



GOVERNMENT OF BERMUDA

The Ministry of Finance

Ministry of Finance Headquarters

Our ref: 15C/1
(Please quote in reply)

28nd March 2013

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

Att: Mr. Philip Micallef

Dear Mr. Micallef,

Re: Regulatory Authority Budget 2013-14.

I write on behalf of the Minister of Finance to inform you that after review of the "Financial Year 2013-2014: Regulatory Authority Work Plan and Proposed Budget" dated 22nd February 2013, and in consultation with the Minister responsible for Telecommunications, in accordance with Section 43(4)(c) of the RAA the Minister of Finance approves the budget as submitted for the 2013-2014 fiscal year.

Yours sincerely,

Anthony Manders C.G.A
Financial Secretary



REGULATORY
AUTHORITY

Bermuda

**Financial Year 2013-2014:
Regulatory Authority Work Plan and
Proposed Budget**

Preliminary Report to the Ministers of Economic Development
and Finance

Matter: C13/01

Date: 22 February 2013

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1 EXECUTIVE SUMMARY

1. The Regulatory Authority hereby submits this Preliminary Report in support of its request that the Minister of Finance approve the Authority's proposed budget for financial year 2013-14 and its request that the Minister of Economic Development ("Minister") make a regulation establishing the Regulatory Authority fees to be paid by certain participants in the electronic communications sector.

2. The Regulatory Authority has preliminarily concluded that it will adopt a work plan for financial year 2013-14 that seeks to achieve the following strategic priorities: (1) institutional capacity building; (2) completion of the transition from the Telecommunications Act 1986 ("TA86") regime to the new regulatory regime; (3) promotion of sustainable competition; (4) consumer protection; (5) ensuring efficient use of scarce resources; and (6) promoting Bermudian employment and Bermudian ownership.

3. The Regulatory Authority proposes to adopt, subject to the approval of the Minister of Finance, an expense budget of \$3,557,600 for financial year 2013-14.

4. The Regulatory Authority requests that the Minister make a regulation imposing a general regulatory fee of 1.75 per cent of "relevant turnover" on ICOL holders. The first payment would be due on 31 May 2013, based on relevant turnover during the first three months of calendar year 2013.

2 BACKGROUND

5. The Regulatory Authority Act 2011 (“RAA”) sets out the procedures that the Regulatory Authority is to use, starting with its first full financial year, to establish its work plan and budget.

6. Section 43(2) provides that not later than six months before the commencement of each financial year, the Authority shall initiate a public consultation regarding its work plan for the upcoming financial year, which shall include --

- (a) the Authority’s strategic priorities for the upcoming financial year;
- (b) any major activities, such as public consultations, that the Authority anticipates undertaking during the upcoming financial year;
- (c) any quantitative indicators that the Authority has adopted to measure its performance during the upcoming financial year; and
- (d) a preliminary estimate of the Authority’s budget for the upcoming financial year.

7. Section 43(3) further provides that “[n]ot later than three months before the commencement of each financial year,” the Regulatory Authority, “after giving due consideration to the comments submitted in the public consultation,” is to submit to the Minister and to the Minister of Finance “a preliminary report setting out the Authority’s proposed work plan for the next financial year” and “a proposed budget, with a request for approval.”

8. Pursuant to Section 43(4), the Minister of Finance, after making “any modifications” to the budget proposed by the Authority that he “deems necessary and proper,” is to “issue a written decision approving the budget.”

9. Section 44(1) provides that “[a]t the same time that the Authority submits a proposed budget” for approval, it is to submit a “request and recommendation” to the Minister to “make regulations establishing the Regulatory Authority fees that some or all sectoral participants . . . shall pay to the Authority during the upcoming financial year.” The Regulatory Authority fees must be “consistent with the Authority’s budget.”¹

10. The Regulatory Authority may recommend the imposition of two different types of Regulatory Authority fees: service fees and general regulatory fees. Service fees are charges “designed to recover from a sectoral participant a reasonable estimate of the cost to the Authority of performing the function for which the fee is assessed.”² By contrast, general regulatory fees are designed to recover “the estimated costs incurred by the Authority that are directly related to the supervision of

¹ RAA § 44(2).

² *Id.* § 44(3). For example, the Regulatory Authority could impose a fee for processing a licence application or providing photocopies of public records.

[a] regulated industry sector that are not recovered from service fees or other sources.”³

11. The Electronic Communications Act (“ECA”) provides that the Regulatory Authority must recommend that general regulatory fees be imposed on ICOL holders “based on a percentage of the relevant turnover of the licensee.”⁴ The ECA defines relevant turnover as “the portion of a licence holder’s total turnover minus payments to other COL holders, as specified by the Authority.”⁵

12. The ECA further provides that the Regulatory Authority may recommend that general regulatory fees also be imposed on other entities that hold a Communications Operating Licence (“COL”) (such as an entity that holds a class licence).⁶ Section 11(2) of the ECA requires the Regulatory Authority, in recommending which “types” of COL holders (other than ICOL holders) should be required to pay general regulatory fees, to give “due regard” to:

- (a) the comparative costs of regulatory administration attributable to different types of authorization holders when proposing the applicable general regulatory fees for the various types of authorizations;
- (b) the cumulative effect of all sources of Regulatory Authority fees on each type of authorization holder;
- (c) the financial and commercial impact of the timing of the payment or payments for general regulatory fees on authorization holders, taking into account the financial requirements of the Authority; and
- (d) the efficient management of the Authority’s resources.⁷

13. Pursuant Section 44(8) of the RAA, the Minister is to make a regulation specifying “the means of calculating” the Regulatory Authority fee. The Minister’s regulation is subject to the affirmative resolution process.

14. The Regulatory Authority was to have begun operations on 1 October 2012 – six months before the start of financial year 2013-14. The Minister, however, deferred the date on which the RAA and ECA came fully into effect until 28 January 2013.⁸ As a consequence, in order for the budget to be in place, and for Parliament to approve the proposed Regulatory Authority fees, by the start of the Regulatory Authority’s first full financial year on 1 April 2013,⁹ the Authority was required compress the work plan and budget adoption process into two months. The

³ *Id.* § 44(4)(a).

⁴ ECA § 11(4).

⁵ *Id.* § 2.

⁶ *See id.* § 11.

⁷ *Id.* § 11(2).

⁸ *See* Electronic Communications Act Commencement Notice, BR 3 / 2013 (22 Jan. 2013); Regulatory Authority Act Commencement Notice, BR 4 / 2013 (22 Jan. 2013).

⁹ The Regulatory Authority assumes that Parliament will consider the proposed Regulatory Authority fees during the annual budget session, customarily held in February.

Regulatory Authority therefore conducted a public consultation from 29 January through 15 February 2013 regarding the Authority's proposed work plan (including budget) for financial year 2013-14.

15. Nine parties submitted responses during the course of the public consultation. Their responses, which generally tracked the specific questions posed by the Regulatory Authority in the Consultation Document, are discussed in Appendix D to this Preliminary Report.

16. The Regulatory Authority, after giving due consideration to the comments submitted during the public consultation process, hereby submits this Preliminary Report in support of its request that the Minister of Finance approve the Authority's proposed budget for financial year 2013-14 (attached as Appendix A) and its request and recommendation that the Minister of Economic Development make a regulation establishing the Regulatory Authority fees to be paid by participants in the electronic communications sector (attached as Appendix B).

3 FINANCIAL YEAR 2013-14 WORK PLAN

3.1 Strategic Priorities

17. The Regulatory Authority has concluded that it should adopt six strategic priorities, which will guide its work plan during financial year 2013-14. They are: (1) institutional capacity building; (2) completion of the transition from the TA86 regime to the new regulatory regime; (3) promotion of sustainable competition; (4) consumer protection; (5) ensuring efficient use of scarce resources; and (6) promoting Bermudian employment and Bermudian ownership.

18. **Institutional capacity building.** The Regulatory Authority will establish itself as an efficient, effective and independent regulator by employing and training a qualified permanent staff, using appropriate information technology, adopting transparent administrative procedures, preparing reasonable expense and revenue budgets and imposing appropriate financial controls.

19. **Completion of the transition from the Telecommunications Act 1986 regime.** The Regulatory Authority will complete the transition from the regulatory regime that existed under the TA86 to the new regime created by the RAA and the ECA by continuing to enforce specific TA86 provisions until they “sunset,” making any needed revisions to pre-existing administrative determinations and authorizations, and by resolving matters transferred from the Ministry and the Telecommunications Commission.

20. **Promotion of sustainable competition.** The Regulatory Authority will promote sustainable competition for the purpose of enhancing consumer welfare by implementing the new licensing framework contained in the ECA, eliminating artificial barriers to competition among ICOL holders, requiring ICOL holders with significant market power to implement effective *ex ante* remedies, enforcing prohibitions against anti-competitive conduct, resolving interconnection and access disputes between providers, and enhancing the ability of users to switch providers.

21. **Consumer protection.** The Regulatory Authority will protect the interests of Bermudian consumers by ensuring that all end-users have access to electronic communications networks and services, implementing requirements that ensure transparency, protecting consumers from unfair or abusive practices, and resolving disputes between end-users and service providers.

22. **Efficient use of scarce resources.** The Regulatory Authority will ensure that scarce resources, such as radio spectrum, are allocated and used efficiently by conducting investigations and, as necessary, requiring that inefficiently used resources be relinquished or shared.

23. **Promoting Bermudian employment and Bermudian ownership.** The Regulatory Authority will adopt policies that promote the growth of the Bermudian economy in a manner that creates employment and ownership opportunities for the people of Bermuda.

3.2 Major Activities to Be Undertaken

24. During financial year 2013-14, the Regulatory Authority has concluded that it should to undertake a number of major activities to implement its strategic priorities.

3.2.1 Institutional Capacity Building

25. **Staff.** The Regulatory Authority will recruit, retain and train a qualified permanent staff.¹⁰

26. **Official website.** The Regulatory Authority will upgrade the official website to allow for online filing and fee payments.¹¹

27. **Administrative Rules.** The Regulatory Authority will conduct a public consultation regarding its Administrative Rules,¹² and will adopt an administrative determination establishing permanent rules.

28. **Financial controls.** The Regulatory Authority will complete establishment of financial controls necessary to “keep proper accounts and records of its transactions and affairs”¹³ and will to prepare and issue a report and financial statement, covering the initial period (28 January 2013 through 31 March 2013) by 31 July 2013.¹⁴

29. **Work plan.** The Regulatory Authority will: conduct public consultations regarding the definition of relevant turnover and the work plan for financial year 2014-15 (including the expense and revenue budgets);¹⁵ submit a recommended budget to the Minister and the Minister of Finance;¹⁶ submit a request and recommendation to the Minister to make a regulation establishing the Regulatory Authority fees to be paid in financial year 2014-15;¹⁷ and make a recommendation regarding the Government authorization fees to be paid by industry during financial year 2014-15.¹⁸

3.2.2 Completion of the Transition from the Telecommunications Act 1986 Regime

30. **Enforcement of Telecommunications Act 1986 transitional provisions.** For as long as they remain in effect,¹⁹ the Regulatory Authority will enforce

¹⁰ See RAA § 28.

¹¹ See *id.* § 18.

¹² *Id.* § 13(c).

¹³ *Id.* § 46(1)(a).

¹⁴ See *id.* § 112(2).

¹⁵ See *id.* § 43(2).

¹⁶ *Id.* § 43(3)(b).

¹⁷ *Id.* § 44(1).

¹⁸ *Id.* § 52(2).

¹⁹ The ECA establishes two triggers for the “sunset” of these statutory requirements, based on whether the Regulatory Authority, following the market review consultation, designates a provider as having significant market power (“SMP”) in any relevant market. If the Authority does not designate a provider as having SMP, the provisions will remain in effect as applied to that provider until “one day after the date on which the Authority issues a general determination” designating the providers that have SMP. If the Authority designates a provider as having SMP, the provisions will remain in effect

Sections 21 (Duties of Carriers), 23 (Specified Carriers must give notice of charges) and 23A (Carriers to maintain lists of rates and charges) of the TA86 which, among of things, require all carriers to obtain approval prior to entering into or terminating an interconnection agreement, and requires specified carriers (*i.e.*, Bermuda Cablevision Limited, Bermuda Land Development Company Limited and Bermuda Telephone Company Limited) to obtain approval before initiating new telecommunications services or varying the charges for existing services.

31. **Resolution of pre-existing matters.** The Regulatory Authority will seek to resolve all “matters relating to the electronic communications sector pending before the Minister or the Telecommunications Commission” on 28 January 2013 that were transferred to the Authority.²⁰

32. **Revision of Regulations adopted under the Telecommunications Act 1986.** The Regulatory Authority will conduct a public consultation and will revise regulations, previously adopted pursuant to the TA86, to conform to the ECA.²¹

3.2.3 Promotion of Sustainable Competition

33. **ICOL conversion.** The Regulatory Authority will make a general determination converting the licences of existing Class A, B and C carriers and subscription television providers to ICOLs.²²

34. **Determination of licensees with significant market power.** The Regulatory Authority will make a general determination specifying those licensees that have significant market power in a relevant market.²³

35. **Imposition of remedies.** The Regulatory Authority will: conduct a public consultation; issue a general determination establishing the remedies with which ICOL holders found to have significant market power must comply, including minimum compliance milestones; assess compliance; and issue notices at such time as it finds that an ICOL holder with significant market power has fully implemented the required remedies.²⁴



as applied to that provider until “the Authority publishes a written notice confirming that the communications provider has complied with all applicable *ex ante* obligations” imposed by the Authority.” ECA § 80(1)(a) & (b). The Regulatory Authority expects to adopt its SMP determination early in financial year 2013-24, but does not expect that all licensees that are found to have SMP will fully implement the applicable *ex ante* remedies before the end of financial year 2013-14. As a result, the Regulatory Authority expects to be required to enforce these provisions, at least as applied to some providers designated as having SMP, throughout financial year 2013-14.

²⁰ *Id.* § 80(3).

²¹ *See id.* § 79(1).

²² *See id.* § 73(3).

²³ *See id.* § 74(b)(i).

²⁴ *See id.* §§ 73(5), 74(b)(ii).

36. **Fees investigation.** The Regulatory Authority will conduct an investigation into whether ICOL holders have paid all fees due under the Government Fees Act and will issue a decision identifying any ICOL holder found to owe fees.²⁵

37. **Class licensing and licence exemptions.** The Regulatory Authority will make a general determination establishing class licences and granting any appropriate exemptions from the ECA's licensing requirement.²⁶

38. **Local number portability.** The Regulatory Authority will conduct a public consultation and will make a general determination establishing the procedures by which consumers will be able to retain their telephone numbers if they switch from one provider to another.²⁷

39. **Dispute resolution.** The Regulatory Authority will resolve disputes between sectoral providers, such as disputes regarding interconnection and access, within the timeframes specified in the RAA.²⁸

3.2.4 Consumer Protection

40. **Universal service.** The Regulatory Authority will “assist the Minister in formulating and implementing any general universal service policies and regulations.”²⁹

41. **Class licences and exemptions.** The Regulatory Authority will ensure compliance with applicable licence conditions, including conditions requiring disclosure of prices for consumer services.³⁰

42. **Dispute resolution.** The Regulatory Authority will resolve disputes between sectoral providers and end-users, such as disputes regarding service price or quality, within the timeframes specified in the RAA.³¹

3.2.5 Efficient Use of Scarce Resources

43. **Spectrum investigation.** The Regulatory Authority will: conduct a public consultation regarding the “efficient use” of spectrum and issue a final determination; issue a document regarding licensee self-assessments of efficient use; facilitate

²⁵ See *id.* § 74(c).

²⁶ See *id.* § 16(2).

²⁷ See *id.* § 47(1) (“The Authority shall make a general determination to facilitate subscribers to retain a fixed or mobile telephone number assigned to them by their existing communications provider”).

²⁸ See RAA § 58(4)-(5) (“If the Authority is unable to facilitate an informal resolution of [a] dispute within 60 days after receiving [a] complaint” and “conducts an adjudication, it shall issue an adjudicative decision and order within four months after the commencement of the adjudication unless the Board, by unanimous vote, establishes a longer period.”).

²⁹ ECA § 33(1).

³⁰ See *id.* §§ 16-17.

³¹ See RAA § 57(4)-(5) (“If the Authority is unable to facilitate an informal resolution of [a] dispute within 30 days after receiving [a] complaint” and “conducts an adjudication, it shall issue an adjudicative decision and order within three months after the commencement of the adjudication unless the Board, by unanimous vote, establishes a longer period.”).

negotiation of industry tower sharing arrangements; and cooperate with the Ministerial consultation on policy with respect to assignment of currently vacant spectrum.³²

3.2.6 Promoting Bermudian Employment and Bermudian Ownership

44. **Bermudianisation.** The Regulatory Authority will conduct a public consultation to consider the ways in which it can perform the statutory function of “promot[ing] the development of the Bermudian economy, Bermudian employment and Bermudian ownership” in the electronic communications sector.³³

3.3 Performance Indicators

45. The Regulatory Authority has concluded that it should adopt a small number of performance indicators, which it will use, at the time it adopts its first Annual Report, to assess “the results achieved” during financial year 2013-14.³⁴ The majority of these performance assessment indicators are based on the deadlines specified in the RAA or the ECA. The Regulatory Authority expects that, based on experience during its initial months of operation, it will propose a more extensive list of performance assessment indicators as part of the financial year 2014-15 work plan consultation, which will be initiated on or before 1 October 2013.³⁵

3.3.1 RAA Performance Indicators

46. The Regulatory Authority will meet all deadlines specified in the RAA. Specifically:

- As required by Section 43(2) of the RAA, the Regulatory Authority will “initiate a public consultation regarding its work plan for the upcoming financial year” by 1 October 2014.
- As required by Sections 43(3) and 44(1) of the RAA, the Regulatory Authority will submit to the Minister and the Minister of Finance: “a preliminary report setting out the Authority’s proposed work plan for the next financial year”; “a proposed budget, with a request for approval”; and a “request and recommendation” regarding the Regulatory Authority fees to be established for financial year 2014-15 by 1 January 2014.
- As required by Section 46(5) of the RAA, the Regulatory Authority will “submit to the auditor its financial statements for the year” by 30 June 2014.

³² See ECA § 78.

³³ RAA § 12(c).

³⁴ *Id.* § 47(1)(a)(iii). The Regulatory Authority anticipates releasing its first Annual Report in late 2014 or early 2015. The Regulatory Authority is to submit its financial statements to the auditor appointed by the Auditor General within three months after the end of the financial year (*i.e.*, by 30 June 2014). See *id.* § 46(5). Within thirty days after receiving the auditor’s report, the Regulatory Authority is to publish its annual report. See *id.* § 47(1).

³⁵ See *id.* § 43(2).

- As required by Section 47(1)(a) of the RAA, the Regulatory Authority will transmit to the Minister “a report on the operations of the Authority” during financial year 2013-14 within 30 days of receiving the auditor’s report.
- As required by Section 57(5) of the RAA, the Regulatory Authority will issue an adjudicative decision and order resolving disputes between a sectoral provider and an end-user within three months after the commencement of the adjudication.³⁶
- As required by Section 58(5) of the RAA, the Regulatory Authority will issue an adjudicative decision and order resolving disputes between sectoral providers within four months after the commencement of the adjudication.³⁷
- As required by Section 87(8) of the RAA, the Regulatory Authority will complete its review of any concentration within four months after receiving a “completed notification.”³⁸

3.3.2 ECA Performance Indicators

47. The Regulatory Authority will meet all deadlines specified in the ECA. Specifically:

- As required by Section 24(3)(a) of the ECA, the Regulatory Authority will complete its review of any filed interconnection agreement within 60 days of the date on which the agreement is submitted.
- As required by Section 73(1)(a) of the ECA, the Regulatory Authority will initiate a consultation regarding the “basic terms and conditions to be in the ICOL” within five days of being directed to do so by the Minister.
- As required by Section 73(1)(b) of the ECA, the Regulatory Authority will “submit to the Minister a proposal for a standard form of ICOL no later than 60 days following the date of initiation” of the ICOL consultation.
- As required by Section 74(a) of the ECA, the Regulatory Authority will issue a notice identifying any product or geographic markets in which it may impose *ex ante* remedies by 7 February 2013.
- As required by Section 74(b) of the ECA, the Regulatory Authority will initiate a market review by 28 February 2013.
- As required by Section 74(b)(ii) of the ECA, the Regulatory Authority will “issue decisions and orders specifying any applicable *ex ante* remedies” by 28 September 2013.

³⁶ The Board of Commissioners, by unanimous vote, may extend this deadline. See *id.* § 57(5).

³⁷ The Board of Commissioners, by unanimous vote, may extend this deadline. See *id.* § 58(5).

³⁸ The Minister may extend this deadline. See *id.* § 87(8).

- As required by Section 74(c) of the ECA, the Regulatory Authority will “initiate an investigation . . . to determine whether all fees due and payable by any licence holder” eligible to receive an ICOL have been paid by 28 March 2013.
- As required by Section 73(d) of the ECA, the Regulatory Authority will initiate a consultation regarding class licences and licence exemptions by 28 February 2013.
- As required by Section 47(2) of the ECA, the Regulatory Authority will issue a general determination that identifies “the technical requirements and timetable for implementing number portability” by 28 July 2013.

3.3.3 Performance Indicators That Exceed Statutory Requirements

48. **Performance indicators.** The Regulatory Authority will also meet the following performance indicators that provide a shorter timeframe for regulatory action than provided for in the ECA:

- The Regulatory Authority will issue a general determination designating one or more operators as having significant market power by 29 April 2013.
- The Regulatory Authority will issue a general determination regarding class licences and licence exemptions by 29 April 2013.
- The Regulatory Authority will convert existing eligible licences to ICOLs by 29 April 2013.

4 PROPOSED BUDGET

4.1 Proposed Expense Budget

49. Subject to the approval of the Minister of Finance, the Regulatory Authority proposes to adopt a budget of \$3,557,600 for financial year 2013-14. The proposed budget is attached as Appendix C.³⁹ The proposed budget reflects the significant amount of work that the Regulatory Authority will be required to perform, pursuant to the RAA and ECA, during this period. The most significant expenses – constituting almost 85 per cent of the total budget – are: compensation for the Commissioners, the Chief Executive and the rest of the staff; payments to economic, legal, and technical consultants; and office rental costs.

50. The proposed budget is consistent with the costs incurred in comparable jurisdictions. For example, during its first year in operation, the Bahamian regulator had a budget of \$3.5 million, excluding consultancy services.⁴⁰ Although The Bahamas is larger than Bermuda, the Bahamian telecommunications market has significantly fewer participants than the Bermudian market. The Bahamian legislation also pre-determined the various market definition and dominance issues, thereby reducing the regulator's initial workload. As a result, the amount of start-up regulatory work required in Bermuda is likely to be greater than in The Bahamas.

51. The Regulatory Authority will review its performance against budget six months after the start of financial year 2013-14. If warranted, the Regulatory Authority will make further communications to the Government regarding the Authority's budget. By the end of financial year 2013-14, the Regulatory Authority should have completed several complex "start-up" proceedings, such as implementation of remedies to be imposed on ICOL holders with significant market power, and will be well on its way to completing other proceedings, such as the spectrum investigation. In addition, by that time, the Regulatory Authority staff should be in place and fully trained, thereby reducing consultancy support.⁴¹

4.2 Proposed Revenue Budget

52. The Regulatory Authority proposes to rely primarily on general regulatory fees paid by ICOL holders to fund its operations during the financial year 2013-14. Specifically, the Regulatory Authority recommends and requests that the Minister make a regulation setting the general regulatory fee to be paid by ICOL holders during financial year 2013-14 at 1.75 per cent of relevant turnover. The Regulatory Authority does not request that the Minister make a regulation imposing service fees "designed to recover from a sectoral participant a reasonable estimate of the cost to the Authority of performing the function for which the fee is assessed."⁴² The Regulatory Authority also does not request that the Minister require class licensees or

³⁹ The Regulatory Authority assumes that the Minister of Finance will not act on this request until after Parliament has reviewed the regulation made by the Minister to adopt the Regulatory Authority fee.

⁴⁰ See URCA 2010 Annual Report at 56. <http://www.urcabahamas.bs/download/096097600.pdf>.

⁴¹ The Regulatory Authority expects that its consultants will provide knowledge transfer to the permanent staff.

⁴² RAA § 44(3).

persons that hold licences issued pursuant to the TA86 for specialized uses of spectrum to pay general regulatory fees.

53. **Service fees.** As a general matter, requiring entities that impose identifiable costs on the Regulatory Authority to compensate the Authority for those costs is sound policy. This approach deters entities from “over-consuming” services while shifting the cost to others, thereby promoting the efficient use of the Regulatory Authority’s resources. Nonetheless, the Regulatory Authority does not request the adoption of service fees. Because the Regulatory Authority has just begun to operate, it lacks reliable information regarding the services to be provided, the demand for each service, and the cost of providing the service. Therefore, the Regulatory Authority is not yet in a position to make “a reasonable estimate” of the cost of providing various services or to assess the impact of imposing fees on the demand for different services. The Regulatory Authority intends to carefully monitor service costs during financial year 2013-14 and will revisit this issue during the financial year 2014-15 work plan consultation.

54. **Class licensees.** The Regulatory Authority has initiated a separate public consultation regarding class licensing. Although the Regulatory Authority expects to issue class licences to several categories of communications providers,⁴³ the Authority does not request that the Minister require class licensees to pay general regulatory fees. In reaching this conclusion, the Regulatory Authority has considered the factors specified in Section 11(2) of the ECA. The Regulatory Authority recognizes that establishment of the class licensing regime will impose some costs on the Authority. For example, the Regulatory Authority will need to review registration requests, maintain an authorizations register and enforce applicable licensing conditions. Nonetheless, when compared to the significant amount of regulatory activity related to the ICOL holders, “the comparative costs of regulatory administration attributable to” class licensees is likely to be relatively small. At the same time, because many class licensees are small business, “the financial and commercial impact” of requiring them to pay general regulatory fees could be significant. Finally, especially during its initial year of operation, when staff resources will be very limited, “the efficient management of the Authority’s resources” requires that the Authority focus its efforts on collecting revenue from the ICOL holders, who generate the vast majority of the relevant turnover. The Regulatory Authority will revisit the issue during the 2014-15 financial year work plan consultation and, based on experience, may propose that some or all class licensees should be required to pay general regulatory fees.

55. **Specialized licensees.** The Regulatory Authority also does not request that the Minister impose general regulatory fees on persons who hold licences issued pursuant to the TA86 for specialized uses of spectrum, such as amateur, marine small craft and maritime operators (“specialized licensees”).⁴⁴ As with class

⁴³ The Regulatory Authority has solicited comments on its proposals to issue class licences to providers of the following categories of electronic communications: closed user groups; electronic communications services provided by hotels, hospitals, prisons, schools and similarly situated institutions; pay telephone services; operator services; and cyber cafes. See Consultation: Communications Operating Licences: Exemptions and Class Licences, C13/03, at ¶¶ 70-112 (4 February 2013). The Regulatory Authority assumes that the final list of class licences will be substantially similar to that proposed during the consultation.

⁴⁴ Pursuant to Section 79(1) of the ECA, the regulations applicable to these specialized licensees will “remain in full force and effect until their disposition is determined by the Minister or the Authority.”

licensees, the regulation of these providers will impose relatively minor costs on the Regulatory Authority. Moreover, many of the authorization holders are individuals and small businesses, who will continue to pay the Government authorization fees specified in the Government Fees Act. Thus, for some of these licensees, the impact of imposing general regulatory fees could be significant. Furthermore, many of these licensees do not derive revenue from the provision of electronic communications services to others and, therefore, will not have any “relevant turnover.” Finally, as noted above, during its initial year of operation, the Regulatory Authority’s limited resources can be used most efficiently by focusing on collecting revenues from ICOL holders.

56. **ICOL holders.** Because the Regulatory Authority does not request that the Minister impose service fees, or to require class licensees to pay general regulatory fees, the cost of operating the Authority during financial year 2013-14 will need to be recovered through the imposition of general regulatory fees on ICOL holders.

57. Pursuant to Section 11(4) of the ECA, the general regulatory fees that the Regulatory Authority recommends must be based on “a percentage of the relevant turnover of the licensee.” The ECA defines relevant turnover as “the portion of a licence holder’s total turnover minus payments to other COL holders, as specified by the Authority.”⁴⁵ The Regulatory Authority recommends and requests that the Minister define “total turnover” as revenue from the provision of electronic communications services to end-users and other holders of COLs in Bermuda. Thus, an ICOL holder’s relevant turnover would be calculated by determining the ICOL holder’s “total turnover” and then subtracting payments made by the ICOL holder to other licensees with COLs in Bermuda only for wholesale electronic communications services related to the provision of the ICOL holder’s electronic communications services. The Regulatory Authority anticipates initiating a public consultation to consider the definition of relevant turnover, with a view to implementing any resulting general determination in financial year 2014-15.

58. As noted above, the Regulatory Authority has concluded that it should adopt a financial year 2013-14 expense budget of \$3,557,600. The Regulatory Authority estimates that the ICOL holders’ annual relevant turnover during financial year 2013-14 will be approximately \$210 million.⁴⁶ In order to ensure sufficient funds to meet its expected expenses, the Regulatory Authority recommends and requests that the Minister make a regulation requiring ICOL holders to pay a general regulatory fee of 1.75 per cent of relevant turnover for financial year 2013-14.

The Regulatory Authority anticipates conducting a consultation during financial year 2013-14 regarding the disposition of these regulations and the authorizations issued thereunder.

⁴⁵ ECA § 2.

⁴⁶ Carriers reported total revenues of approximately \$223 million for financial year 2011-12. However, this includes approximately \$23 million in wholesale revenues that must be excluded from the calculation of the relevant turnover under the ECA, leaving relevant turnover of \$200 million. Increased competition between ICOL holders should drive down retail prices. However, the provision of new services, such as video-on-demand, as well as higher speed data services, should increase industry revenues by \$10 million, resulting in relevant turnover of \$210 million during financial year 2013-14.

59. The Regulatory Authority recommends and requests that the regulation require ICOL holders to make the first payment to the Authority by 31 May 2013, based on relevant turnover during the period 1 January 2013 through 31 March 2013. ICOL holders would be required to make three subsequent quarterly payments, at the 1.75 percentage rate. In each case, payment would be due two months after the end of the quarter (*i.e.*, 31 August 2013, 30 November 2013, and 28 February 2014), based on relevant turnover during the prior quarter. This schedule (quarterly payments, in arrears, due two months after the end of the quarter) has long been used by the Government in connection with Carrier Fees due under the Government Fees Act.

APPENDIX A --

**REQUEST TO APPROVE THE REGULATORY AUTHORITY'S BUDGET FOR FINANCIAL
YEAR 2013-14**

Pursuant to Sections 43(3) and 43(4) of the Regulatory Authority Act, the Regulatory Authority hereby requests that the Minister of Finance, after making "any modifications" to the budget proposed by the Regulatory Authority that he "deems necessary and proper", issue a decision approving the Regulatory Authority's proposed budget for financial year 2013-14.

APPENDIX B --

REQUEST AND RECOMMENDATION TO MAKE A REGULATION REGARDING REGULATORY AUTHORITY FEES FOR FINANCIAL YEAR 2013-14

Pursuant to Section 44(1) of the Regulatory Authority Act, the Regulatory Authority hereby requests and recommends that the Minister make a regulation establishing the Regulatory Authority fees to be paid by ICOL holders during financial year 2013-14.

1. During financial year 2013-14, holders of Integrated Communications Operating Licences ("ICOLs") shall pay general regulatory fees equal to 1.75 per cent of relevant turnover.

2. Relevant turnover shall be calculated by determining the ICOL holder's "total turnover" (*i.e.*, the revenue that the ICOL holder receives from the provision of electronic communications services to end-users and other Communications Operating Licence ("COL") holders in Bermuda) and then subtracting the payments made by the ICOL holder to other licensees with COLs in Bermuda only for wholesale electronic communications services related to the provision of the ICOL holder's electronic communications services.

3. ICOL holders shall make four quarterly general regulatory fee payments to the Regulatory Authority. The payments shall be due by: 31 May 2013 (based on relevant turnover for the period from 1 January 2013 through 31 March 2013); 31 August 2013 (based on relevant turnover for the period from 1 April 2013 through 30 June 2013); 30 November 2013 (based on relevant turnover for the period from 1 July 2013 through 30 September 2013); and 28 February 2013 (based on relevant turnover for the period from 1 October 2013 through 31 December 2013).

APPENDIX C --

**THE REGULATORY AUTHORITY'S PROPOSED EXPENSE BUDGET
FOR FINANCIAL YEAR 2013-14**

| Expenses | | |
|--------------------|--------------------------------------|--------------------|
| Operational | Employees | \$1,687,200 |
| | Training | \$85,000 |
| | Consulting Services | \$960,000 |
| | Meetings and Conferences | \$30,000 |
| | Subscriptions | \$10,000 |
| | Public Relations | \$95,000 |
| | Office Space | \$244,300 |
| | Office Services | \$111,100 |
| | Travel | \$40,000 |
| | | |
| Capital | Furniture and Fittings | \$62,200 |
| | Office Equipment and Supplies | \$65,500 |
| | IT Equipment | \$72,300 |
| | Spectrum Equipment | \$95,000 |
| Total | | \$3,557,600 |

DESCRIPTION OF BUDGET CATEGORIES

Operational Expenses

The following categories consist of recurring costs that the Regulatory Authority is expected to incur each year (although the size of any category is likely to vary from year-to-year):

Employees – This category includes the salaries and benefits for the three Commissioners (who will serve on a part-time basis, currently estimated at three to four days per week during the first financial year), the Chief Executive, four professional staff and three administrative positions. Although staff from the Department of Telecommunications will be seconded to the Regulatory Authority on an interim basis, the Regulatory Authority will conduct a search for permanent staff, which may include a mix of Bermudian and foreign professionals. Therefore, recruiting and relocation expenses are also included in this category.

Training – This category includes the costs of on-site training and workshops for the Regulatory Authority staff.

Consulting Services – This category includes the costs of the legal, regulatory, and technical support the Regulatory Authority will require in connection with the following work-streams: adoption of the financial year 2013-14 budget and work plan; issuance of ICOLs; adoption of the class licensing and exemption regime; designation of providers with significant market power and adoption and implementation of *ex ante* remedies; implementation of local number portability; review and revision of regulations adopted under the Telecommunications Act; adoption of final Administrative Rules; conducting the spectrum investigation; and conducting the investigation of fees due under the Telecommunications Act 1986. The Regulatory Authority expects that, after the first financial year, the level of funding required for consultancy services will decline as a result of the completion of several major consultations mandated by the ECA, the retention of permanent staff, and knowledge transfer undertaken by the consultants.

Meetings and Conferences – This category includes the costs the Regulatory Authority will incur to conduct and/or participate in on and off-site meetings and conferences with the industry and public.

Subscriptions – This category includes the cost of books, periodicals, and subscriptions the Regulatory Authority will require to remain abreast of industry events and trends.

Public Relations – This category includes the cost to further develop and maintain the Regulatory Authority's website, place notices in local publications and conduct a public relations program. The official website currently has only rudimentary functionality. The Regulatory Authority expects that, during the upcoming financial year, it will develop a more feature-rich website, which will allow for easier access to information and on-line payment of fees.

Office Space – This category includes the rent, taxes, utilities, and insurance associated with leasing a 3,050 square foot office on the 3rd Floor South of Cumberland House, 1 Victoria Street, Hamilton. Also included are the associated telephone, internet, and mobile communications expenses.

Office Services – This category includes IT service support, payroll and accounts preparation, financial audit, human resources, startup assistance, and maintenance and cleaning contracts.

Travel – This category includes the costs of meetings, conferences, and seminars attended by the Regulatory Authority Commissioners and/or members of the staff.

Capital Expenses

The following categories consist of one-time expenses required to enable the Regulatory Authority to begin its operations:

Furniture and Fittings – This category includes the costs of renovating the Regulatory Authority's offices to adapt the space for its needs. Also included in this category is furniture for the staff, reception area and conference room.

Office Equipment and Supplies – This category includes office equipment, such as a copier, smart-board, projector and miscellaneous office equipment. This category also includes general office supplies, stationery with the Authority's logo and basic cleaning and kitchen supplies.

IT Equipment – This category includes the cost of an internal computer network for the Regulatory Authority's offices, including workstations for the Commissioners and staff, associated software, and backup facilities.

APPENDIX D --

RESPONSES TO THE CONSULTATION DOCUMENT

The following parties submitted responses during the consultation period. Their responses to the questions posed by the Regulatory Authority are discussed below.

| <u>Name</u> | <u>Abbreviation</u> |
|--|---------------------|
| Bermuda Digital Communications Ltd. | BDC |
| Bermuda Telephone Company Ltd. | BTC |
| Brasil Telecom Subsea Cable Systems (Bermuda) Ltd. | Brasil Telecom |
| Cable Co. Ltd. | CableCo |
| LinkBermuda Ltd. | LinkBermuda |
| Logic Communications Ltd. | Logic |
| North Rock Communications Ltd. | North Rock |
| Quantum Communications Ltd. | Quantum |
| Telecommunications (Bermuda & West Indies) Ltd. | Digicel |

Question 1

Interested parties are invited to comment on the Regulatory Authority's proposed strategic priorities. Parties that advocate deletion of any of the proposed strategic priorities should provide a justification. Parties that advocate addition or modification of any of the proposed strategic priorities should propose specific additions or modifications and provide a justification.

In the Consultation Document, the Regulatory Authority identified six strategic priorities for financial year 2013-14. Brasil Telecom, BTC, CableCo, LinkBermuda, Logic and Quantum either supported or did not disagree with these priorities.

BDC urged the Regulatory Authority to exercise caution before endorsing the strategic priority of promoting Bermudian employment and ownership in the electronic communications sector. The Regulatory Authority notes that promoting Bermudian employment and ownership is one of the stated goals of the ECA. Having said that, the Regulatory Authority is mindful of the issues surrounding the achievement of this goal. It was for this reason that the Regulatory Authority indicated that it would initiate a public consultation to address Bermudianisation.

BTC emphasized the critical importance of completing the transition from the TA86 regime. It urged the Regulatory Authority to avoid a "non-level playing field" by allowing ICOL holders without significant market power ("SMP") to get a "head start" during the period in which ICOL holders with SMP must comply with any *ex ante* remedies imposed by the Authority. The Regulatory Authority is not unsympathetic to BTC's request and will consider this issue in the SMP consultation.

Digicel expressed concern about the volume of work the Regulatory Authority is attempting to undertake and, in particular, objected to the inappropriateness of defining markets, making SMP determinations and imposing *ex ante* remedies just as the market is being liberalized; it argued that the Authority should focus on licensing and, if there is capacity left, spectrum reassignment, transitioning from the TA86 regulatory regime, and consumer protection. The Regulatory Authority disagrees.

The ECA identifies the Regulatory Authority's responsibilities and, while the Authority may within reason sequence its work, it cannot ignore the ECA's mandates, in particular the requirements of Sections 47 (number portability), 73 (ICOLs), 74 (markets, SMP, *ex ante* remedies, fees, class licences, licence exemptions), and 78 (spectrum), that the Authority undertake certain tasks within specified time frames.

Question 2

Interested parties are invited to comment on the major activities that the Regulatory Authority proposes to undertake during financial year 2013-14. Parties that propose the elimination of any major activity should provide a justification. Parties that propose the addition or modification of any major activity should make a specific proposal and provide a justification.

In the Consultation Document, the Regulatory Authority proposed to undertake a number of major activities to implement its strategic priorities. BTC, as noted above, urged the Regulatory Authority to avoid creating a "non-level playing field" and to ensure that ICOL holders without SMP do not benefit from a significant "head start." The Regulatory Authority will consider BTC's concerns in the SMP proceeding.

Digicel agreed, or did not take issue, with many of the Regulatory Authority's proposed activities, a number of which it did not deem to be major undertakings. Digicel argued that the market definition, SMP, and *ex ante* remedies consultations should not be undertaken; it also proposed that number portability be deferred to financial year 2014-15. Digicel stated that other activities, such as upgrading the Authority's website to permit online filing and payments and revising TA86 regulations, should not be priorities, and questioned the need to address Bermudianisation. As noted above, the ECA identifies the Regulatory Authority's responsibilities and, in some cases, specifies the time frames within which the Authority must act. The Regulatory Authority appreciates the burden that implementing the ECA may impose on industry, but that does not relieve the Authority of its statutory responsibilities. The Regulatory Authority also notes, as Digicel correctly points out, that a number of the activities identified in the proposed work plan will not require a major commitment of time or resources by the Authority or industry.

LinkBermuda and Quantum urged the Regulatory Authority to add an investigation of local access charges to the list of major activities. The Regulatory Authority will consider this request later in the year.

Question 3

Interested parties are invited to comment on the Regulatory Authority's proposed performance indicators. Parties that propose the deletion of any proposed performance indicator should provide a justification. Parties that propose the addition or modification of any proposed performance indicator should make a specific proposal and provide a justification.

In the Consultation Document, the Regulatory Authority proposed the adoption of objective performance assessment indicators based on the deadlines specified by the RAA and ECA. BTC, CableCo and Logic supported the proposed performance indicators and welcomed the Regulatory Authority's commitment to develop additional

indicators in its next work plan. Digicel found the proposed performance indicators to be acceptable, and asked that the audit of the Authority required by the RAA be made public. Section 47(2)(b) of the RAA requires the publication of the Regulatory Authority's audited financial statement in the Gazette.

Question 4

Interested parties are invited to comment on the Regulatory Authority's proposal to adopt an expense budget for financial year 2013-14 of \$3,557,600. Parties that advocate a different expense level should specify the proposed level and provide a justification.

In the Consultation Document, the Regulatory Authority proposed an expense budget for financial year 2013-14 in the amount of \$3,557,600. BTC, CableCo and Logic stated that they were unable to comment on the reasonableness of the proposed budget absent additional information about the Regulatory Authority's proposed staffing.

Digicel objected to the proposed expense budget as driven by an overly ambitious work plan. Making comparisons with the per capita cost of regulation in The Bahamas and the UK, Digicel argued that the proposed expense budget is excessive and should be reduced to \$1.7 million, at a per capita cost of \$26. The Regulatory Authority notes the parties' questions and concerns about staffing. As the Regulatory Authority has only recently been established, the Authority is temporarily supported by employees seconded from the Department of Telecommunications. As the Regulatory Authority begins to carry out its responsibilities under the ECA, it will develop a better understanding of its staffing needs. The proposed expense budget is intended to provide a framework for satisfying those needs. The Regulatory Authority does not agree with Digicel's analysis. The Regulatory Authority's work plan is driven by the requirements of the ECA, however ambitious Digicel may consider that to be. The proposed expense budget must be measured against the ECA, not a per capita comparison to The Bahamas.

The Regulatory Authority, however, takes note of the parties' comments. The Regulatory Authority will review its performance against budget six months after the start of the financial year. If warranted, the Regulatory Authority will make further communications to the Government regarding the Authority's budget.

Question 5

Interested parties are invited to comment on the specific items in the Regulatory Authority's expense budget. Parties that advocate reducing or eliminating any line items should propose a specific level of funding and provide a justification. Parties that advocate increasing or adding any line items should propose a specific level of funding and provide a justification. Parties are encouraged to provide comparisons to relevant jurisdictions.

In the Consultation Document, the Regulatory Authority presented the elements comprising its proposed expense budget for financial year 2013-14. BTC, BDC, CableCo, and Logic raised questions about the number and tasks of the Regulatory Authority's proposed staffing. BDC, CableCo and Digicel also raised questions about the Authority's proposed use of consultants. Digicel suggested specific revisions to

the individual elements of the Regulatory Authority's proposed expense budget. LinkBermuda and Quantum deferred to the Regulatory Authority as to its budget, but recommended a robust training budget. As noted above, the Regulatory Authority anticipates refining its staffing needs as it gains experience with implementing the requirements of the ECA. This experience will also enable the Regulatory Authority to make judicious use of consultants. One-time requirements, e.g., developing a Bermuda-based solution to number portability and conducting the required spectrum investigation, may be best satisfied through short-term consultancies rather than adding permanent staff. Where permanent staff are deemed to be the better solution, the Regulatory Authority will not need to rely on outside consultants, the need for which will in any event decline as the Authority completes the time-bound consultations required by the ECA. Finally, the Regulatory Authority's proposed budget reflects the Authority's best estimate as to its needs and that, as it gains experience, those needs will be better understood. The Regulatory Authority appreciates that Digicel and others may disagree with the Authority's conclusions, but a year of experience will provide all concerned with a better understanding of the Authority's budgetary needs. As noted above, the Regulatory Authority will review its performance against budget mid-way through the financial year. The Regulatory Authority anticipates developing a more detailed and experience-based expense budget as part of the work plan consultation for financial year 2014-15.

Question 6

Interested parties are invited to comment on the Regulatory Authority's proposal not to request the Minister to impose service fees during financial year 2013-14. Parties that advocate imposition of service fees should identify specific services for which a fee should be imposed, propose a methodology to develop a reasonable estimate of the cost of providing the service and provide a justification.

In the Consultation Document, the Regulatory Authority proposed not to ask the Minister to impose service fees on the users of its services during financial year 2013-14, but stated that it would revisit this issue during the financial year 2014-15 work plan consultation. BTC agreed with this approach. Logic indicated that the Regulatory Authority's decision not to impose service fees should continue beyond financial year 2013-14; it also suggested that any favourable variances during the year be put towards the next fiscal year's budget. Digicel welcomed any proposal that would keep down the Regulatory Authority's administrative costs. BDC characterized the costs associated with the Regulatory Authority's use of consultants as start-up costs and suggested that they be recovered through a service fee. LinkBermuda and Quantum argued that service fees should be imposed on all licensees and that application fees be imposed on class licensees and entities seeking an exemption from the obligation to hold a COL.

The divergent views expressed by the commenting parties lead the Regulatory Authority to conclude that it should not ask the Minister to make a regulation imposing service fees during financial year 2013-14, but that service fees should be considered in connection with the financial year 2014-15 work plan. After a year of experience, the Regulatory Authority will have a better understanding of its costs and who is responsible for imposing those costs; the Authority may also conclude, as Digicel appears to suggest, that the cost of calculating and collecting service fees may outweigh the revenues they generate.

BDC's suggestion that the costs of consultants be recovered through service fees is inconsistent with the definition of service fees in Section 44(3) of the RAA. In this regard, the Regulatory Authority notes that the Authority will revisit its expense budget and level of the general regulatory fee next year and that, contrary to BDC's apparent concern, the Authority will not seek to recover the 2013-14 "start-up costs" of consultants in financial year 2014-15.

Finally, the Regulatory Authority notes that application fees or any other regulatory fees cannot be required of entities that are exempt from the requirement to hold a COL. Moreover, the Regulatory Authority does not envision an application process for such entities and, as a consequence, they will not impose any costs on the Authority. Finally, the Regulatory Authority notes that Sections 40 and 41 of the RAA address the disposition of favourable budget variances.

Question 7

Interested parties are invited to comment on the Regulatory Authority's proposal not to request the Minister to impose general regulatory fees on class licence holders or specialized licensees during financial year 2013-14. Parties that advocate imposition of general regulatory fees on class licence and/or specialized licensees should identify the specific class licensees and/or specialized licensees that should be required to pay general regulatory fees, should propose a reasonable fee and should provide a justification.

In the Consultation Document, the Regulatory Authority proposed not to ask the Minister to make a regulation imposing general regulatory fees on class licensees and specialized licensees (which pay Government authorization fees) during financial year 2013-14, but stated that it would revisit this issue during the financial year 2014-15 work plan consultation. BTC agreed with this approach. Digicel also agreed with this approach to the extent that these licensees do not impose more than *de minimis* costs on the Authority and the cost of collecting these fees is likely to exceed the revenues to be generated. LinkBermuda, Logic and Quantum argued that general regulatory fees should be imposed on all licensees. Logic also suggested that the Regulatory Authority defer the issuance of class and specialized licences until the appropriate level of fees for such licensees can be determined.

For all of the reasons set forth above in connection with service fees, the Regulatory Authority concludes that it should not impose general regulatory fees on class licensees and specialized licensees during financial year 2013-14, but should consider this matter in connection with the financial year 2014-15 work plan. As concerns Logic's suggestion, the Regulatory Authority notes that the issuance of class licences is a necessary complement to the issuance of ICOLs, and that services previously not subject to regulation under the TA86 must now be licensed. Similarly, specialized licences issued under the TA86 are coming up for renewal and applications for new licences continue to be filed. To delay the issuance of class and specialized licences would result in the discontinuation of existing operations or, if they continue, requiring the individuals in question to operate without licences in violation of the ECA. The Regulatory Authority concludes that such a result would not be sound public policy.

Question 8

Interested parties are invited to comment on the Regulatory Authority's proposal to calculate relevant turnover in the manner described in paragraph 89. Parties that advocate adoption of a different means of determining relevant turnover should propose a specific methodology and provide a justification.

In the Consultation Document, the Regulatory Authority proposed to recommend that "relevant turnover" be defined as "total turnover," minus payments made to other COL holders in Bermuda for wholesale electronic communications services. BTC and Digicel did not disagree with this definition. North Rock asked whether payments made to class licensees may be deducted in calculating relevant turnover. Although the Regulatory Authority has not proposed that class licensees be permitted to offer wholesale electronic communications services, were that to be allowed payments to such licensees for electronic communications services would qualify for deduction.

LinkBermuda and Quantum argued that ICOL holders should also be able to subtract payments made to non-Bermudian telecommunications service providers. The ECA, however, does not permit such a result; only payments made to operators with COLs issued by the Regulatory Authority may be deducted. Such a result is consistent with the intent of the ECA to avoid "double payments" by the operator providing the wholesale service and the operator employing that wholesale service in the provision of the services authorized by its licence. Although the Regulatory Authority anticipates initiating a public consultation to address relevant turnover in greater detail, during financial year 2013-14 ICOL holders may only deduct payments made to other licensees with COLs related to the provision of ICOL holder's electronic communications in calculating their relevant turnover. In this regard, the Regulatory Authority notes the response of Brasil Telecom that "revenue from traffic that merely transits Bermuda is not included in the calculation" of total turnover. Whether traffic "merely transits" Bermuda is a question of fact, the resolution of which is within the purview of the Authority.

Question 9

Interested parties are invited to comment on the Regulatory Authority's estimate that ICOL holders' relevant turnover for financial year 2013-14 will be approximately \$210 million. Parties that believe that this is not a reasonable estimate should provide an alternative estimate along with an explanation of the basis on which they derived that estimate.

In the Consultation Document, the Regulatory Authority estimated that the total relevant turnover for the industry during financial year 2013-14 would be approximately \$210 million. BTC and Digicel indicated that they had insufficient information to disagree with the Authority. LinkBermuda and Quantum similarly deferred to the Regulatory Authority's estimate, but characterized it as cautiously optimistic given current economic conditions. CableCo expressed a similar caution and urged the Regulatory Authority to manage its long-term budget accordingly. BDC predicted that industry revenues would stay flat or even decline and suggested that the Regulatory Authority assume relevant turnover of under \$200 million in financial year 2013-14. The Regulatory Authority believes that estimate to be sound. The

Regulatory Authority, however, will monitor the payments made by industry and, if required, will adjust its expenditures accordingly.

Question 10

Interested parties are invited to comment on the Regulatory Authority's proposal to request the Minister to impose a regulatory fee of 1.75 per cent of relevant turnover. Parties that advocate a different percentage should propose a specific percentage and provide a justification.

In the Consultation Document, the Regulatory Authority proposed a general regulatory fee for financial year 2013-14 of 1.75 per cent of relevant turnover. BTC stated that it is not in a position to comment on the proposed fee, given its questions about the Regulatory Authority's expense budget and estimate of total relevant turnover. Brasil Telecom commented that the Regulatory Authority's proposed fee structure is reasonable in light of its work agenda. CableCo asserted that the level of this fee should not increase without further consideration. Digicel contended that the fee should be set no higher than the amount required to regulate the sector under the TA86. Based on experience in The Bahamas and adding an uplift for one-time capital costs, Digicel asserted that a 0.8 per cent general regulatory fee would be more appropriate to cover its proposed budget of \$1.7 million for the Regulatory Authority. For the reasons stated above, the Regulatory Authority remains of the view that its proposed expense budget reflects the amount required to satisfy its statutory obligations and, accordingly, the Authority is recommending a general regulatory fee of 1.75 per cent, which is the level necessary to recoup that expense budget.

LinkBermuda and Quantum did not address the level of the fee, but asked the Regulatory Authority to make clear that ICOL holders can recover the general regulatory fee through a dedicated charge to end-users on their bills. The Regulatory Authority is not persuaded, absent a more complete record, that the general regulatory fee can be fairly apportioned among end-users. Accordingly, the Regulatory Authority is not prepared to recommend such a dedicated charge at this time.

Question 11

Interested parties are invited to comment on the Regulatory Authority's proposal to require ICOL holders to make their first general regulatory fee payment on 1 May 2013, based on "relevant turnover" during January through March 2013, and to have three subsequent quarterly payments. Parties that advocate a different payment schedule should propose a specific alternative and provide a justification.

In the Consultation Document, the Regulatory Authority proposed to recommend to the Minister that ICOL holders be required to pay their general regulatory fees on a quarterly basis, with the first payment due by 31 May 2013. The parties commenting on the proposed schedule agreed with such an approach.