

# **CABLE AND WIRELESS**

**Response to TRC Consultation on**

## **Licence Renewal Fee Methodology**

## COVER SHEET FOR RESPONSE TO A COMMISSION CONSULTATION

### BASIC DETAILS

Consultation title: **Licence Renewal Fee Methodology**

Name of respondent: **Mr. Ravindra Maywahlall**

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Organisation: **Cable and Wireless (BVI) Limited**

### CONFIDENTIALITY

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

**Nothing**

**Whole response**

**Part of the response**

**Details of Confidential Information**

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name: **Ravindra Maywahlall**

Signed (if hard copy)

## 1. INTRODUCTION

**1.1** Cable and Wireless (BVI) Limited dba Flow is pleased to provide comments and remarks on the Consultation Document “**Licence Renewal Fee Methodology**” published October 28, 2021.

**1.2** Flow expressly states that failure to address any issue raised in the Consultation Document does not necessarily signify its agreement in whole or in part with any position taken on the matter by the TRC or respondents. Flow reserves the right to comment on any issue raised in the Consultation Document at a later date.

**1.3** Please send all responses to this Consultation Document and any matters arising to Ravindra Maywahlall at [ravindra.maywahlall@cwc.com](mailto:ravindra.maywahlall@cwc.com) and Melesia Sutherland at [melesia.sutherland@cwc.com](mailto:melesia.sutherland@cwc.com).

## 2. PRINCIPLES AND QUESTIONS

**2.1** The Commission puts forward three basic principles that it believes are relevant in assessing the licence fee Flow and other providers will have to pay on renewal of their licence(s). These principles are (i) recovery of regulatory costs (ii) efficient allocation of public resources, and (iii) reflection of economic value. The Commission concludes that “ *The cost recovery principle is believed to be the most relevant to determining the appropriate licence renewal fee<sup>1</sup>...*”

**2.2** The Commission has requested responses to the following questions:

*1. Do you believe that the Commission has considered appropriate countries in demonstrating the principles used for determining fees for telecommunications operating licences? If you do not, please provide examples of other countries and explain*

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<sup>1</sup> Licence Fee Renewal Methodology, Published October 28, 2021, TRC, Paragraph 4.4

*in detail the principles and processes applied by the relevant authorities in those countries to determine telecommunications operating licence fees.*

*2. What are your views on the Commission's proposal to use the principle of cost recovery to determine the appropriate fee for renewal of unitary licences? If you disagree with the principle of the principle of cost recovery, please indicate which principle you believe is more appropriate and why.*

*3. Do you agree with the Commission's preliminary view that a similar level of effort will be required for all applications for renewal of a unitary licence and, therefore, the same Fee should apply to all operators seeking renewal of their unitary licences in 2022? If you do not, please indicate how you believe the fee should be apportioned, explaining your reasoning in detail along with providing supporting evidence for your response.*

*4. Are there any other concerns, interests or obligations that the Commission should consider including in determining the appropriate methodology to use for the licence renewal fee? If so, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable.*

*5. Do you agree with the steps outlined in the Annex that the Commission has outlined as applicable to the licence renewal process?*

*6. Please provide your views on any other matters you consider relevant to this consultation.*

**2.3** Flow's response to the Commission's questions is as follows:

### **3. FLOW'S RESPONSE TO THE COMMISSION'S QUESTIONS**

**1. Do you believe that the Commission has considered appropriate countries in demonstrating the principles used for determining fees for telecommunications operating licenses? If you do not, please provide examples of other countries and explain in detail the principles and processes applied by the relevant authorities in those countries to determine telecommunications operating license fees.**

**3.1** Flow has no particular objection or contention with the countries selected by the Commission to demonstrate the principles adopted to determine renewal fees for telecommunications operating licence(s). The economic value principle and the principle of cost recovery are common and acceptable principles applied to the determination of the cost to provide certain services in the telecommunications industry. Additionally, fees should also be determined so as to promote the efficient allocation of public resources. This means that the fees should not be distortionary to the market and should be designed to promote the efficient functioning of the telecommunications market. With that said the countries selected are less relevant than the basis of the principles applied to determine the fees.

**3.2** We however wish to point out that the fees often referenced in the countries cited by the Commission are typically one-off annual fees and regulatory fees as opposed to licence renewal fees. In that light, although it may not have a lot of bearing on the principle of cost recovery itself, it could be argued that the annual regulatory fees and other license one-off fees would and should cover license renewal fees. Furthermore, if cost recovery is the basis for the licence renewal fee should not that principle also be the basis for the annual Royalty fee paid by Flow?

**2. What are your views on the Commission’s proposal to use the principle of cost recovery to determine the appropriate fee for renewal of unitary licenses? If you disagree with the principle of the principle of cost recovery, please indicate which principle you believe is more appropriate and why.**

**3.3** From a pure principle standpoint Flow has no contention or objection, at this point, to the adoption of the cost recovery principle for renewal of unitary licenses, given the objective nature of the approach since there is less reliance on making assumptions and subjective judgement calls. Both the Commission and Flow should be able to verify costs and the point of causation of cost can be ascertained and identified objectively. With that said however, the challenge with the cost recovery principle approach is the temptation to ‘goldplate’, that is to inflate costs unnecessarily, typically through inefficiencies and exaggeration of costs such as the attribution of full cost rather than the marginal cost of the activity.

In this regard Flow has already communicated to the Commission that<sup>2</sup>:

***“III. The Commission’s Request for Additional Information on Flow’s Application for Renewal of Operating Licence***

*The Commission’s letter of August 30, 2021 states that “...the Commission determined that further information was needed to better assess Flow’s Application...”. In its list of questions, the Commission includes requests for information on Flow’s Application that is not consistent with the Renewal Procedure for Flow’s Operating Licence. Indeed, the extensive list of questions submitted by the Commission is tantamount to abuse of process.*

*Fundamentally, the process for assessing Flow’s Application is the Renewal Procedure. The Commission’s Evaluation Report is consistent with the Renewal Procedure and that Report has established the further requirements for Flow for additional information and submissions. Attached is Flow’s response to the Commission’s Evaluation Report for your attention.”*

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<sup>2</sup> Flow letter to TRC dated September 20, 2021

And that<sup>3</sup>:

*“I. With reference to the reasonableness of the Commission’s request for further information and in the interest of concluding the application process and with a view to promoting a conciliatory working relationship with the Commission, Flow is pleased to respond to those questions from the Commission that seek clarification and those questions to which Flow has already responded in the application form, as contained in the Commission’s original letter on the captioned dated August 30, 2021. This is without prejudice to Flow’s letter to the Commission of September 20th, which is to be read in conjunction with this letter.*

*Flow respectfully requests that the Commission revisit the questions it has asked Flow, apart from those that are clearly seeking clarification of Flow’s earlier responses, to assess not only whether the questions are relevant in the context of Flow’s specific licence renewal process (including the contractual provisions contained in the current licence regarding the renewal procedure), reasonable, proper and proportionate but also to consider answers that are already contained in the Commission’s own “Evaluation Report, Cable and Wireless (BVI) Ltd License Performance From May 2007 – May 2021” (the Evaluation Report) published September 30, 2021. Flow believes that such a review will confirm that many of the questions have already been answered or otherwise fall outside reasonable, proper and proportionate parameters of the licence renewal process”.*

**3.4** Flow’s position then is that the all activities incurring costs for the Commission which are attributed to licence renewal that falls outside,

- (i) the licence renewal process established by Flow’s unitary licence, and;
- (ii) reasonable, proper and proportionate parameters of the licence renewal process

is tantamount to goldplating and not eligible to be included in Flow’s licence renewal fee.

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<sup>3</sup> Flow letter to TRC dated October 25, 2021

**3.5** Further, the licence renewal fee should reflect only the marginal cost to the TRC of the licence renewal process. That is the licence renewal fee is the cost of those legitimate activities that are directly attributable to licence renewal. The licence renewal fee should not include operational costs that fall within the general day to day function of the Commission and any licence renewal activities which are already included in the Commission's annual budget and already funded by Royalty fees from telecoms providers.

**3.** Do you agree with the Commission's preliminary view that a similar level of effort will be required for all applications for renewal of a unitary license and, therefore, the same Fee should apply to all operators seeking renewal of their unitary licenses in 2022? If you do not, please indicate how you believe the fee should be apportioned, explaining your reasoning in detail along with providing supporting evidence for your response.

**3.6** Flow reserves all rights in this matter but will say that where costs are legitimately incurred, the cost recovery principle is an objective method to determine the Fee independent of *'similar level of effort'*.

**4.** Are there any other concerns, interests or obligations that the Commission should consider including in determining the appropriate methodology to use for the license renewal fee? If so, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please specify the Part and/or section under which you propose to include an additional provision.

**3.7** Save for the comments that Flow has made on these matters in other sections of the response, Flow has no additional comments to make at this time. Flow reserves all rights to make further comments at a later date.

**5.** Do you agree with the steps outlined in the Annex that the Commission has outlined as applicable to the license renewal process?

**3.8** The renewal procedure for Flow's unitary licence is as follows:



### 3.3 Renewal Procedure.

(a) **Public Notice.** Within ten (10) Working Days from the date at 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 (i) that Licensee has applied for renewal of the Licence Term; (ii) the length of the renewal sought; (iii) 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; (iv) 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 (v) 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.

(b) **Evaluation Report.** Upon receipt of an application for renewal in accordance with Article 3.2, the Commission shall prepare the Evaluation Report stating if and to what extent the Licensee has during the preceding Licence period up to the date of the application:

- (i) complied with its obligations under this Licence;
- (ii) complied with the regulations and orders adopted from time to time by the Commission; and
- (iii) generally provided the Licensed Services and conducted its business in accordance with the laws of the British Virgin Islands.

The Commission shall send its Evaluation Report to the Licensee within the deadline set forth in the Commission's notice.

(c) **Public Hearing.** On the date set forth in the Commission's notice in accordance with subparagraph 3.3(a) above, the Commission shall call a public hearing during which the Licensee and third parties with a legitimate interest that have duly filed comments or objections which the Commission deems to be relevant, shall have a right to be heard.

(d) **Decision.** The Commission shall deliver its written decision on the renewal of the Licence Term within one hundred and twenty (120) Working Days from the date of receipt of the renewal application, and notify the Licensee of such decision in writing. In the event that the Commission does not issue a decision within one hundred and twenty (120) Working Days of the Commission's receipt of a renewal application, the Commission shall notify the Licensee in writing that a decision has not been adopted and that the current Licence shall remain in effect until such time as the Commission issues a decision, but in no event shall a decision be rendered later than one (1) year from the date of receipt of the renewal application by the Commission. The Commission may approve Licence renewal with conditions based upon the same terms and conditions of this Licence or based upon new terms and conditions which reasonably reflect changed circumstances in the telecommunications sector in the British Virgin Islands at the time of the renewal application. The

**6. Please provide your views on any other matters you consider relevant to this consultation.**

**3.9** Save for the comments that Flow has made in other sections of the response, Flow has no additional comments to make at this time. Flow reserves all rights to make further comments at a later date.

**4. CONCLUSION**

**4.1** Flow thanks the Commission for the opportunity to participate in this Consultation.

**4.2** Flow anticipates that the Commission will consider its response and, where required, calibrate its approach to determining the licence renewal fee.

**END**