The Regulatory Authority recognizes that, upon the adoption of an exemption for Passive Infrastructure Providers, industry will require a reasonable amount of time within which to comply with the terms and conditions of the exemption. The Regulatory Authority concludes that it would be reasonable to expect industry to comply with the new exemption within 90 days of the effective date of the General Determination.

5 CONCLUSION

30. In furtherance of the conclusions set forth above, the Regulatory Authority adopts the General Determination set forth in the Appendix.

**Appendix – Order, General
Determination and Final Decision**



BERMUDA

**REGULATORY
AUTHORITY**

Communications Operating Licences: Exemption for Passive Infrastructure Providers

Order

Matter: C13/847

1. The Regulatory Authority, pursuant to Section 62 of the Regulatory Authority Act 2011 and Sections 9, 14, 16 and 17 of the Electronic Communications Act 2011, hereby:

(a) Adopts the General Determination, attached hereto, exempting persons who provide passive infrastructure from the requirement to hold a communications operating licence and amending The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013;

(b) Directs the Chief Executive of the Regulatory Authority to forward the General Determination to the Cabinet Secretary; and

(c) Makes the General Determination effective on the date of its publication in the Gazette.

2. So ordered this 6th day of August 2013.



BERMUDA
**REGULATORY
AUTHORITY**

Communications Operating Licences: Exemption for Passive Infrastructure Providers

General Determination
Matter: 13/847

This General Determination is made by the Regulatory Authority pursuant to Section 62(1) of the Regulatory Authority Act 2011 and, in accordance with Sections 16(1)(c), 16(2)(c) and 16(2)(d) of the Electronic Communications Act 2011, establishes an Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence by amending Attachment A to The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013, as set forth in the attached Exemption From Requirement to Hold a Communications Operating Licence.

I. DEFINITIONS

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

“**ECA**” means the Electronic Communications Act 2011;

“**Exemptions and Class Licences Determination**” means The Regulatory Authority (Exemptions and Class Licences) General Determination 2013, BR 46/2013.

“**Official Website**” means the website established by the Regulatory Authority pursuant to Section 18 of the RAA;

“**Passive Infrastructure**” means antennae, towers and other supporting structures, ducts, conduits, poles, masts, manholes, cabinets, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements. For the avoidance of doubt, Passive Infrastructure does not include the other electronic communications network elements identified in the definition of Electronic Communications Network in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio apparatus and radio stations;

“**Person**” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person; and

“**RAA**” means the Regulatory Authority Act 2011.

II. INTERPRETATION

2. For the purpose of interpreting this General Determination:

(a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them herein, the ECA, RAA and Interpretation Act 1951;

(b) where there is any conflict between the provisions of this General Determination and the ECA or RAA, the provisions of the ECA or 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 herein are for reference only and shall not affect the interpretation or construction of this General Determination;

- (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 herein shall be incorporated into and form part of this 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; and
- (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3. This General Determination shall be construed by reference to the Consultation Document and Final Decision issued in the Public Consultation entitled “Communications Operating Licences: Exemption for Passive Infrastructure Providers,” Matter C13/847. Where there is any conflict between the Consultation Document and the Final Decision, the provisions of the Final Decision shall prevail. Where there is any conflict between the Final Decision and this General Determination, the provisions of this General Determination shall prevail.

III. LEGISLATIVE BACKGROUND AND PURPOSE

4. 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.

5. Section 12 of the ECA requires all operators of Electronic Communications Networks and all providers of Electronic Communications Services (collectively, “Electronic Communications”), within the territorial limits of Bermuda or between Bermuda and another country, to secure a licence.

6. Section 16(1)(c) of the ECA empowers the Regulatory Authority to grant exemptions from the requirement to hold a COL. Section 16(2)(c) of the ECA authorizes the Regulatory Authority to grant exemptions from the requirement to hold a COL if:

- (a) no conditions, or only limited conditions, need apply to the exempted group of communications providers or the provision of the exempted type or types of Electronic Communications; and
- (b) no Regulatory Authority Fees or Government Authorization Fees are required in respect of the exempted providers of Electronic Communications.

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 “Communications Operating Licences: Exemption for Passive Infrastructure Providers” on 6 June 2013, thereby initiating a Public Consultation

inviting stakeholders and interested parties for their comments on a draft General Determination establishing an Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence that appeared as Appendix A to the Consultation Document. The Public Consultation was closed on 8 July 2013. In accordance with Section 72(4) of the RAA, the Regulatory Authority published a Final Decision in the Public Consultation, setting out its conclusions regarding the issues raised during the Public Consultation process.

9. This General Determination adopts the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence by amending Attachment A to the Exemptions and Class Licences General Determination, as set forth in the attached Exemption From Requirement to Hold a Communications Operating Licence.

IV. MAIN PROVISIONS

1. Determination on the adoption of the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a COL and the amendment of the Exemptions and Class Licences General Determination

10. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 16(1)(c), 16(2)(c) and 16(2)(d) of the ECA, the Regulatory Authority hereby determines that the Exemption for Persons who provide Passive Infrastructure from the requirement to hold a communications operating licence and the amendment to Attachment A to the Exemptions and Class Licences General Determination, as set forth in the attached Exemption From Requirement to Hold a Communications Operating Licence, are adopted.

2. Procedures that apply with respect to the registration of Persons who provide Passive Infrastructure

11. Pursuant to Section 62(1) of the RAA, and in accordance with Sections 16(1)(c), 16(2)(c) and 16(2)(d) of the ECA, the Regulatory Authority determines that the following procedures shall apply with respect to the registration of Persons who provide Passive Infrastructure.

12. A registration requirement will enable the Regulatory Authority to monitor compliance with the conditions of the Exemption of Persons who provide Passive Infrastructure.

13. Therefore, Persons who provide Passive Infrastructure that satisfy Condition 7 of the Exemption will be subject to a registration requirement.

14. A Person who provides Passive Infrastructure will be required to register with the Regulatory Authority electronically, using a form posted on the Official Website.

15. When registering, such Person will provide the following information:

- (a) name;
- (b) address;

- (c) telephone number, fax number and/or email address;
- (d) a certification that the Person satisfies the conditions of the Exemption; and
- (e) a certification that the Person will comply with the conditions of the Exemption.

16. In addition to the information required pursuant to Paragraph 15, a Person who provides Passive Infrastructure will provide the Regulatory Authority with such periodic reports identifying the Passive Infrastructure that is currently being provided to licensees with COLs and any planned works relating to the Passive Infrastructure under their control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, *etc.*, as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among holders of COLs that wish to utilise such Passive Infrastructure.

V. EFFECTIVE DATE; COMPLIANCE

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

18. No later than 90 days after the effective date of this General Determination, Persons who provide Passive Infrastructure pursuant to the Exemption must:

- (a) register with the Regulatory Authority; and
- (b) be in compliance with the Conditions of the Exemption.



BERMUDA

REGULATORY
AUTHORITY

**Exemption From Requirement
to Hold a Communications Operating
Licence**

TABLE OF CONTENTS

1	DEFINITIONS.....	1
2	INTERPRETATION.....	2
3	EXEMPTION	2
4	PRIVATE NETWORKS	4
5	VALUE-ADDED SERVICES.....	4
6	WI-FI SERVICES	4
7	PASSIVE INFRASTRUCTURE.....	5

1 DEFINITIONS

In this Exemption, unless the context otherwise requires:

“Affiliate” means any entity that owns, or is owned by, another entity, as evidenced by the ownership of 25 per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an agreement or arrangement of any type;

“Authorizations Register” means the register of Persons granted a Class Licence and maintained by the Regulatory Authority;

“Campus” means a contiguous parcel of land, not separated by public or private land, on which one or more structures may be located;

“Class Licensee” means a Person who is entered on the Authorizations Register by the Regulatory Authority;

“Condition” means a condition of this Exemption;

“ECA” means the Electronic Communications Act 2011;

“Passive Infrastructure” means antennae, towers and other supporting structures, ducts, conduits, poles, masts, manholes, cabinets, and associated air-conditioning equipment, diesel electric generators, batteries, electrical supplies, and easements. For the avoidance of doubt, Passive Infrastructure does not include the other Electronic Communications Network elements identified in the definition of Electronic Communications Network in Section 2 of the ECA, including but not limited to, circuit and packet (including Internet Protocol) switching and routing equipment, wireline transmission facilities (including lit and dark fibre), electricity cable systems, satellites, radio spectrum, radio apparatus and radio stations;

“Person” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person;

“Private Network” means an Electronic Communications Network operated by, and dedicated to the exclusive use of, a Person, including its Affiliates;

“RAA” means the Regulatory Authority Act 2011;

“Unlicensed Spectrum” means Radio Spectrum as to the use of which the Authority has made a general determination that an individual spectrum licence is not required;

“Value-Added Service” means a service delivered through the use of Electronic Communications that employs computer processing applications that enable users to access, interact with, monitor, store, retrieve and manipulate information. Value-Added Services include: database access and research services; monitoring or alarm services; cloud computing or remote access data processing services; and electronic mail or messaging services;

“Wi-Fi Equipment” means equipment using Wi-Fi technology and approved pursuant to Part 15 of the rules of the U.S. Federal Communications Commission, 47 C.F.R. Part 15; and

“Wi-Fi Service” means the provision of Electronic Communications Services to End-Users through the use of Wi-Fi Equipment and Unlicensed Spectrum that establishes a wireless connection between mobile devices and an Internet connection.

2 INTERPRETATION

For purposes of interpreting this Exemption:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in this Exemption, the ECA, the RAA, and the Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Exemption and the ECA or 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 Exemption 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 Exemption shall be incorporated into and form part of the Exemption and a reference to a document is to a document as modified from time to time;
- (g) expressions cognate with those used in this Licence shall be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (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.

3 EXEMPTION

3.1 Persons are exempt from the requirement of Section 12 of the ECA to hold a communications operating licence to the extent that they meet the criteria set forth in Conditions 4, 5, 6 and 7.

3.2 Nothing in Conditions 4, 5 and 6 of this Exemption shall be deemed to:

- (a) relieve any Person of any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate an Electronic Communications Network or provide an Electronic Communications Service, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus;
 - (b) grant any Person any authorization to self-provision Electronic Communications other than within such Person's premises or Campus; or
 - (c) waive, modify or otherwise limit, either directly or indirectly, any Ex Ante Remedies imposed on an ICOL holder that meets the criteria set forth in, and is exempt from the requirement to hold a communications operating licence pursuant to, Conditions 4, 5 and 6.
- 3.3** Nothing in Condition 7 of this Exemption shall be deemed to relieve any Person of the obligation to comply with:
- (a) any legal requirement to obtain any licences or permits that are necessary to establish, construct or operate an Electronic Communications Network, other than Passive Infrastructure, or provide an Electronic Communications Service, including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus; or
 - (b) the provisions of Part 4 of the ECA and Part 7 of the RAA.
- 3.4** Persons exempt from the requirement to hold a communications operating licence pursuant to Conditions 4, 5 and 6 of this Exemption shall comply with such notification, registration or certification requirements as may be established by the Regulatory Authority.
- 3.5** Persons exempt from the requirement to hold a communications operating licence pursuant to Condition 7 of this Exemption shall:
- (a) register with the Regulatory Authority; and
 - (b) provide the Regulatory Authority with such periodic reports identifying the Passive Infrastructure that is currently being provided to licensees with Individual COLs and any planned works relating to the Passive Infrastructure under their control, including maintenance, repair, expansion or the opening of ducts, poles and other infrastructure to allow for the installation of new lines, cabling, circuits, *etc.*, as the Regulatory Authority may from time to time require, for the purpose of promoting coordination among Licensees with Individual COLs that wish to utilise such Passive Infrastructure.
- 3.6** For purposes of this Exemption, a Person's principal line of business will be deemed to include the provision of Electronic Communications if such Person holds an Individual COL or is providing Electronic Communications, the provision of which requires an Individual COL.

4 PRIVATE NETWORKS

A Person who establishes, constructs or operates a Private Network, provided that such Private Network:

- (a) does not carry third-party communications;
- (b) is not operated for a profit from the provision of Electronic Communications Services; and
- (c) is comprised of Electronic Communications obtained on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

5 VALUE-ADDED SERVICES

A Person who provides Value-Added Services, provided that such Person:

- (a) does not separately sell or charge for the Electronic Communications component of its Value-Added Services; and
- (b) obtains the Electronic Communications component of its Value-Added Services on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

6 WI-FI SERVICES

A Person who provides Wi-Fi Services, provided that such Person:

- (a) does not charge for the use of the Wi-Fi Service;
- (b) does not bundle the Wi-Fi Service with another Electronic Communications Service for which a charge is imposed; and
- (c) obtains the Electronic Communications component of its Wi-Fi Service on a Retail basis from Licensees with an Individual COL, including an ICOL. Notwithstanding the foregoing, (i) a Person whose principal line of business does not include the provision of Electronic Communications and a Person with an Individual COL may self-provision Electronic Communications within such

Person's premises or Campus, and (ii) a Person with an Individual COL may self-provision network facilities other than within its own premises or Campus to the extent authorized by the terms of its Individual COL.

7 PASSIVE INFRASTRUCTURE

A Person who provides Passive Infrastructure, provided that such:

- (a) Person's principal line of business does not include the provision of Electronic Communications; and
- (b) Passive Infrastructure is provided to Persons who (i) are not engaged in the provision of Electronic Communications or (ii) if so engaged, are Licensees with an Individual COL, including an ICOL. Passive Infrastructure may also be provided to Class Licensees or persons exempt from the requirement to hold a COL pursuant to Conditions 4, 5 and 6, but only within their respective premises or campus.