



# Commission Annual Work Plan and Budget 2020/2021

Statement

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## About this document

The Telecommunications Regulatory Commission of the British Virgin Islands (**Commission**) is tasked with the regulation and development of the telecommunications services industry in the Territory.

To achieve this, we promote and protect the interests of consumers and businesses in the British Virgin Islands with respect to price, choice, quality of service and innovation in telecommunications services, while encouraging a competitive marketplace.

Under section 63 of the Telecommunications Act 2006 (**Act**), the Commission is required to publish its Annual Work Plan and Budget.

Our Annual Work Plan outlines some of the key work that we propose to undertake in order to realise our objectives in the coming year. We also highlight our on-going work, which supports these goals. This document is a draft of our Annual Work Plan and Budget for the Commission's 2020/2021 financial year.

We are publishing this draft to provide our stakeholders with the opportunity to comment on our proposed priorities, anticipated work for the financial year and attendant budget.

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## Part 1: 2020/2021 Strategic Overview

### Background

- 1.1 The Commission is the independent regulator for telecommunications in the British Virgin Islands, established in 2007 in accordance with the Act. Our mandate is to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands.<sup>1</sup> Our principal statutory functions are set out in section 6 of the Act.
- 1.2 Our mission is to promote value, choice, innovation, quality and competitive pricing for consumers and businesses in the British Virgin Islands. We work for consumers and businesses by promoting investment, effective competition, informed choice and the opportunity to have access to a wide range of telecommunications services.
- 1.3 To promote transparency and accountability, the Commission is required to publish an Annual Work Plan containing 'a *general description of the work and activities that the Commission plans to undertake in the financial year.*'<sup>2</sup>
- 1.4 In accordance with its statutory obligations, this document is the Commission's 2020/2021 Annual Plan, which will guide the Commission's work in 2020 in the telecommunications sector, for which it has responsibility. Also included in this document is the 2020 Budget, as required by section 63 of the Act.

### Board of the Commission

- 1.5 The Minister, with the approval of the Council, made the following appointments to the Board of the Commission:
  - Chairman: Vance Lewis (Appointed: 01 February 2020 to serve for a term of three years)
  - Deputy Chairman: Vincent Wattley (Appointed: 01 February 2020 to serve for a term of three years)
  - Board member: Bevis Sylvester (Appointed 20 February 2020) to serve for a term of two years)
  - Board member: Joycelyn Murraine (Appointed 20 February 2020) to serve for a term of two years)
  - Chief Executive Officer and Board Member: Guy L. Malone: Re-appointed 1 March 2019 for a term of two years)
- 1.6 The Board of the Commission, as constituted, is continuing its objective of undertaking a thorough review of (a) work done by the Commission to date; (b) action required to bring the Commission into line and up to date with its duties under the Act; (c) the quality and speed of communications services being delivered in the Territory; (d) additional legislation that needs to be introduced to bring the BVI up to international standards; (e) staffing requirements to facilitate the delivery of the Commission's Work Plan; and (e) a universal service mechanism that will improve services in the Virgin Islands inclusive of the sister islands and rural areas on Tortola.

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[http://www.trc.vg/images/attachments/040\\_G00050\\_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf](http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf)

<sup>2</sup> Section 63(2) of the Telecommunications Act 2006.

## Our Principles of Regulation

- 1.7 We have adopted six essential principles of good regulation consistent with international standards and best practice:

**Accountability:** Our decision-making powers should be, with the constraints of confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

**Focus:** We will concentrate on protecting the interests of consumers and business in the British Virgin Islands by ensuring the operation of a well-functioning and contestable market.

**Predictability:** We plan to provide a stable and objective environment, allowing all those affected by our regulation to anticipate the basis for further decisions and make long-term investment decisions with confidence.

**Adaptability:** The framework of our economic regulation will be flexible enough to respond to a quickly changing technology and services environment, continuing to be relevant and effective over time.

**Efficiency:** Where we intervene, policy interventions will be proportionate and cost-effective, and our decision-making should be timely and robust.

**Balance:** Our evidenced-based approach to decision-making and our adaptability will ensure that we remain proportionate, consistent, fair and just.

## Strategic Aims and Objectives 2020/2021

- 1.8 We have identified six strategic aims and objectives for the 2020/2021 financial year:

### 1.9 Improved Telecommunications Services

We believe that a resilient and first-class telecommunications services industry is a hallmark of competitive economies and we recognise that there are several other industries that are critically dependent upon having a competitive and robust telecommunications market and infrastructure. To ensure that the British Virgin Islands is equipped to compete regionally and internationally, we will promote the enhancement of telecommunications in the Territory, recognising its central nature in attracting and retaining targeted business activity and supporting overall economic growth.

### 1.10 Support Governmental Initiatives

The Government has identified several key plans which are geared towards the development of the Territory. Telecommunications has been specifically identified as having a direct impact upon the realisation of these plans. As such, we will be seeking closer relations with our Minister and the wider Government to bolster the view of telecommunications as a fundamental service and demonstrate our commitment to supporting local development plans. We will provide timely and high-quality advice to the Minister relating to telecommunications and consistent updates on our work and the development of the sector.

### 1.11 Heightened Consumer Awareness

The Commission recognises that as the regulator of telecommunications in the British Virgin Islands, we have a duty not only to protect the public's interest, but to ensure that the public is aware of our work and how it impacts their experience in this services industry. We will engage with local consumers and businesses to educate them on the telecommunications

market and our work, and to hear any concerns or challenges that they may be experiencing in the industry. Through this initiative, we will be better able to prioritise work to ensure that we deliver the most benefit to consumers, business and visitors in the British Virgin Islands.

#### **1.12 Positive Stakeholder Engagement**

Our interaction with stakeholders is critical as we prioritise our work plan with a view of providing a quick and effective response to market developments. In this regard, we will positively increase our interaction with local licensees to better understand the challenges they face and opportunities where we might better be able to support their work and assist their processes in relation to improvement of telecommunications infrastructure. We believe that a regulator who proactively engages with key participants in the industry is better equipped to realise advancement of the telecommunications experience.

#### **1.13 International Best Practice**

We have continued to improve our relationships with sectoral regulators including CANTO, OOCUR, CTU, OFCOM in the UK, and the FCC in the US. Our associations with other organisations including the GSMA, PCH, IANA and ARIN have also been enhanced. We will continue to foster closer engagement with URCA in the Bahamas, OfReg in the Cayman Islands, SMA in Jamaica, and CICRA in the Channel Islands. This sharing of knowledge and best practice has allowed us to ensure consistency in our approach to economic regulation and ensure that we continue to follow international best practice in regulation and bring lasting benefits to the telecommunications services industry in the British Virgin Islands.

#### **1.14 Enhanced Industry Oversight**

The Commission is committed to fair and proportionate regulation of the telecommunications industry. We will strategically monitor all licensees' compliance with the Act, their licences, the Telecommunications Codes and any Instructions issued by the Commission, and take enforcement action, as necessary. This is in line with our duties under the Act and our commitment to add value to the telecommunications industry in the Territory. By encouraging increased investment by operators, fostering competition in the market and protecting the welfare of users, we believe that the telecommunications experience can be first-rate.

#### **1.15 Develop Strategic Plan**

We intend to develop and publish a strategic plan, which will guide the Commission's work over the next three years. This document will outline our goals as well as the means by which we intend to achieve these objectives, as we strive to balance fostering a dynamic and competitive environment, which meets the public interest. This is in keeping with our commitment to focused and predictable regulation of the telecommunications industry.

#### **1.16 Support Industry Amidst Covid19 Pandemic**

Our experience from the Covid19 pandemic this far has proven telecommunications to be an essential resource in the Territory. With increased usage of residential voice and broadband due to working from home arrangements and online schooling, the Commission recognises the importance of supporting the industry during this time as it continues to meet these new demands.

## Part 2: The 2020/2021 Work Plan

**The Commission's objective for the British Virgin Islands' telecommunications market is to ensure that it satisfies all reasonable demands for telecommunications services by promoting competition and encouraging investment.**

**Our critical projects for 2020 and 2021 are set out below.**

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

- 2.1 On 3 August 2018, the Commission commenced a consultation on the release of LTE TDD spectrum in the 2.3 GHz, 2.5 GHz and 3.4-3.6 GHz bands. This was done in keeping with our 2018 Spectrum Management Framework and the need to support the improvement of local fixed communications services. Following the close of the consultation, the Commission postponed the next stage of the release, considering responses received from the industry. We have since published our report to that consultation and re-engaged the industry with a view to determining their present spectrum needs. Our efforts are now concentrated on recommencing this Spectrum Award process, for Phase 1 and Phase 2 spectrum, with anticipated completion during the second quarter of the financial year. Thereafter, other activities identified in the Implementation Plan will be prioritised by the Commission.
- 2.2 Develop an Equipment Type Approval framework, which will include the establishment of preferred technical standards, to regularise the system of type approval and certification currently undertaken by the Commission and to allow for the collection of fees for this work. This will be completed during the third quarter of the financial year.
- 2.3 During the 2019/2020 financial year, the Commission engaged the assistance of the Gibraltar Regulatory Authority to upgrade the Commission's Radio Licensing programme to facilitate the processing of frequency authorisations within various radiocommunication services including, amongst others, maritime, aeronautical, broadcasting and land mobile services. This project was severely impacted by the Covid19 pandemic due to traveling restrictions. Nonetheless, work remains underway with an anticipated completion during the second quarter of the financial year.
- 2.4 At its request, the Commission received proposals from vendors for conducting a comprehensive network audit of the capabilities of local service providers and their usage of spectrum frequencies. This project is aimed at assessing the efficiency and effectiveness of spectrum usage, the quality of services, and the users experience that currently exist in the Territory. Once our vendor selection process is complete, the audit will be commenced, and we anticipate completion of this initiative by the fourth quarter of the financial year.
- 2.5 Perform radio monitoring measurements, via the use of our recently acquired mobile monitoring unit, to ensure users of the radio spectrum remain compliant with their frequency authorisations, including but not limited to the international stands of the ITU Radio Regulations.

*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.*

- 2.6 Develop a Broadband policy, taking into account benchmarked speeds from across the Region, to improve the speed and reliability of internet services for the benefit of telecommunications consumers in the British Virgin Islands.
- 2.7 Develop a regime to leverage the cost savings, flexibility, and enhanced security benefits associated with moving the Commission's various technology services to the Cloud.
- 2.8 So as to be prepared in the unfortunate occurrence of a natural or other type of disaster that renders its current premises inaccessible, the Commission will consider establishing an off-site disaster recovery location where it can continue operations until it becomes safe to return to its current premises.

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

- 2.9 The Commission remains cognisant that operator licences are due for renewal by 2022. Considering this, our work towards reviewing operator licences, in preparation for licence renewal, will continue into this financial year, with a view to determining appropriate areas for amendment for the benefit of all industry stakeholders. Once applications for licence renewal are received from operators, negotiations will be commenced on the new licences. This is an on-going project, which is expected to continue until all licences are formally renewed.
- 2.10 On 13 May 2019, the Commission commenced an internal compliance audit aimed at assessing the extent to which each licensee has complied with the Act, Codes, their licence and instructions issued by the Commission. The audit was completed during the second quarter of the 2019/2020 year. As we move closer towards licence renewal, it is the Commission's desire to bring all licensees into compliance. We are in the process of developing a compliance programme for each operator, the implementation of which will continue into this financial year, as we work to address all areas of identified weaknesses and non-compliance.
- 2.11 Continue with already commenced processes for the implementation of recommendations for a revised telecommunications policy, revision to the Act, and introduction of new Codes and Regulations. This is projected for completion during the third quarter of the financial year.

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

- 2.12 Hire a Chief Economist to take forward the programme of work relating to economic analysis and remedies in the telecommunications sector.
- 2.13 Fully develop a statistical database containing information on the state of telecommunications in the British Virgin Islands, to be updated periodically.
- 2.14 Develop an in-house Long Run Incremental Cost model for use in termination of interconnection tariffs and for market analysis purposes, with a view to improving market conditions if and where necessary.

- 2.15 The Commission recognises that consumer choice and satisfaction are crucial in any services industry. To assist consumers in the telecommunications sector, we will develop a user-friendly consumer choice tool using data to help consumers make informed decisions about telecommunications services plans in the Territory.

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

- 2.16 Between the 2018/2019 and 2019/2020 financial years, the Commission undertook a comprehensive compliance audit of its efficiency as a regulator. This initiative confirmed the need for an in-house compliance resource to progress the programme of work relating to regulatory compliance and to bolster the Commission's oversight of the industry. In light of this, the Commission will hire a Compliance Officer to perform these duties.
- 2.17 Commence a public awareness campaign to create awareness in the Territory of projects being undertaken by the Commission and to educate citizens and consumers on key developments in and challenges affecting the telecommunications sector.
- 2.18 The Commission will go on a staff retreat aimed at improving focus within the organisation. Telecommunications, and equally its regulation, is vital in the British Virgin Islands. Therefore, to ensure that the Commission continues to serve the public interest, the time will be used to revise our mission and vision, to gain guidance on the best ways of performing our duties and to develop our three-year strategic plan.
- 2.19 During the 2019/2020 financial year, the Commission continued its efforts towards becoming current in its financial reporting obligations. Audits for the financial years 2016 and 2017 are in progress with a projected completion before the close of the 2019/2020 financial year. The Commission wishes to commence the financial audits for 2018, 2019 and 2020 within the first quarter of this financial year.

## Part 3: On-Going Work to Fulfil Our Duties

**Under section 6 of the Act, the Commission has a broad range of duties and responsibilities. Much of this work is non-discretionary and is outlined in the Act.**

**Our broader programme of on-going work, as outlined below, helps us to fulfill our wider mandate and supports the work identified in Part 2 above.**

### 3.1 Protecting consumer interests

As one of the key safeguards of the public interest, we establish quality of service indicators and reporting requirements. We enforce and monitor the effectiveness of operator performance to ensure an optimum consumer experience in the telecommunications sector.

### **3.2 Addressing consumer complaints**

The Commission regularly investigates and resolve complaints by telecommunications users in the BVI in relation to telecommunications products and services and facilitates relief, as necessary, to create a firm and effective outcome where we see harm.

### **3.3 Monitoring industry compliance**

We assess compliance of all licensees with the regulatory framework, their licence and any relevant instruction or directives issued by the Commission. Where instances of non-compliance arise, we intervene, ensuring that our regulatory powers are exercised in a transparent, appropriate and non-discriminatory manner.

### **3.4 Enforcing competition conditions**

To ensure effective competition in the market, we investigate operator issues in relation to interconnection and shared facilities, enabling timely and amicable resolutions, as necessary. We also enforce regulatory conditions that we impose on communications providers to promote competition.

### **3.5 Managing spectrum usage**

The Commission ensures that the radio spectrum is used in the most efficient way, which limits interference between users and maximises benefits to consumers. We authorise the use of spectrum through the issuance of frequency authorisations. Where appropriate, we issue exemptions to allow spectrum use without a frequency authorisation.

### **3.6 Eliminating harmful radio interference**

We advise and assist spectrum users by monitoring marine traffic and handling reports of interference, while carrying out activities to protect the radio spectrum. The Commission has developed an awareness and enforcement programme, which includes notifications and coordination with Government to eliminate instances of harmful interference.

### **3.7 Frequency Coordination discussions**

Recognising the technical and regulatory process needed to remove or mitigate radio-frequency interference, the Commission remains engaged in formal discussions with the FCC towards establishing clear guidelines for frequency coordination between the British Virgin Islands and the US Virgin Islands.

### **3.8 Determining licence and frequency authorisation applications**

We assess applications for commercial TV and radio service, and other licences and frequency authorisations based on application policies and regulations. Where licence or frequency authorisations are granted, we monitor and enforce effective compliance.

### **3.9 Monitoring telecommunications developments**

Our policy work is informed by technical and commercial developments in the industry. Therefore, to ensure that we are properly informed of future opportunities and challenges, we monitor, analyse and consider respective developments to ensure that our regulation and promotion of expansion are appropriate.

**3.10 Implementing technical development**

As telecommunications advances, the Commission determines the various implications of implementing technical initiatives. We will continue to encourage the proliferation of IPv6 across the Territory.

**3.11 Advising the Government of the Virgin Islands**

The Commission engages with the Government to advise on positions and policies relating to telecommunications issues and advancement in the telecommunications industry. We also work closely with other regulators in the Region to ensure a coordinated approach to regulation.

**3.12 Engaging with international stakeholders.**

We believe that discussing best practice is of utmost important to ensuring consistency in our regulation of telecommunications. Considering this, the Commission engages with international stakeholders in the industry, to learn from their experiences and join policy discussions that may impact the BVI telecommunications sector.

**3.13 Organising Industry Events**

The Commission celebrates telecommunications related occasions including, World Telecommunications and Information Society Day. In December 2018, we hosted our first cocktail reception for industry stakeholders. These events provide an opportunity for mutual engagement between the Commission, licensees, consumers and businesses.

**3.14 Building our human resource**

We undertake comprehensive internal and external staff training and development to ensure increased knowledge and awareness of the communications and technology sector as well as the responsibilities of the Commission.

**3.15 Collecting telecommunications fees**

We assess and collect fees and other charges payable to the Commission, including without limitation, licence fees, royalties, the industry levy and spectrum fees.

## Part 4: Budget for the 2020/2021 Financial Year

### Estimated Income

FY 2021 Budget - Income	FY 2021 Budget	FY 2020 Budget
Domain Registration Fees	30,000.00	30,000.00
Radio License Fees	50,000.00	50,000.00
Royalty Fees	2,187,712.27	2,050,104.74
Spectrum Fees	516,650.00	516,650.00
Submarine Cable Fees	600,000.00	500,000.00
Finance Income	10,000.00	10,000.00
<b>Total Estimated Income</b>	<b>3,394,362.27</b>	<b>3,156,754.74</b>

### Estimated Expenditure

FY 2021 Budget - Expenditure	FY 2021 Budget	FY 2020 Budget
Non-Executive Members Honoraria and Expenses	63,600.00	40,800.00
Employee Compensation	1,396,599.88	1,342,822.48
Government Fees and Staff Benefits	649,518.11	634,283.44
Professional Services	515,500.00	689,745.00
Conferences, Training and Travel	103,850.00	261,834.58
Rent and Utilities	412,866.88	433,720.88
Maintenance Expenses	97,240.00	66,003.45
Consumers Education and Public Relations	22,500.00	55,000.00
General and Administration	104,755.15	205,007.94
Special Project	100,000.00	100,000.00
<b>Total Operating Expenditures</b>	<b>3,466,430.02</b>	<b>3,829,217.77</b>
<b>Total Capital Expenditures</b>	<b>298,875.00</b>	<b>368,695.85</b>
<b>Total Estimated Expenditures</b>	<b>3,765,305.02</b>	<b>4,197,913.62</b>

## Overview of Budgetary Items

### Income

- **Domain Registration Fees:** This income comprises of new and renewal dot.vg subscribers. This is an emerging market that the Commission wishes to grow. In the future, the Commission hopes that all local registered companies will have a DOT.Vg account.
- **Radio Licence Fees:** This income represents fees from individual radio operators, boat captains, and registered boats that renew or apply for a radio licence to operate in the BVI.
- **Royalty Fees:** This income represents royalties received from the licensed operators annually. This amount is 3% of the gross income of the licensed operators.
- **Spectrum Fees:** This is a relatively new revenue stream for the Commission since the LTE award process in 2016. This is a fixed annual fee, payable every August by the holders of the LTE spectrum.
- **Submarine Cable Fees:** A fairly new revenue stream for the Commission, because of CWC submarine cables that terminate or transit the BVI, pursuant to the Submarine Cable Directive dated 18th Dec 2014.
- **Finance Income:** Interest Income on bank deposits.

### Expenditures

- **Non-executive Members Honoraria and Expenses:** This represents the budgeted cost for all members of the Board of the Commission. This expenditure has increased by \$22,800.00 (56%), as a result of new legislative policies and laws.
- **Employee Compensation:** This represents remuneration for all employees, inclusive of 18 full time positions. This increase in expenditure represents new job vacancies and annual salary increments. This figure has increased by 4% over the prior budget year.
- **Government Fees and Staff Costs:** This represents employer social security, NHI, PAYE, pension cost, health benefits, staff recognition program, housing allowance, travel allowance, telephone allowance, entertainment allowance, performance management and gratuity scheme. This figure has increased by 2.4% over the prior budget year.
- **Professional Services:** This represents auditing services, economics service, legal and litigation services, research and development services, and technical and human resource services. This figure has decreased by 25% from prior periods.
- **Conferences, Training and Travel:** This represents travel, local and internationally, for members of the Board and employees, to attend meetings, conferences, seminars, and workshops for continued development on behalf of the Commission. This figure has decreased by 60% compared to the prior year's budget. The Commission has decided, as a result of COVID-19, that all training and travel will be completed via online training and Zoom meetings.
- **Rent and Utilities:** This represent occupancy of the 2<sup>nd</sup> and 3<sup>rd</sup> floor of the LM Business Centre; the latter floor was leased by the Commission from December 2016 to accommodate increased staffing. This figure has decreased 5% over the prior budget year.

- **Maintenance Expenses:** This represents automobile maintenance, building maintenance, cleaning and cleaning materials, computers, equipment and site, fuel, and office equipment. This figure has increased by 47% over the prior budget year, due to new equipment maintenance cost and cleaning requirements.
- **Consumers Education and Public Relations:** This represents initiatives aimed at educating and informing consumer on various aspects of the telecommunications sector, including community outreach; utilisation of other media avenues; and acknowledgement of various telecommunications days/events. This expenditure has decreased by 59% over the prior budget.
- **General and Administration:** This represents subscriptions, customs duties, general office expenses, and messenger services. This figure has decrease by 49% over the prior budget.
- **Special Projects:** Operator Compliance Audit. This represents the Commission's focus on investigating each operator's business operations and practices, in an effort to gain a better understanding of the business and ensure the compliance of all operators. While the Commission will be involved in this initiative, this project includes obtaining external services from its auditors and technical experts for the Commission to effectively carry out this audit.
- **Capital Expenditure:** This represents the Commission's capital requirements for the financial year.

## Annex: Responses to the Draft Annual Work Plan and Budget 2020/2021

The Commission received four (4) responses to the Consultation on our Draft Annual Work Plan & Budget 2020/2021 within the specified consultation period. These responses were submitted by Cable & Wireless (BVI) Limited (“FLOW”); Digicel (BVI) Limited; Caribbean Cellular Telephone Limited (CCT) and BVI Cable TV Limited. In finalising our Annual Plan, we have considered the views of all respondents and have published their submission in full on our website. Below, we provide our responses to key points raised during the Consultation.

### Part 1: 2020 / 2021 Strategic Overview

#### The Commission received responses to Part 1 of its Annual Consultation Plan

##### **Requirement of and Commitment to Timetable**

The Commission has been touched by the occurrence of the COVID-19 pandemic which caused for some adjustments to specific timelines. Nonetheless, the Commission has in place an aggressive plan to ensure that all necessary approvals (and requirements) which must be executed over a determined timeframe are met. The Commission is on track with such timelines which involves presenting for approval to the Premier, its WorkPlan and Budget for 2020/2021. The Commission, however, has no control over the approval time required by the Premier.

##### **Conditions related to Ministerial Approval**

The Commission does not anticipate any material or significant costs related explicitly to the timeframe of and/or the decision of (dis)approval of the Budget by the Minister of Finance. The Commission acknowledges the significance of receiving approval by the Minister towards its overall compliance with requirements of the Act.

##### **Timetable of Deliverables**

The Commission accepts that the timeframe for approval of the WorkPlan budget by the Minister is outside the scope of its control. The Commission recognizes its responsibility to communicate the importance of a timely approval with hope that such request will be considered by the Minister and action taken forthwith. The Commission continues to exercise due care in its budgeting process (under the guidance and approval of its Board) and will dedicate every effort to manage resources detailed in its budget over the 2020/2021 financial year.

##### **Industry levy calculation**

A consultation on the calculation of the Industry Levy was presented to the industry in 2016. The Act does not mandate that there is a continuous re-evaluation of the calculation of the Industry Levy with the industry. The Industry Levy calculation presented in 2016 was adopted by the Commission and applied every year thereafter. In this light, the Commission believes it has satisfied this preliminary action to foster the implementation of the Industry Levy upon the Operators.

##### **Publishing of consultation and Operators’ Responses**

The Commission recognizes its responsibility, as a regulatory requirement and in efforts to consider the perspectives of Industry Operators, to publish a consultation, which give Operators the opportunity to speak candidly on the direction of the Commission for that financial period. The Commission considers the Operators’ responses singly and holistically and determines which of its strategies will be re-evaluated accordingly. The format of the Commission’s consultation document takes on a standard format to demonstrate consistency of presentation over each year. The actions taken by the Commission in acknowledgment of the Operators’ responses will not be identical each year but the overall actions of the

Commission and its final WorkPlan and budget takes into consideration the Operators' responses, among other things.

### **Work Programme cost & Content of Consultation paper**

The Commission's Work Programme is a representation of its estimated financials for the financial period in question, which in support of the level of expenditure reflected in the document is subject to oversight from the Board. A measure which ensures that the Commission presents expenditure that is not neither gives the appearance to be inflated at the expense of or detriment of the industry. In essence, the Commission before it publishes the Work Programme ensures its expenditure has been sufficiently scrutinized. The Commission makes every effort to ensure its Consultation Paper communicates key information to the industry. The inclusion of three (3) points mentioned in your response indicates that the content provided the Consultation Paper is reviewed for relevance in its presentation to the industry. The Commission does not take lightly its commitment to present the Consultation document to the industry.

### **Projected Cost Information**

The Operator infers, quite aggressively, claims regarding projected cost information that lacks merit. The Commission is under no mandate to communicate all the intricacies of cost drivers and resource allocation that may be considered in the overall scheme of the data presented in the WorkPlan and budget, a document in and of itself that is designed to provide a high-level, strategic overview of the Commission's position.

### **LRIC Modelling**

Digicel indicated an interest in understanding the nature of the exercise regarding the LRIC model. Furthermore, the costs that the operators have incurred are those that are relevant to those services that will be used for calculation purposes. On the other hand, Digicel did note their concern on the significant external resources the LRIC model would have on the industry due to the lack of a Chief Economist who would undertake developing an 'in-house' model.

The proposed model will assess the long run incremental cost (LRIC) of various network services provided by local operators. LRIC is a useful regulatory tool to understand the infrastructure costs of each operator and to evaluate market performance of the telecommunications industry. This is an ongoing conversation with the industry as the Commission needs costing data to perform this exercise. More broadly, the Commission is requesting data on (1) the elements of the network concerning access, transport, core, switching and spectrum costs, (2) service demand data for voice, data and text messaging services and (3) financial data. The Commission will review and consult with our external resources on the nature of the costs to the industry in the BVI, the length of time for the project and more cost-effective alternatives.

### **Heighten Consumer Awareness**

Digicel seeks to bring into question the Commission's commitment to the people of the British Virgin Islands on this matter. This claim is unfounded, as at the core of the Commission's objectives is to ensure fairness to consumers, and those who use telecommunication services. The Commission plans to improve its public awareness during these difficult times as consumers are demanding value for money. The Commission remaining mindful that customers, who continue to complain in the past and more so now during this pandemic, that services provided by the Operators are below standard. It is the intent of the Commission to use all media (radio, television, and internet) to stay in touch with the consumers and ensure their concerns and needs are recognized and addressed, where appropriate.

### **Positive Stakeholder Engagement**

The Commission while it is keen to engage in positive stakeholder engagement, we understand that in order for this to be successful requires some dedication on the part of the Operator to be transparent and communicate to the Commission candidly (with supportive evidence through real data) challenges in areas of their business. The Commission's primary objective is to the people of the Virgin Islands that the people receive value for money. The people are our primary stakeholders. The Commission is trying its best to

speak for the voiceless, as the corporate responsibility of some companies will overlook the needs of the consumers. The Commission would think that if the Operator is facing adverse situation that they can call on the commission for assistance. The Commission in this current COVID-19 climate continues to assess how best it can serve all parties.

### **International Best Practices**

The Commission recognizes

- i. it does not operate in an isolated bubble and
- ii. strength can be garnered from other regulatory bodies. Thus, it identifies that the best way forward is to work with our regulatory partners around the region and international. The support obtained from such partnerships can take an array of forms, which may not be communicated (neither is there a need or obligation on the Commission) to Operators. The Commission is committed to fostering its relationship with other regulators as it navigates the ever-changing telecommunication industry and build on its existing model of operations.

### **Develop Strategic Plan**

A strategic plan for the Telecommunication Sector of the British Virgin Islands cannot be done in isolation. The Commission plans to engage all stakeholders. We must plot a course for the Telecommunication Industry of the BVI, so that the BVI will lead the region in Telecommunication services.

## **Part 2: The 2020/2021 Work Plan**

**The Commission received several responses to this part of the Annual Consultation Plan.**

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

### **Spectrum**

In response to Digicel concerns to 2.1, Part J (Implementation Plan) of the Spectrum Management Framework list the activities that will be prioritized. The plan is intended to be reviewed and reassessed in response to market developments. Given the impact on the market, firstly by devastating storms and now by the COVID 19 Pandemic, the Commission sees benefit in allowing for flexibility to prioritize items in the Plan as require by the industry.

The Commission believes that this is especially necessary as delays in releasing spectrum (high priority) to the market have shifted the order of importance of items on the Plan and thus, we will be more responsive to market needs having this flexibility.

As it relates to Digicel comments on the type approval framework project (2.2), the Commission will remain guided by the Telecommunications Act, and it should be noted that any framework developed will be done within the ambit of this requirements. Additionally, the Commission will consider best practice from jurisdictions with key similarities to the BVI. Operators along with the general public will have an opportunity to provide comments on the framework design during the public consultation period.

Clauses 2.7 and 2.8: In response to Digicel's concerns regarding the necessity for the creation of a disaster recovery site, one has to only reflect on the catastrophic damage that buildings in the territory sustained during the hurricanes of 2017. Identifying and preparing a disaster recovery site is deemed a necessary component of the Commission's disaster recovery plan as it will ensure that the Commission can temporarily relocate there following a catastrophic damage to its present premises and continue its operations until it is safe to return to the usual location or to a new location.

The Commission appreciates the response received in respect of the “network audit, however the Commission sees this project as a comprehensive assessment of the capabilities of network providers. The Commission views the project in 2.5 as routine radio monitoring, which is far less extensive than the work to be carried in 2.4 for the work Plan. With our small staff, certainly additional resource will be needed to undergo this important task.

## Part 4: Budget for the 2020/2021 Financial Year

**The Commission received several responses from operators to this part of the 2020/2021 Financial Year.**

### 1. INDUSTRY LEVY

The Operators recently filed applications for leave to apply for Judicial Review of the imposition of the Industry Levy for the financial year 2019-2020. Most of the issues raised in the Judicial Review proceedings are the same issues raised by the Operators in their comments on the Industry Levy in the 2020-2021 draft Annual Work Plan and Budget consequently it is anticipated that guidance would be provided by the Court on these matters so that all parties would have a better understanding of their obligations under the Act.

#### ***Calculation of Industry Levy***

In 2016, in a public consultation, the calculation of the Industry Levy was outlined to the Operators. This is the same approach that has been adopted every year thereafter. The Act does not mandate that the TRC has to communicate to the industry (annually or otherwise) the formula used to calculate the Industry Levy.

Therefore, through the 2016 consultation, the calculation was advised as a courtesy in an effort to be transparent to the industry.

The Operators who have extended a request for additional information related to the Industry Levy, will need to provide specific details on what information it purports that TRC has not included in the Work Plan regarding Industry Levy. All Operators should be guided by the 2016 public consultation which offers relevant details that remain at their disposal recognizing that there have not been any changes to the original calculation.

#### ***Duty to disclose Financial Records***

The TRC's audited financial statements to date can only be recognized as Qualified accounts as a result of the Operators' contravention of the terms of their licence, specifically s.7.14 on Record Keeping and Reporting Requirements, which outline that within ninety (90) working days of the end of each fiscal year, each Licencee is obliged to provide the Commission with their audited statements. As it stands currently, all Operators have outstanding financial statements which have not been provided to the Commission. Despite attempts by the Commission to receive such records to no avail. The Operators' non-compliance to provide their financial statements extend over multiple financial periods. The relevance of receiving such records impacts the Commission's reporting abilities per the Act and affects three (3) significant aspects.

These include;

- i. The accurate reporting of Royalty fees, which, based on the size and value of this income source, it falls within the threshold recognized as 'Material' under auditing standards. This places the onus on the Commission to verify this amount.
- ii. It is the responsibility of the Commission to provide satisfy evidence at the time of the audit that it has exercised due care and prudence in ensuring that the Operators have paid in to the Commission the correct Royalty payments based on their true revenues earned over a given financial period, and

- iii. The accrual principle dictates that at the end of the financial period, the Commission should account for revenues earned and revenues owed (i.e. to be accrued) over its fiscal year and report such information on its audited financial statements.

The Operators' inability to adhere to this **simple** requirement under their licence continues to present challenges for the Commission.

***Adjustments to the sum of Industry Levy based on actual Financial position of the TRC from the prior financial period***

On the matter of 'Adjustments to the sum of Industry Levy' based on actual Financial position of the TRC from the prior financial period, this has not been done in practice because there has been no actual payment of Industry Levy to the TRC by the Operators to date.

TRC is cognizant of the potential surplus or deficit that may arise and will adopt the following measures;

- i. recalculate Industry Levy based on actual expenditure,
- ii. make adjustments to the Industry Levy, as needed for each Operator, and
- iii. communicate the amount of such adjustments and the change in the amount of the Industry Levy due by the Operator. This would be shared with the Operators prior to the Work Plan budget of the next financial period.

***Industry Opposing Implementation of Industry Levy***

As per s.5.1 of the Act on Payment of Industry Levy and Royalty fees, a licence to operate is granted reliant on the condition that Operators pay to the Commission, firstly, an annual Industry Levy fee and secondly, an annual Royalty fee, as described. Two (2) Operators namely, Flow and Digicel indicated from a prior year that they will extend the cost of Industry Levy to customers. This action has been identified as a consensus among all Operators. Therefore, the Operators' comments to pass this cost to customers had already been determined prior to and is not as a result of the COVID-19 pandemic.

The implementation of an Industry Levy by TRC is not unique to the BVI. This industry fee is already in place in other jurisdictions, namely; Jamaica, Bahamas, Caymans, etc. which are countries where at least two (2) Operators already carry out telecom activities and services. Based on these facts, we draw the conclusions that

- i. the Operators are aware of this fee and in general are aware of its purpose, and
- ii. the adoption of the Industry Levy fee in the BVI is to align the local sector with industry fees and revenue infrastructure that is already in place in competing Caribbean nations.

The TRC, for at least five (5) years, has been attempting to implement the Industry Levy but each time this initiative has been met with resistance to comply from the Operators. Meanwhile, TRC recognizes that there are operators offering telecom services in the BVI for over twelve (12) years.

The TRC recognizes that its efforts to implement the Industry Levy fee is calculated at a rate comparative to other Caribbean nations. Recognizing that Operators in competing Caribbean nations are also subject to a corporation tax in addition to the Industry levy, the TRC believes that our Operators are well-positioned to remit the Industry Levy to the Commission because there is no obligation for a corporation tax in the BVI.

## 2. ROYALTY FEES

### ***Potential reduction in Royalty Income due to Pandemic***

The Operators should provide information to support a fall in Royalty fees as a result of the events stated (i.e hurricanes & COVID-19 pandemic). TRC forecasts that increased demand on telecom services due to Work from Home and School from Home (i.e. online school) in the local economy will ease any possible revenue loss.

## 3. 2020/2021 Financial Year Budget

### ***Impact of COVID-19 pandemic on economic conditions generally and more specifically revenues***

The data after Hurricanes Irma and Maria suggests that the industry did not experience any fallout and remained consistent, even up to the present. By this factor, we believe that the industry would have grown to exponential levels without the passage of the hurricanes. The Commission is cognizant however that there may be some impact felt in the area of roaming and international fees due to the COVID-19 pandemic. Further to the above, customers have invested in upgrading their services to support the greater demand and requirements to work from home and educate children through online schooling, all meanwhile retaining their telecom devices at the office.

## 4. TRC Overall Expenditure

Expenditure is on par with cost of living standards in the BVI based on historical data of actual costs incurred by the TRC. TRC Overall Expenditure fell by 9%. The Commission is continually seeking ways to reduce its overall cost of operations.

A revision was made to the 2020/2021 Budget which no longer includes regulatory contributions. This change was made to align the budget with the TRC Act as per section 63.

## 5. Employee Compensation & Benefits

Overall, the employee compensation, benefits, and training costs fell over the 2020/2021 financial period. The rationale in support of the outsourced services is to ensure the Commission has the resources available to assist with Legal matters and the Judicial review.

Employee compensation & benefits represent a budgeted total, but considerations must be made for increased cost of living, inflation, and hiring of key positions in the TRC that are currently vacant.

We have been making every effort to ensure that the Commission has the right skills to fulfil its duties which involves recruiting and maintaining staff that are competent to build upon the structure of the Commission. This is coupled with the responsibility as an organisation to ensure its compensation packages allow, at minimum, that such structure is kept intact even as we endeavor to continue building on our current capabilities and competencies. Staffing, is one of our priorities to ensure the Commission remains effectively able to carry out its duties as the regulator of the telecommunications industry in the British Virgin Islands, with little to no disruption in its performance and to ensure adequate succession planning.