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November 28, 2017

Mr. Guy Malone
Chief Executive Officer
Telecommunications Regulatory Commission
27 Fish Lock Road
Road Town 1110
Tortola

Dear Mr. Malone,

Re: Commission Draft Annual Budget and Work Plan 2017/2018

Digicel thanks the Commission for the opportunity to submit its comments on its Draft Annual Budget and Work Plan 2017/2018, as set out in the consultation document published on September 4, 2017.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in this consultation or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement nor does any position taken by Digicel in this document represent a waiver or concession of Digicel's rights in any way. We expressly reserve all rights in this matter generally.

As a general point, we note with displeasure that the budgeted costs of the Commission are set to increase by US \$1M with no real demonstration as to how this marked increase in costs would necessarily add to the value of the work of the Commission or to the development of telecommunications for the benefit of businesses and consumers in the BVI.

In addition, in light of the debilitating effect of Hurricane Irma on the Territory and the extent to which the sector has been set back as a result, we are of the view that the Work Plan and Budget must be revised to take into consideration the damage to the networks, the restoration efforts undertaken by operators and to reset the priorities of the sector and necessarily, therefore, of the Commission as regulator.

Detailed below is Digicel's response to the Commission's proposals, on a section by section basis, as set out in the consultation document.

1. Part 1 – 2017 and 2018 Strategic Plans

In paragraph 1.4, the Commission notes that the Board has made a further recommendation to the Minister to appoint an additional Commissioner with a telecommunications services background from outside the British Virgin Islands, as specified in section 7(2) of the Act. However, no reason was given as to why it is necessary for the Commission to advance this recommendation at this time. The Commission has operated since 2007 in the absence of this an additional commissioner with a telecommunications services background from outside the BVI. There is no indication that any shortfall in the work of the Commission can be attributable to the absence of this Commissioner on the Board of Directors. Were this Commissioner to be appointed, this will only incur additional costs with no demonstrable added value to the work of the Commission or to the development of the sector. This is an unjustified increase in expenditure and all allocations for this should be set aside at this time.

2. Part 3 – Strategic Aims and Objectives 2017 – 2018

3.1 – Continue a Culture of Compliance

In paragraph 1.5, the Commission states that its mission is to promote value, choice, innovation, quality and competitive pricing for consumers and businesses in the British Virgin Islands by promoting investment, effective competition, informed choice and the opportunity to have access to a wide range of telecommunications services.

In paragraph 3.1 and as set out in greater detail in the Work Plan, the Commission appears to be steadfast in its mission to undertake compliance and enforcement activities.

Although Digicel appreciates the value of fostering a culture of compliance, it would be useful if the Commission proceeds with its compliance exercises strategically and so as to add value to the Commission's overarching objectives (as set out in the Commission's mission statement). In January 2017, operators were asked to submit large volumes of technical and commercial information to the Commission at great time and resource expense of each operator. The Commission's justification for requesting the information was simply that it was required under the operators' Licences. To date, the industry is yet to see the value of the submission of this information to the Commission. The Commission has not published a market report for the last few years and there are no other visible indicators in the performance of the Commission's functions that would suggest that the information was put to good use. Therefore, for the financial year 2017 - 2018, Digicel's recommendation is for the Commission's monitoring activities to be strategically conducted and focused only those initiatives that demonstrably contribute to the fostering of competition and to the welfare of users in the BVI.

3.3 Our Stakeholders

In paragraph 3.3, the Commission states that it will continue to increase its interaction with stakeholders as it prioritises its Work Plan. It is anticipated that this increased interaction will provide the Commission with the ability to respond quickly and effectively to market developments.

However, the Commission has not set out in this part how it proposes to increase interaction with the Licensees - perhaps its most important group of stakeholders.

In this regard, Digicel considers that it would be useful for the Commission to host bi-annual regulatory updates with licensees to discuss the Commission's plans for the development of the sector and mutual expectations in this regard. This can be conducted at minimal cost to the Commission. We believe that this approach would be more helpful rather than for the Commission to continue issuing random requests for information with no indication as the policies or the form of regulation that it is minded to advance.

3.4 Government

In paragraph 3.4, the Commission undertakes that it will continue to advise the Minister for Communications and Works and the Government of the Virgin Islands on policies and positions – providing timely and high quality advice.

Section 4(1) (a) of the Telecommunications Act provides that it is the responsibility of the Minister to develop and review telecommunications policies consistent with the purposes of this Act. In the exercise of its functions and powers under the Act, the Minister shall consult with the Commission. Section 6(a) identifies as one of functions of the Commission the duty to advise the Minister on positions and policies relating to telecommunications issues at international, regional and national levels.

It is clear that the Act envisages a working relationship between the Minister of Telecommunications and the Commission, whereby the Commission's activities, as determined by its Work Plan, should be guided by national policy set by the Minister. The Minister also has specific functions under the Act, including the issuance of licences and the approval of changes in ownership and shareholding of Licensee companies. In the exercise of these functions, the Minister has an obligation to consult the Commission and similarly, the Commission has an obligation to provide advice to the Minister, largely of a technical and regulatory nature.

Recently, the Commission notified Digicel that, unbeknown to the Commission, approvals were granted for a specific transaction even before the Commission had engaged the required processes set out in the Licence to give effect to a transaction such as that under consideration. Digicel intends to address this issue in detail under separate cover and reserves all rights in this regard.

However, the issue that we wish to raise for the purposes of this consultation is that incidents such as this one serve to cast doubt as to whether the relationship between the Minister and the Commission is working in as symbiotic a manner as the Act contemplates. In order to preserve the credibility of the Commission and to heighten the level of regulatory certainty in the sector, this is perhaps a point to which more attention should be paid.

3.6 Improved Performance

The Commission states in this paragraph that it is encouraging and incentivizing licensed operators in the BVI to increase investment in the Territory and to improve their network performance.

However, for the last reporting period, the Commission has hardly implemented any measures that encourage and incentivize operators to increase investment in the BVI and to improve network performance. For the past period, the Commission has attempted to implement an industry levy, which does little else than to unjustifiably add unreasonable and unwanted regulatory costs on Licensees. The Commission has also been slow to grant spectrum to meet operator demands, even in exigent circumstances - opting instead to await the review of the Spectrum Management Framework – a document which has been under review for more than a year.

3. Part 2 – The Industry Levy

Digicel considers that the Commission’s decision to forgo implementation of the Industry Levy for the financial year 2016 - 2017 was a reasonable one. However, the Commission now proposes to implement the Levy in 2017 - 2018 albeit by an amended approach in the initial years of its introduction, which involves a process by which the Commission will credit measurable, reasonable and objectively verifiable investment by each operator in its Network and Services to the payment of the Industry Levy and allow the operators to establish a payment plan.

The Commission further proposes that, going forward, the Industry Levy from each of the Licensees will fund a portion of the work of the Commission and any surplus will be remitted to the Government.

Since the Commission attempted to first implement the industry levy, operators have been calling on the Commission to show why it was necessary for the Commission to draw on an additional source of revenues at this time. For 10 years, the Commission has operated in the BVI with revenues derived solely from royalties. The Commission has not demonstrated the extent to which additional revenues are required to support the functions of the Commission to the point where it is now necessary to implement the Industry Levy. For that matter, the Commission notes that it anticipates a 12% growth income derived from royalties for the upcoming period due to anticipated growth in the sector, especially after the launch of LTE. This gives credence to the argument that the income derived from royalties alone is sufficient to satisfy the costs of regulating the sector.

We wish to reiterate that the Act does not make provision for the remittance of funds to the Government other than what might be properly described as a surplus.

Based on what the Commission has set out in its Work Plan and Budget for the upcoming period, it would appear that great effort is being made to convey the message that the Commission is in dire need of income. However, as set out in detail below, Digicel is of the view that the Commission could do much to limit its costs to a reasonable level rather than try to increase its income by implementing a measure as crippling as the Industry Levy at this time.

Digicel continues to maintain the view that the implementation of the levy would only serve to divert industry revenues, which should properly be applied to further investment in the sector, to the coffers of Government. This is not the intention of the Act. In this regard, Digicel notes the Commission's proposal to give consideration to investments that had been made by operators for the previous period. However, no details were given as to the specific percentage of the levy which may be satisfied by investment credits and whether this may be sufficient to incentivize further investment for the following periods. Therefore, our position remains the same and we reserve all further comments until the Commission discloses these details.

4. Part 3 – 2017/2018 Work Plan

The Commission proposes to undertake specific activities to ensure optimal spectrum efficiency. The Commission and indeed the public is aware of the effect of harmful interference caused to Digicel's network by the European DECT systems on marine vessels docking in the various ports of the BVI and that this has been a tremendous setback for Digicel for the last few years. Thus far, our proposals for relief have not been accepted by the Commission. Therefore, we are disappointed to note that the Commission's only action item on this is simply to continue to monitor the interference and to provide notifications to and coordination with Government. We are of the view that the Commission should have a definitive plan of action which should be implemented as a matter of priority before the peak tourist season is well underway.

Digicel notes the Commission's objective to facilitate continued development of a first class integrated telecommunications infrastructure that delivers choice, value and quality of service for consumers, enterprises and visitors to the BVI. Among the activities identified for completion in the furtherance of this objective during the period, we note that the Commission proposes to go on a staff retreat and celebrate WTISD. We are doubtful as to the extent to which these activities will lend towards the development of telecommunications infrastructure in the BVI.

The Commission also intends to review the legislative framework and to propose the introduction of new or revised Telecommunications Codes and replacing historic legislation. This includes a review of the Telecommunications Act.

However, there is no indication as to what are the policy objectives that would guide the review of the Act. The industry is not aware of any national policies that have been set by the Minister within recent times that would warrant a review of the existing legislation. For that matter, the Policy document to which the Commission makes reference was set since 2007 – the same Policy document that guided the liberalization of the sector. In addition, we are not aware of any marked deficiencies in the Act which has set back the development of the industry or the work of the Commission to any significant extent. In the absence of these indicators, we believe that the Commission's proposals in this regard may be premature.

In paragraph 4.7, the Commission undertakes to introduce an equipment type approval process. However, for the past ten years, licensed operators in the BVI have been importing terminal

equipment which have been enjoyed by users in the BVI without issue. The bigger risk in this regard lies in the sale of gray market equipment, which is peddled by unlicensed merchants who do not fall within the remit of the Commission. Gray market handsets often do not respond to the OTA network changes or upgrades that may be implemented by operators, thereby placing the subscribers who own such handsets in a position of disadvantage. Therefore, although we are not convinced that a type approval framework should be a priority for the Commission at this stage of development of telecommunications in the BVI, if the Commission were to implement such a framework, due consideration should be given to the extent to which the obligations could be extended to merchants other than Licensees.

In its proposals to ensure that the Commission is adequately staffed and has the appropriate financing framework to fulfil its duties under the Act, we are quite confused with the Commission's proposals to hire a Chief Operating Officer. Digicel is of the view that there is very little need for a Chief Operating Officer in such a small undertaking as the Commission, operating in such a small market as the BVI. We consider this proposal to be unjustified, unnecessary and such as to impose unreasonable costs on the sector – costs that will necessarily be passed on to subscribers.

We renew our call for Licensees to have the ability to view the audited financial statements of the Commission. This is necessary in the interest of transparency given that it is Licensees' revenues being used to fund the operations of the Commission. This is also particularly critical to support the Commission's claims of the need to implement the Industry Levy.

5. Budget for the 2017-2018 Financial Year

Digicel notes that although the Commission's objectives identified for completion over the current period are also proposed for completion in 2018 and indeed quite a few of the activities for the current year are proposed to be rolled over into the next period, the Commission's expenses are set to increase by over US \$1M! In particular, we note the following:

- In the work plan and budget for 2016, budgeted employee-related and staff costs, which, it would appear, consisted of Executive Members Compensation, Staff Costs and Office Services were set at US \$1,484,712.13. These costs were budgeted at US \$1,633,228.91 for 2017. For 2018, these costs, identified as employee compensation and staff benefits, total US \$1,854,475.64. We note that with each passing year, the Commission has been increasing staff costs and compensation for staff without any marked changes in headcount.
- The budgeted costs for conferences training and travel for 2018 are set to increase by approximately 71% from the current period.
- Rent and utilities are budgeted to increase by a whopping US \$20,000 although the Commission has not moved offices and its headcount remains the same.
- Administrative costs are set to increase by US \$35,000 since 2016 and by US \$20,000 from costs budgeted for 2017.

It is no secret to the Commission that the industry is being challenged by declining revenues. For the last year alone, Digicel has had to undertake stringent measures in the form of price increases and reorganisation and restructuring in order to manage its own costs. We understand that similar measures have been undertaken by the other operators. However, it is disheartening to note that while the industry continues to make these difficult decisions, the Commission appears to do little to manage its own costs. These concerns are heightened in light of the significant capital outlay that the operators have had to put out within the last couple months towards hurricane relief and restoration efforts in the BVI. In Digicel's case, these expenses amount to at least US \$1.3M to date.

As a point of recommendation, we call upon the Commission to take a modest approach to regulation, to prioritise only on those initiatives that will incentivise further investment in the sector and which demonstrably add value to the development of the industry as a whole. The Commission should also adopt a conservative approach to managing its expenses.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Gordon', is written over a light grey rectangular background.

Kevin Gordon
CEO - Digicel (BVI) Limited