

COMMUNICATIONS REGULATORY REFORM:

**TOWARDS A NEW REGULATORY FRAMEWORK FOR THE
COMMUNICATIONS SECTOR**

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on behalf of

**THE GOVERNMENT OF
THE COMMONWEALTH OF THE BAHAMAS**

A Consultation Paper on the Issues and Options for Reform of the Regulatory
Framework for the Communications Sector in

The Commonwealth of The Bahamas

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FOREWORD

The Government has two broad objectives for the communications market:

- to improve the communications services used by consumers in The Bahamas, both in terms of quality and price; and
- to safeguard future investment in the sector.

The Government recognises that liberalisation of the sector is necessary in order to achieve these objectives. There are two key processes for liberalisation.

First, the implementation of a new regulatory framework for communications, which is the focus of this consultation. The new framework will create the conditions which will allow competition to flourish to the benefit of consumers and the nation as a whole. To do this, the new framework must be modern, robust and transparent.

Second, the privatisation of BTC. For further information on the Government's proposed sale of shares in BTC, see the supplement and press release at www.btcprivatisation.com.

The Government has announced its intention to liberalise the mobile sector through the introduction of additional mobile licences at a later date after completion of these two stages.

This consultation document sets out the Government's preliminary views and reasoning on the envisaged reform of the regulatory framework for the communications sector. This consultation document does not set Government policy, but rather is an invitation for written submissions from the Bahamian public and interested parties, aimed at stimulating debate on the issues addressed in this document for the purpose of refining Government policy.

The deadline for responses is 9 January 2009. Please refer to section 3 of this document for further details on responding to this consultation, including the treatment of confidential information.

1 EXECUTIVE SUMMARY

This consultation follows a comprehensive review of the current regulatory framework for the communications sector which gave rise to a series of recommendations for reform. By implementing the recommendations the Government intends to ensure that the regulatory regime applicable to the communications sector in the Commonwealth of The Bahamas will allow competition to flourish, safeguarding at the same time investment in the sector.

The key decisions arising from the review were firstly **to modernise the regulatory system** at the *institutional level*, by developing a robust framework for a single converged regulator. In terms of *substantive law and regulation*, the intention is to ensure that the reformed regulator will have the powers to regulate effectively in three main areas: telecommunications, broadcasting and spectrum management. The Government believes that the guiding principles of regulation should be technological neutrality in the regulation of services provided on all platforms (e.g. television, radio, personal computers, fixed and mobile telephones); to ensure that content is appropriately regulated across all platforms; and that competition law powers are exercised alongside regulatory powers. In terms of *monitoring and enforcement*, the Government wishes to give to the regulator effective powers to keep the sector under review and to intervene in the marketplace, if necessary by fining operators. The goal would be to ensure that the regime most favourable to a competitive communications sector is introduced whilst ensuring a level playing field between the operators.

This document outlines a number of key areas to be covered by the regulatory reform in order to meet the Government's objectives. This will entail the enactment of a new Communications Act, a new act establishing the regulator (repealing and replacing the current PUC Act), new technologically neutral licences for the provision of electronic communications services and facilities, and the publication of a new Sector Policy. In this consultation the Government poses a wide range of questions regarding those key issues and sets out its preliminary thinking on some of the issues, together with certain initial proposals. Your responses will assist the Government to formulate the envisaged new measures.

2 INITIAL PROPOSALS AND KEY ISSUES FOR CONSULTATION

The Government has identified the key areas to be covered by the regulatory reform, which will result in the enactment of a new regulatory framework and the publication of a new Sector Policy.

In this section a wide range of questions are posed regarding the key issues relating to liberalisation of the communications sector. These questions cover:

- (a) the regulator;
- (b) telecommunications;
- (c) broadcasting; and
- (d) spectrum.

A THE REGULATOR AND ITS POWERS

The success of a regulatory framework for the communications sector is dependent on the ability of the regulator to develop, apply and enforce that framework. The Government therefore wishes to ensure that the PUC, or any newly formed regulator, has this ability. It proposes building on the powers presently available to the PUC whilst ensuring that the regulator remains accountable for its decisions. As set out below, the Government proposes to:

- create a new converged national regulator,
 - clarify the functions of the regulator,
 - ensure that the regulator has comprehensive powers, both regulatory powers and competition law powers for the sector, and
 - put in place an effective appeal mechanism to ensure proper accountability of the regulator, as regards operators and affected third parties.
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- **Creation of a new regulator**

A converged communications regulator can either be established as a new and single-sector regulator with responsibilities restricted to the communications market, or alternatively it can operate as part of a multi-sector regulator which regulates additional sectors such as, for example, electricity and water (as is the case with the present PUC, albeit that the PUC is not currently active in its regulation of other sectors). The debate as to whether to have a single-sector regulator or a multi-sector one is complex. There are various arguments for and against the two models. In populous countries where availability of skilled individuals to work

for regulators is not an issue, it is generally recommended to have different regulators dealing with different sectors, mainly as a way to create real expertise in each area. However, as the Commonwealth of The Bahamas is a relatively small country, the creation of different regulators for the different sectors could likely lead to the fragmentation of the available expertise and to disproportionate expense.

Proposal: The Government is in favour of a new converged regulator for the converged communications sector, which will take over the functions of the existing regulators in the communications sector, whilst operating as part of the existing multi-sector regulator, the PUC.

It is envisaged that the new regulator would be responsible for:

- Electronic communications. .
- Broadcasting and Content. With regards to broadcasting, under the current regulatory regime the state-owned public broadcaster, Broadcasting Corporation of The Bahamas (“**BCB**”) does not act only as a broadcaster, but also undertakes certain regulatory functions. The new Communications Act should therefore transfer all regulatory functions from the BCB to the new regulator, and restrict the functions of the BCB to those of a public service broadcaster.
- Spectrum management and allocation, if necessary in a shared responsibility with the Government as defined in the sector policy.
- Other sectors: it is envisaged that the converged regulator could at a later date be responsible for overseeing other sectors such as post, electricity and/or water.
- **Competition law powers.** There is currently no generally applicable competition law in The Bahamas although the Government is considering the pros and cons of introducing it at a later stage. Meanwhile, the Government wishes to introduce competition law in the communications sector because the benefits of liberalisation in a sector characterised by large economies of scale and scope, access issues and network effects are usually greater if the regulator has competition law powers, to be exercised alongside its general regulatory and enforcement powers. These competition powers include:
 - the power to intervene against *abuses of a dominant position*, such as bundling products or services to leverage market power from one market into another, or making it difficult to compete due to access issues;
 - the power to act against *anticompetitive agreements*, such as agreements for the exclusive supply of services which limit or prevent other parties from competing; and
 - the power to exercise *merger control*.

In many jurisdictions, regulators have supplemented *ex ante*¹ regulation with general *ex post*² competition powers. Over time, it would be expected that a market would become more competitive, allowing the regulatory body to limit its regulatory intervention and rely more on its general competition enforcement powers. This reduced market intervention allows natural economic market forces to dictate the development of the market.

Proposal: Whether or not an umbrella competition law will eventually be introduced in The Commonwealth of The Bahamas, it is the Government's preliminary thinking that the communications regulator should be granted competition law powers, extending to proper merger control powers. Indeed, in a number of countries, the telecoms sector was the first sector in which competition law was introduced, in light of the need to ensure that a strong incumbent does not stifle competition in a newly liberalised market.

- **Monitoring and enforcement.** Any revised regulatory framework would have to ensure that the converged regulator has the ability to intervene when operators breach the terms of their licences or the relevant laws.

Proposal: The Government intends to strengthen the regulator's enforcement powers whilst putting in place explicit and robust safeguards for the parties affected by enforcement decisions. The power to impose fines in the banking sector, for example, is granted to the Governor of the Central Bank under the Central Bank of The Bahamas Act 2000 and the Banks and Trust Companies Regulation Act 2001. These Acts provide for appeals from actions of the Governor to the Supreme Court as well as other safeguards, so that any imposition of a fine by the Governor can be challenged by the affected party. Such safeguards are very limited in the Telecommunications Act 1999. A communications law granting to the regulator the power to impose fines directly would have to include similar safeguards and clear appeal rights as well as guidance as to the appropriateness of fines. The regulator would also be allowed to prosecute directly for breaches of the Communications Act so that the fines would be imposed by the Courts but the regulator would not be dependent on other bodies for the prosecution. A similar system is presently provided for in the National Insurance Act of 1972 (as amended), against those who breach that Act.

Question 1: Do you agree with the Government's preliminary thinking that a new converged and strengthened regulator for the communications sector should be established, particularly with regards to the powers and functions of the regulator, the application of competition laws and the regulator's enforcement powers?

¹ These are regulatory measures intended to deal with issues of concern in anticipation of those events occurring.

² These are regulatory measures intended to deal with anti-competitive actions already taken by operators.

- **Funding the regulator**

Regulators may be funded either through direct fees charged to operators or by government funding (a form of indirect taxation). At present the PUC is funded through the former mechanism. The PUC sets its fees, known as “licence fees”, which are levied against licensed operators in order to meet its costs. It also receives fees for radio licences issued to organisations and individuals, for example for radios on boats. All fees are charged directly by the PUC rather than Government. Direct charging by the regulator is the preferred mechanism internationally as direct funding by the Government could have the effect of compromising the regulator’s independence. The Government intends to maintain the direct charging principle.

International best practice is that licence fees should be used to cover the costs of the regulator and not to raise money for other uses. Similarly, fees should cover all of the regulator’s costs, so that no government subsidy is required. The fees should be levied in a fair and non-discriminatory way on the regulated (licensed) operators. It is therefore common for regulators to forecast their annual operating costs, and then charge licensed operators their share of these costs in proportion to the operators’ annual turnover for regulated activities. Settlement mechanisms deal with any differences between the regulator’s actual and forecast operating costs and any differences between any operator’s actual and forecast annual turnover.

The methodologies for apportioning the regulator’s costs amongst the operators vary from country to country. Generally, there are two preferred models. The simplest methodology is to charge the operators a fixed percentage of their relevant annual revenues, i.e. those generated in the regulated markets. The second methodology is to vary the percentage used to calculate the licence fee according to the turnover of the relevant company. Under this method, operators that have higher revenues will pay a higher percentage of their revenues as a licence fee than smaller operators. This latter mechanism has been adopted in the UK, for example.

Proposal: The Government’s preliminary thinking is to require the regulator to publish its budget for the forthcoming year and to levy a licence fee from operators to meet this budget. The Government is presently of the view that the regulator should be at liberty to determine whether to charge the same percentage licence fee for all operators or to publish a tariff table with varying percentages according to the operator’s turnover. Further, the regulator would have the power to publish a minimum revenue threshold, below which operators would not be charged a licence fee.

Additionally, the Government proposes enabling the regulator to carry surplus funds over to the following year due to the likely disproportionate cost of attempting to return a surplus to the licensees. In this case, fees for the following year would be lower by the amount of the surplus.

Question 2: Do you agree that the costs of the regulator should be met by all participants in the communications market, by a methodology to be determined by the regulator which should be fair and proportionate to each operator's relevant turnover?

B TELECOMMUNICATIONS POLICY

- **Technological neutrality**

In recent years there has been rapid technological advancement in the communications sector. This has made redundant some of the old concepts used in regulation: even fundamental concepts such as “telephone calls” are now open to question. Consequently, regulators internationally have tried to implement regulation which is “technology neutral” and therefore protected from the risk of becoming out of date. The regulation should also avoid favouring one form of technology over another: it is the regulator’s job to ensure good, competitive services are being provided, not to determine by what technological means this must be achieved. A regulatory system based on user experiences, rather than supplier processes, is more resistant to technological changes. For example, regulation of voice services, regardless of medium, ensures a level playing field between providers of VoIP (Voice over Internet Protocol) services and providers of voice call facilities over traditional public switched networks.

Proposal: The Government proposes that the Communications Act will be “technology neutral” where possible, allowing for the adoption of a system of regulation which would be applicable across all technological platforms, present and future, in a converged environment. The requirements of the new regulatory framework (such as a contribution to a universal services fund as envisaged below) would apply to operators regardless of the technology they decide to use to provide their services.

Question 3: Do you agree with the Government’s technologically neutral approach?

- **Wholesale Services and Interconnection**

Wholesale services facilitate competition. They allow market players to provide services to consumers by paying other operators for access to their infrastructure. Without these services, competitors would have to build their own infrastructure in order to provide services. The considerable capital investment required to roll out a new network would likely be prohibitive for many potential new operators. Additionally, the presence of too many infrastructure owners is inefficient and would likely cause disruption to the people of The Commonwealth of The Bahamas as each operator would have to be assigned rights to dig up public property to lay and maintain its cables. There are already two extensive

communications infrastructures in The Bahamas (BTC and Cable Bahamas), with the possibility of a third, being deployed through BEC's infrastructure.

Despite the capital outlay, however, certain operators may prefer to roll out their own networks rather than lease capacity from incumbent operators. This would minimise their reliance on the current network operators, thereby limiting their exposure to significant increases in wholesale rates or unannounced reductions in capacity, leading to lower quality services. The Government does not wish to rule out this possibility at this stage.

Interconnection is fundamental to the development of a competitive liberalised market. It is the means by which calls initiated on one network can transit and / or terminate on another operator's network. The physical points of interconnection, the cost of interconnection and some of the technical criteria can be expected to have major impact on the ability of new entrants to the market to compete effectively with the incumbent operator. Robust procedures for ensuring interconnection are required even in mature markets.

Proposal: To enable effective competition between operators, the Government is considering requiring such operators to offer mutual interconnection services on fair, reasonable and non-discriminatory terms. In keeping with the best practice principle of light touch regulation, the Government proposes to encourage the operators to engage in discussions to agree interconnection rates and only giving the regulator the power to mandate interconnection (including potentially at mandated prices) if initial commercial negotiations are not successful. Similarly, new entrants would be able to benefit from mandated interconnection rates when connecting their end customers to their local switches. The regulator would be able to oblige dominant operators to offer wholesale access to its infrastructure once an adequate financial reporting regime is in place for determining the appropriate cost-based prices.

Question 4: Do you agree with the Government's preliminary thinking on the regulation of the wholesale and interconnection markets?

- **Numbering Plan**

The number combinations that can be assigned to communications operators and subscribers are limited. The new regulator will have to manage a numbering plan to ensure the efficient allocation of numbers in a manner that helps callers understand the cost implications of calling that number. Therefore, when a person calls a number in The Bahamas, that person should be able to ascertain whether they will be charged a standard rate, high rate or low rate for that call.

Numbering plans should also ensure that allocated numbers meet technical standards. This could mean harmonising the number of digits that need to be dialled to make local and national calls.

Proposal: The Government proposes that a new numbering plan will be introduced before liberalisation. It is intended that this numbering plan would continue to allocate certain number ranges to specified services.

Question 5: Do you agree that a new numbering plan should be introduced?

- **Number portability**

Market liberalisation should foster competition as new service providers enter the market and offer more competitive services to consumers. However, a significant barrier that deters subscribers from switching service providers and taking up cheaper or better services is the inconvenience and cost of notifying contacts and, in the case of businesses, customers and suppliers of the change of their telephone number.

Number portability is a regulated facility which enables users of publicly available telephone services (including mobile services) to change their service provider whilst keeping their existing telephone number. This fosters competition as consumers are able to take advantage of new offers advertised by competing service providers without the cost or inconvenience of changing telephone number.

In most jurisdictions, number portability only applies to subscribers switching between similar types of services. For example, subscribers that have a fixed telephone service provided by Operator A can keep their telephone number when switching to a fixed telephone service provided by Operator B. However, that subscriber would not be able to keep his or her telephone number when switching from a fixed to a mobile telephone service.

There are a number of reasons for limiting number portability to customers who switch to similar services: these include that fixed numbers can indicate geographic locations, to ensure that telephone users have clarity on the charges to be incurred when they call a number and also due to increased technical difficulties in providing such portability. Furthermore, absolute number portability (i.e. the ability to keep a telephone number even when switching from a fixed service to a mobile service) would interfere with numbering plans which seek to assign certain numbers to certain types of services or to a certain geographic location.

Proposal: The Government proposes to introduce number portability for fixed communications as soon as is practicably possible. It is intended that number portability would be introduced for mobile communications from the time that any alternative mobile service operators begin competing with BTC. The Government does not propose introducing absolute number portability between the mobile communications sector and the fixed communications sector at the moment though will leave open the possibility of the regulator introducing this in the future.

Question 6: Do you agree with the Government's proposal to introduce number portability for fixed communications as a matter of priority in the sector, to be followed by number portability

for mobile communications as soon as practical after the introduction of competition in mobile services?

- **Rebuttable presumption of dominance**

Typically, efficient regulatory regimes will attempt to minimise the regulatory burden on operators and allow market forces to develop the market. However, it is sometimes necessary for regulators to intervene in markets to ensure that operators can compete on a level playing field. This happens when an operator controls so much of the market that it can raise prices or reduce service quality without suffering a significant loss of customers. In this case the operator is said to be “dominant” in that market. A robust regulatory regime will include measures to prevent a dominant operator abusing its dominant position. Regulators perform analyses of the individual markets (for example, the market for mobile phone voice services) to determine whether an operator is dominant. These analyses look at factors such as market share and consumers’ responses to changes in price.

At the beginning of liberalisation, it is fairly clear that the existing incumbent operator would have a position of dominance in a number of markets. With the introduction of competition, there is a need to keep the market under review. It can take some time for a new regulator to perform a full market analysis and determine that an operator is dominant. Initially, the regulator would have to assess the product and geographic markets to demonstrate that the operator is dominant and, second, the regulator would have to demonstrate that the operator could act to an appreciable extent independently of its competitors or customers. The Government intends that the new regulator will begin a programme of market analysis in The Bahamas in this way, publish the results and regulate accordingly.

However, a full market analysis can take many months to complete. The new regulator will need to be able to apply pro-competitive regulatory remedies before the programme of full market analyses is complete. Waiting for full market analyses could seriously compromise consumer welfare if dominant operators are free to set prices as they wish or deny access to their infrastructure to potential competitors. Therefore interim measures are necessary.

Proposal: Given the highly concentrated nature of the communications sector in The Bahamas post-liberalisation, the Government is considering introducing a rebuttable presumption that the incumbent operators are dominant in certain specified markets.

This presumption could be rebutted by any interested party demonstrating to the regulator that the licensee either lost its market power or was never in a dominant position. In putting forward a case to rebut a presumption of dominance, a licensee should focus on those factors that would be relevant when preparing a dominance determination. These factors include: market shares, market concentration, control of essential facilities, network effects, economies of scale, barriers to entry and restrictions on consumers switching.

Question 7: Do you agree that initially there should be a rebuttable presumption of dominance in the mobile communications, fixed communications (landlines), cable television and internet services sectors?

- **Universal Services Obligation (USO)**

Universal service is the provision of a defined set of services to all end-users regardless of their geographical location and, in light of specific national conditions, at an affordable price. Existing policy on universal service in The Bahamas is for the provision of basic telecommunications services including emergency services and public pay apparatus as well as networked information services and access to the Internet, to all populated areas, defined as settlements of ten or more households. This is provided and funded by BTC. In addition to this obligation on BTC, Cable Bahamas has an obligation in its current franchise agreement to provide a cable television service throughout The Bahamas.

As we move to a liberalised environment, there is a danger that the universal service in The Bahamas could be compromised if it is not properly established in the new legislation and policy and also adequately funded. The current internal funding mechanism used to work because BTC was the monopoly provider and could use money from profitable areas of its business to fund the unprofitable services provided to very remote communities. Through the liberalisation of the market, competing operators will be able to 'cherry pick' and compete with the profitable services that BTC provides thereby removing some of BTC's ability to fund unprofitable services. Without an effective USO, this could put at risk the services currently provided to customers in remote areas and customers with very low usage.

By implementing an effective USO, the PUC can guarantee equality of service and coverage, protecting the most vulnerable customers. Due to its position as the incumbent operator and the significant investment BTC has made to the infrastructure of the islands, it is reasonable to assume that the mandate of the USO would be expected to be fulfilled substantially by BTC.

As a USO would require, for example, BTC to offer services to certain customers at a loss, the costs incurred by BTC through the provision of these services should be covered by a Universal Service Fund. The operators not subject to the USO would be called upon to contribute to this fund. This corresponds with international best practice.

- Proposal: The Government envisages that there should continue to be a general USO for a designated operator to provide pre-determined services to settlements with ten or more households where it would not be otherwise profitable to offer those services.

The scope of the services covered by the USO should be the subject of a separate consultation and may include fixed voice services, access to internet, access to broadband services, the ability to receive single or multi-channel television or any other service.

- Given the range of services which may fall into scope, it may be that the most efficient method of allocation would be for either (i) one operator to meet the USO for all services or (ii) for one operator to be obliged to provide the facilities that would enable other operators to provide those services.

The USO would be technology neutral. For the avoidance of doubts, all operators will be subject to (less wide-ranging) quality of service obligation and may be subject to coverage obligations. These would be mandated in their licence and will not be funded by a central fund. A universal service fund will be established, maintained and administered by the regulator. The cost of providing the USO and sunk costs will be funded by the other licensed operators through payments into the universal service fund. The payments should be a fixed percentage of the revenues generated by the operators for the provision of licensed service. This percentage should be determined and periodically reviewed by the regulator. It is proposed that BTC would be exempt from making direct payments to the USF, but would remain liable for covering the cost of maintaining the USO. BTC would be required to provide detailed and evidenced justification for the cost of its USO which will be independently verified.

Question 8: Noting that the scope of universal services is not the subject of the current consultation, do you agree that the regulator should introduce and manage a fund to ensure that universal service obligations are met?

- **Service liberalisation**

The ultimate goal of liberalisation is to ensure that consumers benefit from a wider range of cheaper services, driven by competition. Price and service competition will develop as the new service providers enter the market. New market entrants will attempt to win new customers by offering cheaper prices and/or more innovative services, forcing existing operators to consider reducing their own prices and improving their services. This effect will be more pronounced if there are no limits to the kind of technology that can be used to provide services.

Proposal: the Government proposes that the new regulatory regime should not impose any limits on the number of licences to be awarded to fixed data and voice electronic communications service providers, subject to those licensees complying with the terms of their licenses and any relevant enactment. Further, the Government would propose including a technology neutral approach to liberalisation, encouraging operators to use the most efficient ways to provide services to their customers (and pass on the savings). This means that VoIP and other resale services will be allowed.

The Government has considered the current state of competition and potential state of competition in the facilities market between the existing operators. The Government proposes immediate liberalisation of the facilities market so that operators can compete fully with each other..

Question 9: Do you agree that fixed voice, and in particular VoIP, and other resale services should be liberalised when the new regulatory package is introduced?

C BROADCASTING AND CONTENT REGULATION

- Broadcasting Regulation

The new Communications Act should enable the new regulator to regulate all aspects of broadcasting.

- Content Regulation

In a technology neutral environment, there would be no restrictions on the types of services that could be offered over communications facilities. This ensures that the regulatory framework does not impede the development of innovative forms of distributing services, such as IPTV (television broadcast over the Internet) or mobile TV, and also does not inhibit the development of converged services, such as interactive television.

The removal of limitations on who can broadcast services means that the regulator would have a wider responsibility to ensure that content meets certain guidelines. These guidelines could cover factors that may be offensive to general viewers, requirements to encrypt material that may not be suitable for all audiences, restrictions on broadcasting misleading material and rules for ensuring fair representation of political campaigns.

For the avoidance of doubt, it is not proposed that the new regulator would have any involvement in the collection of royalties for distribution of copyright materials.

Proposals: It is the Government's preliminary thinking that the new Communications Act should enable the new regulator to regulate all aspects of broadcasting and content services, including the licensing of broadcasting and content services on all platforms (e.g. radio, television, cable, mobile, and, where appropriate, over "new media" platforms), setting of broadcasting standards (e.g. with regards to protection of minors, political broadcasting, advertising and sponsorship, etc.) and encouraging local production.

It is also the Government's preliminary thinking that the BCB should be subject to the regulatory control of the new converged regulator for all matters of content regulation. The BCB should be licensed by the new regulator and subject to its enforcement regime for compliance with all standards, codes and regulations set by the new regulator.

Question 10: Do you agree with the Government's proposal to liberalise cable and television markets?

Question 11: Do you agree with the proposed powers that the regulator will be given with regards to content regulation? Do you agree with the Government's preliminary thinking that the BCB should be licensed and subject to the regulations set by the new regulator?

D SPECTRUM

- **Powers regarding Spectrum**

Spectrum (the range of all possible electromagnetic radiation frequencies) is a valuable resource which is naturally in limited supply. It is an essential component of many electronic communications services, including cellular services. It is also likely that in the future new services will be developed which require spectrum. Spectrum must be managed to avoid intolerable interference between competing services to and to ensure that it is allocated in an efficient way.

At present spectrum is allocated directly to operators who apply for it – there is no system in place to accommodate a bidding process. Further, the allocation of such spectrum to the applicant operator is made for a specific purpose and is non-transferable. If the said operator wishes to use the spectrum for a purpose other than that specified to it by the regulator upon allocation, or the operator wishes to transfer such allocated spectrum to a third party, the operator must obtain the regulator's prior approval for this.

Proposal: It is the Government's preliminary thinking that the new Communications Act should *enable* the new regulator to implement mechanisms for licensing and allocation of spectrum which ensure efficient utilisation of spectrum. These should support existing services and technologies as well as foster the development and roll-out of new services. The allocation of spectrum for certain uses will remain the responsibility of the Government, who will continue to represent the Commonwealth of The Bahamas in international treaty organisations dealing with spectrum related matters.

Question 12: Do you agree that the regulator should determine, together with the Government, the methodology to allocate spectrum?

- **Spectrum trading**

Efficient spectrum management is necessary to ensure that consumers derive the most benefit from wireless services. The first stage of spectrum management is ensuring that frequency bands are properly allocated and assigned. At this stage, it is necessary to consider international standards for spectrum use and potential interference issues.

The second stage of spectrum management is ensuring that once allocated to an operator, that spectrum continues to be used efficiently. This could entail lifting restrictions on an operator from assigning the spectrum to a third party and allowing spectrum to be reassigned for the deployment of new technologies. Spectrum trading devolves responsibility for ensuring efficient use of spectrum from the regulator to the market.

Proposal: It is the Government's view that the communications market in The Bahamas is not sufficiently developed to enable spectrum trading at this stage. However, the benefits of

spectrum trading are recognised and the Government is minded to introduce a framework which would enable the regulator to introduce spectrum trading at a later stage if it becomes expedient to do so.

Question 13: Do you agree that the regulator should have the ability to review the market and introduce spectrum trading at a later date?

3 RESPONDING TO THIS CONSULTATION

The Government invites written submissions from the public and interested parties on the questions set out in this document, to be made by 5pm on 9th January 2009.

Submissions can be made by email to consultation@btcprivatisation.com and should be in either PDF or Word format. Alternatively, submissions may be delivered, posted or faxed to the address below:

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Note that hard copies do not need to be submitted in addition to an electronic version. The Government will not acknowledge receipt of responses.

It would be helpful if your submission could include direct answers to the questions asked in this document, which are listed together at the Appendix. You should feel free to answer whichever questions you want to. It is not necessary to answer each and every question. Please indicate the number of each question you are responding to. It would also help if you can explain in your submission why you hold your views and how the Government's proposals would impact on you.

If you need advice on the appropriate form of response, please call KPMG, referencing the consultation, at +1 242 393 2007, and you will be put through to a person who can assist you.

Confidentiality

The Government believes it is important for everyone interested in an issue to see the views expressed by consultation respondents. The Government intends to publish all responses on its website www.btcprivatisation.com or a summary of such responses. **Please do not submit any information that is confidential or commercially sensitive to your business.** Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to the Government's use.

APPENDIX: CONSULTATION QUESTIONS

The following is a list of the consultation questions:

PART A – The regulator and its powers

Question 1: Do you agree with the Government's preliminary thinking that a new converged and strengthened regulator for the communications sector should be established, particularly with regards to the powers and functions of the regulator, the application of competition laws and the regulator's enforcement powers?

Question 2: Do you agree that the costs of the regulator should be met by all participants in the communications market, by a methodology to be determined by the regulator which should be fair and proportionate to each operator's relevant turnover?

PART B – TELECOMMUNICATIONS

Question 3: Do you agree with the Government's technologically neutral approach?

Question 4: Do you agree with the Government's preliminary thinking on the regulation of the wholesale and interconnection markets?

Question 5: Do you agree that a new numbering plan should be introduced?

Question 6: Do you agree with the Government's proposal to introduce number portability as a matter of priority in the sector?

Question 7: Do you agree that initially there should be a rebuttable presumption of dominance in the mobile communications, fixed communications (landlines), cable television and internet services sectors?

Question 8: Noting that the scope of universal services is not the subject of the current consultation, do you agree that the regulator should introduce and manage a fund to ensure that universal service obligations are met?

Question 9: Do you agree that fixed voice, and in particular VoIP, and other resale services should be liberalised when the new regulatory package is introduced?

PART C – BROADCASTING

Question 10: Do you agree with the Government's proposal to liberalise cable and television markets?

Question 11: Do you agree with the proposed powers that the regulator will be given with regards to content regulation? Do you agree with the Government's preliminary thinking that the BCB should be licensed and subject to the regulations set by the new regulator?

PART D – SPECTRUM

Question 12: Do you agree that the regulator should determine, together with the Government, the methodology to allocate spectrum?

Question 13: Do you agree that the regulator should have the ability to review the market and introduce spectrum trading at a later date?