



**EVALUATION REPORT
BVI CABLE TV LTD**

LICENSE PERFORMANCE FROM JUNE 2007 – JUNE 2021

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1. EXECUTIVE SUMMARY

- 1.1. Pursuant to **section 15 of the Telecommunications Act 2006**, on 29 June 2007, the Telecommunications Regulatory Commission (the Commission) granted a Licence to BVI Cable TV Ltd (the Licensee).
- 1.2. The Licence is for fifteen (15) calendar years, effective from 29 June 2007, and gives the Licensee authority to establish, install, operate, maintain, exploit, and use within, into and from the British Virgin Islands and all territorial waters a telecommunications network consisting of transmission, reception, switching and related equipment, including without limitation cable (coaxial, metallic or fiber optic) and microwave, radio and satellite transmission, reception, and related facilities.
- 1.3. The Licensee is authorized to provide telecommunication services comprising basic telephony services including local, national and international telephony services; cellular mobile telecommunications services; trunk capacity resale services, including the provision of leased lines and circuits; satellite telecommunications services; third party private network services; paging services; store and forward messaging services; telex services; telegraph services; value-added services; the sale and maintenance of subscriber premise wiring and terminal apparatus; private telecommunications services; internet services; wireless video programming; and cable television service via wireline network.
- 1.4. **Article 16 of the Licence** outlines certain obligations that had to be fulfilled on the signing of the Licence for the Licence to be effective namely: -
 - 1.4.1. pursuant to **Article 5.1 of the Licence**, the payment by the Licensee to the Commission of an annual industry levy and of an annual royalty fee in the amount of 3% of the gross revenues for services provided under the Licence collected by the Licensee payable no later than 5 April of each year;
 - 1.4.2. the reception of frequencies and frequency bands as assigned by the Commission;
 - 1.4.3. the delivery to the Commission of an officer's certificate certifying the representations and warranties of the Licensee contained in **Article 17 of the Licence**;
 - 1.4.4. the delivery to the Commission of all corporate documents;
 - 1.4.5. the delivery to the Commission of consortium agreements;
 - 1.4.6. the delivery to the Commission of originals of the Licence agreement;
 - 1.4.7. complying with its obligations under **Article 7 of the Licence**.
- 1.5. Additionally, under the Licence agreement, there were obligations that had dates of fulfillment attached to the fifth anniversary of the Effective Date, which was 29 June, 2012.

The Commission carried out an evaluation of the Licensee's performance and assessed the level of fulfillment these obligations. It was observed that by the end of the first five years, the Licensee had duly complied with the relevant obligations although the requisite reports were not found on the Commission's files at the time of this Evaluation. The Commission has continued to monitor the Licensee's performance following the 2012 assessment.

- 1.6. The Licensee's Licence expires on 28 June 2022 and in accordance with **Article 3.2 of the Licence**, on 28 June 2021, the Licensee submitted its application for the renewal of the Licence for another fifteen (15) years.
- 1.7. The Commission has been monitoring the Licensee's operations throughout the Licence period and has carried out assessments of the Licensee's compliance with its obligations under the Licence and pursuant to the relevant laws, including the Telecommunications Act and Code.
- 1.8. The Commission has an obligation pursuant to **Article 3.3(b) of the Licence** to prepare an Evaluation Report stating if and to what extent the Licensee has complied with its obligations under the Licence, and the legislative framework; has abided by directives and orders of the Commission; and has provided the Licensed Services and conduct its business in accordance with the laws of the British Virgin Islands.
- 1.9. The evaluation contained within this Evaluation Report (the Evaluation) is intended to assist the Commission in its determination of the Licensee's application for renewal of the Licence, and if it is determined that the Licence should be renewed, the requisite terms and conditions to be included in the renewed Licence.
- 1.10. The Evaluation will focus on the extent to which the Licensee has complied with its financial, legal, technical, regulatory, and other obligations.
- 1.11. The Evaluation reveals that the Licensee has been largely non-compliant with its obligations, and that there are numerous matters that need to be rectified, in order for the renewal application process to progress.

2. BACKGROUND

- 2.1. On 29 June 2007, the Commission granted to BVI Cable TV Ltd. a Licence to provide telecommunications services in the British Virgin Islands for a period of fifteen (15) calendar years.
- 2.2. The Licence is scheduled to terminate on 28 June 2022 and in accordance with **Article 3.2 of the Licence**, the Licensee on 28 June 2021 applied for the renewal of its Licence for a further period of fifteen (15) years.
- 2.3. **Article 3.3(a) of the Licence** states that within ten (10) working days from the date on which the application was received, the Commission shall give notice to the public by publication in the Gazette and at least one (1) other domestic newspaper of general circulation which notice shall state: -
 - 2.3.1. that the Licensee has applied for renewal of the Licence Term;
 - 2.3.2. the length of the renewal sought;
 - 2.3.3. the time within which comments or objections to the proposed application shall be made in writing by any interested third party, such time not being less than thirty (30) nor more than forty-five (45) Working Days from the date of the publication of the notice;
 - 2.3.4. the fact that the Commission shall send to the Licensee an evaluation report (the "**Evaluation Report**") within ninety (90) working days from the date of receipt of the application, which report shall be a matter of public record at the Commission; and
 - 2.3.5. the date and the place for a hearing during which the Licensee and any third party with a legitimate interest may make comments or objections, such date being within ten (10) working days of the date of publication of the Evaluation Report.
- 2.4. Additionally, **Article 3.3(b) of the Licence** indicates that the Evaluation Report prepared by the Commission shall state if and to what extent the Licensee has during the preceding Licence period up to the date of the application:
 - 2.4.1. complied with its obligations under this Licence;
 - 2.4.2. complied with the regulations and orders adopted from time to time by the Commission; and
 - 2.4.3. generally provided the Licensed Services and conducted its business in accordance with the laws of the British Virgin Islands.

- 2.5. In compliance with **Article 3.3 of the Licence**, the Commission ensured that the public notice was issued in the *Gazette* and in the Beacon Newspaper on 8 July 2021 (the Notice), thereby complying with its obligation to inform the public of the Licensee's application for renewal. As indicated in the Notice, the deadline for comments or objections to the application was 6 September 2021.
- 2.6. In accordance with **Article 3.3(a) of the Licence**, the Commission must send this Evaluation Report (the Evaluation) to the Licensee within ninety (90) working days from the date of receipt of the application, which will be a matter of public record at the Commission. Accordingly, the Commission must send the Evaluation to the Licensee no later than 5 November 2021.
- 2.7. The Evaluation will be made available at the reception desk of the office of the Commission located at 3rd Floor, LM Business Centre, Fish Lock Road, Road Town, Tortola, British Virgin Islands. Alternatively, a copy of the Evaluation will be available on the Commission's website (www.trc.vg).
- 2.8. On 16 November 2021, a public hearing will be held at Maria's by the Sea during which the Licensee and any third party with a legitimate interest may make comments or objections on the application. Participation in this hearing will be limited to those persons who submitted a relevant comment or objection on the application in response to the Notice.
- 2.9. The person responsible for this matter is Mr. Guy L. Malone, Chief Executive Officer, and he can be contacted at gmalone@trc.vg concerning this Notice. All queries in relation to this matter should be copied to Chantal L. Flax-Ward, Chief Legal Advisor, at cflax-ward@trc.vg.
- 2.10. Thus, in fulfillment of its obligations under the Licence and **section 24 of the Telecommunications Act 2006**, the Commission issues this Evaluation relative to BVI Cable TV Ltd.

3. EVALUATION PROCESS

3.1 Purpose of the Evaluation Process

- 3.1.1 The Evaluation is meant to guide the Commission, the Licensee, and the public on the fundamental issues that ought to be and were considered by the Commission in evaluating the Licensee's performance of its obligations under the Licence and forms the basis for the Commission's decision regarding the Licensee's application for renewal of its Licence.
- 3.1.2 The evaluation process helps to determine whether the Licence should be renewed. In order for the Commission to make this decision it has to determine the following: -
- 3.1.2.1 the extent to which the Licensee has complied with the terms and conditions of the Licence throughout the term of the Licence from June 2007 to present;
 - 3.1.2.2 the extent to which the Licensee has observed the conditions attached to the resources assigned to it in accordance with the relevant legislation and the Licence;
 - 3.1.2.3 the extent to which the Licensee has complied with the Telecommunication Act, the Telecommunication Code, directives, standards, and other orders issued by the Commission over the fourteen-year period since June 2007;
 - 3.1.2.4 the Licensee's Telecommunications Network capability to provide the Licensed Services.

4. METHODOLOGY

4.1. The Commission used the following methodology in evaluating the Licensee's operations: -

- 4.1.1. Reviewing the Licensee's obligations under its Licence;
- 4.1.2. Reviewing the Licensee's obligations under the Telecommunications Acts and Codes;
- 4.1.3. Review of the records on file submitted by the Licensee over the years, including quality of service reports, coverage reports and maps, financial reports and fulfillment of financial obligations, resource authorisations, et cetera;
- 4.1.4. Consideration of the independent evaluation of the Licensee's compliance with its legal and regulatory obligations carried out by Harneys Fiduciary in May 2019;
- 4.1.5. Verifying the provision of emergency communication services and related measures, especially after the passage of Hurricanes Irma and Maria in September 2017;
- 4.1.6. Confirming that customers are provided adequate access to customer care services.

4.2. Assessing the Licensee's performance was guided by the following considerations: -

- 4.2.1. The terms and conditions contained in the Licensee's Licence;
- 4.2.2. The relevant laws and Codes that have been in operation throughout the term of the Licence;
- 4.2.3. The response and/or adherence of the Licensee to the orders and/or directives that were issued by the Commission during the term of the Licence.

4.3. Prior to publishing this Evaluation, the Commission provided the Licensee with the opportunity to review and comment on its findings. On 12 October 2021, a draft version of the Evaluation was sent to the Licensee for comments to the Commission on or before 26 October 2021. The Licensee responded on 26 October 2021 that the Licensee met "the standards articulated in **Article 24 of the Telecommunications Act, 2006**, in regard to licence renewal" and that it considered that any material concerns had been addressed in its 28 June 2021 letter regarding the Harneys Audit and in its Unitary Licence renewal application. The Licensee provided no additional evidence in support of its position or to counter the findings of the Evaluation Report. Notably, the Licensee failed to address any of the issues outlined under paragraph 8.5.2 below despite the Commission's indications in paragraph 1.11 above.

4.4. The Commission notes that this Evaluation Report takes the Licensee's 28 June 2021 letter into account, where relevant. In accordance with **Article 3.3(b) of the Licence**, this Report focuses on the Licensee's performance prior to the date of Unitary Licence renewal application.

5. STRUCTURE OF THE REPORT

5.1. This Evaluation provides a summary of how the Licensee has complied with its legal and licensing obligations over the past fourteen (14) years. To arrive at this summary, the Commission has reviewed and assessed the Licensee's compliance with the following categories of obligations:

5.1.1 Technical performance and obligations

5.1.1.1 This section looks at the Licensee's general obligations under the Telecommunications Act 2006, including, the obligations not to assign its Licence without the prior written approval of the Commission; upon written request made by the Governor to collaborate with the Governor in matters of internal security; to comply with the Act, the Regulations, the Telecommunications Code, the terms and conditions of its Licence and any instructions; not to allow a person owning or holding a significant interest in it to sell, transfer, charge or otherwise dispose of his interest, or any part of his interest unless the prior written approval of the Minister has been obtained; not to cause, permit or acquiesce in any said sale, transfer, charge or other disposition unless the prior written approval of the Minister has been obtained; not to merge or consolidate with another company, unless the prior written approval of the Minister has been obtained; and not to issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in a person acquiring a significant interest in it or a person who already owns or holds a significant interest in it, increasing or decreasing the size of his interest, unless the prior written approval of the Minister has been obtained, unless its listed on a recognized stock exchange in which case the obligation may be waived.

5.1.1.2 It also includes obligations under the Licence such as the provision of telecommunications services, provision of leased lines and circuit services, interruption of operations, telecommunications during a public emergency, public payphone requirements, service quality requirements, inspection procedures and control requirements, customer and subscriber assistance requirements, assistance to disabled persons, amongst other considerations.

5.1.2 Financial and Reporting Obligations

5.1.2.1 This part gives an overview of the Licensee's compliance relative to its financial obligations under the Licence. These include the obligation to pay the industry levy, royalty fees, payment for resources, including spectrum and numbering range, accounting requirements, record keeping and reporting requirements.

5.1.3 Consumer, competition, and other regulatory obligations

5.1.3.1 This section includes matters such as compliance with the relevant laws and codes, compliance with orders and/or directives issued by the Commission, the establishment of a Master Service Agreement, and the establishment of interconnection agreements with other operators, the appointment of a Compliance Officer.

5.1.4 Audit by Harneys Fiduciary in 2019

5.1.4.1 This section gives an overview of the audit of the Licensee carried out by Harneys Fiduciary Limited (Harneys) in May 2019, the recommendations made by Harneys and the Licensee's response to the audit.

5.2. The Commission has summarized its findings on these obligations in this report.

6. FINDINGS ON FULFILLMENT OF LICENSEE'S OBLIGATIONS

6.1 TECHNICAL PERFORMANCE AND OBLIGATIONS

6.1.1. The Commission has assessed the Licensee's technical performance to evaluate the extent to which the Licensee's technical operations are compliant with its obligations under the technical provisions of its Licence, the Telecommunication Act, the Telecommunication Code, and industry standards.

6.1.2. This appraisal indicates that the Licensee has throughout the term of the Licence been barely compliant with the various technical requirements, as discussed below: -

6.1.2.1 Obtaining Licence Permits, and Frequency Authorisation

6.1.2.1.1 Article 13.1 of the Licence states that the Licensee shall be obligated to obtain all authorisations, permits and licences which are necessary under the Telecommunications Act, 2006, the Commission Regulations and the Laws of the British Virgin Islands for the provision of Telecommunications Services in accordance with the Licence.

6.1.2.1.2 Section 15 of the Telecommunications Act, 2006 requires that any person who wishes to operate a telecommunications network or provide a telecommunications service must apply to and obtain from the Commission a Licence in accordance with the Telecommunication Code.

6.1.2.1.3 Section 19 of the Telecommunications Act, 2006 requires that any person who wishes to use the spectrum, must apply to the Commission in accordance with the Telecommunication Code.

6.1.2.1.4 Section 94(4) of the Telecommunications Act, 2006 states that where any person who is licensed under the Telecommunications Act operates a telecommunications network or provides a telecommunications service, radiocommunications service or broadcasting service and is required to obtain a licence or frequency authorisation under this Act to continue such operation or provision of service, he shall during the period referred to in subsection (3), apply to the Commission for such a licence or frequency authorisation to continue operating such network or providing such service as he operated or provided the day this Act comes into force.

6.1.2.1.5 Section 3.1.7 of Frequency Authorisation Numbers VRGFX/0165/2016 to VRGFX/0168/2016 indicate that the Licensee/Frequency Authorisation Holder shall obtain all required approvals and rights of access for access to lands and/or for the construction or erection of the facilities or of any equipment or other installation in relation to the use of the assigned frequency band.

6.1.2.2 Evaluation of Licensee's compliance with obtaining Licence, permits and Frequency Authorization

- 6.1.2.2.1 The Evaluation notes that in compliance with the requirement to obtain a Licence, there is a signed and legally binding Licence in place for the operation of a telecommunications network and the provision of telecommunications services in the British Virgin Islands for the Licensee. The Licence was issued 29 June 2007 and expires 28 June 2022.
- 6.1.2.2.2 The Evaluation found a letter from the Commission to the Licensee dated 25 May 2007 in which the Commission indicated to the Licensee that it was processing its application for Licence and wanted to schedule a meeting to discuss areas of concern, which included spectrum needs.
- 6.1.2.2.3 The Evaluation notes an email from the Commission to the Licensee dated 24 January 2008 in which it was indicated that based on the Commission's frequency plan the Licensee *"will receive 2 x 15MHz in the 1800 band and 2 x 15MHz in the 1900 band for the purpose of establishing mobile telephony services. Specifically, the frequencies will be 1725 – 1740 paired with and 1820 – 1835 in the 1800 band and 1865 – 1880 paired with 1945 – 1960 in the 1900 band."* There is no indication on the Commission's files that these frequencies were ever applied for by or issued to the Licensee. Additionally, there is no indication that the Licensee ever provided during the licence term any other service other than cable television services, as discussed in greater detail under paragraph 6.1.2.12 below.
- 6.1.2.2.4 In the said email, the Commission requested information regarding existing microwave links and provided the relevant forms, and also PDF versions of the Telecommunications Act 2006 and the Licence issued to the Licensee. The Licensee seemed to have responded by an email dated 30 January 2008.
- 6.1.2.2.5 The Evaluation notes that there were several radio frequency authorisations assigned to the Licensee by the Commission for the period March 2016 to March 2018 of the Licence, namely:
- 6.1.2.2.5.1 four (4) frequency authorisations were issued from 19 March 2016 to expire on 19 March 2017, that is, VRGFX/0165/2016 to VRGFX/0168/2016.
- 6.1.2.2.5.2 four (4) frequency authorisations were issued from 19 March 2017 to expire on 19 March 2018, that is, VRGFX/0165/2016 to VRGFX/0168/2016.

6.1.2.2.6 **Instances of non-compliance**

6.1.2.2.6.1 The Evaluation notes that in its letter dated 25 May 2007, referred to in paragraph 6.1.2.2.2 above, the Commission referred to the spectrum needs of the Licensee and needing additional information. Thereafter, there is no mention of spectrum allocation and based on the Commission's files, the Licensee failed to apply for frequency authorisations relating to microwave fixed links until 2016.

6.1.2.2.6.2 The Commission sent a letter to the Licensee on 14 February 2019 in relation to micro-wave link authorisations VRGFX/0165/2016 to VRGFX/0168/2016 which were issued on 19 March 2016 to expire on 19 March 2017. The Commission indicated in said letter that these authorisations were expired and asked the Licensee to provide a status update on the microwave system and to renew the frequency authorisations. The Licensee was asked to respond by 5 March 2019.

6.1.2.2.6.3 The Licensee's response

6.1.2.2.6.3.1 Relative to the email dated 30 January 2008 mentioned in paragraph 6.1.2.2.3 above, the Licensee indicated that it had the frequencies for each of its microwave towers and was gathering the coordinates for each tower and would get these to the Commission shortly. There is no indication on the Commission's file of if or when this information was sent to the Commission.

6.1.2.2.6.3.2 In a letter from the Licensee to the Commission dated 8 March 2016, the Licensee provided an Engineer Trip Report which included all the information requested by the Commission in reference to the Licensee's TV frequencies and indicated that it was submitting this report as its application for Frequency Authorization for its microwave transmitting and receiving points in the British Virgin Islands for sites at Bellevue, Tortola, Cane Garden Bay, Tortola, Jost Van Dyke, Fanny Hill/Gorda Peak and Spanish Town, Virgin Gorda, and the Settlement, Anegada.

6.1.2.2.6.3.3 The Evaluation notes a letter from the Licensee dated 24 March 2017 in which it stated that it was re-applying for its Radio Frequency Authorisation which was issued on 22 March 2016 and expired 21 March 2017. The Evaluation notes that the authorisations were issued on 19 March and not 22 March. The Evaluation notes that

frequency authorisations VRGFX/0165/2016 to VRGFX/0168/2016 were signed by the Commission on 20 April 2017 for the period 19 March 2017 to expire on 19 March 2018.

6.1.2.2.6.3.4 The Evaluation does not reveal any response from the Licensee to the Commission's letter dated 14 February 2019. However, in its response to the Harney's Audit, the Licensee indicated that it was not using these frequencies, as discussed in paragraph 6.1.2.10.2 below.

6.1.2.3 Collaborate with the Governor on matters of internal security

6.1.2.3.1 Under **section 16(1)(b) and 20(1)(c) of the Telecommunications Act, 2006** the Licensee has an obligation to collaborate with the Governor on matters of internal security.

6.1.2.4 Evaluation of the Licensee's compliance to collaborate with the Governor

6.1.2.4.1 The Evaluation did not reveal any instances of the Licensee being asked to collaborate with the Governor on matters of internal security during the Licence Term.

6.1.2.5 Changing significant interest in the Licensee

6.1.2.5.1 Under **Article 11 of the Licence and sections 16 and 20 of the Telecommunications Act, 2006**, the Licensee is obligated not to allow a person owning or holding a significant interest in it to sell, transfer, charge or otherwise dispose of his interest, or any part of his interest unless the prior written approval of the Minister has been obtained; not to cause, permit or acquiesce in any said sale, transfer, charge or other disposition unless the prior written approval of the Minister has been obtained; not to merge or consolidate with another company, unless the prior written approval of the Minister has been obtained; and not to issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in a person acquiring a significant interest in it; or a person who already owns or holds a significant interest in it, increasing or decreasing the size of his interest, unless the prior written approval of the Minister has been obtained, unless its listed on a recognized stock exchange in which case the obligation may be waived.

6.1.2.6 Evaluation of Licensee's compliance with duty not to change significant interest without approval

6.1.2.6.1 The Evaluation found indications of the Licensee submitting notifications to the Commission regarding changes in significant interest.

6.1.2.6.2 The Evaluation found evidence of an application from Stanford Springel and National Rural Utilities Cooperative Finance Corporation (CFC) being submitted to the Commission dated 26 May 2009 regarding the transfer of control in the Licensee. By a letter to the Ministry of Communications and

Works dated 28 July 2009, the Commission indicated that it had no objection to this application.

- 6.1.2.6.3 The Evaluation found evidence of an application being submitted by CFC and Atlantic Tele-Network Inc. (ATN) to the Commission dated 3 November 2015 regarding the transfer of control in the Licensee to ATN's subsidiary, ATN VI Holdings LLC and to charge the assets of the Licensee to secure a loan. By a letter to the Ministry of Communications and Works dated 18 February 2009, the Commission indicated that it had no objection to this application.
- 6.1.2.6.4 In compliance with **section 16(2) of the Telecommunications Act, 2006**, the Evaluation found evidence of the Licensee seeking permission from the Minister of Communication and Works, via a letter dated 27 June 2017, for the transfer of interest in the Licensee to TGM Holdings Limited. The Commission granted initial approval to the transfer by letter to the said Minister dated 20 July 2017. The approval for the transfer was granted by the said Minister by letter dated 26 July 2017.
- 6.1.2.6.5 The Evaluation found further correspondence from the Commission to the Licensee dated 23 August 2017 which outlined the processes that had to first be undertaken before the transaction could be completed, including the amendment of the Licence, and implementing Merger Guidelines. There is correspondence in reply to the Commission from TGM Holdings Limited indicating that the transaction, which it stated was not a merger, had concluded on 18 August 2017 following receipt of approval from the said Minister. This letter also served as notification to the Commission of the completion of the transaction as required by the said Minister.
- 6.1.2.6.6 The Evaluation notes correspondences from the Commission to the Licensee dated 16 December 2017 and 19 September 2018 requesting a copy of the Owner Contribution Agreement. The Evaluation found no response to these correspondences on the Commission's files.

6.1.2.7 Strictly adhere to the designated frequency band

- 6.1.2.7.1 Under **section 20(1)(a) of the Telecommunications Act, 2006**, the Licensee is mandated to strictly comply with the designated frequency bands.

6.1.2.8 Evaluation of Licensee's compliance with duty to adhere to frequency band

- 6.1.2.8.1 The Evaluation found no evidence on the Commission's files that the Licensee did not adhere to its designated frequency bands.

6.1.2.9 Spectrum Management (Numbering and Domain Name)

- 6.1.2.9.1 **Section 38 (1) of the Telecommunications Act, 2006** requires that the Licensee operates its facility, terminal equipment or other equipment in a manner that is not likely to cause harmful interference.

6.1.2.10 Evaluation of the License's spectrum management

- 6.1.2.10.1 The Evaluation found no indication of harmful interference caused by the Licensee on the Commission's files.
- 6.1.2.10.2 The Evaluation notes that the Commission has no cogent information relative to the current usage of spectrum by the Licensee. The Evaluation recognizes that in the Licensee's response to the Harney's Audit (detailed in paragraph 7.2.6 below), the Licensee indicated that it was not using its radio links and would have applied for authorisation if it was using same. As stated in paragraph 6.1.2.5.2, the Licensee's frequency authorisations expired on 19 March 2018.
- 6.1.2.10.3 Based on the Licensee's 2021 response, the Commission notes that the microwave fixed radio spectrum that was assigned to the Licensee has been unused for the past three and a half (3 ½) years and the Licensee neglected to inform the Commission of this fact. It is noted that under **sections 34 (1) and 36(c) of the Telecommunications Act, 2006**, the Commission has the duty to ensure the efficient utilisation of frequencies for the operation of all telecommunications networks and provision of all telecommunications services, and the efficient use of the spectrum, respectively.

6.1.2.11 Provision of telecommunications services

- 6.1.2.11.1 Under **Article 7.1 of the Licence**, the Licensee is obligated to provide the Licensed Services within, into and out of the British Virgin Islands in accordance with the terms of the Licence, the Telecommunications Act, 2006, the Telecommunications Code and the Commission Regulations, and the Laws of the British Virgin Islands.
- 6.1.2.11.2 According to **Article 2.1(b) of the Licence**, the Licensed Services are basic telephony services including local, national and international telephony services; cellular mobile telecommunications services; trunk capacity resale services, including the provision of leased lines and circuits; satellite telecommunications services; third party private network services; paging services; store and forward messaging services; telex services; telegraph services; value-added services; the sale and maintenance of subscriber premise wiring and terminal apparatus; private telecommunications services; internet services; wireless video programming; cable television service via wireline network; and International Connectivity Services.

6.1.2.12 Evaluation of compliance with provision of telecommunications services

6.1.2.12.1 The Evaluation reveals that the Licensee provided Cable television services via wireline network. However, the Licensee indicates in its licence renewal application that it provides the following type of networks/services, backhaul; Dedicated Internet Access; Internet Exchange Point; Service Providers requiring numbering resources; Broadband Wireless, Fixed Radio Communication Links; Internet service provider; Broadcasting Station (Television); Fixed Voice; Pay Television and Resale of services (Voice/Data). Notwithstanding this indication, the Evaluation found no evidence of the Commission being informed of the launch of any of these services or having any information relative to these services. As outlined in paragraph 6.3.20.7 below, the Commission has sought information relative to the services that the Licensee provides to no avail.

6.1.2.12.2 Most of the services for which the Licensee was licensed have not been provided for example, basic telephony services including local, national, and international telephony services; cellular mobile telecommunications services; trunk capacity resale services, including the provision of leased lines and circuits; satellite communication services. Additionally, there are a few services that were not provided but became obsolete in view of the advance in technology, for example, paging services; telex services; telegraph services.

6.1.2.12.3 There is no evidence on the Commission's file that there were any discussions between the Commission and the Licensee regarding Licensed Services that were not provided or that the Licensee applied for any frequency to provide any other service other than cable television service as is their right to do under **Article 14 of the Licence**.

6.1.2.13 Provision of leased lines and circuit services

6.1.1.13.1 In **Article 7.2 of the Licence**, the Licensee was obligated to provide leased and circuit services.

6.1.2.14 Evaluation of compliance with provision of leased lines and circuit services

6.1.1.14.1 The Evaluation does not reveal that the Licensee ever provided leased lines and circuit services. As indicated under paragraph 6.1.2.12, the Evaluation reveals that the Licensee solely provided cable television services.

6.1.2.15 Telecommunications during a public emergency and Force Majeure

6.1.2.15.1 Under **Article 7 of the Licence**, the Licensee is mandated to develop plans for operating networks and providing services during force majeure and where there is serious and substantial interruption in the provision of telecommunications services. This is also reiterated by **section 89(5) of the Telecommunications Act, 2006** which also indicates that the

Licensee shall cooperate in the development and implementation of any such plans.

6.1.2.15.2 **Article 7.4(e) of the Licence** mandates that the Licensee provide an emergency alert system on all programmed channels of a cable or wireless cable television system.

6.1.2.15.3 **Article 20 of the Licence** deals with Force Majeure events and what is expected in such situations. This article indicates that if any of the listed force majeure event occurs and causes damage to the telecommunications network operated by the Licensee, the Licensee shall be obligated to repair or rebuild the network pursuant to a timetable and workplan to be established by the Licensee and approved by the Commission, and subject to adequate changes in the provisions of this Licence to be agreed upon between the Parties.

6.1.2.16 Evaluation of Compliance with Public Emergency and Force Majeure Provisions

6.1.2.16.1 The Evaluation notes a **Section 70 Notice** from the Commission to the Licensee dated 13 January 2011 in which it outlines the Licensee's obligation to develop emergency operating plans pursuant to **section 89(5) of the Telecommunications Act, 2006**. This Notice outlined the history of requests from the Commission to the Licensee for its emergency operating plans. It indicated that the Licensee was requested to provide this information by a request for information dated 28 September 2010 returnable by 28 October 2010. A further request was sent to the Licensee on 4 November 2010 returnable by 11 November 2010. The Licensee replied via email dated 10 November 2010 requesting an extension of time to respond. On 25 November 2010 the Commission responded to this email and granted an extension to the Licensee to 9 December 2010. However, the Licensee failed to respond to the request for information by the new deadline. The Licensee was thus requested under section 70, to provide the requested information by 21 January 2011. The Evaluation was unable to ascertain whether the information was provided by this date.

6.1.2.16.2 The Evaluation found information on equipment and site status along with plans for restoration following Hurricane Earl when the Licensee applied to the Minister for Pioneer Status via letter dated 3 September 2011. However, there is no evidence on the Commission's file that, following Hurricanes Irma and Maria in September 2017, a document was sent by the Licensee to the Commission outlining the impact of these hurricanes and its plans for restoration and whether the radio links are currently operational. However, in its response to the Harney's Audit dated 28 June 2021, as mentioned in paragraphs 6.1.2.2.6.3.4 and 6.1.2.10.2, the Licensee indicated that it was not using the frequencies assigned to it in 2016. It also indicated that it provided the Commission a work plan and timetable for reconstruction after Hurricane Irma and attached as an enclosure to this

response a one-page document. There is no indication in the Commission's files of how and/or when this workplan and timetable was sent to the Commission, nor is there any indication or evidence that this plan was approved by the Commission and/or executed by the Licensee as required by **Article 20 of the Licence**.

6.1.2.16.3 The Evaluation notes correspondence from the Commission dated 23 May 2019 in which the Licensee was required to submit its Business Plan to the Commission by 30 May 2019. The Evaluation did not find any response from the Licensee regarding this request. However, in its 28 June 2021 response to the Harneys Audit, detailed under paragraph 7.2 below, the Licensee provided an Emergency and Business Continuity Plan.

6.1.2.17 Public payphone requirements

6.1.2.17.1 **Article 7.6 of the Licence** places an obligation on the Licensee to install and maintain Public Pay Telephones in accordance with a plan submitted to and approved by the Commission.

6.1.2.18 Evaluation of Compliance with installation and maintenance of Public Pay Telephones

6.1.2.18.1 The Evaluation found no documentation on the Commission's files indicating that the Licensee ever installed and maintained public pay telephones or submitted a Public Pay Telephones plan for approval by the Commission. As indicated under paragraph 6.1.2.12, the Evaluation reveals that the Licensee solely provide cable television services.

6.1.2.19 Service Quality Requirements

6.1.2.19.1 **Article 7.7 of the Licence** states that the Licensee shall be obligated to provide minimum quality of service of its Telephony Services for calls carried within the Telecommunications Networks of the licensee in accordance with Annex 3.

6.1.2.20 Evaluation of compliance with Service Quality Requirements

6.1.2.20.1 As indicated under paragraph 6.1.2.12, the Evaluation reveals that the Licensee solely provided cable television services and no telephony services.

6.1.2.20.2 The Evaluation reveals that the Commission sent a letter to the Licensee dated 23 January 2017, which was a further letter to its letter of 16 January 2017. It indicated to the Licensee that the reporting parameters for service quality requirements that apply to years 1 through 5 of the Licence were never submitted to the Commission. The Commission also indicated that the Licensee was to use the parameters for Year 5 of Annex 3 to report on the Licensee's current service quality requirements. This issue is further particularised under paragraph 6.3.18 below.

6.1.2.20.3 As discussed under paragraph 6.2.5, relative to its obligations under **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee has failed to provide certain QoS reports, has not published its QoS reports on its website within the statutory timeframe, and has often failed to provide complaints reporting and statistics within the statutory timeframe.

6.1.2.21 Inspection procedures and control requirements

6.1.2.21.1 **Section 45 of the Telecommunications Act, 2006**, specifies that all installations to be used for a public telecommunication network or a public telecommunication service need to be tested by the Commission unless the requirement of pre-installation testing is waived by the Commission.

6.1.2.21.2 Under **section 45 of the Telecommunications Act, 2006**, the Commission is authorized to enter, search and inspect any premises, place, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or telecommunications service is provided, or from which any person is using spectrum for telecommunications, for the purposes outlined under that section, including for the examination of records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications service or the use of spectrum.

6.1.2.21.3 Additionally, under **Article 7 of the Licence** the Licensee is mandated to comply with information requests and with inspection procedures and reporting requirements established from time to time by the Commission with regard to fulfilment of the provision of telecommunications services and services quality requirements.

6.1.2.21.4 **Sections 3.1.11 of Frequency Authorisations Numbers VRGFX/0165/2016 to VRGFX/0168/2016** indicate that the Licensee/Frequency Authorisation Holder shall allow the Commission upon receiving reasonable notice to inspect the facilities, equipment, and related assistance to the Commission to ensure compliance with the frequency authorisations.

6.1.2.22 Evaluation of Licensee's compliance with Inspection procedures and control requirements

6.1.2.22.1 The Evaluation found evidence of the Licensee communicating to the Commission regarding changes in some equipment in November 2009.

6.1.2.22.2 In September 2011, after the passage of Hurricane Earl, the Licensee provided a list of equipment that it needed to upgrade its infrastructure and to launch new services when it applied to the Premier's Office for Pioneer Status. Thereafter, the Evaluation does not note any evidence on the Commission's files that the Licensee sought and was given permission by the Commission

for any new equipment after the passage of Hurricanes Irma and Maria in September 2017.

6.1.2.22.3 There are no recorded instances of denied access to the Licensee's facilities.

6.1.2.23 Customer and subscriber assistance requirements

6.1.2.23.1 Under **Article 7 of the Licence**, the Licensee is required to set up directory assistance services for its customers. It is also required to operate a database publicly accessible as well as produce a phone book to be free of charge.

6.1.2.24 Evaluation of Customer and subscriber assistance requirements

6.1.2.24.1 There is no evidence that the Licensee set up directory assistance services for its customers. As indicated under paragraph 6.1.2.12, the Evaluation reveals that the Licensee solely provided cable television services.

6.1.2.25 Assistance to disabled persons

6.1.2.25.1 Under **Article 7.11 of the Licence**, the Licensee is obligated to provide equipment or services during the licence term for disabled Customers and Subscribers.

6.1.2.25.2 **Article 7.11(a) of the Licence** states that the Licensee shall, at the request of the Commission, arrange for the supply of, and the provision of maintenance services for telecommunications apparatus designed or adapted to meet the reasonable demands of disabled people; the connection to the telecommunications networks of said telecommunications apparatus; and the Licensee's participation in any advisory group established to address the needs of persons who are disabled.

6.1.2.25.3 **Article 7.11(b) of the Licence** states that the Licensee shall use its reasonable endeavours to ensure that there are available for supply in such a way as to meet all reasonable demands for customer premises, equipment capable of being inductively coupled to hearing aids which have been designed to be so coupled to Customer Premises Equipment; and equipment incorporating sound amplification facilities, provided that this condition shall be deemed to be satisfied if the Licensee uses its reasonable endeavours to ensure that there is available for supply either one type of customer premises equipment which meets both descriptions or two types of customer premises equipment each of which meets one of the requirements set forth in **Article 7.11 (a) or (b)**.

6.1.2.25.4 **Article 7.11(c) of the Licence** states that the Licensee take all reasonable steps to install and keep installed in at least fifty percent (50%) of Public Pay Telephone Service, apparatus enabling persons using hearing aids designed for use in conjunction with Public Pay Telephones to use such

hearing aids in connection with Voice Telephony Services. The target specified in the immediately preceding sentence shall be achieved as soon as practicable but, in any event, no later than the fifth (5th) anniversary of the Effective Date. On the fifth (5th) anniversary of the Effective Date the percentage of such Public Pay Telephones at which the Licensee shall be obligated to install and keep installed such apparatus shall be agreed between the Licensee and the Commission.

6.1.2.26 Evaluation of Assistance to disabled persons

6.1.2.26.1 The Evaluation found nothing in the Commission's files that indicates that the obligation under **Article 7.11(a) of the Licence** was invoked by the Commission. Based on the Commission's file, the Evaluation was unable to determine whether the obligations under **Article 7.11(b) of the Licence** were adhered to.

6.1.2.26.2 As indicated under paragraph 6.1.2.12, the Evaluation reveals that the Licensee solely provided cable television services. Thus, based on the Commission's file, the obligations under **Article 7.11(c) of the Licence** would not have been adhered to as they are inapplicable to the provision of cable television.

6.2 FINANCIAL AND REPORTING OBLIGATIONS

6.2.1 The Commission has assessed the Licensee's financial and reporting performance to evaluate the extent to which the Licensee's financial and reporting operations are compliant with its obligations under the financial and reporting provisions of its Licence, the Telecommunication Acts, the Telecommunication Code, and industry standards.

6.2.2 This appraisal indicates that the Licensee has throughout the term of the Licence been largely non-compliant with the various financial and reporting requirements, as discussed below: -

6.2.3 Financial Provisions

6.2.3.1 The Licensee is required to maintain accounting records in accordance with Generally Acceptable Accounting Principles in accordance **with Article 7.1 of the Licence**.

6.2.3.2 Under both **Article 5.1 of the Licence** and **section 59(1) of the Telecommunications Act, 2006**, the Licensee has an obligation to pay to the Commission an annual Industry Levy. The Act indicates that the industry levy is payable and due to be paid within four (4) weeks of receiving a notification from the Commission.

6.2.3.3 Under both **Article 5.1 of the Licence** and **section 60(1) of the Telecommunications Act, 2006**, the Licensee has an obligation to pay to the Commission an annual Royalty fee in the amount of three percent (3%) of the gross revenues from services provided under the Licence collected by the Licensee, payable in US Dollars no later than 5 April of each year. The Licence indicates that this payment shall commence on 5 April, 2007.

6.2.3.4 Under **Article 5.3 of the Licence**, the Licensee has an obligation to pay to the Commission the annual charges for use of the radio spectrum.

6.2.4 Reporting Provisions

6.2.4.1 **Article 7.3(a) of the Licence** states that the Licensee should not interrupt the operation of the telecommunications network or any portion thereof or to suspend the provision of any licensed service in the normal course of business, without giving written notification to the Commission.

6.2.4.2 Under **Article 7.14 of the Licence**, the Licensee has an obligation to establish and maintain adequate records to permit the effective supervision and enforcement of the terms of the Licence. Within ninety (90) working days of the end of each fiscal year, the Licensee shall deliver to the Commission its year-end balance sheet and related states of operation, equity, and cash flow, accompanied by an independent public accountant's report, in accordance with **section 69 of the Telecommunications Act 2006**.

6.2.4.3 According to **Article 7.14 of the Licence**, within ninety (90) working days following each anniversary of the effective date of the Licence, the Licensee shall deliver to the Commission, in accordance with **section 69 of the Telecommunications Act 2006**, a report on the operations and services of the Licensee and the extent to which the conditions of the Licence have been followed during the preceding twelve(12) months, substantially in the form of Annex 4 of the Licence.

6.2.4.4 Under **section 4(3) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is obligated to notify the Commission no later than thirty (30) days after the end of each quarter of the commercial launch of any services within that quarter.

6.2.4.5 Under **section 4(4) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is obligated to measure and report on quality of service in accordance with the quality of service (QoS) targets set by the Commission.

6.2.4.6 Under **section 8(3) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, requires the Licensee to provide to the Commission a QoS report in terms of services provided under Schedules 1, 2 and 3 on paper and by email, in Microsoft Excel format, no later than thirty (30) days after the end of

the reporting period. As per **section 11 of the said Code**, the report needs to contain a comparison with the same performance data in the previous period along with the proposed level of service for the next twelve (12) months.

- 6.2.4.7 As per **section 8(4) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is required to provide coverage maps as well as calculations of coverage in terms of territory and population, against an outline map of the Virgin Islands, indicating the areas in which each of the services covered in the Requirements are available, and in the case of a wireless service, the map should indicate the signal strength in dBm (decibels referenced to 1 milliwatt) at the edge of the coverage area.
- 6.2.4.8 As per **section 11(1) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee must publish its QoS on its website no later than thirty (30) days after the end of the reporting period.
- 6.2.4.9 Under **section 13 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee shall include in the quality-of-service measurements the number of requests received for services that the Licensee cannot provide to a user because it is not technically feasible to install the service, or the Licensee does not supply the particular service in the requested geographical area.
- 6.2.4.10 In the event of a force majeure affecting the QoS, as estimated and reported, under **section 14 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010** the Licensee is required to provide a second set of data showing the effect of the force majeure along with a note explaining the differences in detail; or the Licensee can apply for an exemption to submit said report.
- 6.2.4.11 **Section 15(2) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, indicates that the Licensee shall notify the Commission of planned service interruptions at least forty-eight (48) hours in advance.
- 6.2.4.12 In the case of unplanned service interruptions, **section 16 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, mandates that the Licensee notify the Commission, by email and SMS, of the service interruptions within three (3) hours of the service disruption event and include details on areas and number of users affected; provide continuous updates every twelve (hours) detailing progress in resolving the issue; and provide a full report within twenty-four (24) hours of the disruption.
- 6.2.4.13 **Sections 3.3.2 of Frequency Authorisations Numbers VRGFX/0165/2016 to VRGFX/0168/2016 indicate** that the Licensee/Authorisation Holder shall provide a quarterly report to the Commission specifying accurate, up-to-date, and

detailed technical data, as outlined in section 3.3.1, in relation to its use of the assigned frequency bands.

6.2.5 Analysis of compliance with Financial and Reporting Obligations

- 6.2.5.1 The Evaluation finds no written evidence of the Commission granting approval for the accounting system adopted by the Licensee. However, given that the Licensee has been submitting its financial statements for the past fourteen (14) years without there being any complaints from the Commission regarding the format of its financial statements or accounting system, then it can be concluded there had been some approval given to the Licensee for its accounting system albeit not in writing.
- 6.2.5.2 The Evaluation reveals that the Licensee has not paid the Industry Levy throughout the term of the Licence. However, the Levy was not implemented until February 2017. The Commission's efforts in this regard have been met with resistance and the matter is presently before the High Court being judicially reviewed and payments have been stayed pending the outcome of the review.
- 6.2.5.3 The Licensee has for the most part made timely payment of the assessed Spectrum fees.
- 6.2.5.4 The Licensee originally paid its Royalty fees quarterly. However, since 2016 it has been paying its Royalty fee annually. Audited financial statements have been provided to the Commission but not within the period outlined in the Licence and the Telecommunications Act, 2006.
- 6.2.5.5 The Evaluation shows that while the Licensee generally pays the relevant Royalty fees, it does not pay them on time or submit the applicable documentation within the requisite time.
- 6.2.5.6 The Evaluation notes numerous correspondences from the Commission to the Licensee regarding the Licensee's failure to submit its audited financial statements and other information required under **Article 7.14 of the Licence**, including,
- 6.2.5.6.1 a letter dated 9 May 2014 which requested the outstanding Annual Audited Financial Statements of the financial years 2008, 2009, 2010, 2011 and 2013 to be provided by 9 June 2014. These statements were not provided by the stated date.
 - 6.2.5.6.2 a **Section 70 Notice** dated 29 May 2015, which requested, amongst other things, the documents outlined in **Article 7.14 of the Licence**, and the Annual Audited Financial Statements of the financial years 2008, 2009, 2010, and 2011 to be provided by 15 June 2015.
 - 6.2.5.6.3 a letter dated 15 December 2015, requesting the quarterly Royalty Payment along with supporting management account information for the period and the audited financial statement for May 15, 2015, by the 23 December 2015.

- 6.2.5.6.4 a **Section 70 Notice** dated 16 January 2017, which requested, amongst other things, the audited financial statement for the year ended 31 May 2016 by 1 February 2017. The Licensee responded by letter dated 3 February 2017.
 - 6.2.5.6.5 A follow-up letter dated 3 March 2017 in response to the Licensee's response dated 3 February 2017 in which the Commission indicated amongst other things that the audited financial statement for 2016 was outstanding.
 - 6.2.5.6.6 A letter dated 21 March 2017, which indicated that there had been no response to the Commission's letter dated 3 March 2017, requested a response by 31 March 2017 and stated that enforcement action would be taken if the Licensee failed to respond. The Evaluation found no reply to this correspondence on the Commission's files.
 - 6.2.5.6.7 A letter dated 23 January 2019, which indicated, amongst other things, that the audited financial statements for the years 2017 and 2018 were outstanding.
 - 6.2.5.6.8 A letter dated 31 May 2019 which indicated that the audited financial statements for the years 2017 and 2018 were outstanding and requested same by 14 June 2019.
 - 6.2.5.6.9 a **Section 70 Notice** dated 17 January 2020 which indicated that the audited financial statements for the years 2017 and 2018 were outstanding and requested same by 31 January 2020.
 - 6.2.5.6.10 a **Section 70 Notice** dated 11 May 2020 which indicated that the audited financial statements for the years 2017, 2018 and 2019 were outstanding and requested same by 1 June 2020.
 - 6.2.5.6.11 a letter dated 19 October 2020 which indicated that the audited financial statements for the years 2017, 2018 and 2019 which the Licensee orally promised would be delivered by September 2020 were still outstanding and requested same by 16 October 2020.
 - 6.2.5.6.12 a **Section 69 letter/Notice** dated 29 January 2021 which indicated that the audited financial statements for the years 2017, 2018 and 2019 were outstanding and requested same by 5 February 2021.
- 6.2.5.7 The Evaluation reveals that the audited financial statements for the years 2017, 2018, 2019 and 2020 were outstanding at the time of the preparation of the Evaluation Report.
- 6.2.5.8 The Licensee only provided cable television services throughout the Licence Term and thus as per **section 4(2) of the Telecommunications Code (Part 3)(Quality of Service) Requirements 2010** only sections 1, 2, 3, 4(3) and (4), 6, 8(1), 12, 15, 16, 17(4) to (6) and 18 apply to the Licensee. Thus, the obligations under paragraphs 6.2.4.7, 6.2.4.9 and 6.2.4.10 are inapplicable to the Licensee.
- 6.2.5.9 The Evaluation reveals numerous correspondences from the Commission to the Licensee relative to outstanding QoS reports since the implementation of **the**

Telecommunications Code (Part 3)(Quality of Service) Requirements 2010,
including,

- 6.2.5.9.1 a letter dated 27 September 2018 indicating that the data for the 2nd to 4th quarters of 2017 and the 1st and 2nd quarters of 2018 were outstanding and requesting same by 12 October 2018. The Licensee was again given instructions on completing the template.
 - 6.2.5.9.2 a letter dated 2 February 2019 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 3rd quarters of 2018 were outstanding and requesting same by 28 February 2019.
 - 6.2.5.9.3 a letter dated 27 August 2019 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018 and the 1st and 2nd quarters of 2019 were outstanding and requesting same by 13 September 2019.
 - 6.2.5.9.4 a letter dated 17 February 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018 and the 1st to 4th quarters of 2019 were outstanding and requesting same by 17 March 2020.
 - 6.2.5.9.5 a letter dated 6 July 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018, the 1st to 4th quarters of 2019 and the 1st quarter of 2020 were outstanding and requesting same by 31 July 2020.
 - 6.2.5.9.6 a letter dated 28 September 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018, the 1st to 4th quarters of 2019 and the 1st and 2nd quarters of 2020 were outstanding and requesting same by 13 October 2020.
- 6.2.5.10 It must be indicated that the Evaluation could not find a functional website for the Licensee. However, the Evaluation notes that in a letter dated 3 January 2014 from the Commission to the Licensee, the Commission refers to the Licensee’s website and certain information that was posted on said website. Additionally, on the Licensee’s Facebook page, which was last updated on 19 October 2017, after the passage of Hurricanes Irma and Maria in September 2017, there is a website link provided, <http://www.innovativevi.net/bvicable> ([404 Not Found \(innovativevi.net\)](#)). However, when this link is utilized, the following messages are seen, “*The requested URL was not found on this server.*”, “*Additionally, a 404 Not Found error was encountered while trying to use an ErrorDocument to handle the request*”.
- 6.2.5.11 Thus, regarding QoS reporting obligation, the Licensee has
- 6.2.5.11.1 neglected to provide the majority of applicable data required in the QOS template;
 - 6.2.5.11.2 failed to include complaints reporting and statistics;
 - 6.2.5.11.3 not been publishing its QoS reports on its website.

- 6.2.5.12 The Evaluation indicates that additional information from the Licensee is required for the Commission to be able to accurately assess the services provided by the Licensee.
- 6.2.5.13 The Evaluation found some evidence of initial correspondence from the Licensee to the Commission outlining the launch of new channels and products over the early period of the Licence. However, no such correspondence is noted since 13 May 2014 when the Licensee informed the Commission of its intent to introduce adult programming.
- 6.2.5.14 The Evaluation found some evidence of initial correspondence from the Licensee to the Commission outlining instances of service disruption. No such correspondence is noted in the last six (6) years.
- 6.2.5.15 The Evaluation notes that in the **Section 70 Notice** referenced in paragraph 6.2.5.6.4 above dated 16 January 2017 from the Commission to the Licensee, the Commission outlined non-compliance with sections 3.3 of the terms and conditions of **Frequency Authorisations VRGFX/0165/2016 to VRGFX/0168/2016** in that the Licensee failed to provide technical records to the Commission on a quarterly basis. It was given until 1 February 2017 to be compliant.
- 6.2.5.16 The Evaluation notes correspondence between the Commission and the Licensee regarding the provision of ITU Market data. Notably, the Evaluation takes note of a letter from the Commission to the Licensee dated 16 September 2016, in which it outlined its numerous requests to the Licensee for the 2013 and 2014 ITU Market Data. According to this letter the following request were made,

2013 Data

- 6.2.5.16.1 July 24, 2014 – the Commission formally requested 2013 data in the “2013 ITU & Market Data Request – BVI Cable TV” in order for the Licensee to meet the September 1, 2014, deadline.
- 6.2.5.16.2 August 19, 2014 – The Commission sent a reminder to the Licensee of the approaching September 1 deadline.
- 6.2.5.16.3 September 4, 2014 – The Commission sent an email to the Licensee indicating not receiving the request and to submit it by the end of the week.
- 6.2.5.16.4 September 4, 2014 – the Licensee indicated missing the deadline and asked for an extension until the following week.
- 6.2.5.16.5 September 11, 2014 – The Commission asked the Licensee to send the submission by September 2014 which the Licensee responded it will try to do so.
- 6.2.5.16.6 September 12, 2014 – The Commission asked the Licensee to send the ITU Data information which was contained within the initial request.
- 6.2.5.16.7 September 16, 2014 – The Commission sent an email requesting the ITU Information as mentioned above and that the “2013 ITU & Market Data Request” was still overdue.

6.2.5.16.8 September 22, 2014 – The Commission reminded the Licensee that the data was still outstanding.

2013 and 2014 Data

6.2.5.16.9 May 12, 2015 – the Commission formally requested 2013 and 2014 data in the “2013 and 2014 ITU & Market Data Request – BVI Cable TV” in order for the Licensee to meet the July 1, 2015, deadline.

6.2.5.16.10 June 22, 2015 – The Commission sent a reminder to the Licensee of the approaching July 1 deadline.

6.2.5.16.11 August 19, 2015 – The Commission sent a letter to the Licensee concerning their outstanding “2014 ITU market Data Request’ submission. The Evaluation notes that this was a **Section 70 Notice** that required the information to be submitted by 24 August 2015.

6.2.5.17 In the letter of 16 September 2016 referred to in paragraph 6.2.5.15 the Commission invoked Section 70 and indicated that a completed version of the outstanding 2013 and 2014 data must be submitted by 28 October 2016 and the completed 2015 data by 9 December 2016. The Commission stated that failure to submit same would result in enforcement action being taken against the Licensee.

6.2.5.18 In the **Section 70 Notice** referenced in paragraph 6.2.5.6.4 above dated 16 January 2017 from the Commission to the Licensee, the Commission requested completed 2013, 2014, and 2015 ITU and Market Data information.

6.2.5.19 **Licensee’s Response:**

6.2.5.19.1 The Licensee responded to the Commission’s **Section 70 Notice** dated 16 January 2017 (referred to in paragraph 6.2.5.6.4 above) by letter dated 3 February 2017 in which it indicated, amongst other things, that the audited financial statements for 2014, and 2015 were submitted on 19 February 2016 but it had not received the 2016 audited financial statement. However, it is noted that only the 2016 Annual Audited Financial statement was requested by the Commission in its letter.

6.2.5.19.2 In said letter of 3 February 2017, in reference to the Radio Frequency Authorisations, the Licensee indicated that it was also submitting the second and third calendar quarter reports.

6.2.5.19.3 Additionally, the Licensee also attached the ITU Market Data for 2013, 2014, and 2015.

6.2.5.19.4 The Evaluation notes a letter from the Licensee to the Commission dated 9 March 2017 to which it attached “the audited financial statements for the period May 31, 2016, and 2015 conducted by KPMG LLP”. This correspondence did not reference any letter from the Commission but may

have been an effort to comply with the Commission's **Section 70 Notice** letter dated 16 January 2017 (referred to in paragraph 6.2.5.6.4 above).

6.2.5.19.5 The Licensee responded to the Commission's **Section 70 Notice** dated 17 January 2020 (referred to in paragraph 6.2.5.6.9 above) by letter dated 31 January 2020 in which it requested an extension to complete the Audited Financial Statements for 2017 and 2018 by the middle of the year. As noted in paragraph 6.2.5.7, these statements are still outstanding.

6.3 CONSUMER, COMPETITION, AND OTHER REGULATORY OBLIGATIONS

6.3.1 The Commission has assessed the Licensee's consumer, competition, and other regulatory obligations to evaluate the extent to which the Licensee operations are compliant with these obligations under its Licence, the Telecommunication Acts, the Telecommunication Code, and industry standards.

6.3.2 This appraisal indicates that the Licensee has throughout the term of the Licence been largely non-compliant with the various obligations, as discussed below: -

6.3.3 Conditions for effectiveness of Licence

6.3.3.1 As indicated previously, **Article 16 of the Licence**, set out some conditions for the effectiveness of the Licence, including providing to the Commission an officer's certificate signed by a duly authorised officer of the Licensee certifying that the representations and warranties of the Licensee are correct in all material respects.

6.3.3.2 The Licensee was also mandated to provide a certified copy of the Licensee's articles of association within ten (10) working days from effective date, a copy of the resolutions passed by the board of directors authorising the execution, delivery and performance of the Licence, a certified copy of the Licensee's registration certificate within ten (10) working days of the effective date, certified copies of the Licensee's by-laws, and signature and incumbency certificates of the officers of the Licensee executing the Licence.

6.3.4 Evaluation of compliance with the above conditions for effectiveness of Licence

6.3.4.1 The Evaluation found in the Commission's file a copy of the Memorandum and Articles of Association certified on 18 June 2009, Certificate of Incorporation certified on 1 January 2009, Certificate of good standing dated 18 June 2009. These documents were obtained as part of the Commission's due diligence process in evaluating the application for consent to transfer control in the Licensee mentioned in paragraph 6.1.2.6.2 above. Thereafter, there were no updates to these documents since establishment of the Licence.

6.3.4.2 The review did not locate copies of the other documentation required under **Article 16 of the Licence**.

6.3.5 Price Obligations

6.3.5.1 **Section 29 (3) of the Telecommunications Act 2006** imposes an obligation on the Licensee to publish its prices and terms and conditions.

6.3.5.2 Additionally, **Article 8 of the Licence** imposes certain price caps where a public supplier is designated a Dominant Public Supplier.

6.3.6 Evaluation of the Licensee's compliance with its price obligations

6.3.6.1 The Evaluation finds several documentations from Licensee to the Commission informing the Commission of changes in prices and channels offered. The Evaluation is unable to determine if the Commission was informed of every price change or change in channels. However, these notifications are vintage, and none is noted after 2 January 2014. The Evaluation notes a letter from the Licensee to the Commission dated 01 March 2016 in which it requested a copy of all correspondences between itself and the Commission relative to rate increases from 08 June 2009 to 1 March 2016.

6.3.6.2 The Evaluation also notes correspondence dated October 15, 2010, from the Commission to the Licensee regarding a complaint that had been received by the Commission pertaining to the Licensee's methodology for deciding on the number of accounts for a customer's property and thus the price to be charged. The Licensee was supposed to provide to the Commission its procedures for price determination, but this was not provided.

6.3.6.3 As noted in paragraph 6.2.5.10 above, the Evaluation was unable to locate a website for the Licensee.

6.3.6.4 The Evaluation was unable to ascertain the Licensee's Terms and Conditions in relation to the services it offers. The Evaluation notes correspondence from the Commission to the Licensee dated 3 January 2014 (first referred to in paragraph 6.2.5.10 above) in which the Commission requested a copy of the Licensee's Terms and Conditions to verify that the proposed rate increase was in accordance with same. There is nothing on the Commission's files to indicate that this information was provided.

6.3.7 Interconnection (Access, Agreements and Numbering)

6.3.7.1 **Article 9 of the Licence** imposes an obligation on the Licensee to provide interconnection to other operators. This obligation is reiterated by the **Part IV of the Telecommunications Act, 2006** and the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**.

6.3.7.2 Relative to interconnection Access, **section 16 of the Telecommunications Act, 2006** states that the Licensee shall provide for the transmission and routing of the services of other public suppliers at such technically feasible point and on such terms as may be specified by the Commission.

6.3.7.3 In relation to Interconnection negotiation timelines, **Article 9.3 of the Licence** required that the Licensee conclude interconnection agreements within six (6) months following the effective date of the other operator's Licence. This obligation was modified by **section 6 (3) of the Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**, which states that *"every public supplier must offer to provide and provide interconnection on a timely basis not to exceed 90 days subject to section 8, after requested by another public supplier, and on the basis of terms and conditions that are transparent and reasonable, having regard to economic feasibility"*.

6.3.7.4 Interconnection Agreements

6.3.7.4.1 Under **Article 9.1(c) of the Licence**, it is indicated that the Licensee must file with the Commission an application for the Commission's approval or re-approval, as the case may be, of each proposed interconnection agreement to be entered into at least thirty (30) working Days before the effective date of such agreement and each interconnection agreement already approved by the Commission on the fifth anniversary of the effective date of such interconnection agreement and on each successive five (5) year anniversary thereof.

6.3.7.4.2 Under **Article 9.3** of the Licence, the Licensee has an obligation to file with the Commission for the Commission's approval each interconnection agreement which it intends to enter no later than six (6) months following the effective date of the other operator's Licence.

6.3.7.4.3 Under **Article 9.6** of the Licence, the Licensee has an obligation to enter into an agreement to provide roaming services on a reciprocal basis to every other operator of cellular telecommunications service within the British Virgin Islands that requests such service.

6.3.7.4.4 Further guidance is provided by the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011 (sections 5, 9, 11 and 13)** which stated that once a request for interconnection is received by the Licensee a standard written interconnection agreement, which complies with the said Requirements, must be provided to the requester within thirty (30) days of receipt of the request. Once the agreement is concluded, a copy of the agreement must be provided by the Licensee to the Commission within twenty-eight (28) days.

6.3.7.4.5 If the Licensee is deemed a dominant supplier, then it must publish the interconnection agreement on its website within twenty-eight (28) days of conclusion of the agreement (**section 8, Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**).

6.3.7.4.6 Under **Annex 8 of the Licence**, the Licensee was required to execute revised Interconnection Agreements with each licensee or operator of telecommunications services interconnected to the Licensee's networks to give effect to the rates prescribed from 1 August 2012 and submit each such Agreement to the Commission no later than 8 August 2012.

6.3.7.4.7 The Licence and the Code imposes an obligation on the Licensee to negotiate in good faith.

6.3.7.5 Access to Facilities

6.3.7.5.1 Under **section 27 of the Telecommunications Act, 2006** access to facilities and utility installations shall not be unreasonably denied by the Licensee and access shall be negotiated on a non-discriminatory and equitable basis.

6.3.8 Evaluation of Licensee's Interconnection Obligations

6.3.8.1 Based on the Commission's file, the Evaluation did not find evidence that there were any interconnection agreements concluded between the Licensee and any other public supplier. This may be attributed to the fact that the Licensee's service was centered around the provision of cable television. Hence there would not be a need to conclude such agreements.

6.3.8.2 Based on the Commission's file, the Evaluation did not find evidence that access to facilities has been unreasonably denied by the Licensee.

6.3.9 Disclosure of information to the Commission

6.3.9.1 **Section 69 of the Telecommunications Act, 2006** requires the Licensee to make returns, or furnish documentation, to the Commission for statistical purposes or where the disclosure would facilitate the carrying out of the Commission's functions, powers, or duties, or is in the public interest.

6.3.9.2 **Section 70 of the Telecommunications Act, 2006** allows the Commission to serve a notice on a Licensee to produce or furnish to the Commission at a time and place specified in the notice any documents specified or described in the notice that are in that person's possession or custody or under his control, where it appears to the Commission that a Licensee may be contravening, or may have contravened the Act, the Regulations, the Telecommunications Code, any instructions or any term or condition of a Licence or frequency authorization; or it is reasonably required for the purpose of discharging the Commission's functions or ensuring compliance with the Act, the Regulations, the Telecommunications Code or any term or condition of a Licence or frequency authorization.

6.3.9.3 **Annex 8 of the Licence** stated that the Licensee must submit revised interconnection agreements within one week, August 1st, 2012.

6.3.10 Evaluation of Licensee's Information Disclosure Obligations

6.3.10.1 The Evaluation shows that the Licensee does not ordinarily comply with general requests for information.

6.3.10.2 Section 70 requests must generally be invoked to obtain requested data, and these are generally not complied with as demonstrated above.

6.3.10.3 **Annex 8 of the Licence** does not apply to the Licensee as it only provided cable television services.

6.3.11 Designation of a Compliance Officer

6.3.11.1 It is a statutory requirement that the Licensee appoint a compliance officer under **section 72 of the Telecommunications Act, 2006**, which indicates the qualifications that person must possess.

6.3.12 Evaluation of Licensee's compliance with requirement to appoint a Compliance Officer

6.3.12.1 The Evaluation found no documentation of a compliance officer being approved by the Commission.

6.3.12.2 On 18 October 2007, the Commission wrote to the Licensee pertaining to **section 72 of the Telecommunication Act 2006**, and the appointment or designation of a compliance Officer. The name and contact information were to be provided to the Commission.

6.3.12.3 A letter was sent from the Commission to the Licensee dated 20 May 2008 informing the Licensee that the Commission had not received the information relative to its Compliance Officer as requested by the letter dated 18 October 2007.

6.3.12.4 The Evaluation notes a letter dated 2 March 2011 from Innovative Companies to the Commission, following the transfer of control of the Licensee on 1 March 2011, in which a Jennifer Matarangas-King, Vice President of Public Relations and Governmental Affairs for Innovative Companies, indicated that she will be responsible for customer complaints and compliance.

6.3.12.5 Additionally, the Commission wrote to the Licensee on 8 April 2019 requesting that it be provided with the name of its compliance officer so that its Chief Economist would be able to liaise with said officer for the provision of essential data requests. Based on the Commission's files, the Licensee neither acknowledged nor responded to said correspondence.

6.3.12.6 The Evaluation was not able to locate any evidence of the Commission being provided with the statutory required compliance manual or any submitted written reports confirming compliance with the relevant legislation and the Licence by the Licensee and its staff.

6.3.12.7 Notwithstanding paragraph 6.3.12.1 above, the Evaluation notes that in its letter dated 28 June 2021, referred to in paragraph 7.2.4 below, the Licensee proposed that its CEO would be its Compliance Officer.

6.3.13 Management of Consumer Complaints

6.3.13.1 **Article 7 of the Licence** states that the Licensee shall establish an efficient conflict resolution procedure.

6.3.13.2 The **Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010**, contains detailed guidance in relation to the complaint procedures. It outlines the period for acknowledgment and resolution of complaints, the requirement for an efficient complaint resolution procedure, and lists the duties of the Licensee in dealing with customer complaints.

6.3.13.3 **Section 5 of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall acknowledge receipt of a complaint within five (5) business days and where possible, in writing and outline the time frame for resolution and contact details of the person dealing with the complaint and any other relevant information.

6.3.13.4 **Section 6 of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall resolve the complaint within twenty (20) business days where possible.

6.3.13.5 **Section 17 (1)(c-d) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall establish and maintain channels for customers to submit complaints, must have a number available for this, and make the complaints submission process known to the public.

6.3.13.6 **Section 17 (1)(e) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** requires that the Licensee create a reasonable process for registering, investigating and resolving complaints where customers are informed of the recourse.

6.3.13.7 **Section 17 (1)(g) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that no more than ten (10) business days after the end of each reporting quarter, the Licensee must submit to the Commission a report of all the complaints received. The report should contain the number of complaints received related to billing and rates, and QoS; how many were resolved and rejected relative to each area; the number of complaints where Licensee fully or partially satisfied the

grievances; the total value of reimbursements, compensations, credits et cetera in monetary reimbursements or compensations (services).

6.3.14 Evaluation of Licensee's compliance with management of Consumer Complaints

6.3.14.1 In the letter dated 2 March 2011 referred to in paragraph 6.3.12.4 above, Ms. Matarangas-King indicated that contact would be made with the Commission to set up a meeting to review the procedures for resolving customer complaints. There is no indication on the Commission's file as to whether this meeting took place.

6.3.14.2 However, the Evaluation shows that the Licensee first provided the Commission with its Complaints Procedures in 2011. Since then, no updated versions have been provided to the Commission.

6.3.14.3 The Evaluation notes correspondence from the Commission to the Licensee dating back to 6 September 2012 requesting Consumer Complaints Data for the periods 01 July 2011 to 30 September 2011 and 1 October 2011 to 31 December 2012 to be provided by 19 September 2012. In a letter dated 3 May 2013, these reports were again requested by 16 May 2013.

6.3.14.4 It is also a requirement that the Licensee, submit to the Commission a report of all the complaints that it received and resolved in that quarter. While the Licensee included some complaints statistics in its quarterly QoS reporting, it does not comply with the requirement to provide to the Commission complaints statistics and reporting on a monthly basis as per **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**. It is also noted that the complaints statistics that are to be provided in its quarterly QoS reporting are outstanding from Quarter 2 of 2017 as the QoS Reports have been outstanding from Quarter 2 of 2017 to present.

6.3.14.5 As noted in paragraph 6.2.5.10 above the Licensee does not appear to have an operational website which would provide information to the public on the contact person to whom complaints are submitted.

6.3.14.6 Notwithstanding, paragraph 6.3.14.2 above, the Evaluation notes that in its response to the Harneys Audit dated 28 June 2021, detailed under paragraph 7.2 below, the Licensee provided a Complaints Procedure.

6.3.15 Competition Rules

6.3.15.1 Under **Article 10 of the Licence**, the Licensee is mandated not engage in any activities, whether by act or omission, which have or are intended to or likely to have, the effect of unfairly preventing, restricting, or distorting competition in relation to any business activity relating to communications services.

6.3.15.2 Additionally, the Licensee must comply with reasonable requests by the Commission to submit periodic reports, statistics, and other data and to inspect the Licensee's facilities, files, records, and other data as well as request additional

information with a view to supervise and effectively enforce the terms of this Article.

6.3.15.3 Under **section 26(4) of the Telecommunications Act, 2006**, where the Commission determines that a public supplier is dominant in any market, the Commission shall include in the Licence of the public supplier, upon issuing or by amending the Licence, such additional terms and conditions to the Licence for the purposes of regulating tariffs, protecting the interest of users and other Licensees including the provision of adequate facilities and interconnection and access services, and of ensuring fair competition among Licensees as it considers appropriate.

6.3.16 Evaluation of the Licensee's compliance with competition rules

6.3.16.1 As indicated in paragraph 6.1.2.6.4 above, there was an ownership change where TGM Holdings Limited acquired ownership of the Licensee. This change was a direct contravention with **Article 10.1(b) of the Licence** but was approved by the Minister of Communications and Works under **section 16(2) of the Telecommunications Act, 2006** after initial approval was given by the Commission. The Commission later issued certain instructions in a letter dated 23 August 2017 (mentioned in paragraph 6.1.2.6.5 above) but based on correspondence received by the Commission in response to this letter, the transaction had been completed on 18 August 2017.

6.3.16.2 The Evaluation notes that, at the time of the ownership change, the Licensee only provided cable television services in the Territory and thus the cross ownership of the Licensee and CCT (BVI) Ltd., which provides other telecommunications services to the Territory, did not raise concerns regarding compliance with competition rules raise concerns regarding compliance with competition rules per se. However, based on the ownership structure of the Licensee and CCT (BVI) Ltd. and the fact that the Commission has not been provided with a copy of the Owner Contribution Agreement between the Licensee and CCT (BVI) Ltd. despite repeated requests, the Evaluation is unable to definitively conclude that the Licensee is compliance with competition rules.

6.3.17 Confidentiality Obligations

6.3.17.1 Under **Article 7 of the Licence**, the Licensee shall maintain the confidentiality of the content of all communications over its network from interference, eavesdropping or recording by Licensee.

6.3.17.2 Additionally, the Licensee shall institute reasonable measures and procedures to safeguard the confidentiality of business secrets and personal data concerning its subscribers which it acquires during its business.

6.3.17.3 Furthermore, Under **Article 7.9 of the Licence**, the Licensee shall appoint one of its officers to oversee the implementation, compliance and supervision of such

measures and procedures. On 15 February every year, the Licensee shall submit to the Commission an annual report for the preceding calendar year, or portion thereof, setting forth such measures and procedures which have been established by the Licensee and describing the effectiveness thereof and any necessary changes and improvements thereto.

6.3.17.4 Under the **section 7 of the Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**, the Licensee is required to protect personal information and details from disclosure.

6.3.18 Evaluation of Compliance with Confidentiality Obligations

6.3.18.1 The Evaluation notes that the Licensee provided information on its cyber security in February and March 2017 after requests made on 6 June 2016, 31 October 2016, and finally a **Section 70 notice** from the Commission dated 16 January 2017 (referred to in paragraph 6.2.5.6.4 above). Based on the information provided on its cyber security, the Evaluation finds that the Licensee complied with its confidentiality obligation in relation to protecting its customers' personal details, usage, and disclosure as it outlined the procedure the Licensee has in place to handle and manage information for safe keeping.

6.3.18.2 The Evaluation notes that in the **Section 70 Notice** dated 16 January 2017 (first mentioned in paragraph 6.2.5.6.4 above) the Commission requested that the Licensee provide its Annual Compliance Report in accordance with Article 7.14 of the Licence and Annex 4. The Licensee responded by correspondence dated 3 February 2017 (mentioned in paragraphs 6.2.5.6.4 and 6.2.5.19.1 above and discussed in paragraph 6.3.18.8.1 below).

6.3.18.3 The Commission sent a further letter to its letter of 16 January 2017 dated 23 January 2017 to aid the Licensee with completing its Annual Compliance Report. It indicated to the Licensee that the reporting parameters for service quality requirements that apply to years 1 through 5 of the Licence were never submitted to the Commission and stated that it needed all the information listed in Section A of Annex 4. The Commission also indicated that the Licensee was to use the parameters for Year 5 of Annex 3 to report on the Licensee's current service quality requirements.

6.3.18.4 In its follow up letter dated 3 March 2017 (first mentioned in paragraph 6.2.5.6.5 above), the Commission indicated that the annual compliance report was insufficient and referred the Licensee to **Article 7.14 of the Licence** and the requirements outlined therein which include the completion of Annex 4.

6.3.18.5 In a letter dated 21 March 2017 (first mentioned in paragraph 6.2.5.6.6 above), the Commission pointed out that there had been no response to its letter dated 3 March 2017. The Commission requested a response by 31 March 2017 and stated that enforcement action would be taken if the Licensee failed to respond. The

Evaluation found a letter from the Licensee dated 30 March 2017 which referenced the Commission's letters of 3 and 21 March 2017.

6.3.18.6 The Evaluation finds no evidence that an Annual Compliance Report was provided to the Commission thereafter.

6.3.18.7 The Evaluation finds no evidence on the Commission's files of an annual report being submitted to the Commission in relation to the effectiveness of its confidentiality and privacy obligation.

6.3.18.8 **The Licensee's Response**

6.3.18.8.1 In its response of 3 February 2017, the Licensee indicated, amongst other things, that it had been advised by an employee at the Commission that only the portion of Annex 3 that concerns frequencies and not Annex 4 was applicable to it. The Commission addressed this issue in its letter of 3 March 2017.

6.3.18.8.2 In its letter dated 30 March 2017 the Licensee explained that it was not an Internet Service Provider and thus it had a different focus on cybersecurity than entities that offer end-user cyber products. It also indicated that although it was not yet incorporated into the network of its corporate parent, it was subject to corporate cyber-security policies and provided to the Commission the ATN International Cyber Security Policy.

6.3.19 Other Duties and Obligations

6.3.19.1 In accordance with **Article 7.1(b) of the Licence**, the Licensee shall not reduce or cease to provide a service unless, with the Commission's consent, it is substituted by a service more advantageous for customers.

6.3.19.2 According to **Article 7.10(e) of the Licence**, within three (3) months from the effective date of the Licence, the Licensee shall submit to the Commission for its approval a form of service agreement containing the terms and conditions for the provision of Licensed Services to subscribers and customers, the Master Service Agreement.

6.3.19.3 In accordance with **Article 7.16 of the Licence** the Licensee must file its consortium, shareholders, partnership or other such agreements with the Commission.

6.3.19.4 **Article 6.1 of the Licence** outlines the Licensee's right to place and maintain telecommunications lines.

6.3.19.4.1 This must be done in accordance with the provisions of the **Physical Planning Act, 2004**, the development plan for the area and the provisions of the **Road Ordinance** and any other relevant written law.

- 6.3.19.4.2 The Licensee's is obligated to obtain plans from the Chief Planner showing all utility installations that might be affected, to submit detailed plans of intended works to affected utility installation owners and, if applicable, obtain their written permission.
- 6.3.19.4.3 The Licensee must inform the Commission of intended works and the Commission shall notify other operators and public utilities.
- 6.3.19.5 **Article 6.2 of the Licence** outlines the Licensee's obligation to repair and restore.
- 6.3.19.5.1 If the Licensee damages any utility installation in carrying out works, it shall immediately request the utility installation owner to repair the damage to the utility installation and shall compensate the utility installation owner for the full cost of repair.
- 6.3.19.5.2 The Licensee shall, as speedily as possible, complete all works and restore any road or public grounds affected, including the removal of any debris, to the written satisfaction of the Chief Planner, and if the Licensee fails to comply it shall be held liable for any expenditure that the Chief Planner incurs in such restoration and for any other loss by any other person for a period of two years.
- 6.3.19.6 **Article 7.3(a) of the Licence** states that the Licensee should not interrupt operation of the telecommunications network or any portion thereof or to suspend the provision of any licensed service in the normal course of business, without providing reasonable advance notice to affected customers.
- 6.3.19.7 **Article 7.3(d) of the Licence** indicates that the Licensee shall give reasonable notice to the affected public of scheduled routine maintenance on the network which results in disruption of service exceeding thirty (30) minutes. The Licensee is obliged to perform all routine maintenance on the network which will result in service disruption between the hours of 2.00 a.m. and 5.00 a.m.
- 6.3.19.8 In cases of emergency interruptions, **Article 7.3(b) of the Licence** provides that the Licensee shall maintain adequate diagnostic equipment and shall employ sufficiently trained staff locally to ensure prompt restoration of licensed services.
- 6.3.19.9 Under **Article 13.3 of the Licence**, the Licensee is required to comply with the Commission Regulations concerning the implementation of the Numbering Plan and domain name management.
- 6.3.19.10 Under **Article 13.3 of the Licence**, the Licensee is required to obtain all necessary licences and permits including building permits to build and maintain installations and buildings.

6.3.19.11 Under **section 77(2) of the Telecommunications Act 2006**, the Commission has the power where it is considered necessary for the effective performance of its functions and prudential supervision of telecommunications services business to issue directives of a special or general nature not inconsistent with the provisions of this Act, the Regulations, or the Telecommunications Code.

6.3.20 Evaluation of compliance with other duties and obligations

6.3.20.1 As indicated in paragraph 6.3.4.1. the Evaluation found in the Commission's file a copy of the Memorandum and Articles of Association certified on 18 June 2009, Certificate of Incorporation certified on 1 January 2009, Certificate of good standing dated 18 June 2009.

6.3.20.2 The Evaluation notes correspondence from the Commission to the Licensee dated 20 May 2005 requesting the Master Service Agreement be submitted to the Commission for approval in accordance with **Article 7.10(h) of the Licence**. The Evaluation did not find any response from the Licensee to this request.

6.3.20.3 The Evaluation observed correspondence from the Commission to the Licensee dated 3 January 2014 (first referred to in paragraph 6.2.5.10 above) in which the Commission requested a copy of the Licensee's Terms and Conditions to verify that the proposed rate increase was in accordance with its Terms and Conditions. There is no evidence that this information was received by the Commission.

6.3.20.4 The Evaluation reveals that prior to 2016, the Licensee kept the Commission informed on changes in cable packages and channels. Since then, no such correspondence is noted on the Commission's file since 12 May 2015.

6.3.20.5 The Licensee has a duty not to reduce or cease to provide a service unless, with the Commission's consent, it is substituted by a service more advantageous for customers. The Licensee primarily provided cable television services as indicated in paragraphs 6.1.2.2.3 and 6.1.2.12 above and based on the information on the Commission's file, this service ceased after September 2017. As it indicated on its Facebook page in the post, dated 19 October 2017 referred to in paragraph 6.2.5.10 above "*BVI Cable TV system was destroyed by Hurricane Irma on September 6, 2017. All offices are closed until rebuild is completed.*" While this hurricane was an event of Force Majeure, it occurred four (4) years ago in 2017 and there has been no update on the Licensee's Facebook page since then nor has there been any correspondence to the Commission relative to the re-launching of its services.

6.3.20.6 The Licensee has a duty to ensure prompt restoration of licensed services following an emergency interruption. However, in its response to the Harney's Audit dated 28 June 2021, as mentioned in paragraphs 6.1.2.2.6.3.4 and 6.1.2.10.2 above, the Licensee indicated that it was not using the frequencies assigned to it in 2016, for which it must re-apply annually.

6.3.20.7 Furthermore, the Licensee has not provided to the Commission any reports relative to the services that it is providing since September 2017. It is noted that the Commission wrote to the Licensee by letter dated 19 June 2020 confirming receipt of the Licensee's Royalty Fees for 2019 from CCT (BVI) Ltd. on behalf of the Licensee and requested further information on the source of its revenue streams, specifically, the telecommunications related services or sales by the Licensee, to who these were being provided and the relevant period for the revenue generation. This said letter noted that a similar request had been made via letter dated 18 April 2019 and the Commission was still awaiting a reply. The Evaluation did not find any response by the Licensee to the Commission's letters of 18 April 2019 and 19 June 2020.

6.3.20.8 There is nothing on the Commission's files to indicate that the other obligations outlined under paragraph 6.3.19 were not complied with.

7 Audit by Harneys Fiduciary in 2019

7.1 The Audit

7.1.1 In or around February 2019, the Commission appointed Harneys Fiduciary to conduct an audit of the Licensee to identify areas of compliance and non-compliance with telecommunications obligations and to make any necessary recommendations.

7.1.2 Based on the audit done, the following recommendations were made to the Licensee:

7.1.2.1 Ensure to clarify and regularise the relationship between BVI Cable TV and CCT BVI. Document an outline of the operational platform and share all relevant underlying documentation with the Commission. The information should seek to clarify what functions are integrated or separated, what governance and management boards or committees are shared and not (if any) and, most importantly, how do BVI Cable TV and CCT BVI handle and clearly segregate customer records and details.

7.1.2.2 Put measures in place to ensure that a consistent exchange is established with the Commission in relation to pricing and new products.

7.1.2.3 Commit to paying the levy on time going forward and pay the outstanding and owed amounts (inclusive of any late payment penalties and interests that may apply).

7.1.2.4 Take steps to implement an adequate system to ensure correct capture and collation of data in the required format to enable correct and timely QoS report submissions and the relevant complaints statistics.

7.1.2.5 To establish a suitable public communications platform.

- 7.1.2.6 Present the Commission with a detailed plan on how to achieve a higher level of compliance and ensure that correct and timely QoS reporting is in place (both to the Commission and to its website).
- 7.1.2.7 Ensure that an active exchange with the Commission is taken along with a more collaborative approach with the TRC.
- 7.1.2.8 Allocate a suitably qualified resource to ensure that the required notifications are prepared and submitted in a timely manner.
- 7.1.2.9 Ensure that an experienced and suitably qualified Compliance Officer with sufficient resources is appointed and approved by the Commission. The role of the Compliance Officer, acting as the main liaison between the Commission and the Licensee's senior management, is an essential one as it relates to the implementation, maintenance, monitoring and reporting of an effective compliance monitoring system with documented procedures. The Compliance Officer must be able to closely monitor the internal compliance mechanism and make sure it is fully operational and enable the Licensee to comply with all requirements, especially driving notifications of events and triggers.
- 7.1.2.10 Ensure qualified resource(s) are allocated to act as the Licensee's Confidentiality Officer and person responsible for the complaints procedures to ensure that documented policies and procedures in these areas are firmly in place (and made available to the public) and is compliant with the legislation
- 7.1.2.11 Ensure to allocate a dedicated resource to ensure that an internal compliance monitoring function is fully operational and enabling the Licensee to comply with all requirements.
- 7.1.2.12 Instigate review of current disaster recovery procedures to ensure they are effective, shared, maintained and approved by the Commission.
- 7.1.2.13 Urgently submit a detailed workplan and timetable of restorative works required in order to resume service to the Commission for review and approval.
- 7.1.2.14 Implement procedures to ensure that all of the required information is available for viewing on its website in a timely manner, such as QoS data, coverage maps, directory services, inter-connectivity agreement/s and complaint submission forms/procedures.
- 7.1.2.15 Adopt a more collaborative and transparent approach to the Commission by improved compliance with reasonable requests for information; ensuring that the Commission is in receipt of all up-to-date policies and procedures, due diligence, relevant notifications and required approvals as well as facilitate access for the Commission for onsite inspections of records, facilities and equipment.

- 7.1.2.16 Create and document a risk management framework and foster a healthy compliance culture that enables timely and correct prioritisation of technical fixes and regulatory notifications as well as areas of investment and improvement.

7.2 The Licensee's response to the Audit

- 7.2.1 On 29 June 2019, written correspondence was sent by the Commission to the Licensee indicating that an internal audit had been completed which revealed that there were certain areas of non-compliance by the Licensee and that the Commission will be issuing instructions for the submission of various documentation and actions which should be taken to remedy the irregularities. There is no indication on the Commission's files that these instructions were issued.
- 7.2.2 On 11 June 2020, the Commission sent a letter to the Licensee in which it attached a copy of the audit results. The finding of the audit was that the Licensee was *non-compliant* and the above recommendations, outlined under paragraph 7.1.2, were made by Harneys for the Licensee to become compliant. The said letter indicated that contact would be made to set a mutually convenient time to discuss the findings of the audit. The Licensee was asked to peruse the audit and contact the Commission if there were any questions or concerns. This proposed meeting between the Commission and the Licensee has not taken place.
- 7.2.3 By correspondence dated 21 May 2021, the Commission requested that the Licensee provide an update as to what has been done to implement the recommendations made by Harneys, excluding the issue of Industry Levy.
- 7.2.4 The Licensee responded to this correspondence by letter dated 28 June 2021 indicating that it was compliant in that it has operated within the terms of the current License agreement and frequency authorisations, has complied in material respects with, or is not in persistent breach of, any of the provisions of this Act, the Regulations, the Telecommunications Code or the terms and conditions of the license agreement and the frequency authorisation, and has complied in material respects with, or is not in persistent breach of, any instructions of the Commission.
- 7.2.5 It addressed a few of the issues of the Harneys Report stating that in relation to the finding that the Commission did not have information regarding the cross-ownership issue, mentioned under paragraph 6.1.2.6 above, this matter involved the Licensee's shareholders and not the Licensee itself. It further indicated that it had received the approval of the Minister acting on the advice of the Commission and thus any cross-ownership should not constitute a non-compliance by the Licensee. The Evaluation notes that the Licensee did not address the issue of the Commission not having the requisite information regarding the cross-ownership nor address the other matters outlined under paragraph 7.1.2 above.
- 7.2.6 The Licensee also indicated that it did not agree with the finding that harmful interference could not be ascertained due to the unknown status of its radio links as it was not using

its radio links and if it were using same, it would have applied for authorisation as it had done in the past.

- 7.2.7 The Licensee stated that it was flabbergasted that no spectrum management considerations had been made to it as a unitary telecommunications licensee. It indicated that the Commission's statement in the Spectrum Management Framework Review 2017 that there were three mobile network operators in the British Virgin Islands and that it did not believe that it should promote further entry into the mobile sector at that time, was completely inconsistent with the fact that there are four unitary telecommunications licenses in the British Virgin Islands.
- 7.2.8 The Commission notes, however, that, as detailed in paragraph 6.1.2.2 above, there seems to have been initial discussions between the Commission and the Licensee about providing frequencies for the establishment of mobile telephony services. Furthermore, the Evaluation found correspondence from the Commission to the Licensee dated 25 October 2007 where the Commission indicated that it had assigned listed International Mobile Subscriber Identity codes to the Licensee for its mobile telephone service, namely Mobile Country Code - 348, Mobile Network Code - 370, Mobile Subscriber Identification number - Determined by Licensee. Notwithstanding this, as discussed under paragraph 6.1.2.12 above, to the best of the Commission's knowledge and information, the Licensee provided only cable television services and never ventured into the provision of mobile telephone services. Furthermore, there is no indication on the Commission's files that the Licensee applied for frequency authorisation to provide any telecommunications services except cable television.
- 7.2.9 Relative to the failure to provide QoS reports, the Licensee responded that it suffered significant damage from Hurricanes Irma and Maria and has only recently restored broadcast television services. The Licensee did not provide any information relative to this service or a date when the service recommenced. It is noted that the Licensee has paid its Royalty fees to the Commission each year, thus indicating that it is generating revenue through the provision of services, although it has not provided the Commission with any information on what these services are as indicated in paragraph 6.3.20.7 above.
- 7.2.10 The Licensee stated that it will ensure that QoS reports and requests for information are submitted on time moving forward. However, at the time of finalization of this Evaluation, four (4) months after the Licensee's June 2021 letter, there were numerous outstanding reports including the QoS information from Quarter 2 of 2017 to present, information relative to revenue streams, etc.
- 7.2.11 The Licensee disputed that it had not provided a workplan and timetable in relation to restoration works following Hurricane Irma and Maria and provided attached a one-page document to its response. This issue was outlined under paragraph 6.1.2.16.2 above.
- 7.2.12 The Licensee also indicated that it had updated its Complaints Procedure and provided a one-page document that was updated in 2021. It also provided a Business Continuity Plan. The Licensee further indicated that its CEO would serve as its Compliance Officer.

8 CONCLUSION

- 8.1 **Section 24 of the Telecommunications Act, 2006 states** that subject to the terms and conditions of a licence or frequency authorisation, the Commission may renew the licence or frequency authorisation provided that the licensee or authorisation holder has operated within the terms of the current licence or frequency authorisation; has complied in material respects with, or is not in persistent breach of, any of the provisions of this Act, the Regulations, the Telecommunications Code or the terms and conditions of the licence or the frequency authorisation, and has complied in material respects with, or is not in persistent breach of, any instructions.
- 8.2 Before determining not to renew a licence or a frequency authorisation, the Commission shall give the licensee or the authorisation holder adequate advance notice, which, absent exigent circumstances and except as provided for in subsection (1), shall not be less than thirty (30) days, in writing of its intention not to renew such licence or frequency authorisation, specifying the grounds on which it proposes not to renew, and shall give the licensee or the authorisation holder the opportunity to present its views, and to submit to the Commission within such time as the Commission may specify a written statement of objections to the decision not to renew the licence or the frequency authorisation, which the Commission shall take into account before reaching a decision on renewal.
- 8.3 This is reinforced by **Article 3.3(b) of the Licence** which requires the Commission to prepare an Evaluation Report stating the extent to which the Licensee has generally complied with its obligations under the Licence, the regulations and orders adopted from time to time by the Commission, generally provided the licensed services and conducted its business in accordance with the laws of the British Virgin Islands.
- 8.4 Based on the findings of the Evaluation contained herein, the Commission finds that
- 8.4.1 until September 2017, the Licensee provided a singular service, cable television services, to the Territory of the British Virgin Islands which was one of the services it was authorized to provide under the terms of its Licence in accordance with the laws of the British Virgin Islands;
 - 8.5.1 apart from providing a singular service, prior to 2017 the Licensee was largely compliant with its licence and regulatory obligations but subsequent to September 2017 the Licensee has been largely non-compliant with its licence and regulatory obligations.
 - 8.5.2 as outlined in this Evaluation Report, there are numerous outstanding areas of non-compliance that must be addressed before the Commission can progress the Licensee's renewal application including, but not limited to:-
 - 8.5.2.1 ensuring that it has a website for the purposes of carrying out its obligations under the Law and its Licence;

8.5.2.2 ensuring that its website has been updated to reflect the requirements of the Telecommunication Act and the Telecommunication Code so that:-

8.5.2.2.1 QoS reports are available in accordance with **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010;**

8.5.2.2.2 customers can easily find the procedure on how to submit a complaint in accordance with **the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** and if possible, be able to submit a complaint via the website;

8.5.2.2.3 all other relevant information is available such as services offered, prices, company contact information, Help, et cetera.

8.5.2.3 providing to the Commission the relevant outstanding documents, procedures, manuals, and agreements referred to within this Evaluation, including but not limited to:

8.5.2.3.1 the outstanding QoS reports, dating back to Quarter 2 of 2017, formatted in accordance with the Code and the guidelines given by the Commission;

8.5.2.3.2 audited financial statements for the financial years 2016, 2017, 2018, 2019 and 2020;

8.5.2.3.3 outstanding ITU Market Data;

8.5.2.3.4 cross-ownership agreement between the Licensee and CCT BVI Ltd.;

8.5.2.3.5 the information relative to the designated officer in charge of the implementation, compliance and supervision of confidentiality measures and procedures in compliance with **Article 7.9 of the Licence**, and whether or not this is a separate person to the Compliance Officer;

8.5.2.3.6 manual of Compliance Procedures;

8.5.2.3.7 annual compliance reports in compliance with **Article 7.9 of the Licence;**

8.5.2.3.8 written reports on the Licensee's compliance with the provisions of this Act, the Regulations, the Telecommunications Code, the conditions of its licence and any instructions in compliance with **section 72 of the Telecommunications Act, 2006;**

8.5.2.4 address the applicable outstanding issues in the Harneys Audit as detailed under paragraph 7.1.2 above, especially those where reports or documents are required, including but not limited to paragraphs 7.1.2.1, 7.1.2.6, and 7.1.2.10.

Dated this day of 2021

For and on behalf of the Telecommunications Regulatory Commission

**Guy L. Malone
Chief Executive Office**