



BERMUDA

REGULATORY AUTHORITY (EXEMPTIONS AND CLASS LICENSES) (NO. 2)  
GENERAL DETERMINATION 2013

BR 78 / 2013

The Regulatory Authority, in exercise of the power conferred by section 62 of the Regulatory Authority Act 2011 read with section 16(2) of the Electronic Communications Act 2011, makes the following General Determination:

Citation

1 This General Determination may be cited as the Regulatory Authority (Exemptions and Class Licences) (No. 2) General Determination 2013.

Interpretation

2 In this General Determination unless the context otherwise requires all relevant terms shall have the meaning given in the Regulatory Authority Act 2011 and the Electronic Communications Act 2011.

General Purpose

3 (1) This General Determination establishes—

- (a) an exemption for certain providers of passive infrastructure from the requirement to hold a communications operating licence; and
- (b) a registration requirement for such providers.

(2) Accordingly, this General Determination adopts Attachment A to the Regulatory Authority (Exemptions and Class Licences) General Determination 2013 (BR 46/2013), with amendments, as set out in the attachment hereto entitled "Exemption From Requirement to Hold a Communications Operating Licence".

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Terms and conditions of the General Determination

4 The Schedule has effect.

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SCHEDULE

(Paragraph 4)

BERMUDA REGULATORY AUTHORITY

COMMUNICATIONS OPERATING LICENCES: EXEMPTION FOR PASSIVE INFRASTRUCTURE PROVIDERS

MATTER: C13/847

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;

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- (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.

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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.

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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**

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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;

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**“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:

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- (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.

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**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

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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.

Made this 9th day of August 2013

Chairman, Regulatory Authority