

# **CABLE & WIRELESS**

**Response to TRC Consultation on**

**Commission Draft Annual Work Plan and Budget**

**2018/2019**

October 31, 2018

**COVER SHEET FOR RESPONSE TO A COMMISSION CONSULTATION**

**BASIC DETAILS**

Consultation title: Commission Draft Annual Work Plan and Budget 2018/2019

Name of respondent: Mr. Colin MacDonald

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**CONFIDENTIALITY**

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing

Whole response

Part of the response

Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

**DECLARATION**

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name: Colin MacDonald

Signed (if hard copy)

## 1. INTRODUCTION

**1.1** Cable and Wireless (BVI) Limited dba Flow is pleased to provide comments and remarks on the 'Commission Draft Annual Work Plan and Budget 2018/2019' (the Consultation Document) published October 3, 2018.

**1.2** Flow expressly states that failure to address any issue raised in the Work Plan and Budget (the Consultation Document) does not necessarily signify its agreement in whole or in part with any position taken on the matter by the TRC or respondents. Flow reserves the right to comment on any issue raised in the Consultation Documents at a later date.

**1.3** Please send all responses to this Consultation Document and any matters arising to Colin MacDonald at [colin.macdonald@cw.com](mailto:colin.macdonald@cw.com) and Melesia Sutherland at [melesia.campbell@cw.com](mailto:melesia.campbell@cw.com).

## 2. 2018/2019 Strategic Overview

**2.1** Flow notes that the Commission's strategic plans for FY 2018/19 largely mirror its strategic plans for the preceding fiscal period, 2017/18. We do recognize that the passage of the devastating hurricanes, Irma and Maria, are likely to have impeded the ability of the Commission to deploy that plan.

**2.2** The Two category 5 hurricanes significantly damaged all networks resulting in major loss of service to consumers, both business and residential, and slowed economic activities within the country. Considering the devastation caused by these events, and the still continuing restoration efforts, Flow believes the Commission's primary strategic objective for the upcoming fiscal period must be the expeditious reconstruction of vital infrastructure in the British Virgin Islands, which means that all barriers interfering with this objective be addressed and resolved.

### **3. Industry Levy**

**3.1** The Commission makes reference to a Levy at paragraph 3.11 of the Consultation Document. In light of the task of reconstructing networks and connecting customers, lost revenues due to the hurricanes and increased capital cost to replace networks, it is not realistic for the Commission to seek to engage the industry on a discussion of a Levy in fiscal 2018/19.

**3.2** Moreover, the Commission has not satisfied the criteria to implement a Levy. As contained in Flow's response to Commission's 2017/2018 Work Plan and Budget, the industry has indicated with regards to a proposed levy that:

1. As an industry, we continue to maintain the position that Industry Levy has not been implemented in accordance with the Telecommunications Act ("the Act"). **Section 59** of the Act, which sets out the procedure by which the Industry Levy must be implemented, envisions a regularly reporting Commission that has audited financial statements that form the basis for operators to develop reasonable expectations about the relative size of both the Commission's budget and their relative contribution to this budget. However, the Commission has never provided operators (or the public at large) with audited financials for any year of the Commission's existence, in spite of repeated requests by operators and Section 64 of the Act, which specifically requires the Commission to present such audited financials to the Minister within six months of the end of each fiscal year.
2. Section 66 of the Act further requires the Minister to lay such audited financials before the Legislative Council within three months of receipt of these statements, making them incontrovertibly public documents that operators can review and rely upon to develop forecasts and expectations. Furthermore, even Section 59 of the Act, upon which the Commission currently relies to implement the Levy, makes specific provisions to adjust the Commission's budget up or down by the relative surplus or deficit reported in the previous years' audited financials.

3. In the absence of audited financials and public reporting which permits true transparency, the Commission's efforts to establish this Levy breach fundamental legal guarantees to the industry against arbitrary rulemaking and unreasonable interference with our revenues, under basic principles of administrative law. In short, we believe that the Levy is unlawful both because of the manner of its imposition and unreasonable magnitude.
  
4. In our individual responses, we have consistently argued that:
  - a. the manner of Implementation of the Levy is unlawful and breaches the rules of natural justice;
  - b. there are excessive budgetary line items, and that the total amount of the Levy is exorbitant, unnecessary and unreasonable; and
  - c. the imposition of such an extraordinary Levy on operators will lead to higher prices for all consumers, drastically reduce investment in the BVI and generally would not be in the best interest of the public. We maintained that the Commission should more appropriately be focused on spurring investment, further developing electronic communications infrastructure and increasing access to electronic communications goods and services in all parts of the Territory for the greater good of the public.

**3.3** If the levy is implemented Flow would pay approximately 10% of revenues to the Commission in fees. Moreover the Commission is proposing charges for new spectrum, in another consultation, which could be significant, which would further increase fees paid to the Commission. This is untenable.

**3.4** Flow reiterates that in light of the devastation of the networks in BVI by the hurricanes, the focus of the Commission must be on restoration / rebuild of the networks.

#### **4. Budget 2018/19**

**4.1** Flow commends the Commission for containing its spending, overall, Y-O-Y. Flow welcomes the reduction in some expense items such as Conferences, Training and Travel, and Maintenance expenses. We believe this to be a signal of the Commission's growing awareness of the need to keep expenses in check and to be more efficient with its spending even as the

industry continues to grapple with decimated revenues from traditional video, voice and SMS services as competition from unregulated Over-the-Top providers (OTTs) intensifies.

**4.2** Yet, even with containment of spend Y-O-Y, the Commission's budget remains excessive in absolute terms. Some of the Commission's expense items showed increase Y-O-Y increase that are beyond BVI's low inflation rate of 2.5% (est.) and are substantive. These are Professional Services (9%), Rent and Utilities (5%) and General and Administration (28%). Note is made that General and Administration expenses, has increased cumulatively by 52% over the last 3 (three) years.

**4.3** Our comments on the budget line items are as follows:

**Professional Services**

i. The TRC has provided some details on professional services however the TRC does not provide enough details to justify the extent of the increase of 9%. Flow request greater details from the TRC to support an increase in its spending on professional fees by 9%.

**Rent and Utilities**

ii. The TRC has noted that it will need to spend up to 5% more on rent and utilities due to an increase in office space to be occupied by the TRC. However the TRC would need to provide the reason(s) for the need for additional office space.

**General and Administration Expenses**

iii. This expense items has been increase by an accumulated 52% in three years with an expected increase of 28% for this financial year. This is a substantive increase. Flow request further details from the Commission on the projected expenditure of the respective expenses under this heading.

## **Capital Expenditure**

**iv.** Flow request a breakdown of the expenses for Capital Expenditure which is budgeted at US\$ 1,411,518.83.

## **5. Conclusion**

**5.1** In closing, Flow trust the Commission will give thoughtful consideration to Flow's comments. We also invite the Commission to reconsider its overall budget which still remains excessive.