



August 27, 2020

Mr. Guy Lester Malone
Chief Executive Officer
Telecommunications Regulatory Commission
Road Town, Tortola
British Virgin Islands

Dear Mr. Malone:

Re: Draft Annual Work Plan and Budget 2020/2021

BVI Cable TV contends that the Industry Levy assigned pursuant to the Draft Annual Work Plan and Budget 2020/2021 is invalid and unenforceable because it is in breach of the Commission's obligations under the Telecommunications Act. The Commission used an improper procedure to produce the estimates from which the Industry Levy was calculated, and had the estimates been prepared using the procedures mandated by the Act it is probable that no Industry Levy would have been assigned for the financial year 2020/2021.

The Industry Levy for 2020/2021 was miscalculated using total estimated expenditure rather than net estimated expenditure as required by the Act. The Industry Levy is to be based on net estimated expenditure and is therefore only chargeable where there is a shortfall in the projected income of the Commission from all sources relative to the expenditure approved for the Commission for that period. However, Draft Annual Work Plan and Budget 2020/2021 calculated an Industry Levy by reference to "total estimated expenditures". This is in breach of Section 59 (2) of the Telecommunications Act which requires the Industry Levy be calculated by "adding the net estimated expenditure of the Commission as set out in the estimates approved by the Minister responsible for finance and a contingency of ten per cent of the net estimated expenditure".

The Draft Annual Work Plan and Budget 2020/2021 also reduces estimated income of the Commission by (\$2,187,712.27) on account of a "regulatory contribution." This sum is the exact amount of the Royalty Fees payable to the Commission under Section 60.(1) of the Telecommunications Act. The use of the funds and resources of the Commission is circumscribed by Section 58 (2) of the Act which does not contemplate or permit the Commission to transfer the Royalty Fees payable to it under the Telecommunications Act to the Government either as a "regulatory contribution" or at all. The Royalty Fees payable must be applied for the purposes and/or to defray the expenses of the Commission.

Furthermore, the Act requires that in setting the Industry Levy the sum of the net estimated expenditure and the contingency must be adjusted upwards or downwards by the addition or subtraction of any surplus or deficit, as the case may be, carried over from or incurred in the previous financial year. This was not done in the present case. The importance of this factor lies

in the consideration that the Industry Levy is to be calculated by reference to the actual expenditure incurred by the Commission for the relevant financial year, pursuant to Section 59 (2) of the Act. The scheme of the Act provides a mechanism whereby any surplus resulting from an under or overestimation of expenditure in any financial year is adjustable upward or downwards to ensure that the amount of the Industry Levy for the previous financial year conforms with the expenditure actually incurred in that year. The Commission is not permitted to calculate the Industry Levy without making those adjustments.

Yours sincerely,



Averad Penn
Chief Executive Officer
BVI Cable TV

Cc: Board of Directors, Telecommunications Regulatory Commission
Board of Directors, BVI Cable TV