

April 20, 2010

DECISION NOTICE 2010 – 2

Re: Provo Power Company Ltd. Use of Spectrum

Background

When IslandCom was granted its licence in 2006, Digicel and Cable and Wireless mobile frequencies were already in place, and the only “room” for IslandCom involved frequencies in the 900 MHz band, which is available for mobile communications, but is also used as “unlicensed” spectrum in the USA and Canada.

Since deploying their system in 2007, IslandCom has been plagued with interference in various places in Provo in particular, from equipment brought in from the USA and turned on without any licence application or notice to the Commission(which is in breach of the Ordinance).. However, the equipment in question, though required to be licensed in this jurisdiction, is not necessarily subject to regulation in the US and Canada, so the suppliers in some cases might not have been aware of the obligation to obtain a licence from the Commission.

Recently, IslandCom has been subject to ruinous interference with the installation by PPC, (without approval of the Commission) of over 8000 radio frequency meter readers – which emit high power signals right in the middle of IslandCom’s spectrum– essentially shutting them down.

On 30th April 2009, at its general meeting, the Commission considered the interference issue and came to the preliminary finding that ***PPC was operating outside the laws of the Turks and Caicos Islands***, and directed the Director General to write them and informed them of the preliminary findings. On May 7th, 2009, PPC was informed on the Commission’s position and was invited to make representation at the Commission within 14 days.

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On May 22nd 2009, the Commission received a letter dated May 20, 2009, explaining PPC's position on the matter. At its June 2nd, 2009 general meeting the Commission reviewed the written response submitted by PPC legal counsel and advised that PPC be invited to air their concerns at the Commission on June 18, 2009. However, this meeting had to be postponed due to the board members term expiring.

A new board was appointed in July, 2009, and at their meeting of July 30th, 2009, the Director General was directed by them to rearrange the meeting with PPC. On August 10, 2009 the meeting with PPC was held and the following arguments inter alia were put forth by PPC's legal counsel as to why PPC had deployed and installed their digital radio frequency (RF) meters using frequency 910 - 920MHz; which is within the ISM (Industrial, Scientific and Medical) band (902-928 MHz) without a spectrum license..

- *Based on ITU spectrum plan; band (902-928 MHz) in region 2 is reserved for ISM (Industrial, Scientific and Medical) services which is unlicensed. PPC meters are similar to unlicensed domestic wireless devices such as remotes to open car doors, cordless phones and other wireless devices which are licence exempt and operate in the ISM band in the Americas, Canada and the Caribbean.*
- *PPC has deployed and installed more than 8,000 meters in the Turks and Caicos Islands and has acted in accordance with local and international requirements. The meters cannot be changed or tweaked to another frequency because that is the only area Itron (the manufacturer) designed them to operate in.*
- *PPC has never received sufficient evidence that IslandCom's interference is caused by PPC, and is of the belief that many domestic devices which operate on the same frequency may contribute to the problem.*
- *There are several other companies within the Islands which have deployed similar devices without any reaction from the Commission.*

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- *Under Section 10 (2) of the Telecommunications and Frequency Regulation 2005 they do not need a license to install the meters since the Minister must make a determination and none was ever made in this case.*

A decision at this meeting was postponed to a future date, but the Commission stated that there were strong grounds for the position that PPC action of installation of the meters without approval or license was **a flagrant disregard to the ordinance** accordingly steps should be undertaken urgently to regularize the situation as quickly as possible.

PPC's legal counsel has advised that PPC was working throughout on the belief that they did not need a licence, or need to apply in light of section 10 of the Telecommunication and Frequency Licensing Ordinance 2005, but he emphasized that if PPC was required to be regulated, he did not think that PPC would have any substantive objection. The Commission has not definitively advised PPC that they ought to be licensed but has categorically advised them that their use of spectrum was unauthorized.

The legality of PPC actions was considered on many subsequent meetings of the commission and a decision on the issue was made at the Board's general meeting on April 8th, 2010.

COMMISSION DECISION

The decision of the Commission is inter alia that;

(1) The Commission recommends to the Ministry, their determination that PPC is required to obtain a license under the Ordinance and the Regulations in accordance with the provisions of section 10 (1) of the Telecommunications and Frequency Licensing Regulations 2005 which reads as follows:

The Minister, upon recommendation of the Commission, may determine that one or more providers of telecommunications service other than public telecommunications services are required to obtain a licence under the Ordinance and these Regulations.

(2) The Ministry and the Commission should take all necessary and appropriate steps to have PPC properly regularized, and to ascertain whether PPC's past and current use of spectrum is indeed unauthorized and punishable and if so, what should be the appropriate fines and or penalties.