

Telecommunications Regulatory Commission

Notice Concerning Proposed Directive on International Connectivity (Regulated prices for IPLCs and MPLS)

[Gazetted 19 December 2013]

TAKE NOTICE THAT:

The Telecommunications Regulatory Commission, (“the Commission”) is responsible for ensuring fair competition in the telecommunications sector in the Virgin Islands (“VI”). Under Section 26(3) of the Telecommunications Act, 2006, (“the Act”) the Commission may determine that a public supplier is dominant with respect to a telecommunications network.

According to the Determination of Dominance issued on 26 September 2013, the Commission has determined that:

- LIME BVI is dominant in the market for the provision of IPLCs in the VI
- LIME BVI is dominant in the market for the provision of IMDS in the VI

Section 26(4) of the Act states that where the Commission determines that a public supplier is dominant in any market, the Commission shall include additional terms and conditions in the Licence of the public supplier, for the purposes of regulating tariffs, protecting the interests of users and other licensees and of ensuring fair competition among licensees as it considers appropriate.

In the Report on the Consultation on the *Market Analysis of International Connectivity*, published by the Commission on 26 September, 2013, the Commission proposed to adopt a directive setting out the regulated wholesale prices for IPLCs and MPLS to be charged by public suppliers who have been determined dominant in the relevant markets in the VI.

So as to properly impose the obligation on each of the above named public supplier (“the Licensee”) to effect to these regulated rates, the Commission intends to amend the licence of each Licensee as follows and as outlined in the Draft Directive contained in the attached Schedule:

1. Article 2.1(b) shall be amended by inserting the following as paragraphs (P) and (Q):
 - (P) **Terrestrial International Private Leased Circuit (IPLC) Services;**
 - (Q) **International Managed Data Services (IMDS)**
2. Article 8.1 shall be amended by inserting the following as subparagraph (iv):
 - iv. **Should the Licensee be designated as a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS), the Licensee shall:**
 - a) **provide such services to any other licensee in the British Virgin Islands at rates which do not exceed the rates set out in Annex 9;**

- b) **notwithstanding (a) above, provide such services to any other licensee in the British Virgin Islands at rates which do not exceed the cost of self-provision;**
 - c) **upon request by the Commission from time to time, provide the Commission with information in relation to the Licensee’s offer of rates to other licensees in the British Virgin Islands in such form and within such period of time as may be required by the Commission.**

- 3. Article 9.4 shall be amended as follows:
 - i. Subparagraph (c) shall be numbered as subparagraph (d);

 - ii. The following shall be inserted as subparagraph (c):
Interconnection Default rates shall not apply where the Commission has determined the Licensee to be a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) in accordance with Section 26(4) of the Act. Should the Commission determine that the Licensee is a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS), the provisions of Article 8.1(iv) shall apply.

- 4. Annex 1 shall be amended:
 - 1. by inserting the definition of “**International Managed Data Services (IMDS)**” after the definition of “International Call Completion Rate” as follows:

“International Managed Data Services (IMDS) means the packet-based services that provide managed connectivity between multiple user sites, at least one of which is located outside of the British Virgin Islands.”

 - 2. by inserting the definition of “**International Private Leased Circuit (IPLC) Services**” after the definition of “International Managed Data Services (IMDS)” as follows:

“International Private Leased Circuit (IPLC) Services” means the services provided over submarine cables, which offer users the exclusive use of a point to point, dedicated transparent transmission path for voice, data or video between a location in the British Virgin Islands and a location outside of the British Virgin Islands.”

- 5. The following shall be inserted as Annex 9:

ANNEX 9

PRICE CAPS APPLICABLE TO THE SUPPLY OF INTERNATIONAL CONNECTIVITY SERVICES

1. Rate Ceiling

1.1 Effective from [the Effective Rate Revision Date], the Licensee shall charge and shall be paid rates for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) by other licensees in the British Virgin Islands, which do not exceed the rates set out below:

	Set-up fee	Monthly rental cost
IPLCs	US\$0 US\$15,000 US\$20,000 US\$38,000	US\$2400 per E1 per month US\$9000 per DS3 per month US\$12000 per STM1 per month US\$30000 per STM4 per month
MPLS		US\$900 per month

1.2 The Licensee acknowledges that these rates set out in 1.1 above constitute a ceiling and represent the maximum rates that the Licensee may charge.

2. The Licensee shall execute revised agreements with other licensees in the British Virgin Islands for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) to give effect to the rates prescribed in paragraph 1 above from [the Effective Rate Revision Date] and shall submit each such Agreement to the Commission no later than one week after [the Effective Rate Revision Date].

Information as to the rationale for the regulation of international connectivity services in the manner proposed by the Commission can be found in the *Market Analysis of International Connectivity* and the *Report on the Consultation on the Market Analysis of International Connectivity*. All interested parties are referred to these documents and to the related documents so identified on the Commission’s website.

The Commission proposes to hold a hearing for the Licensees and for any third party with a legitimate interest on a date and location in the VI to be confirmed with the Licensees such date being no sooner than ten (10) days after the date on which comments and objections to this Notice are due.

The Commission shall submit a report and opinion on this proposed Directive following the hearing.

In the absence of exigent circumstances which renders it difficult or impossible to do so, the proposed Directive, shall take effect, subject to such amendments as the Commission considers appropriate upon consideration of the comments and objections received in accordance with this Notice, on a date no sooner than ninety (90) days of the date of publication of this Notice. The Commission shall publish a notice in the Gazette and one other newspaper stating the adoption of this Directive on the said date.

Comments and/or objections to this proposed Directive must be submitted to the Commission **by 4.30pm on 31st January, 2014.**

The Chief Executive Officer
The Telecommunications Regulatory Commission
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P.O. Box 4401
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All responses containing confidential information should be clearly identified. Any person claiming confidentiality is required to clearly mark any information included in a response that is claimed to be confidential (including personal or proprietary information), and to provide reasons why that information should be considered confidential. Whenever confidential information is included in a response, the respondent is required to provide both a confidential and a non-confidential version of the response. Such confidential information should be kept to a minimum. The Commission will evaluate such a request to consider such information confidential in the light of the relevant legal provisions and principles and make a final decision in this regard.

Issued by the Telecommunications Regulatory Commission on the 4th day of December, 2013.

Guy Malone
CHIEF EXECUTIVE OFFICER

SCHEDULE

VIRGIN ISLANDS

THE TELECOMMUNICATIONS REGULATORY COMMISSION

DRAFT DIRECTIVE

[Gazetted 19 December 2013]

With the effect from the date of publication of this Directive in the Gazette, the licences of the following licensees:

- Cable and Wireless (BVI) Ltd (“LIME”)

shall be amended as follows:

6. Article 2.1(b) shall be amended by inserting the following as paragraphs (P) and (Q):
 - (P) **Terrestrial International Private Leased Circuit (IPLC) Services;**
 - (Q) **International Managed Data Services (IMDS)**
7. Article 8.1 shall be amended by inserting the following as subparagraph (iv):
 - iv. **Should the Licensee be designated as a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS), the Licensee shall:**
 - d) **provide such services to any other licensee in the British Virgin Islands at rates which do not exceed the rates set out in Annex 9;**
 - e) **notwithstanding (a) above, provide such services to any other licensee in the British Virgin Islands at rates which do not exceed the cost of self-provision;**
 - f) **upon request by the Commission from time to time, provide the Commission with information in relation to the Licensee’s offer of rates to other licensees in the British Virgin Islands in such form and within such period of time as may be required by the Commission.**
8. Article 9.4 shall be amended as follows:
 - iii. Subparagraph (c) shall be numbered as subparagraph (d);
 - iv. The following shall be inserted as subparagraph (c):

Interconnection Default rates shall not apply where the Commission has determined the Licensee to be a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) in accordance with Section 26(4) of the Act. Should

the Commission determine that the Licensee is a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS), the provisions of Article 8.1(iv) shall apply.

9. Annex 1 shall be amended:

3. by inserting the definition of “**International Managed Data Services (IMDS)**” after the definition of “International Call Completion Rate” as follows:

“International Managed Data Services (IMDS) means the packet-based services that provide managed connectivity between multiple user sites, at least one of which is located outside of the British Virgin Islands.”

4. by inserting the definition of “**International Private Leased Circuit (IPLC) Services**” after the definition of “International Managed Data Services (IMDS)” as follows:

“International Private Leased Circuit (IPLC) Services” means the services provided over submarine cables, which offer users the exclusive use of a point to point, dedicated transparent transmission path for voice, data or video between a location in the British Virgin Islands and a location outside of the British Virgin Islands.”

10. The following shall be inserted as Annex 9:

ANNEX 9

PRICE CAPS APPLICABLE TO THE SUPPLY OF INTERNATIONAL CONNECTIVITY SERVICES

3. Rate Ceiling

1.1 Effective from [the Effective Rate Revision Date], the Licensee shall charge and shall be paid rates for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) by other licensees in the British Virgin Islands, which do not exceed the rates set out below:

	Set-up fee	Monthly rental cost
IPLCs	US\$0 US\$15,000 US\$20,000 US\$38,000	US\$2400 per E1 per month US\$9000 per DS3 per month US\$12000 per STM1 per month US\$30000 per STM4 per month
MPLS		US\$900 per month

3.2 The Licensee acknowledges that these rates set out in 1.1 above constitute a ceiling and represent the maximum rates that the Licensee may charge.

4. **The Licensee shall execute revised agreements with other licensees in the British Virgin Islands for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS) to give effect to the rates prescribed in paragraph 1 above from *[the Effective Rate Revision Date]* and shall submit each such Agreement to the Commission no later than one week after *[the Effective Rate Revision Date]*.**

Issued by the Telecommunications Regulatory Commission on the 4th day of December, 2013.

Guy Malone
CHIEF EXECUTIVE OFFICER