

BASIC DETAILS

Consultation title: Consultation on the Annual Work Plan and Budget 2019/2020

Name of respondent: Mr Guy Malone

Representing (self or organisation/s): Digicel (BVI) Limited

Address (if not received by email): Delivered by Email

Mrs. Elaine Ward,
The Road Division -
6.2.19

CONFIDENTIALITY

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

Nothing

Kevin Gordon/+12843001917/Chief Executive Officer

Digicel (BVI) Limited

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the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: Mr Kevin Gordon

Signed (if hard copy): By Email



Digicel

Digicel (BVI) Limited
PO Box 4168
Road Town
Tortola
VG1110
British Virgin Islands
Tel: +1 (284) 300 1000
Fax: +1 (284) 494 0111
www.digicelbvi.com

Monday, 24 June 2019

Mr. Guy Malone
Chief Executive Officer
Telecommunications Regulatory Commission ("Commission")
27 Fish Lock Road
Road Town 1110
TORTOLA

RECEIVED
JUN 27 2019
TELECOMMUNICATIONS REGULATORY COMMISSION
BRITISH VIRGIN ISLANDS

Dear Mr. Malone,

Re: Commission Draft Annual Work Plan and Budget 2019/2020

Digicel BVI Limited ("Digicel") thanks the Commission for the opportunity to submit comments on the Commission's Draft Annual Work Plan and Budget 2019/2020, as set out in its consultation document published on 27 May 2019.

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.

Detailed below is Digicel's response to the Commission's proposals as set out in the consultation document.

1. Part 1: 2019/2020 Strategic Overview

Digicel agrees that 'a resilient and first-class telecommunications services industry is a hallmark of competitive economies', and that the telecommunications industry has an impact on many other sectors and industries. The Commission, at paragraph 1.9 states that "in order to ensure that the British Virgin Islands ("BVI") is equipped to compete regionally and internationally" it would "promote the enhancement of telecommunications in the Territory". Digicel welcomes further information in this regard, and looks forward to discussing these enhancements, which the Commission is seeking to implement in BVI.

It would be important to have proper consultation with operators given the changes that the industry has gone through, from the usual traditional telecommunications, to what it is today, and any frameworks or suggestions put forward by the Commission would need to be relevant, and must take into consideration the present needs and challenges that the operators are currently facing. This includes, for example, the changing landscape and introduction of Internet of Things ("IoT"), lack of regulation and taxing of OTT's, which has a direct impact on the success and growth of law abiding operators, and operators need for infrastructure sharing arrangements and better cooperation between operators.

The Commission, at paragraph 1.10, goes on further to state that the "Government has identified several key plans, which are geared towards the development of the Territory". Given the direct reference to the Telecommunications industry having an impact on the realization of these plans, the operators must be given an opportunity to review and provide comments. We therefore welcome details regarding these plans, and look forward to having the opportunity to discuss the same with the Commission.

The Commission, at paragraph 1.14, suggests that telecommunications experience can be first-rate in BVI, and the Commission intends to achieve this by, amongst other things, "encouraging increased investment by operators". While Digicel respects the Commissions desire to bring to the people of BVI first class telecommunications services, and appreciates that operator investments may play a key role to this vision, the Commission must take into consideration the current challenges and concerns that operators may have, including operator's own visions and future plans. It would be unfortunate if the Commission were to commit to the Minister any specific investments that it envisages would enhance telecommunications services in BVI, without first understanding the impact to operators.

2. Part 2: The 2019/2020 Work Plan

Ensure optimal spectrum efficiency so that this resource is used for the maximum benefit of consumers and enterprises.

Digicel welcomes the Commissions confirmation that it has postponed the next stage of the release related to the Spectrum Management Framework, and is encouraged by the continued engagement by

the Commission with the industry. We look forward to engaging in further round of consultations in this regard.

Digicel, in its submissions on the 2018/2019 Work Plan requested details relating to the software tool and spectrum monitoring unit the Commission was looking to purchase, and sought to understand how the tools would be used to efficiently and effectively manage spectrum related matters. It is noted that the Commission have gone ahead and purchased the spectrum management software tool during the 2018/2019 financial year. It is disappointing that more information was not provided as requested.

Facilitate continued development of a first-class telecommunications infrastructure with enhanced quality of service while improving the internal ICT environment to allow for better service to consumers, enterprises and visitors to the British Virgin Islands

The Commission, when it commences work on developing a Broadband Policy for the benefit of telecommunications consumers in BVI, should engage early with the industry. Further, when examining broadband speeds in other jurisdictions, it would be important to ensure that jurisdictions identified for this exercise are comparable to BVI, and similar in economy, geography and present circumstances in BVI.

Review the licencing framework and support the implementation of recommended changes to the Telecommunications Policy, Act, Codes and Regulations.

Digicel is of the view that before any steps are taken to review frameworks to support the implementation of changes to any legislation, policy or regulations, either the basis of, or contributing factors to pursue amendments to existing legislation, policies, and regulations must be published for industry comments. Instead, proposal for introducing amendments (or any new legislations, policies, regulations) should be done either to correct a drafting error or omission, or to update laws. All said, these can only be done on well set out and reasoned principles. Unless such clear and detailed reasons are provided, it is difficult to comprehend why any new or amendment legislations or policies would be contemplated at this time.

Before the Commission proceeds with this exercise it must identify a consultation process. To do otherwise would prejudice the industry, and would result in uncertainty as to the next steps. Digicel therefore expects that the Commission would engage in consultation before it sets out to reviewing or suggesting amendments to operator licences, or before any additional telecommunications Codes and Regulations are introduced in BVI.

Enhance economic remedies and solutions to deliver choice and value to consumers and business in the British Virgin Islands.

Digicel welcomes further discussion as it relates to the Commissions intentions of developing an in-house Long Run Incremental Cost ("LRIC") model for use in termination of interconnection tariffs and for market analysis purposes. It would be important to engage in a well set out consultation process, and to agree the parameters within, which any such LRIC model may be applied. For example, in some jurisdictions, tariff changes may or may not affect incoming international termination, and may only affect termination

for domestic calls. Any decisions reached must therefore be based on market considerations and take into account operator's current challenges.

Particular care therefore must be taken before any decision is made to develop or implement LRIC model in BVI. This is because in practice the use of the LRIC standard has been controversial. The point of contention is not with the principle but with its application. For example, respected London based consultants Indepen wrote in one of their discussion documents, that:

"Long Run Incremental Cost (LRIC) models have been applied by regulators in the UK, US and elsewhere in pricing access and interconnection in telecommunications networks since the mid 1990's. Advocacy of LRIC is often based on the assumption that this is the level at, which effective competition would drive prices, or more colloquially "mimic competition". In practice the application of the LRIC methodology has been based around hypothetical network models that may depart substantially from the real-world attributes of the actual network in question.

The conditions necessary for LRIC to "mimic competition" and allow a firm to recover exactly its costs over the life of an asset are still a matter of academic research, and failure to take account of known potential sources of bias in modelling can result in large errors."¹

In recent year's research by leading academics has shown that LRIC models that have actually been used to price network services or unbundled elements can generate substantially incorrect values i.e. the models fail to properly mimic a competitive / contestable market.

For these reasons, while Digicel is not averse to suggestions of models and approaches to be undertaken by the Commission, it is important that these are first discussed at great lengths with operators and also that proper consultations are held. This would allow operators and the Commission to properly discuss and consider the pros and cons of the suggested models and the best approach to be taken to bring success to the telecommunications industry in BVI.

Ensure that the Commission is adequately skilled, involved with telecommunications users, and has the appropriate financial framework to fulfil its duties under the Act.

While Digicel appreciates the Commission wishing to employ an additional staff to take up the role of Compliance Officer, it notes that the role description may also be suited to, and may be supported by the Commissions Legal Advisor. This would ensure, particularly where regulatory specific compliance is required and implementation of procedures that it is done with greater diligence and with an aligned approach as it relates regulatory policies and legislation in BVI. This may be better use of the money that is likely to be spent by the Commission, particularly if the Budget is eventually to be collected through fees and levies imposed on the industry.

The outcomes from any staff retreats and internal focus meetings, which impacts on the day to day running and efficiency of the Commission, which in turn impacts on the treatment of the industry, should

¹ See <http://www.indepen.co.uk/panda.html> and in particular the 2004 paper, "Access Pricing in Telecommunications – Time to Revisit LRIC?"

be shared with the operators, or at the minimum published on the Commission's website. This would be particularly welcomed, especially where the costs and expenses of such retreats are paid for through operator imposed fees, levies and related costs.

Further, Digicel seeks clarification on:

- Whether costs for the retreat will come from operators fees or investment;
- Who will the guidance on best ways of performing duties be gained from, and what costs are expected; and
- In order to maintain transparency and governance, will the industry be provided a report of this retreat, which itemises and details objectives, discussion points, and outcomes.

Finally, Digicel appreciates the Commission's candour as it relates the completion of its audited financial statements for 2016, 2017, and 2018. It is hoped that where operators are also unable to complete or submit updated statements, over any period being requested, whether current or past, that there is an understanding of similarly genuine delays faced by operators in finalising its own respective internal statements.

3. Part 3 – On-Going Work to Fulfil Our Duties

Digicel appreciates the Commissions on-going work and the fulfilment of its duties, however, the industry should be provided with detailed reports showing the achievements and outcomes as compared to previous reports. This has not been done, and it has been difficult to follow the achievements and on-going duties fulfilled, particularly given the types of costs and expenses that are expected.

It is noted that each year, either the same work plan rolls over or expenditures unreasonably increases, however, the industry are yet to observe output it would come to expect from a Regulatory body.

4. Part 4 – Budget for the 2019/2020 Financial Year

Digicel remains disappointed that the Regulator is pursuing to arbitrarily implement on operators, Industry Levy Fees ("Levy"). Digicel objects to the imposition of this Levy, and continues to call on the Commission to organise further discussions between interested parties, and the Commission must make a genuine effort to take on board and understand concerns being raised by the industry relating to the Levy. Disappointingly, each year the draft Work Plan and Budget is provided to the industry for comments, a further draft, or explanation of the final document has not been provided. This must happen in order that the Commission maintains transparency and good governance in the manner in which it is running the office, particularly with suggestions of such exorbitant Fees, and Levies.

Digicel, and the industry as a whole, have historically opposed these Levies, and continues to do so. Unfortunately, the Commission, without completing further rounds of consultation or review, moves to impose the onerous Levy and or fees on the industry.

The Commission, under this Work Plan and Budget seeks to implement Levy Fees at US\$4,249,009.13 without explaining or providing any level of details of how this number was arrived at, or if any relevant factors were considered. The Levy is extremely high, and unjustified.

While Digicel acknowledges that the Commission has to date not implemented the Levy for the past financial years, going into a new year with different circumstances and various changes and challenges faced by the industry, it is only fair, and as mandated under section 59(1) of the Telecommunications Act 2006 ("Act"), that the Commission commence a public consultation, which should consider all comments and concerns before any decision is issued, which must be preceded by detailed reasons. Unless this happens, Digicel remains opposed to paying for such exorbitant and unfair Levy. The Commission must provide justification that the Levy is actually required to fund the reasonable costs of the Commission.

If the Commission moves forward with arbitrarily imposing the Levy, Digicel may have no choice but to pass the costs on to its consumers. This should be avoided at all costs, however, if the Commission is adamant that it would pursue the Levy without further and proper consultation, or without taking into consideration Industry concerns, Digicel would be prepared to protect its position and reserves its rights in this regard.

Over the years, the Commission has operated successfully in 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. The Royalty Fees remain high, with the Budget setting it for the coming year at US\$2,050,104.74. This only further supports Digicel's arguments that the income derived from such significant royalties alone is sufficient to satisfy the costs of regulating the sector. The Commission has not provided any response or rebuttal to this argument to date.

The implementation of the Levy would only serve to divert industry revenues, which should properly be applied to further investment in the sector. This is not the intention of the Act. Therefore, our position remains and Digicel reserves all further comments until the Commission discloses details and calls for a new consultation.

The Commission has set the Contingency Amount at US\$419,791.36. While we appreciate the need to provide for unforeseen expenses and costs, any contingency amount not used within the respective year must be refunded to the respective operators.

The Commission expects that its Employee Compensation and Government Fees and Staff Benefits would be US\$1,342,822.48, and US\$634,283.44, respectively. These appear to cover 21 staff members within the Commission's office. Digicel would appreciate receiving a breakdown of these costs and the specific expected expenses.

The Commission expects to spend US\$55,000 on Consumer Education and Public Relations exercises. This appears to be a significant amount, and in any event, without proper detail or justification, such spends should be avoided. Given technological advancements and the wider reach that is available through the internet and social media, Digicel is of the view that education and public relations as suggested by the

Commission would be most effective through the use of social media, which would not only have wider reach, but would also be much cheaper than traditional means of communication, outreach programmes, and face to face meetings where unnecessary costs would go to hiring of meeting venues, refreshment costs, costs of travels, printing paper and so on. It is Digicel's respectful view that the Commission should instead think about maximizing such alternate avenues to manage its costs and effectiveness. Digicel may also be able to assist in this regard, through the use of its marketing entity, "Trend Media". We welcome further discussion in this regard.

Finally, Digicel notes that the Commission expects to spend US\$689,745.00 on Professional Services, which includes, auditing services, economic services, legal and litigation services, research and development services, and technical and human resource services. Digicel seeks clarification on whether the Commission has access to an auditor general's office, or similar body within the Government, as it is Digicel's understanding that such bodies are usually tasked to audit entities, such as the Commissions. Further, there is no explanation as to what Economic Services includes, and welcomes information regarding the same. Costs related to research and development services should also be explained and detailed, as it is not clear what the Commission intends to research, or develop, which may not already be available through other regulatory resource and or published in developed countries.

Digicel, in light of the above submission, therefore respectfully calls on 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 own expenses.

Yours sincerely



Kevin Gordon
Chief Executive Officer
Digicel (BVI) Limited