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# PRELIMINARY ADJUDICATIVE DECISION AND ORDER

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In the Matter of Enforcement Proceedings  
No.1 of 2020

Regulatory Authority of Bermuda  
-vs-  
TeleBermuda International Limited

**PARTIES:**

- (1) The Regulatory Authority of Bermuda, ("the Authority")**  
Attention: Designated Representative, Richard Ambrosio
- (2) TeleBermuda International Limited, ("TBI")**  
Attention: Lee Greene, Dave St. Laurent, Nicholas Faries

**TO: The Board of Commissioners - Regulatory Authority of Bermuda**  
**RE: Preliminary Adjudicative Decision and Order**

## **A. INTRODUCTION**

1. Section 80(1) of the Regulatory Authority Act 2011 ("the RAA"), and Rule 30(1) of the Regulatory Authority (Adjudication Rules) General Determination 2014 ("the Rules"), provide for the submission of a preliminary adjudicative decision and order ("Preliminary Decision"), for your consideration in the captioned matter, prepared in accordance with-
  - (1) Section 80(2) of the RAA and Rule 30(2) of the Rules, which provide that a Preliminary Decision shall contain the following -
    - (a) A summary of the positions of the parties;
    - (b) Proposed findings of fact and conclusions of law;
    - (c) The proposed disposition of the matter, including any enforcement action to be taken or damages to be awarded.
  - (2) Section 80(3) of the RAA and Rule 30(3) of the Rules, which provide that a Preliminary Decision may also require the payment of costs, which may include either or both-
    - (a) costs incurred by a party;
    - (b) administrative costs and expenses incurred by the Authority.
2. Attention is also drawn to the other Board of Commissioners' ("the Commissioners") obligations, stipulated in the RAA and the Rules, requiring actions to be taken subsequent to the submission and/or review of this Preliminary Decision, specifically-
  - (1) Section 80(4) of the RAA and Rule 31 of the Rules, which stipulate that the Commissioners must provide the parties with an opportunity to respond to this Preliminary Decision; and
  - (2) Section 80(5) of the RAA and Rule 33(1) of the Rules, which provide that the Commissioners may revise this Preliminary Decision and shall adopt a final adjudicative decision and order, which must be served on the parties and published on the Authority's website.

## **B. POSITION SUMMARY**

1. The Authority's position is that TeleBermuda International Limited ("TBI") contravened certain statutory provisions requiring the payment of fees to the Authority. In particular, the Authority alleged that TBI contravened the following statutory, administrative or authorization provisions, in that TBI, as holders of an integrated communications operating licence ("ICOL") are required, in respect of each twelve-month period, to pay by quarterly installments in arrears, the following fees:

"(a) an RA fee ("RAF"), payable under sections 44 of the RAA and section 11 of the Electronic Communications Act 2011 ("ECA"), equal to 1.75% of licensee's relevant turnover - see also regulation 2 of, and the Schedule to, the Electronic Communications (Regulatory Authority Fees) Regulations 2018; and

(b) a Government Authorization Fee ("GAF"), in accordance with section 52 of the RAA as read with section 19 of the ECA, equal to 3.5% of licensee's relevant turnover – see also Head 25 of the Schedule to the Government Fees Regulations 1976.

Total outstanding GAF+RAF = [REDACTED]

2. TBI's position is that the amount of [REDACTED] representing the alleged total outstanding GAF+RAF fees ("Outstanding Fees") was paid to the Authority on 9 December 2020, in full and final settlement of this matter.

## **C. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **The IPO finds:**

1. The Authority, via email dated 18 November 2020, served on TBI the following legislated documentation, setting out the alleged facts, next steps and directing a payment schedule, namely -
  - (1) 'Written Notice pursuant to section 93(2) of the Regulatory Authority Act 2011 ("RAA") - Outstanding Quarterly Fees, TeleBermuda International Limited ("TBI")', and
  - (2) 'Written Direction pursuant to section 64(1) of the Regulatory Authority Act 2011 ("RAA") – Outstanding Quarterly Fees, TeleBermuda International Limited ("TBI").
2. The Chairman of Board on 30 November, 2020 appointed the Independent Presiding Officer ("IPO") in the manner specified in section 76 of the RAA, to conduct this adjudication and enforcement proceeding in accordance with the RAA and the Rules.
3. The Commencement Notice and Directions for Hearing ("Directions") made and served on 26 February 2021, notified the Parties that an informal adjudication would be conducted by the IPO in accordance with the provisions of section 81 of the RAA and Rule 27 of the Rules, concluding with the preparation of a preliminary adjudicative decision and order by the IPO.
4. The Authority confirmed, in an email ("Confirmation Email") addressed to the IPO and copied to TBI and others dated 4 March 2021 –
  - (1) that in response to Direction 1.A., Mr. Ambrosio would act as Designated Counsel;
  - (2) receipt of payment by TBI of all Outstanding Fees in the amount of [REDACTED] on 9 December 2020, "thereby clearing the entirety of the arrears that form the basis of this enforcement proceeding";
  - (3) no further action is intended at this time in respect of the matter, and
  - (4) inviting the IPO to issue an order, as appropriate, dismissing the matter and making no further order as to costs.
5. TBI, in email communications with the IPO and the Authority, dated -
  - (1) 5 March 2021 from Mr. D. St. Laurent pursuant to Direction 1.A, confirmed that based on his previous communications with Mr. Ambrosio regarding TBI's payment of the Outstanding Fees, there was no need to designate Counsel; and

- (2) 8 March 2021 from Mr. N Faries, upon learning that a party was seeking intervenor status, requested that the Authority “comment on the fact that this matter was resolved back in December 2020” and that the Authority is “satisfied with the outcome”.
6. The Public Notice published on the Authority’s website dated 1 March 2021, in accordance with the provisions of section 77 of the RAA and Rule 4 of the Rules, inviting persons with “a legal or other substantial interest in the matter” to participate on an intervenor basis in the enforcement proceedings, elicited responses from two companies, namely-
- (1) One Communications Ltd. (Mr. Michael Tanglao – Chief Legal and Regulatory Officer) by email headed “Seeking to intervene in Public Hearing”, dated 8 March 2021, submitted on the basis of being a service provider to TBi including wholesale services, indicated his interest “in monitoring the ability of TBi to pay its creditors as payments come due”. In response thereto the IPO notified TBi, by letter dated 16 March 2021 that having considered all of the relevant circumstances, Mr. Tanglao’s request to intervene was technically no longer relevant because payment of the Outstanding Fees had been made. His petition was therefore set-aside (denied).
  - (2) BTC & Digicel Bermuda (Mi Hong Yoon – Legal & Regulatory Counsel), who clarified by email dated 11 March 2021 that her emailed letter of 8 March 2021 was not seeking intervenor status but was simply intended to serve as a request, as a service provider/creditor of TBi, to be notified of the final outcome of the proceedings.

**The IPO therefore concludes:**

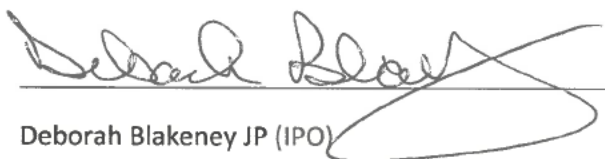
7. That the payment by TBi of the Outstanding Fees negates any requirement to hear/proceed with this matter any further and that an Order must be made-
- (1) accepting the payment thereof;
  - (2) dismissing the matter;
  - (3) confirming that no issues remain pending in this case.

**D. DECISION AND ORDER/DAMAGES/COSTS**

**The IPO Orders:**

1. Having jurisdiction over this matter and having considered all submissions particularly the contents of the Authority’s Confirmation Email taken together with the payment by TBi of the Outstanding Fees, it is hereby ordered that-
  - (1) this matter has been lawfully concluded to the satisfaction of both parties, by the payment and acceptance the Outstanding Fees of [REDACTED] as full and final settlement of this matter; and
  - (2) TBi shall remain current with the payment of all future fees payable under the RAA and the Rules (including GAF+RAF fees), as and when they become due; and
  - (3) with no remaining issues pending in this case, this matter is dismissed.
2. There shall be no Order as regards damages, administrative or other costs.

SO ORDERED, this 24<sup>th</sup> day of March, 2021

  
Deborah Blakeney JP (IPO)

DEBORAH BLAKENEY J.P., B.Sc., LL.B.  
COMMISSIONER FOR OATHS  
NOTARY PUBLIC  
IN THE ISLANDS OF BERMUDA  
APPOINTED UNDER COMMISSIONERS FOR  
OATHS AND NOTARIES PUBLIC ACT 1872  
MY COMMISSION DOES NOT EXPIRE

