

Public Notice

Notice of Licence Modification

1. In accordance with section 10 of the Telecommunications Act 1984 ('the Act'), the Communications and Utilities Regulatory Authority ('the Authority')¹ hereby gives notice of its intention to modify the Licence granted to Bluewave Communications Ltd ('Bluewave') to provide services under section 5 of the Act.
2. Schedule 1 of the Telecommunications Act 1984, known as the Telecommunications Code, gives certain network operators the rights to install and maintain their apparatus on public and private land. Only those operators that have the Code applied to them are able to benefit from, and be subject to, the Code.
3. Bluewave has requested the addition of these Code Powers to its Licence.
4. Applications for Code Powers fall under s.8 of the Act. In considering whether to apply the Code in any person's case, the Authority must have regard, in particular, to each of the following matters:
 - (i) that the running of the system will benefit the public; and,
 - (ii) that it is not practicable for the system to be run without the application of that Code to that person.
5. Given that there is nothing in Bluewave's application that would preclude the application of Code Powers, the Authority is proposing to modify the Licence. Details of the modifications to the licence, and the reason for the decision, are provided below.
6. Interested parties now have 28 days in which to make any representations and/or objections to this change.
7. Representations and/or objections should be made in writing, preferably by email, to the Authority by 21 May 2021 to:

laura.balmer@cura.im

¹ Following an Order made by Tynwald, with effect from 16 December 2020 the Communications Commission became known as the Communications and Utilities Regulatory Authority. A copy of the Order can be found on the Tynwald website:

<https://www.tynwald.org.im/business/opqp/sittings/20182021/2020-SD-0550.pdf>

or

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Consultation and Notification of Proposed Determination

Application for Telecommunications Code Powers under the Telecommunications Act 1984

1. Code Powers

Schedule 1 of the Telecommunications Act 1984, known as the Telecommunications Code, gives certain network operators the rights to install and maintain their apparatus on public and private land. Only those operators that have the Code applied to them are able to benefit from, and be subject to, the Code, (i.e. have 'Code Powers'). Bluewave Communications Ltd ('Bluewave') has applied for Code Powers. Code power operators can install and maintain telecommunications apparatus under conditions placed on them in their licence in respect of the Code.

Applications for Code Powers fall under s.8 of the Telecommunications Act 1984 ('the Act').

The Code Powers would be applied via a modification to Bluewave's Licence, prior to any such modification the Authority must follow the process in s.10 of the Act "*Modification of licence conditions*". This requires that a notice is published laying out the reasons for the modification and the effect of the modification and giving 28 days for any representations or objections.

A notice will be published and, as required under s.10(5) of the Act, a copy will be sent to the Chief Secretary. If the Council of Ministers directs the Authority not to make any modification, the Authority shall comply with the direction.

If the licence is modified to apply the Code, this will not have effect until the licence has been approved by Tynwald.

Bluewave's current licence is available at: <https://www.iomcc.im/media/1396/bluewave-consolidated-licence-updated-february-2020.pdf>.

2. Applications

In considering whether to apply the Code in any person's case, the Authority must have regard, in particular, to each of the following matters:

- (i) that the running of the system will benefit the public; and,
- (ii) that it is not practicable for the system to be run without the application of that Code to that person.

The Authority may impose conditions as to the Code, in particular to ensure:

- (a) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary; and,
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.

Where appropriate, outside of those statutory considerations, the Authority will also have regard to any additional factors that, in its opinion, are relevant to the particular application.

3. General Duties

Under s.1 of the Act the Authority shall exercise its functions under the Act in a manner which it considers best calculated:

- (a) to secure that there are provided throughout the Island, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including in particular, services linking the Island with countries outside the Island, emergency services, public call box services and services in rural areas; and,
- (b) without prejudice to the generality of paragraph (a), to secure that any operator by whom such services fall to be provided is able to finance the provision of those services.

Also, Subject to subsection (1), the Authority shall exercise its functions under this Act in the manner which it considers is best calculated to promote the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the Island (including in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, services provided and apparatus supplied.

The Authority also has regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.

The Authority has, however, a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

4. Consideration of Code Power Applications

The Authority has evaluated the application against the criteria set out in the Act, as described above.

a) The Benefit of the Network to the Public

It is generally accepted that the building of alternative infrastructure is in the interests of the public because it is likely to improve access to services. The Authority is of the view that in cases where the grant of the Code can lead to highway disruptions, it will be to a large extent a matter of judgement for it to determine where the public interest lies.

The risk of detriment of the public interest is minimised if all Code Power operators are members of the Strategic Infrastructure Group led by Department of Infrastructure.

The Authority may choose to place restrictions on Bluewave's Licence in respect of the Code, and to protect the public interest it is proposed that the following conditions also be included in Bluewave's Licence in relation to the application of Code Powers:

- (i) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (ii) that there is no greater damage to streets or interference with traffic than is reasonably necessary; and,
- (iii) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.

b) Practicability of Providing the Network without the Code

The Authority is of the view that the need for the Code Powers can be assessed based on factors such as the extent of the network required, as the larger the network the more likely it is that Code Powers will be needed to build infrastructure. The Authority notes that this is consistent with Ofcom's approach to this matter.

In addition to the attached application, the Authority has had discussions with relevant parties in relation to the application, and is satisfied that Code Powers should be awarded in this instance. It should be noted that content of such discussions is not disclosed as it is considered commercially sensitive.

On balance the Authority is of the view that nothing in Bluewave's application would lead the Authority not to grant Code Powers.

5. Process

A summary of the next steps is:

- Public Notice on the modification of the licence to include Code Powers
- Submission to Council of Ministers
- Board Consideration of application and submission
- Approval by Tynwald

6. Decision

The Authority proposes to modify Bluewave's licence to include Code Powers as laid out in Annex 2. The Authority is of the view that this will be in the public interest and that that it is not practicable to run the network without the application of Code Powers.

7. Responses to Proposed Modification

Any comments on this proposed modification to Bluewave's licence should be sent to the Authority, preferably by email, by 21 May 2021, to:

laura.balmer@cura.im

Ms Laura Balmer
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Annex 1 – Bluewave Communications Ltd Application for Code Powers



Isle of Man Communications Commission
Murray House
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20th April 2021

Dear Isle of Man Communications Commission

Application for Code Powers – BlueWave Communications Limited

Introduction

1. BlueWave Communications Limited (“BlueWave”) is wholly owned by aql Holdings Ltd, which also owns and operates aq (Limited) (“aql”) based in Leeds, UK. BlueWave operates an electronic communications network throughout the Isle of Man, which includes telecommunications apparatus on private land. The BlueWave network also reaches across to the UK where it interconnects with the aql network.
2. BlueWave was granted a licence by the Isle of Man Communications Commission (“the Commission”) under section 5 of the Telecommunications Act 1984 (the Act) on 20th June 2008 and subsequent modification to full licence on 19th April 2018 (“the Licence”). BlueWave’s current licence does not, under section 8 (2) the Act, include application of the electronic communications code (more particularly set out at Schedule 1 of the Act) (“the Code”).
3. On reliance of the reasons set out herein, BlueWave applies to the Commission for the application of the Code to the Licence.

Requirement for Code Powers

4. BlueWave requires the Code to be applied to the Licence to be able to further maintain, operate and expand its fixed and wireless electronic communications network on private land and public highways for the benefit of the Isle of Man public. The application of the Code to the Licence will benefit the Isle of Man public in such ways as:

- a. The improvement of digital inclusion by increasing access to faster broadband speeds in currently underprovided rural areas, assisting with the ambition of Isle of Man Government's National Telecoms Strategy 2018 to deploy fibre Broadband to 99% of premises.
 - b. Further improving the access to high speed, good quality broadband. Recent public consultation evidence shows that there continues to be a requirement for improved telecommunications coverage and provision to Isle of Man premises. As understood in the National Telecoms Infrastructure Committee Report September 2017 (GD 2018/0019) (<https://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020162018/2018-GD-0019.pdf>)
 - i. Only 56% of businesses that provided evidence felt that telecoms coverage to businesses was good enough, 18% strongly disagreed.
 - ii. 62% of consumers that answered the survey felt that investment is needed to future-proof infrastructure.
 - iii. Only 56% of businesses that provided evidence felt that telecoms coverage to businesses was good enough, 18% strongly disagreed.
 - c. Provide added resiliency to the Isle of Man population to its ever-increasing demand for data hungry applications available to a range of connected devices by commercial provision of robust and reliable telecommunications infrastructure.
 - d. Continuing to increase competition in the Isle of Man to further bring about competitive pricing for the Manx consumer. BlueWave has recently become a founding member of the Isle of Man Internet Exchange (www.manxix.im) showing its commitment, by way of investing in key internet infrastructure, to assist with mutualisation the costs of quality internet connectivity in the Isle of Man, to ultimately create economies to benefit of the Isle of Man consumer.
 - e. Providing high quality and high-speed telecommunications infrastructure to be an enabler of the increased economic growth of the Isle of Man. As the Hon. Howard Quayle, MHK and Chief Minister for the Isle of Man references in the *Foreword to the National Telecommunications Strategy, 2018 (GD 2018/0062)* "It has been shown that high quality, high speed communications are essential for economic growth and social inclusion".
 - f. Create infrastructure for connectivity and be an innovation enabler in the Isle of Man. The future of connectivity for 5G, and beyond, will require rapid deployment of nodes and many lengthy planning application processes will slow down deployment.
5. BlueWave do not have the practicability of the provision of the network or system without the application of the Code, as set out below:
- a. Bluewave has an existing public telecommunications network that spans the Isle of Man, that includes the hosting of Bluewave telecommunications apparatus on or within private land. Operating the Bluewave public network exposes Bluewave to commercial risks that will be mitigated by the granting of the rights afforded under the Code. Inherent in the operation of the



Full Member

BlueWave Communications Limited is a Government licensed telecommunications provider, authorised and regulated by the Telecommunications Act 1984 and the Wireless Telegraphy Act 1949. We're incorporated within the Isle of Man. Reg: 119798C VAT: GB003209336 Directors: A Beaumont, S Langan-Newton, M Seyle



- Bluewave public network outside of the statutory protections of the Code is a risk to the delivery to and consumption of telecommunications connectivity by private users of Bluewave services (i.e. the Isle of Man consumer).
- b. Inter alia, granting the application and the protections of the Code to Bluewave will afford protections to the delivery of the Bluewave Public Network to the Isle of Man public by granting greater security to Bluewave for the hosting of its network apparatus on private land.
 - c. The operations of Bluewave are expanding, delivering network choice and professional service to the Isle of Man public. Expansion of the BlueWave network requires clearer rights afforded by the Code, along with clarification of the law around its future development sites in order to confidently invest further.

Other Considerations

6. As part of the group of companies, BlueWave's sister company (aq) Limited has operated with application of the Code since 2015:
https://www.ofcom.org.uk/_data/assets/pdf_file/0027/78255/condoc.pdf and therefore demonstrates its ability as a group to understand the application of the Code along with the responsibilities required.
7. BlueWave has demonstrated long term investment into the Isle of Man telecoms landscape over the last ten years, most recently by acquiring and developing the telecommunications site at Carnane Estate in Douglas, re-purposing redundant telecommunications sites, which includes both a mast site and a Satellite Earth Station. BlueWave looks to the Isle of Man Communications Commission to assist with its desire to invest further into the Isle of Man telecommunications landscape, including the build out of its own fibre network, for the reasons set out herein we invite the Commission to grant the application of the Code to the Licence.

Yours sincerely

Shelley Langan-Newton
Managing Director
Bluewave Communications Limited
Email: shelley@bwc.im



Full
Member

BlueWave Communications Limited is a Government licensed telecommunications provider, authorized and regulated by the Telecommunications Act 1984 and the Wireless Telegraphy Act 1949. We're incorporated within the Isle of Man. Reg: 119598C VAT: GB003209336 Directors: A Beaumont, S Langan-Newton, M Sayle



Annex 2 – Proposed Additional Conditions for Bluewave Communications Ltd Licence

SCHEDULE 5: EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE TELECOMMUNICATIONS CODE

Paragraph 1

1. Registered Buildings and Ancient Monuments

1.1 For the avoidance of doubt it is hereby declared that nothing in this Licence affects:

- (a) the statutory requirement that the consent of the Manx Museum and National Trust (publicly known as Manx National Heritage) shall be obtained before any work is carried out which will affect the site of an ancient monument scheduled under the Manx Museum and National Trust Act 1959; or,
- (b) the obligations imposed on the Communications Provider by virtue of the Town and Country Planning Act 2019.

Paragraph 2

2. Overhead Lines

- 2.1 Without prejudice to paragraph 1.1, the Communications Provider shall take steps to ensure that, wherever practicable, taking into account the need to provide telecommunication services at the lowest reasonable cost, new lines (other than Overhead Service Lines flown from poles) installed after the date on which this Licence enters into force are installed underground.
- 2.2 The Communications Provider shall consider carefully a request by any person that any of its existing lines be resited underground. If the Communications Provider is satisfied that the person making the request will pay the costs of placing the lines underground, the Communications Provider shall, wherever it is reasonable and practicable, so place the line. In other cases, except where the request is frivolous, the Communications Provider shall be obliged within 28 days of receiving it, to give notice of its decision whether or not to accede to the request in writing to the person making the request giving, where it decides to refuse, reasons.
- 2.3 Where telecommunication services are to be provided to a person occupying or proposing to occupy a new development the Communications Provider shall consider in conjunction with those responsible for the development and any other statutory

undertaker providing or proposing to provide a service to persons occupying that development whether lines can be installed underground on a shared cost basis.

Paragraph 3

3. Manx Museum and National Trust (publicly known as Manx National Heritage)

3.1 Except in the case of emergency works, before installing any telecommunication apparatus for the purpose of providing a service to the occupier of any land which the Manx Museum and National Trust (publicly known as Manx National Heritage) has notified the Communications Provider that it owns, or holds any interest in, the Communications Provider shall:

- (a) give the Trust written notice of its intention to do so, describing the proposed works; and,
- (b) consider any written representations made by the Trust within 28 days of the giving of such notice to it by the Trust.

3.2 The requirements of paragraph 3.1 are satisfied where the Communications Provider has complied with the statutory requirement referred to in paragraph 1.1(a).

Paragraph 4

4. Placing of Underground Apparatus in Ducts

4.1 All lines installed underground after the date on which this Licence enters into force, in a part of a maintainable highway which is paved, shall, whenever practicable, be installed in Ducts.

Paragraph 5

5. Height of Overhead Lines

5.1 Lines installed over the carriageway of a maintainable highway shall be placed at a height of not less than 5.5 metres above the carriageway except where the Highway Authority has previously otherwise agreed in writing.

Paragraph 6

6. Maintenance and the Safety of Apparatus

- 6.1 The Communications Provider shall from time to time take such steps as it considers reasonable to inspect its telecommunication apparatus which is not inside a building and which is on or above the surface of the ground with a view to ensuring that it will not cause harm to other persons or property; and the Communications Provider shall notify the Commission of its arrangements for inspecting such telecommunication apparatus.
- 6.2 In addition to carrying out inspections of its own telecommunication apparatus on or above the surface of the ground the Communications Provider shall investigate any report (other than a frivolous one) of any of its telecommunication apparatus (wherever situated) being in a dangerous state and to remove any danger.

Paragraph 7

7. Arrangements with Manx Utilities Authority

- 7.1 Subject to any modifications agreed between the Communications Provider and the Manx Utilities Authority, the Communications Provider shall:
- (a) where it installs and keeps installed telecommunication apparatus in proximity to previously installed plant which is the responsibility of the Manx Utilities Authority, continue to observe the terms of existing agreements or arrangements concerning the engineering principles to be adopted and the allocation and apportionment of costs which arises; and,
 - (b) where the Authority gives notice that it proposes to install its plant in proximity to any of the Communications Provider's installed telecommunication apparatus, continue to observe the relevant terms of the agreements and arrangements referred to in sub- paragraph (a) above.

Paragraph 8

8. Instructions for the Installation of Apparatus

- 8.1 Without prejudice to any of its statutory obligations the Communications Provider shall take all reasonable steps to secure (in particular by giving instructions to its employees and agents) that:
- (a) where telecommunication apparatus is to be installed underground in a maintainable highway, the normal practice wherever practicable will be to place it

- in the verge or footway if any rather than the carriageway;
- (b) provision is made for any new Ducts installed after the date on which this Licence comes into effect to contain sufficient spare capacity to meet demand which is reasonably foreseeable by the Communications Provider for telecommunication services provided by it;
 - (c) attention is drawn to the need wherever practicable to place lines at minimum depths of cover appropriate for the locality (varying between 350 mm and 600 mm in footways and between 600 mm and 900 mm in the carriageways);
 - (d) regular liaison is maintained with the Highway Authority with a view to ensuring that, as far as possible, telecommunication code works which entails breaking up the surface of the highway are carried out in advance of scheduled resurfacing works or together with other schemes affecting the highway;
 - (e) regular liaison is maintained with statutory undertakers and other operators to whom the telecommunications code is applied with a view to reducing the disruption of the services provided by those persons;
 - (f) where telecommunication apparatus is installed in a manner which involves the breaking up or opening of the highway and the Communications Provider is to do the reinstatement and making good at upper levels, all reasonable steps are taken to reinstate the surface of the highway in its previous form;
 - (g) with a view to reducing to a minimum the need for the erection of new poles or the construction of new Ducts, before installing any such poles or Ducts steps will be taken to investigate the possibility of using existing poles, Ducts or other conduits;
 - (h) attention is drawn to the desirability of:
 - (i) installing the minimum practicable number of poles and other items of apparatus, allowing for estimated growth in demand for telecommunication services; and,
 - (ii) protecting the visual amenity of properties in proximity to which poles or other items of apparatus are installed; and,
 - (iii) lines and other items of apparatus are placed so that they do not present safety hazards.

8.2 The Communications Provider shall within three months of the amendment to this Licence by which this schedule was added furnish details to the Authority of the steps taken to implement paragraph 8.1.

Paragraph 9

9. Records of Apparatus

9.1 The Communications Provider shall keep records of any of its telecommunication apparatus installed underground after the date on which this Licence enters into force which can be made available in the form of route plans drawn on an Ordnance Survey map background of one of the following scales (1:625, 1:1,250, 1:2,500, 1:10,000) according to the density of development in the area concerned.

9.2 The Communications Provider shall provide by means of a telecommunication system free of charge, to the Highway Authority or other person who is intending to undertake works in the vicinity of any telecommunication apparatus it has installed underground, a service furnishing information free of charge about the location of that telecommunication apparatus and shall whenever practicable:

(a) respond to bona fide enquiries; and

(b) where necessary confirm its advice in diagrammatic form and make trained staff available to give on-site advice about such telecommunication apparatus so installed,

and shall also respond to any other reasonable request from the Highway Authority for information about the location of the Communications Provider telecommunication apparatus installed underground.

9.3 The Communications Provider shall co-operate in any joint projects involving persons who are statutory undertakers under any statutory provision or to whom the powers of the telecommunications code have been applied which have as their purpose the recording and making available of information about underground apparatus, unless the Commission agrees that it would be inappropriate having regard to its existing practice for it to do so.

Paragraph 10

10. Emergency Works

10.1 Where the Communications Provider executes emergency works which would otherwise require prior notice under paragraph 3, it shall, as soon as practicable after the commencement of the works, give to the Manx Museum and National Trust (publicly known as Manx National Heritage) written notice describing the works.

Paragraph 11

11. Public or private events and construction sites

11.1 Where the Communications Provider is to provide telecommunication services for a limited period at the site of a public or private event or a construction site, it may install overhead lines and associated poles to provide that service notwithstanding paragraph 3, provided that the lines or poles are removed within a reasonable period at the end of the event or after the work at the construction site is complete.

Paragraph 12

12. Emergency Organisations

12.1 Where the Communications Provider is to provide any telecommunication service for a limited period to an Emergency Organisation in an Emergency it may, notwithstanding paragraphs 3 and 5, install overhead lines and associated poles for the purposes of providing such services as are made necessary by the Emergency provided that any such line or pole is removed within a reasonable period after such services ceases to be required.

12.2 In this paragraph "**Emergency Organisation**" and "**Emergency**" have the same meaning as in Schedule 1 to this Licence.

Paragraph 13

13. Public Inspection of Code Related Licence Conditions

13.1 The Communications Provider shall place a copy of this Schedule and of every direction given to the Communications Provider under section 8(5) of the Act in a publicly accessible part of the principal office in the Island of the Communications Provider in such a manner and in such a place that it is readily available for inspection free of charge by the general public during normal business hours.

Paragraph 14

14. Definitions and Interpretation

14.1 In this Schedule unless the context otherwise requires:

- (a) "**Duct**" means a structure or apparatus (with appropriate entry points) installed underground in such a way that lines can be installed in it without having to break

up the surface of the highway;

- (b) "**emergency works**" has the same meaning as in paragraph 1 of Schedule 1 of the Act;
- (c) "**Highway Authority**" means the Department of Infrastructure;
- (d) "**line**" has the same meaning as in paragraph 1 of Schedule 1 of the Act;
- (e) "**maintainable highway**" has the same meaning as in paragraph 1 of Schedule 1 of the Act;
- (f) "**Service Line**" means any line placed or intended to be placed for the purpose of providing any telecommunication service to the occupier from time to time of any land, as distinct from a line placed or intended to be placed for the general purpose of any telecommunication system;
- (g) "**telecommunication apparatus**" has the same meaning as in paragraph 1 of Schedule 1 of the Act.

14.2 Any word or expression used in this Schedule shall, unless the context otherwise requires have the same meaning as it has in the Act.

Paragraph 15

15. Additional Provisions

15.1 The Communications Provider is subject to provisions that secure:

- (a) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.