



Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

Monday, 22 November 2021

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

Dear Mr. Malone,

Re: Commission Licence Renewal Fee Methodology

Digicel BVI Limited ("**Digicel**") welcomes this opportunity to provide this preliminary submission on the *Commission Licence Renewal Fee Methodology* Consultation Document, which was published on 28 October 2021 ("**Consultation Document**").

Please note that these preliminary submissions are made "without prejudice" to Digicel's position in Judicial Review BVIHCV2020/0153. Further, Digicel's decision not to respond to any particular issue(s) raised in the Consultation Document or any particular issue(s) raised by any party relating to the subject matter, generally, does not necessarily represent agreement, in whole or in part, nor does any position taken by Digicel in this preliminary submission represent a waiver or concession of any sort of Digicel's rights in any way.

Introduction

While Digicel understands the stated purpose of the Consultation Document is to seek comments from interested parties on the Telecommunications Regulatory Commission's ("**Commission**") "*proposed fee methodology for the renewal of licences*" generally, it appears that the Commission's primary intention is to propose a fee methodology that will specifically apply to the renewal of unitary licences held by CCT, Flow, Digicel BVI respectively ("**Unitary Licences**"). This is indicated by subsections 1.4 and 1.5 of the Consultation Document, along with its annex, *Table of Renewal Procedure Actions*.

If that is indeed the case, then Digicel respectfully submits that the Commission should provide further clarification so that there may be a common understanding as to the Commission's intentions. In the

Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

absence of such clarity, Digicel has prepared this preliminary submission on the basis of its understanding that the purpose of the Consultation Document is to propose a fee methodology for the Unitary Licence renewals only. Digicel otherwise expressly reserves all its rights in this matter generally.

Legal basis for imposing a Unitary Licence renewal fee

Section 2 of the Consultation Document suggests that four subsections of Section 6 of the *Telecommunications Act 2006* (“**Act**”) along with Article 5.5 of the Unitary Licences provides the legal basis for the Commission setting the Unitary Licence renewal fees.

However, none of the provisions referred to by the Commission, provides any express legal mandate for the Commission to determine either the Unitary Licence renewal fee or any other fee. In particular:

- a. Section 6(j) of the Act only authorises the Commission to “**collect all fees and any other charges payable under this Act**” (emphasis added); and
- b. Article 5.5 of the Unitary Licence provides that “**the fees payable for any renewal period shall be agreed upon between the Commission and the Licensee at the time the renewal is granted**” (emphasis added).

That is, Section 6(j) of the Act does not, in and of itself, provide the Commission with any power to determine any particular licence fee and Article 5.5 of the Unitary Licence specifically provides that any fees payable are a matter for agreement between the Commission and the relevant Licensee. This is perhaps not surprising, since the Act already includes provisions relating to the assessment and payment of industry levies that are intended to cover the Commission’s budgeted costs each year.

It is therefore not clear to Digicel that the Commission has any legal mandate to impose a Unitary Licence renewal fee at this time. Until this important threshold issue is resolved, Digicel submits that the current regulatory proceeding be put on immediate hold.

Even if a legal basis for the imposition of a Unitary Licence renewal fee were to be established, Digicel submits that the quantum of any such fee should be set at zero. This is for the following reasons:

- a. The Commission’s costs of dealing with any licence renewals are already covered in its annual budget and are therefore covered by any properly imposed industry levy. Specifically, Section 2.5 of the Commission’s *Annual Work Plan and Budget 2021/22* states:

“Complete renewal of operator licences. All operator licences are due to expire in 2022. The 2020/2021 work year saw the Commission taking the

Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

necessary steps to ensure that we are prepared to accept applications from operators who apply for renewal and to progress those application in accordance with section 24 of the Act and Article 3 of the operator licences. In this work year, we will assess applications, once received, conduct compliance evaluations and public hearings and finalise the Commission's determination on the renewal of each operator's licence. Due to the timelines related to this project, as specified in the operator licences, this project may span into the 2022/2023 financial year, as it relates to the renewal of one operator, and thus will be completed by December 2022."
(emphasis added)

Given that the Commission's forecast costs associated with the Unitary Licence renewal process have already been budgeted, any further fees, levies or charges that are imposed would, in effect, amount to "double counting". On this basis alone, Digicel is of the view that the imposition of any additional fees relating to the renewal of licences in the coming year would be inappropriate.

- b. The Commission's costs in completing the Unitary Licence renewal process should be minimal in any case. That is because any compliance issues that might be relevant to the renewal of a licence should have been raised at the time they first arose. In the absence of any such material compliance issues having been identified during the course of the relevant licence term, the licence should automatically be renewed.

International Practice

Digicel notes that the Commission has made reference to a number of other international jurisdictions that generally support the proposition that licence fees should reflect the costs of the relevant regulatory authority. While Digicel has no issue to the references as far as they go and broadly supports the principle of cost recovery, we question whether they are relevant in the context of Unitary Licence renewal fees in BVI. In particular, no information has been provided on the actual amounts that are charged by the regulatory authority for the renewal of an existing licence.

Digicel further notes that the principles that have been described from other jurisdictions apply generally to annual charges for operating licence fees rather than licence renewal fees specifically and that in at least some of those markets, no such fees are charged.

Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

In other jurisdictions where Digicel operates, operating licence renewal fees are either set at zero or are set at a level that can reasonably be described as *de minimis*. This can be seen from the following table, which shows licence renewal fees that have been payable in a range of the jurisdictions in which Digicel operates:

Country	Operating Licence Renewal Fee (USD) (approximate)
Antigua	NIL
Barbados	\$2,500
Cayman	\$8,000
Fiji	\$ 25
Guyana	NIL
Papua New Guinea	\$1,460
Samoa	\$ 400
Tonga	NIL
Vanuatu	NIL

In Digicel's submission, international practice does not support the imposition of any Unitary Licence renewal fee in BVI.

Conclusion

It is Digicel's respectful submission, that the Commission has not yet properly established any legal authority to impose a Unitary Licence renewal fee.

Even if such an authority is established, Digicel does not consider there is any justification for the imposition of such a fee at this time. This is because:

- The Commission has already included the costs of licence renewals in its annual budget that has been approved by the Minister;
- The incremental costs of assessing any applications for renewal of a Unitary Licence should be minimal; and
- International practice does not support the imposition of such fees.

Finally, Digicel notes with concern the elaborate *Table of Renewal Procedure Actions* ("**Process**") that has been included as an annex to the Consultation Document. In Digicel's view the Process, as

Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

described, is needlessly complex and involved for what should be a relatively simple administrative renewal procedure. We therefore suggest the Commission consider reviewing and simplifying the Process so that it is more closely aligned with the requirements of the Act and that unnecessary costs for both the Commission and industry members may be avoided.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Mara Samaniego', written over a dotted line.

Ms. Mara Samaniego
Chief Executive Officer