



**EVALUATION REPORT  
DIGICEL (BVI) LTD**

**LICENSE PERFORMANCE FROM DECEMBER 2007 – DECEMBER 2021**

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## 1. EXECUTIVE SUMMARY

- 1.1. Pursuant to the requirement set out in **section 15 of the Telecommunications Act 2006**, on the 17 day of December 2007, the Telecommunications Regulatory Commission (the Commission) granted a Licence to Digicel (BVI) Ltd.
- 1.2. The Licence is for fifteen (15) calendar years, effective from 17 December 2007, and gave 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; cable television service via wireline network; and international connectivity services .
- 1.4. **Article 16 of the Licence** outlined 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 License agreement, there were obligations that had dates of fulfillment attached to the fifth anniversary of the Effective date, which was December 17, 2012. The Commission carried out an evaluation of the Licensee' 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 Commissions files. The Commission has continued to monitor the Licensee's performance.
- 1.6. The Licensee's Licence expires on 17 December 2022 and in accordance with **Article 3.2 of the Licence**, on 17 December 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 Acts and Codes.
- 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 License, 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 predominantly compliant with its major obligations, and that while there are a few minor matters that need to be rectified, the renewal application can progress as long as the other requirements of the application process have been met.

## 2. BACKGROUND

- 2.1. On the 17 day of December 2007, the Commission granted to Digicel (BVI) 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 17 December 2022 and in accordance with **Article 3.2 of the Licence**, the Licensee on 17 December 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 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 30 December 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 24 February 2022.
- 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 26 April 2022.
- 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](http://www.trc.vg)).
- 2.8. On 06 May 2022, a public hearing will be held at the Moorings Conference Room 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](mailto: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](mailto: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 Digicel (BVI) 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 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 December 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 December 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 Act and Code;
- 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. By correspondence dated 21 March 2022, a draft version of the Evaluation was sent to the Licensee for comments to the Commission on or before 04 April 2022. The Licensee started responding on 25 March 2022 to address the issues outlined under paragraph 8.4.2 of the Draft Evaluation.

4.4. The Commission notes that this Evaluation Report considers the Licensee's correspondences and responses stemming from the Harney's Audit and the Draft Evaluation, 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 like 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 ranges, 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 Acts, the Telecommunication Code, and industry standards.

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

#### 6.1.2.1 Obtaining Licence Permits, and Frequency Authorization

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 Number VRGM/001/2016 and section 3.1.9 of Frequency Authorisation Number VRGM/005/2016 and Frequency Authorisations Numbers VRGFX/0267/2016 to VRGFX/0272/2016** 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 on 17 December 2007 and expires 16 December 2022.
- 6.1.2.2.2 The Evaluation notes that there were several radio frequency authorisations assigned to the Licensee by the Commission during the Licence term, namely:
  - 6.1.2.2.2.1 Paired frequencies of 1710 MHz – 1725 MHz and 1805 MHz – 1820 MHz and paired frequencies 1880 MHz – 1895 MHz and 1960 MHz – 1975 MHz; backhaul frequencies 7128 MHz – 7184 MHz and 7282 MHz – 7338 MHz were issued from 17 December 2007;
  - 6.1.2.2.2.2 FA/003/2012 was issued on 17 October 2012 to expire on 18 January 2013 for additional spectrum within the 1900 MHz Band, namely 1875 MHz to 1880 MHz and 1955 MHz to 1960 MHz;
  - 6.1.2.2.2.3 FA/001/2013 was issued on 20 August 2013 to expire on 20 August 2014 for radio-frequency channels within the 15 GHz Band, namely 14795 MHz to 15215 MHz and 14823 MHz to 15243 MHz;
  - 6.1.2.2.2.4 Ninety-five (95) frequency authorisations were issued from 13 June 2016 to expire on 12 June 2017, that is, VRGFX/0001/2016 to VRGFX/0095/2016;
  - 6.1.2.2.2.5 Eighty-one (81) frequency authorisations were issued from 12 October 2016 to expire on 11 October 2017, that is, VRGFX/0300/2016 to VRGFX/0381/2016;
  - 6.1.2.2.2.6 Authorisation Number, VRGM/001/2016, frequency authorisations for 1710 MHz – 1725 MHz paired with 1805 MHz – 1820 MHz and 1880 MHz – 1895 MHz paired with 1960 MHz – 1975 MHz were issued from 5 July 2016 to expire on 16 December 2022;

6.1.2.2.2.7 Authorisation Number, VRGM/005/2016, frequency authorisations for 776 MHz – 7787 MHz paired with 746 MHz – 757 MHz and 1725 MHz – 1740 MHz paired with 2125 MHz – 2140 MHz were issued from 23 August 2016 to expire on 22 August 2031.

### 6.1.2.2.3 **Instances of non-compliance**

6.1.2.2.3.1 The Evaluation notes that as a part of its application in 2007, the Licensee was issued certain frequency authorisations.

6.1.2.2.3.2 The Commission issued a notice of non-compliance to the Licensee on 13 February 2019 in relation to micro-wave link authorisations VRGM/0001/2016, VRGM/0005/2016 and VRGFX/0300/2016 VRGFX/0381/2016 and provided the necessary application form to the Licensee. The Licensee was given until 5 March 2019 to be compliant.

6.1.2.2.3.3 On 05 May 2021, the Commission wrote to the Licensee indicating that some its authorisations for microwave links had expired since 2017 and other were due to expire in May 2021 and attached the requisite application form to be completed and returned by the Licensee to the Commission by 21 May 2021.

#### 6.1.2.2.3.4 **The Licensee's response**

6.1.2.2.3.4.1 The Evaluation indicates that in 2015, the Licensee was required by the Commission to enter into undertakings with the Commission, which included amongst other obligations, the obligation to apply for frequency authorisations for point-to-point microwave fixed links required for the support of its mobile telecommunications network. These undertakings were prerequisites which allowed the Licensee to qualify to participate in the Spectrum Award Process.

6.1.2.2.3.4.2 The Commission's files reflect that the requisite applications were made by the Licensee for point-to-point microwave fixed link following the issuance of the Commission's letter of 5 May 2021.

### 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 found that in 2017, post Hurricanes Irma and Maria, the Offices of the Governor of the Virgin Islands issued a request to three (3) telecommunications operators, including the Licensee, for there to be implemented an interim commercial arrangement between said operators. The operators were unable to reach an agreement regarding said arrangement and the Governor's request was not implemented. The Evaluation notes that there was no follow-up from the Governor's Offices regarding his request.

6.1.2.4.2 The Evaluation reveals that the relevant operators were meeting with the Commission three times per week – Mondays, Wednesdays, and Fridays – to discuss service restoration progress. In those meetings the issue of charging one of the operators (not the Licensee) for the service ordered by the Governor arose, and this was rejected by said operator. Thereafter, the Governor's request was not carried out by the operators, including the Licensee.

#### **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 no evidence of any change in significant interest that required the Licensee to submit notifications to the Commission regarding same.

#### **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 evidence that 10 July 2016 the Commission fined the Licensee for not adhering to its designated bands. However, this decision was successfully judicially reviewed by the Licensee.
- 6.1.2.8.2 On the 22 July 2015, the Commission wrote to the Licensee relative to the use of spectrum in the 1900 band specifically 1875 -1880 MHz paired with 1955-1960 MHz by the Licensee, the authorized usage of which had expired on 18 January 2013. The Commission reminded the Licensee that the temporary assignment had expired, and that the spectrum was to be returned to its condition prior to the granted authorisation and as this was not done, the Licensee was to clear the spectrum forthwith and to notify the Commission by 3:30 p.m. on July 27, 2015. The Licensee responded by letter dated 24 July 2012.
- 6.1.2.8.3 In the said letter of 22 July 2015, the Commission also informed the Licensee that it was investigating an allegation that the Licensee was using spectrum in the 1900 MHz band that had not been assigned to any operator in the BVI.
- 6.1.2.8.4 On 29 July 2015 the Commission contacted the Licensee via letter requesting information on its actual frequency usage on the 850, 900, 1800 and 1900 MHz Bands. The Commission requested that the information be provided by the Licensee to the Commission by 3:30 p.m. on 31 July 2015.
- 6.1.2.8.5 In the said letter of 29 July 2015, the Commission made reference to its letter of 22 July 2015, and indicated that it had received no response from the Licensee by the stipulated date of July 27, 2015. The Licensee responded to this letter by correspondence dated 4 August 2015.
- 6.1.2.8.6 On 12 May 2016, the Commission wrote to the Licensee enquiring whether the Licensee was using or had used 1865 to 1875 MHz paired with 1945 to 1955 MHz bandwidth without authorization. The Licensee was instructed to reply by 17 May 2016. The Licensee responded via letter date 17 May 2016.
- 6.1.2.8.7 There was a meeting between the Commission and the Licensee on 19 August 2015 relative to issues of compliance that had to be rectified in advance of any application by the Licensee for spectrum in the 2015 Spectrum Award.
- 6.1.2.8.8 On 19 August 2015, the Commission issued an Invitation to Apply for a 700, 1900 and AWS-1 Spectrum Award. The Licensee did not meet the qualification of being in material compliance with the Act, its Licence, the Codes and thus the Licensee gave certain written undertakings to the Commission.

#### **6.1.2.8.9 The Licensee's response**

6.1.2.8.9.1 Although in its letter of 29 July 2015, the Commission stated that it had received no response from the Licensee to the Commission's letter of 22 July 2015, the Evaluation notes a letter from the Licensee dated 24 July 2015 in which it outlined its concerns about being directed to immediately vacate the said spectrum and gave a history of how the spectrum came to be assigned to it. It also requested the short-term assignment of the spectrum, namely 1875 MHz – 1880 MHz and 1955MHz -1960 MHz.

6.1.2.8.9.2 On 4 August 2015, the Licensee wrote to the Commission indicating that it had responded to the Commission's letter of 22 July 2015 and provided a copy of its letter dated 24 July 2015. It also referred to the Commission's letter of 29 July 2015 and again reiterated its request to be temporarily assigned the said spectrum, namely 1875 MHz – 1880 MHz and 1955MHz -1960 MHz. The Licensee also provided the requested details of its spectrum usage.

6.1.2.8.9.3 In its response dated 17 May 2016 to the Commission's letter of 12 May 2016, the Licensee indicated that it to ascertain whether the said spectrum would alleviate some of the harmful interference that it was experiencing, it had tested the said spectrum pending the approval of its application for temporary assignment of the said spectrum by the Commission. It noted that the interference persisted nonetheless, and it had already begun to vacate the spectrum and would have completely ceased occupation by midnight of May 18, 2016.

6.1.2.8.9.4 In another letter dated 17 May 2016, the Licensee notified the Commission that it had completely vacated the spectrum at 1865 MHz to 1875 MHz paired with 1945 MHz to 1955 MHz.

#### **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 intentional harmful interference caused by the Licensee on the Commission's files.

#### **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 provides a range of services comprising basic telephony services including local, national and international telephony services; cellular mobile telecommunications services; Dedicated Internet Access; Internet Exchange Point; Fixed Radio Communication Links; Optical fibre links; Internet Service; submarine cable networks; Wi-Fi networks; International Connectivity Services; value-added services; the sale and maintenance of subscriber premise wiring and terminal apparatus; the sale of cellular mobile telecommunications handset equipment; Pay Television; Wi-Fi network equipment; prepaid calling card services.

6.1.2.12.2 There are a few services that have not been provided although they were part of the services for which the Licensee was licensed, for example, satellite communication services. Additionally, there are a few services that 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 were discontinued.

#### **6.1.2.13 Provision of leased lines and circuit services**

6.1.2.13.1 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**

6.1.2.14.1 The Evaluation does not reveal that the Licensee ever provided leased lines and circuit 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 In a correspondence dated 21 October 2010, the Commission indicated to the Licensee that pursuant to section 89(5) of the Telecommunications Act 2006, the Licensee was issued a request for information (RFI) dated 28 September 2010. The Licensee responded to the RFI on 8 October 2010 but failed to provide certain information on the grounds of confidentiality/commercial sensitivity.
- 6.1.2.16.2 In this said letter of 21 October 2010, pursuant to section 70(2) of the Telecommunications Act 2006, the Licensee was given notice to provide certain documents including a copy of its Disaster Preparedness and Recovery Plan its Business Continuity Plan to the Commission within seven (7) days of receipt of the letter. The Evaluation was unable to ascertain what was the Licensee's response or if there was response from the Licensee to this correspondence, and no follow-up from the Commission was gleaned from the files.
- 6.1.2.16.3 On 26 July 2016 the Commission sought information from the Licensee about its preparedness for the 2016 Hurricane Season. The Evaluation was unable to ascertain what was the Licensee's response or if there was response from the Licensee to this correspondence, and no follow-up from the Commission was noted from the files.

6.1.2.16.4 Following the hurricanes of September 2017, by correspondence dated 25 October 2017, the Commission requested from the Licensee a detailed report which would include information pertaining to the state of its network after Hurricane Irma, the estimated cost of damage suffered, the baseline detail including assets prior to Hurricane Irma, indicators, specific restoration and/or rebuilding activities and timetable including proposed, start, duration and completion date of each activity, the expected date of completion of entire restoration and/or rebuilding exercise, the estimated development cost, the provision of a description of customer engagement, any plans for refunding costs of services not delivered, and its funding source. The Evaluation found evidence of a document from the Licensee, outlining its recovery program.

6.1.2.16.5 Additionally, in response to the Harney's Audit, the Licensee provided an updated Disaster Management Plan to the Commission in May 2021.

#### **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.

#### **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**

The Quality-of-service metrics provided by the Licensee as required by Annex 3 of the Licence exceeded the targets that were specified within the said Annex.

6.1.2.20.1 The Evaluation was unable to locate coverage maps, or QoS reports on the Licensee's website.

6.1.2.20.1.1 Notwithstanding paragraph 6.1.2.20.1 above, in responding to paragraph 8.4.2 of the draft Evaluation sent to it on 21 March 2022, on 25 March 2022 the Licensee provided the requisite coverage maps to the Commission.

### **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 **Section 3.1.9 of Frequency Authorisation Number VRGM/001/2016 and section 3.1.11 of Frequency Authorisation Number VRGM/005/2016 and Frequency Authorisations Numbers VRGFX/0300/2016 to VRGFX/0381/2016** 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 It is expected that over time new or replacement equipment would have been needed for the provision of services by the Licensee. Based on the data available, up to May 2021 there was no evidence on the Commission's file that the Licensee sought and/or was given permission by the Commission for any new equipment.

6.1.2.22.2 In May 2021, in response to the finding of the Harney's Audit, the Licensee provided to the Commission a list of all the new equipment that it had invested into its network.

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 The Evaluation found no evidence that the Licensee set up directory assistance services for its customers.

**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.

6.1.2.26.2 Based on the Commission's file, the Evaluation was unable to determine whether the obligations under **Article 7.11(b) and (c) of the Licence** were adhered to.

### **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 predominantly 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.

6.2.3.5 Under **Article 5.6 of the Licence**, the Licensee shall pay the annual fee for operation of an international submarine cable landing in the British Virgin Islands.

## 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 **Annex 10 of the Licence** indicates that the Licensee shall report on submarine cable locations and capacity by May 1 each year.
- 6.2.4.5 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.
- 6.2.4.6 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.
- 6.2.4.7 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.
- 6.2.4.8 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.

6.2.4.9 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.

6.2.4.10 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.

6.2.4.11 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.

6.2.4.12 **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.

6.2.4.13 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.

6.2.4.14 **Sections 3.3.2 of Frequency Authorisations Numbers VRGM/001/2016, VRGM/005/2016, and VRGFX/0300/2016 to VRGFX/0381/2016** 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 its financial statements or accounting system, then it can be concluded there had been some approval given to the Licensee 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 According to the Commission's records the Licensee's fiscal year ends on 31 March. Audited financial statements are being provided but not consistently before April 2021. Since then, the Licensee has put processes in place to be timely in its submissions and are currently up to date.
- 6.2.5.4 Although there has been some correspondence from the Commission to the Licensee pertaining to the late submission of fees, the Licensee has for the most part made timely payment of the assessed Spectrum fees.
- 6.2.5.5 The Evaluation notes that the Licensee does not operate an international submarine cable in the Territory and therefore, the requirements under paragraphs 6.2.4.4 and 6.2.3.5 are inapplicable.
- 6.2.5.6 The Evaluation shows that in 2015, the Licensee requested of the Commission that it be allowed to make its royalty payments on a quarterly basis to accommodate its financial year. The permission was granted by the Commission. However, since 2021 royalty payments have been paid annually. The Licensee generally pays the relevant Royalty on time.
- 6.2.5.7 The Evaluation reveals 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**. In the initial years, the data submitted was incomplete and was not in the format provided by the Commission. However, this has improved. The Evaluation uncovered the following:-
- 6.2.5.7.1 a letter dated 16 February 2012 indicating that the data for the 1st and 2nd periods (3rd and 4th quarters of 2011) were outstanding and requesting same by 27 February 2012. On 24 July 2012 the Commission acknowledged the receipt of the reports but indicated that required data was omitted or incorrectly calculated and provided instructions for correct completion of future reports.
- 6.2.5.7.2 a section 70 letter dated 16 January 2017, which amongst other things indicated that the Licensee was required to post the QoS Reports for Quarter 4 of 2014, Quarter 4 1015 and Quarters 1, 2, and 3 of 2016 on its website;

- 6.2.5.7.3 a follow up letter dated 23 January 2017 to its letter of 16 January 2017 indicating, in addition to other things, that the Licensee was to report on its current service quality requirement;
  - 6.2.5.7.4 another follow up letter dated 1 March 2017 acknowledging receipt of certain documents and indicating that certain QoS reports were not seen on the website;
  - 6.2.5.7.5 a letter dated 14 December 2017 indicating that the reports for Quarter 2, 2017 was outstanding and should be submitted by 15 January 2017 and the reports for Quarters 3 and 4 of 2017 should be submitted by 15 February 2018;
  - 6.2.5.7.6 a letter dated 27 September 2018 informed the Licensee that the QoS reports for Quarters 1 and 2 of 2018 were outstanding and were to be submitted by 12 October 2018. No response was seen on the Commission's files to this letter;
  - 6.2.5.7.7 A letter dated 8 February 2019 from the Commission to the Licensee which outlined that the reports for Quarters 1 to 3 of 2018 were outstanding and were to be submitted by 28 February 2019 along with report of Quarter 4 which would be due by that date. The Evaluation did not find a filed response to this letter. It is noted that there were no follow-up letters from the Commission regarding these reports;
  - 6.2.5.7.8 A letter dated 27 August 2019 informing the Licensee that the QoS Reports for Quarters 1 and 2 of 2019 were outstanding and were required by 13 September 2019. No response was seen on file to this letter. However, it is noted that there were no further letters from the Commission to the Licensee regarding these.
- 6.2.5.8 Thus, regarding QoS reporting obligation, the Licensee has
- 6.2.5.8.1 after some initial prompting, presently provided the majority of the data required in the QOS template;
  - 6.2.5.8.2 included complaints reporting and statistics;
  - 6.2.5.8.3 had some late submissions;
  - 6.2.5.8.4 not consistently included coverage maps;
    - 6.2.5.8.4.1 Notwithstanding, paragraph 6.2.5.8.4 above, as noted in paragraph 6.1.2.20.1.1 above, the Licensee provided to the Commission its coverage maps on 25 March 2022.
  - 6.2.5.8.5 published QoS reports on its website in the past, but none could be found at the time of the Evaluation.
    - 6.2.5.8.5.1 However, in responding to paragraph 8.4.2 of the draft Evaluation sent to it on 21 March 2022, on 31 March 2022 the Licensee sought guidance from the Commission on how it could make the QoS reports more user friendly for the average consumer so that the consumer is able to readily understand the information provided within. The Commission was still working with the Licensee regarding the request at the time of finalization of the Evaluation.

- 6.2.5.9 The Evaluation found some evidence of correspondence from the Licensee to the Commission outlining the launch of new services over the period of the Licence.
- 6.2.5.10 The Evaluation notes there are no written notifications of service disruption, whether planned or unplanned, from the Licensee to the Commission nor does it reveal that the Commission wrote to the Licensee in relation to internet service disruption.
- 6.2.5.11 The Evaluation notes correspondence on 13 February 2019 from the Commission to the Licensee regarding non-compliance with sections 3.3 and 3.3.2 of the terms and conditions **of Frequency Authorisations VRGM/001/2016 and VRGM/005/2016**, in that the Licensee failed to provide technical records to the Commission for Quarters 1 and 2. It was given until 5 March 2019 to be compliant. There is no indication on file as to whether the Licensee was compliant or not by that date. However, the Evaluation revealed that the Licensee endeavored to have all of its outstanding reports submitted to the Commission in January 2022.

#### **Licensee's response**

- 6.2.5.12 Based on the Commission's letter dated 24 July 2012, the Licensee responded to its letter dated 16 February 2012. However, the Evaluation could not ascertain whether the reply was verbal, written or electronic.
- 6.2.5.13 The Evaluation revealed that the Licensee responded to the Commission's section 70 Notice dated 16 January 2017 by correspondence of 1 February 2017 indicating, amongst other things, that the QoS reports had been uploaded to its website and providing a link thereto.
- 6.2.5.14 In reply to the Commission's letter of 23 January 2017, the Licensee provided the required information by letter dated 8 February 2017.
- 6.2.5.15 The Licensee answered the Commission's letter of 1 March 2017 by correspondence dated 15 March 2017 and directed the Commission as to where to find the requested reports by providing a link to same.
- 6.2.5.16 In response to the Commission's letter of 14 December 2017, the Evaluation notes correspondence from the Licensee dated 15 February 2018, in which it provided the requested reports.
- 6.2.5.17 It is noted that in response to the Harney's Report, from January 2021 the Licensee has been striving to ensure that all its Quality-of-Service Reports are submitted to the Commission.

## 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 predominantly 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 on file a copy of the Licensee's Management Structure, Memorandum and Articles of Association, Certificate of Incorporation, and a Certificate of Good Standing from the Registry of Corporate Affairs (dated 30 March 2020). There was also a document outlining the Licensee's Directors and Company Secretary on file.

6.3.4.2 The review did not locate copies of the other documentation required under **Article 16 of the Licence**. However, it is noted that these documents were required fifteen (15) years ago and there was no correspondence seen from the Commission requesting same.

### **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 notes that Licensee was designated a Dominant Public Supplier on the 22 day of September 2011 in the wholesale market for voice call termination on its mobile network. **Article 8.1 of the Licence** was amended accordingly, and Annex 8 implemented. Pursuant to **Annex 8 of the Licence**, the prices for voice call termination services on the Licensee's fixed network and the Licensee's mobile network were fixed by the Commission. There is nothing on the Commission's files that indicates that the Licensee has failed to follow the procedure laid out under **Annex 8**.

6.3.6.2 The Evaluation finds several documents and emails from Licensee to the Commission informing the Commission of rate plans, changes in price and new services that is proposed to implement. The Evaluation is unable to determine if the Commission was informed of every price change, change in plans, or change in services.

6.3.6.3 The Terms & Conditions in relation to the various services are available on the site at <https://www.digicelgroup.com/vg/en/legal/terms-of-use/index-legal.html>.

### **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 In respect to the Licensee's interconnection obligation, in accordance with **section 26(1) of the Telecommunications Act, 2006**, the Evaluation reveals that the Licensee has concluded interconnection agreements with Cable and Wireless (BVI) Ltd. and CCT BVI Ltd.
- 6.3.8.2 Although the Evaluation found no interconnection agreement with CCT (BVI) Ltd., it notes that there are correspondences dated from 13 November 2011 regarding interconnection between the Licensee, CCT (BVI) Ltd., and Cable and Wireless (BVI) Ltd. In a letter dated 27 November 2011 to the Licensee, CCT (BVI) Ltd., and Cable and Wireless (BVI) Ltd. the Commission indicated that there should be an interim indirect interconnection between the Licensee and Cable and Wireless (BVI) Ltd. through the existing CCT-C&W interconnection agreement dated 9 March 2007 and amended on 20 November 2007. It indicated that there was no requirement for the Licensee and CCT (BVI) Ltd., to submit an interconnection agreement in the interim period. The interim agreement was not concluded, and the Commission wrote to the parties on 12 December 2012 requesting information relating to said failure. There was no response to this request and the Evaluation notes no further correspondence on the issue.
- 6.3.8.3 The Evaluation found evidence on the Commission's files that an application was submitted to the Commission for an interconnection agreement between the Licensee and Cable and Wireless (BVI) Ltd. in 2009, namely, a letter from the Commission to the Licensee dated 30 June 2009 which indicated that the Commission had approved an application dated 8 June 2009 for proposed interconnection on an interim basis and requesting executed copies of the said agreement.
- 6.3.8.4 The Evaluation found on the Commission's files the following documents relative to interconnection between the Licensee and Cable and Wireless (BVI) Ltd., specifically, Definitions dated 15 May 2008, Standard Interconnection Agreement, and a Joint Working Manual on Interconnection Procedures both dated 2 June 2009, Service Descriptions, Legal Framework, Parameter Schedule, Service Schedule, and Tariff Schedule all dated 2 April 2009. It is noted that these documents were unsigned.
- 6.3.8.5 Based on the Commission's files, the Evaluation was not able to determine the Licensee's compliance within the prescribed time from the time of the request of interconnection, application for, establishment of the interconnection and the receipt of the interconnectivity agreement, when signed copies of these documents were submitted to the Commission or when any final interconnection agreements between the Licensee and Cable and Wireless (BVI) Ltd. were filed.
- 6.3.8.6 The Commission's files do not reveal that subsequent interconnection agreements were filed by the Licensee after these initial interconnection agreements as required by **Article 9.1(c) of the Licence**.

- 6.3.8.7 Additionally, the dates of the documents referred to in paragraphs 6.3.8.4 and 6.3.8.6 indicate that no new agreements were entered into between the Licensee Cable and Wireless (BVI) Ltd. or alternatively, not provided to the Commission, as required under the revision to **Annex 8 of the Licence** which required the Licensee to submit revised interconnection agreements by August 1, 2012.
- 6.3.8.8 Based on the Commission's file, the Evaluation did not find evidence that access to facilities have been unreasonably denied by the Licensee.
- 6.3.8.9 The Evaluation did not find evidence that Licensee published a copy of the interconnection agreements on its website as required by **section 8, Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**.
- 6.3.8.10 Notwithstanding paragraph 6.3.8.10 above, in responding to paragraph 8.4.2 of the draft Evaluation sent to it on 21 March 2022, on 25 March 2022 the Licensee indicated that it had uploaded the agreements and it provided to the Commission the link to its website, which leads to the interconnection agreements with CCT and FLOW (Cable and Wireless (BVI) Ltd), namely, <https://www.digicelgroup.com/vg/en/legal/terms-of-use/InterconnectAgreements.html>.

### **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 Under **Article 8.1(iv)(e) of the Licence**, where the Licensee is designated as a supplier dominant in the markets for the provision of terrestrial International Private Leased Circuit (IPLC) Services and or for International Managed Data Services (IMDS), the Licensee is required to provide to Commission, upon request, information on the rates offered to other Licensees for these services.

6.3.9.4 **Article 8.1(iv)(e) of the Licence** further requires that the Licensee submits to the Commission within thirty (30) days of agreement with other consortium members on Wholesale Landing Station Services.

6.3.9.5 **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 there has been issues in the past with the Licensee complying with general requests for information. However, since January 2021 there has been some improvement in this area.

6.3.10.2 Section 70 requests have been invoked in the past to obtain requested data and these were generally complied with. However, based on the Commission's files since January 2021 the Commission has not issued a section 70 notice to the Licensee.

### **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. However, the Evaluation notes correspondence dated 25 September 2009 from the Commission to the Licensee requesting the appointment of a compliance officer. Although, the Evaluation found no reply to this correspondence, it notes a correspondence dated 1 December 2009 from the Commission that was addressed to the Licensee's compliance officer.

6.3.12.2 Thereafter, the Evaluation notes a request dated 3 April 2014 from the Commission to the Licensee for the name of its compliance officer. The Licensee was required to respond by 10 April 2014. No response from the Licensee was found on the Commission's files.

6.3.12.3 The Evaluation notes that on 8 April 2019, the Commission wrote to the Licensee requesting the name of its Compliance Officer so that the Commission's 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.

6.3.12.4 The Evaluation notes correspondence dated 23 January 2017 from the Commission to the Licensee providing information relative to the completion of its annual compliance report. The Evaluation did not locate on file 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.

6.3.12.5 The Evaluation notes that it did not locate any annual compliance reports on the Commission's files prior to 2021. It is noted that the Licensee provided an annual compliance report to the Commission on 4 November 2021 in its efforts to comply with the Compliance Audit that was done by Harneys.

6.3.12.6 Notwithstanding, paragraph 6.3.12.1 above, in November 2021, the Licensee made certain indications relative to the person designated to 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 The Evaluation shows that the Licensee first provided the Commission with its Complaints Procedures in 2013. The Licensee provides complaints information through the submission of its QoS reports.

6.3.14.2 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 as indicated in paragraph 6.3.14.1 the Licensee includes 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**.

6.3.14.3 The Licensee has a "Get Support" tab on its web page at [Mobile - British Virgin Islands \(digicelgroup.com\)](http://Mobile - British Virgin Islands (digicelgroup.com)) which has links to Hot Topics, live chats and feedback submission, but it does not contain specific information in relation to conflict resolution or complaint submission.

6.3.14.3.1.1 Notwithstanding paragraph 6.3.14.3 above, in responding to paragraph 8.4.2 of the draft Evaluation sent to it on 21 March 2022, on 25 March 2022 the Licensee provided to the Commission the link to its instructions to the public about how to file a complaint, namely, <https://www.digicelgroup.com/vg/en/legal/terms-of-use/complaints-procedure.html>

6.3.14.3.1.2 Additionally, the Licensee provided a link to the Commission which showed the changes reflected on their homepage so that the public can readily access the links to the Complaints Procedure and the Interconnection Agreements, namely <https://www.digicelgroup.com/vg/en/legal.html>

#### **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 noted in paragraph 6.3.6.1 above, the Licensee was designated a Dominant Public Supplier in the wholesale market for voice call termination on its mobile network. The Licensee had an obligation to enter into a new interconnection agreement and to file it with the Commission in accordance with Annex 8 of the Licence. The Evaluation did not find any new interconnection agreements on the Commission's files.

6.3.16.2 Since 2012 the Licensee has not complied with a request to liaise with the Commission's chief economist to improve the data being collected and monitored to better determine whether any anti-competitive or monopolistic practices are in place in the British Virgin Island market.

### **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 finds that the Licensee complied with the obligation in relation to protecting its customers' personal details and usage, through eavesdropping, recording and disclosure,) through its Privacy Policy available on its website at <https://www.digicelgroup.com/en/privacy-policy.html>.

6.3.18.2 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.

6.3.18.3 The Evaluation notes that an annual compliance report was provided by the Licensee in 2021 but notes non-compliance for all other years.

6.3.18.4 As stated in paragraph 6.3.12.6 above, in November 2021, the Licensee made certain indications relative to the person designated to be its compliance officer. The Commission can only conclude that the compliance officer will also be the person responsible for ensuring compliance with its confidentiality measures and procedures.

### **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 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 there is corporate documentation on the Commission's files on behalf of the Licensee including the Licensee's Management Structure, Memorandum and Articles of Association, Certificate of Incorporation, and a Certificate of Good Standing from the Registry of Corporate Affairs (dated 30 March 2020). There was also a document outlining the Licensee's Directors and Company Secretary.

6.3.20.2 The Evaluation notes that the Licensee has made applications to the Commission for the assignment of frequency authorisations over the years. There are no complaints from the Commission relative to the Licensee using numbers or short codes without first obtaining the authorisation of the Commission.

6.3.20.3 The Evaluation did not note any evidence of failure by the Licensee to obtain permission or to compensate landowners.

6.3.20.4 There is no obligation on the Licensee to provide to the Commission copies of any permission obtained from the Planning Authority. As the Licensee is not stated to have an obligation to provide same to the Commission, it is noted that there is nothing on the Commission's files that indicates that the Commission requested said permissions from the Licensee. However, the Evaluation notes that there were correspondences on file which date back to 2008 and 2009 from the Town and Country Planning Department to the Licensee regarding the Licensee's failure to comply with certain timelines given by the said Department. After 2009, no similar correspondence is noted on the Commission's files.

## **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 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 Licensee needs to submit such policies and manuals to the Commission for review and approval;

- 7.1.2.2 Put measures in place to ensure that a consistent exchange is established with the Commission in relation to pricing, new products and service disruptions (planned or otherwise);
- 7.1.2.3 Diarise events (recurring or otherwise) to ensure that regulatory deadlines and notification/submission dates are not overlooked;
- 7.1.2.4 Ensure that all legal and regulatory obligations are met in terms of submitting documentation and responding to requests for information and data in a timely manner. Maintain an adequately resourced compliance function to enable a higher level of compliance with the documentation requirements;
- 7.1.2.5 Establish an exchange with the Chief Economist of the Commission to ensure that the correct information can be collected to enable accurate comparisons of the providers in the market;
- 7.1.2.6 Establish policies and procedures and allocate resources responsible for ensuring adherence with the requirements for testing and inspection;
- 7.1.2.7 Implement a procedure that enables all required notifications to be submitted to the Commission. Such a procedure may be supported by the Licensee allocating resources to tasks of this nature and define accountability and responsibilities;
- 7.1.2.8 Appoint qualified resource(s) to act as the Licensee's Complaints' Officer and Confidentiality Officer to ensure that documented policies and procedures in these areas are firmly in place (and made available to the public) and compliant with the legislation. Such policies will need to be submitted to the Commission for approval;
- 7.1.2.9 Commit to paying the industry levy in writing to the Commission;
- 7.1.2.10 Ensure to allocate a dedicated resource to ensure that an internal compliance monitoring mechanism is fully operational and enabling the Licensee to comply with all requirements, especially driving notifications of events and triggers;
- 7.1.2.11 Instigate review of current disaster recovery procedures to ensure they are effective, up-to date and submitted to the Commission for approval;
- 7.1.2.12 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 and interconnectivity agreement/s;

- 7.1.2.13 Ensure that documented complaints procedures are in place and forwarded to the Commission for review and that the policy is regularly reviewed and updated on an on-going basis;
- 7.1.2.14 Comply with the requirement to submit monthly reports to the Commission with complaints details;
- 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; and
- 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 Based on the Commission's files, the Commission inadvertently did not inform the Licensee prior to the commencement of work that Harneys had been appointed to conduct an audit to identify areas of compliance and non-compliance with telecommunications obligations and to make any necessary recommendations.
- 7.2.2 In a letter dated 11 June 2020, the Commission informed the Licensee that it had commenced an internal compliance audit aimed at assessing the extent to which each Licensee had been compliant with the Act, Code, licences and instructions issued by the Commission. The Licensee was informed that the finding of the audit was that the Licensee was *partially compliant* and the above recommendations were made by Harneys for the Licensee to become compliant.
- 7.2.3 By correspondence dated 20 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 Commission's files indicates that the Licensee responded to this correspondence and worked to address the issues that were highlighted by Harneys which it could resolve.
- 7.2.5 Additionally, in responding to paragraph 8.4.2 of the draft Evaluation sent to it on 21 March 2022, between 25 March 2022 to 4 April 2022, the Licensee endeavored to provide to the Commission the information required by the Commission under said paragraph.

## 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 The Licensee has to a large extent provided uninterrupted telecommunication services to the Territory of the British Virgin Islands during the term of its Licence in accordance with the terms of its Licence, and the relevant laws and Codes;
- 8.4.2 Having received the results of Harneys Audit and the draft Evaluation, the Licensee worked to ensure that it complied with most of the provisions of its licence and regulatory obligations, so at the time of the finalization of the Evaluation it was on par with most of its major obligations. The outstanding matters are not significant enough not to progress the Licensee's application for renewal and include: -
- 8.4.2.1 providing to the Commission:
- 8.4.2.1.1 the manual of Compliance Procedures. The Licensee has provided a Complaints Procedure to the Commission even though it is not a manual as required by the Licence;

8.4.2.1.2 yearly 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**. The Licensee provided to the Commission an Annual Compliance Report in accordance with Annex 4 of the Licence in November 2021. Based on the Commission's files, this is the only report that the Licensee provided during the term of the License.

**Dated this 26 day of April 2022**

**For and on behalf of the Telecommunications Regulatory Commission**

**Guy L. Malone  
Chief Executive Office**