



November 14, 2012

Re: "Response to Pre-Consultation Document PC12/02: Comments on Communications Operating Licences: Exemptions and Class Licences."

Attention: Ms. Nakia Smith  
Telecommunications Regulatory Administrator

Dear Ms. Smith,

Quantum Communications ("Quantum") hereby submits its comments in response to the Pre-Consultation Document PC12/02: Comments on Communications Operating Licences: Exemptions and Class Licences, issued on October 10, 2012. We applaud the exhaustive efforts of the team of advisors assisting the Government of Bermuda in implementing the provisions of the Electronic Communications Act 2011 ("ECA") dealing with class licences and licence exemptions in accordance with Section 74(d) of the ECA and welcome the opportunity to provide the views of Quantum on this critical undertaking.

Quantum looks forward to working closely with the Government and the new RA, its advisors and other industry participants to implement the ECA and its new licensing regime in a timely and successful manner. Should there be any questions regarding this submission please direct them to the undersigned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "L. Gentemann", with a long horizontal flourish extending to the right.

Lin Gentemann  
General Counsel

Cc: Paul Furbert, COO

**QUANTUM COMMUNICATIONS LTD. COMMENTS TO PRE-CONSULTATION #2 –  
EXEMPTIONS AND CLASS LICENCES**

QUESTION	COMMENTS
<p><b>With respect to Questions 1 - 13:</b></p> <p><b>Question 1:</b> Whether private network operators should be exempt from the obligation to hold a COL?</p> <p><b>Question 2:</b> Whether the description of private network operators accurately describes the persons that should be exempt from the obligation to hold a COL?</p> <p><b>Question 3:</b> Whether the conditions of the exemption for private network operators are appropriate or should be amended or supplemented?</p> <p><b>Question 4:</b> Whether the format, terms and conditions of the exemption set forth in Appendix A are appropriate or should be amended or supplemented?</p> <p><b>Question 5:</b> Whether providers of (a) value-added services generally and, more specifically (b) database access and research services, (c) monitoring or alarm services, (d) cloud computing or remote access data processing services, and (e) electronic mail or messaging services should be exempt from the obligation to hold a COL?</p> <p><b>Question 6:</b> Whether other value-added service providers should be specifically identified and exempted from the obligation to hold a COL?</p> <p><b>Question 7:</b> Whether the descriptions of (a) value-added services generally and, more specifically (b) database access and research services, (c) monitoring or alarm services, (d) cloud computing or remote</p>	<p>The Company's comments on Questions 1 – 13 are as follows:</p> <p><b>1.</b> Save for the comments set out below, as a general policy matter the Company supports extending an exemption of the requirements to obtain a Communications Operating Licence and pay the Government and RA fees to those qualifying as:</p> <ul style="list-style-type: none"> <li>(a) private network operators;</li> <li>(b) providers of (i) value-added services generally and, more specifically (ii) database access and research services, (iii) monitoring or alarm services, (iv) cloud computing or remote access data processing services, and (v) electronic mail or messaging services; and</li> <li>(c) Wi-Fi service providers,</li> </ul> <p><b><u>provided that</u></b> the regulations:</p> <ul style="list-style-type: none"> <li>(1) clearly define who is eligible for this beneficial exemption,</li> <li>(2) clearly identify which activities are entitled to this beneficial exemption,</li> <li>(3) establish appropriate compliance reporting and mechanisms to ensure ongoing and vigilant Government oversight of actual market practices to prevent abuse of this beneficial exemption; and</li> <li>(4) provide clear consequences for abusing the privileges of this beneficial exemption.</li> </ul> <p>The Company believes clarity and transparency on all exemption matters is critical to successfully balancing Government's reform objectives of granting relatively "no touch" regulation while ensuring a level playing field that fairly extends the costs and benefits of a healthy and competitive Electronic Communications market for all Industry participants, whether they are licenced or exempt.</p> <p><b>2.</b> The Company believes the use of the defined term "Affiliate" as used throughout the exemption and class licence discussion is not appropriate in this context. (Please note, the defined term "Person" is actually the term used throughout these Pre-Consultation Materials and it is actually defined to include "Affiliates.") We believe that the proper reach of these beneficial exemptions should be limited to affiliates falling within the standard corporate and commercial "control" definition. Specifically, we believe the threshold affiliate test should be increased from 25% to 50%. In other words, the Company believes that a 25% control test is not appropriate in the context of defining who should be entitled to take advantage of an exemption from COL licensing and fee regulation. In our view, this exemption is a special privilege that should be narrowly tailored and applied to only that set of Persons that clearly fall within the scope of Government's policy objectives for creating the exemption.</p>

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access data processing services, and (e) electronic mail or messaging services accurately describe the service providers that should be exempt from the obligation to hold a COL?

**Question 8:** Whether the conditions of the exemption for value-added service providers are appropriate or should be amended or supplemented?

**Question 9:** Whether the format, terms and conditions of the exemption set forth in Appendix A are appropriate or should be amended or supplemented?

**Question 10:** Whether Wi-Fi service providers should be exempt from the requirement to hold a COL?

**Question 11:** Whether the description of Wi-Fi service providers accurately describes the persons that should be exempt from the requirement to hold a COL?

**Question 12:** Whether the conditions of the exemption for Wi-Fi service providers are appropriate or should be amended or supplemented?

**Question 13:** Whether the format, terms and conditions of the exemption set forth in Appendix A are appropriate or should be amended or supplemented?

We note further that a 25% control test is not the standard typically used in corporate and commercial settings, as exemplified by the 50% control test used under Section 63 of the Bermuda Companies Act 1981. The 25% control test sets a very low bar for extending the COL licencing and regulation exemption to loosely affiliated entities. It invites the inclusion of entities into a set of exempted activities and its attendant benefits that under standard corporate and commercial control test conventions would not be available to them. We don't believe it is Government's intention to unnecessarily broaden the reach of these exemptions.

For clarity, we note our support for the ECA "affiliate" test as otherwise applied, including in the context of regulating the activities of SMP designated ICOL holders which are part of the same corporate group. In this context we agree that a 25% control test best serves Government's interests and policy objectives.

To address this potential definitional loophole, the Company proposes amending the definition of "affiliate" as follows:

***"Affiliate" means affiliate as defined in section 63 of the Companies Act 1981 (as amended) means any entity that owns, or is owned by, another entity, as evidenced by the ownership of 25 percent 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."***

2. In the proposed regulations, self-provisioning by the exempt provider is permitted for "Persons whose principal line of business does not include the provision of Electronic Communications." The Company believes this "principal line of business" test is not the appropriate standard for determining such Person's eligibility to engage in on-Campus self-provision of Electronic Communications. This test lacks objective criteria that can be clearly understood and applied by the prospective exempt Person. Should a revenue test apply? If so, what percentage of revenues establishes whether it constitutes such Person's "principal line of business": - 20%, 30% or 50%? How will this standard enforced? Is self-policing of an ambiguous standard desirable or even possible? This standard raises far more questions than are appropriate in the context of determining exemption eligibility and thus fails to achieve the Government's stated objectives of clear and transparent regulation. If not rectified, this ambiguous standard will lead to disparate interpretation and application. This regulatory uncertainty in turn will likely put strain on the RA in terms of increased workload to handle the enquiries, complaints and enforcement matters. We propose either setting forth clear guidelines for interpreting this test or replacing it altogether with an objective standard.

3. With respect to Question 3, the Company proposes that the Private Network Operator Condition 4.1(b) be amended to replace the term "commercial gain" with "any commercial benefit" in order to clarify that the criteria restricts not only positive financial benefit but also any form of material benefit,

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including situations such as the avoidance or reduction of losses, such as related operating costs. Accordingly, we propose the following amendment to Condition 4.1:

*“4.1 A person who establishes, constructs or operates a private network, provided that such private network:....*

*(b) is not operated for **any** commercial **benefit**gain; and ...”*

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QUESTION	COMMENTS
<p><b>Question 14:</b> Whether there are any operators of electronic communications networks or providers of electronic communications services that, in addition to those identified above in Section 4 of this consultation document, should be exempt from the obligation to hold a COL?</p> <p><b>Question 46:</b> Whether there are any electronic communications services that, in addition to those identified above in Section 5 of this consultation document, should be authorized pursuant to a class licence and whether such licence should be subject to a registration requirement?</p>	<p>As the RA pursues a policy of “light touch” regulation over electronic communications, the Company believes the RA should be mindful of some current market practices under TA86 that the Industry generally views as “gray” (or worse). The Company is concerned that such practices will remain murky and continue unchecked post-ICOL if not addressed now as part of the Consultation process. We agree with the Government and its advisors that such practices should be identified by the Industry in order for the RA to appreciate current market dynamics in the context of establishing ICOL regulations. We encourage the RA to address these issues in a forthright fashion by creating clear regulations that will reduce controversy no later than ICOL launch. This will enable the Industry to plan and prepare its business activities accordingly.</p>

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QUESTION	COMMENTS
<p>With respect to Questions 15 - 46</p> <p><b>Question 15:</b> Whether the operation of closed user group networks should be authorized by a class licence?</p> <p><b>Question 16:</b> Whether the description of closed user groups accurately describes the closed user group networks that should be authorized by a class licence?</p> <p><b>Question 17:</b> Whether the conditions of the class licence for closed user groups are appropriate or should be amended or supplemented?</p> <p><b>Question 18:</b> Whether the class licence for closed user groups should be subject to a registration requirement?</p> <p><b>Question 19:</b> Whether the format, terms and conditions of the class licence set forth in <u>Appendix B</u> are appropriate or should be amended or supplemented?</p> <p><b>Question 20:</b> Whether the provision of electronic communications by hotels, hospitals, prisons, schools and similarly situated institutions, as set forth above, should be authorized by a class licence? In particular, interested parties should comment on whether the Bermuda Hospitals Board and Department of Corrections should be required to operate pursuant to a class licence?</p> <p><b>Question 21</b> Whether the description of such services set forth above accurately describes the services that should be authorized by a class licence?</p> <p><b>Question 22:</b> Whether the conditions of the</p>	<p>The Company's comments on Questions 15 – 46 are as follows:</p> <p>1. Save for the comments set out below, as a general policy matter the Company supports extending class license status and thus more limited regulation to those qualifying as a:</p> <ul style="list-style-type: none"> <li>(a) closed user group;</li> <li>(b) hotels, hospitals, prisons, schools;</li> <li>(c) providers of pay telephone services in public locations</li> <li>(d) providers of Foreign Calling Card Services;</li> <li>(e) providers of teleconferencing services; and</li> <li>(f) the provision of electronic communications by Cyber cafes,</li> </ul> <p><b><u>provided that</u></b> the regulations:</p> <ul style="list-style-type: none"> <li>(1) clearly define who is eligible for this beneficial class licence,</li> <li>(2) clearly identify which activities are entitled to this class licence,</li> <li>(3) establish appropriate compliance reporting and mechanisms to ensure ongoing and vigilant Government oversight of actual market practices to prevent abuse of this beneficial class licence; and</li> <li>(4) provide clear consequences for abusing the privileges of this beneficial class licence.</li> </ul> <p>The Company believes clarity and transparency on all class licence matters is critical to successfully balancing Government's reform objectives of granting relatively "very light touch" regulation while ensuring a level playing field that fairly extends the costs and benefits of a healthy and competitive Electronic Communications market for all Industry participants, regardless of licence type or exempt status.</p> <p>2. With respect to all Class Operating Licence matters, the Company reiterates its comments regarding the need to amend the term "Affiliate" as used in the defined term "Person" in Condition 1 of Appendix B, Class Operating Licence. Specifically, the Company proposes the following defined term be added to Condition 1:</p> <p style="padding-left: 40px;"><i><b>"Affiliate"</b> means affiliate as defined in section 63 of the Companies Act 1981 (as amended).</i></p> <p>3. With respect to all Class Operating Licence matters, and especially the "closed user group" class, the Company does not agree that "associations" should be included in the definition of the Persons</p>

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class licence set forth above for such services are appropriate or should be amended or supplemented?

**Question 23:** Whether the class licence for such services should be subject to a registration requirement?

**Question 24:** Whether the format, terms and conditions of the class licence set forth in Appendix B are appropriate or should be amended or supplemented?

**Question 25:** Whether the provision of pay telephone services in public locations, as set forth above, should be limited to the holders of ICOLs?

**Question 26:** Whether the provision of pay telephone services in private locations, as set forth above, should be authorized by a class licence?

**Question 27:** Whether the description of pay telephone services set forth above accurately describes the services that should be authorized by a class licence?

**Question 28:** Whether the conditions of the class licence set forth above for pay telephone services are appropriate or should be amended or supplemented?

**Question 29:** Whether the class licence for pay telephone services should be subject to a registration requirement, and whether registration should be waived for persons who operate a single pay telephone?

**Question 30:** Whether the format, terms and conditions of the class licence set forth in Appendix B are appropriate or should be amended or supplemented?

**Question 31:** Whether the provision of

eligible to qualify for the class licence special privileges of reduced regulation. In our view, the inclusion of “associations” in this context creates far too large a class of licensees to the unnecessary detriment of the licensed service providers and thereby defeats the intended purposes of the reduced regulation. For example, as drafted residents of a condominium building may be considered an “association” and qualify for a “closed user group” class licence. The association members would thereby be entitled to avoid the requirement to use only Electronic Communications Services provided by licensed carriers, which we believe is not contemplated under the ECA. Accordingly, the Company proposes amending the defined term “Person” in Condition 1 of Appendix B, Class Operating Licence as follows:

***“Person” means a natural person or a company ~~or association or body of persons~~, whether corporate or unincorporate, including an Affiliate thereof;***

4. With respect to the “closed user group” class licence especially, the Company is concerned of the very real potential for abuse through leakage of communications with third parties outside the closed user group. In this area particularly, we urge the RA to adopt meaningful penalties as a necessary deterrent to those who seek to enjoy the benefits of the closed user group licence status.

5. On the same basis that the Company objected to the use of a “*principal line of business*” test in the context of exempt matters, we equally object to its use as a “special condition” in any Class Operating Licence matters, including “Annex A Closed User Groups” Condition 2.1 and “Annex B Electronic Communications Services Provided by Hotels, Hospitals, Prisons, Schools and Similarly Situated Persons” Condition 2.1. For all the reasons previously stated, this test should either be made clear through additional guidance or replaced with a workable standard.

6. With respect to Question 18, the Company believes in the need for and thus strongly supports the registration requirement for all Class Licensees.

7. With respect to Question 19, the Company suggests inserting the word “Class” in Appendix B “Class Operating Licence” Sec 3.2(d) to provide:

**“3.2** *This Licence shall continue in force in respect of each Class Licensee until the earlier of the following events: ...*

*(d) the **Class** Licence is modified or revoked by the Authority.”*



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Foreign Calling Card Services, as set forth above, should be authorized by a class licence?

**Question 32:** Whether the description of Foreign Calling Card Services set forth above accurately describes the services that should be authorized by a class licence?

**Question 33:** Whether the conditions of the class licence set forth above for Foreign Calling Card Services are appropriate or should be amended or supplemented?

**Question 34:** Whether the class licence for Foreign Calling Card Services should be subject to a registration requirement?

**Question 35:** Whether the format, terms and conditions of the class licence set forth in Appendix B are appropriate or should be amended or supplemented?

**Question 36:** Whether the provision of teleconferencing services, as set forth above, should be authorized by a class licence?

**Question 37:** Whether the description of teleconferencing services set forth above accurately describes the services that should be authorized by a class licence?

**Question 38:** Whether the conditions of the class licence set forth above for teleconferencing services are appropriate or should be amended or supplemented?

**Question 39:** Whether the class licence for teleconferencing services should be subject to a registration requirement?

**Question 40:** Whether the format, terms and conditions of the class licence set forth

7. With respect to Question 20, the Company comments that several of the entities listed are essentially synonymous with the Government itself, such as prisons. We request clarification and guidance from the RA concerning how Government itself will be treated under these regulations, including for example whether the RA views that Government will otherwise qualify for class license status (other than as expressly noted already) and/or be eligible for exempt status, e.g., as a private network operator. As such, the Company reserves comment with respect to other Government activities.

8. With respect to Question 21, the Company proposes to amend the change in description of “Licensed Services” in “Annex B Electronic Communications Services Provided by Hotels, Hospitals, Prisons, Schools and Similarly Situated Persons” Condition 1 to clarify that the End-User/Class Licensee “economic or other relationship” cannot be the Electronic Communications Service itself. We believe this change would better align the apparent Government policy objective for establishing this Class License. This clarification is especially important in light of our previously expressed concerns over the ambiguous “principal line of business” test. Accordingly, the following amendment is proposed:

### **“1. Licensed Services**

*The provision of Electronic Communications Services by Hotels, hospitals, prisons, schools, and similarly situated Persons to, respectively, their guests, patients, prisoners, students and other End-Users with an economic or other relationship with the Class Licensee, **provided that the provision of Electronic Communications Services is merely incidental to the parties’ economic or other relationship.**”*



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in Appendix B are appropriate or should be amended or supplemented?

**Question 41:** Whether the provision of electronic communications by Cyber cafes, as set forth above, should be authorized by a class licence?

**Question 42:** Whether the description of the services provided by Cyber cafes set forth above accurately describes the services that should be authorized by a class licence?

**Question 43:** Whether the conditions of the class licence set forth above for Cyber cafes services are appropriate or should be amended or supplemented?

**Question 44:** Whether the class licence for Cyber cafes should be subject to a registration requirement?

**Question 45:** Whether the format, terms and conditions of the class licence set forth in Appendix B are appropriate or should be amended or supplemented?

**Question 46:** Whether there are any electronic communications services that, in addition to those identified above in Section 5 of this consultation document, should be authorized pursuant to a class licence and whether such licence should be subject to a registration requirement?

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QUESTION	COMMENTS
<p><b>Question 47:</b> Interested parties are invited to comment on the proposed registration process and requirements.</p> <p><b>Question 48:</b> Interested parties are invited to comment on the proposed procedures for suspending or revoking the status of an individual service provider as a class licensee.</p> <p><b>Question 49:</b> Interested parties are invited to comment on the proposed procedures for creating, modifying and eliminating class licences.</p> <p><b>Question 50:</b> Interested parties are invited to comment on the proposed procedures for creating and eliminating exemptions from the requirement to hold a class licence.</p>	<p>1. With respect to Question 47, the Company inquires whether the Class Licensee will be required to include in its registration the spectrum frequencies it will use in connection with its licence? Further, it is unclear whether the registration information will be publicly available. We encourage the Government to make such information publicly available on the RA's website.</p> <p>2. With respect to Question 47 and Question 48, the Company proposes inclusion of an appropriate public notice and comment period in advance of the RA issuing an order for (1) all new registrants, and (2) individual licensee suspension/revocation orders that impact the Industry generally and where public input is appropriate in the RA's determination. Specifically, with respect to new registrants we propose increasing the 10 day window to 15 days between a prospective licensee's registration filing and the RA's issuance of an order. With respect to individual licensee suspension/revocation orders we propose the RA's general determination include express language indicating the possibility of a public notice and comment period as may be announced in the RA's sole discretion. Finally, we clarify that this process would not rise to the level of a public consultation, but rather would serve as a more limited means for public input in support of the RA's decision-making process.</p> <p>3. With respect to Question 47 through Question 50, whilst the Company acknowledges the proposed Moratorium establishes only annual statement filing requirements for Class Licensees and possible extension thereof at the conclusion of the 1 to 3 year Moratorium period, we believe that a permanent reporting obligation should be established at the outset. Specifically, contrary to the proposal at para 106 of these Pre-Consultation Materials, the Company believes that Class Licensees should not be entirely exempt from RAA Sec 53. We propose that the Class Licence should expressly provide that it is subject to the terms of RAA Sec 53(2) for the duration of the Licence term.</p> <p>Further, the Company proposes that the RA determine that Class Licensees shall submit an annual statement that (1) confirms (or updates) the licensee's contact information; (2) certifies that the licensee continues to meet the eligibility requirements for the class licence; (3) certifies that the licensee has complied, and will continue to comply, with all conditions of the class licence; and (4) attaches financial statements certified by a company officer. Items 1-3 are already recommended to the RA under para 108 of the Pre-Consultation Materials. Item 4 is essentially RAA Sec 53(1)(b) without the auditor's report requirement. We believe Item 4 is needed in order to give the RA the means to assure compliance with the eligibility requirements for retaining Class Licence status. We believe that vigilant oversight including reasonable and regular compliance checks is very important in all cases where relief from Electronic Communications regulations is granted, especially in the</p>

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area of for-profit class licence holders.

4. With respect to Question 50 through Question 52, the Company requests clarification with regard to how the RA views the private VSAT terminals operated between locations within a closed user group. Would this attract the same licensing treatment as other closed user groups, or would it possibly fall within the exemption for private network operators, or some combination of the two?

5. With respect to Question 51, the Company believes that a communications operating license should not be required for the types of radio services covered by the regulations identified here (e.g., Marine VHF), provided that the equipment/user does not operate in licensed spectrum or cause any interference to other services.

6. With respect to Question 52, the Company comments that it believes a “robust registration” procedure should require the complete and timely submission of all requested information with immediate disclosure (save for confidential information) to all interested parties through the posting of such information on the RA’s website.

7. With respect to Question 54, the Company requests RA consideration of permitting interim allocations of spectrum for use by new potential licensees free of charge for a reasonable period of time in order for such party to conduct trials and performance tests prior to major commitments to launch formal wireless services.