

Telecommunications Regulatory Commission

Notice Concerning Proposed Directive on Submarine Cable Fees

[Gazetted 5th June, 2014]

TAKE NOTICE THAT:

The Telecommunications Regulatory Commission, (“the Commission”) is responsible for ensuring fair competition in the telecommunications sector in the Virgin Islands (“VI”). Under Section 23 of the Telecommunications Act 2006 (the “Act”), a public supplier’s license may be amended where it is in the public interest to do so. The landing of submarine cables in the VI is a crucial element enabling international connectivity to the VI. There are four submarine cables currently connected to the VI with plans to land further cables in the prospective future. The Commission therefore plans to introduce fees and reporting requirements for the landing and operation of submarine cables in VI territory in order to control and regulate the number of submarine cables to the VI and to ensure that the interest of VI consumers is taken into account in the landing and operation of each cable. The Commission recognises that connecting submarine cables to the VI enables a critical lifeline of international connectivity to the VI but also needs to ensure that the VI gains adequate benefit from each cable.

The VI is in a strategic geographical location for the landing of submarine cables and this means that more submarine cables will be connected to the VI than required to serve domestic demand. Indeed, it has been recognized in the Commission’s analysis of international connectivity¹, that it is the VI’s strategic location that enables it to benefit from the connection of submarine cables whereas its small population would not otherwise justify the connection. However, as the demand for further submarine landing cables increases, the Commission proposes to introduce the following fee schedule.

So as to properly impose the obligation on all public suppliers (“the Licensee”) to effect to these regulated rates, the Commission intends to amend the licence of each Licensee as follows and as outlined in the Draft Directive contained in the attached Schedule:

1. Article 5 shall be amended by inserting the following paragraph 5.6:

5.6 Submarine Cable Fees

The Licensee shall pay to the Commission an annual fee for the operation of an international submarine cable landing in the VI. The licensee shall pay an initial connection fee to land a new submarine cable in the VI. Fees are set out in Annex 10. No fees will be payable in connection with submarine cable systems that provide connections wholly within the BVI.

¹ Market Analysis of International Connectivity December 2012

2. The following shall be inserted as Annex 10:

ANNEX 10

SUBMARINE CABLE FEES AND REPORTING REQUIREMENTS

1. Effective from 4th September 2014, the following fee schedule shall apply to the Licensee landing and operating international submarine cable(s) in territory of the British Virgin Islands. No fees will be payable in connection with submarine cable systems that provide connections wholly within the BVI.

	Connection fee	Annual operating fee
Existing international submarine cables connected to the British Virgin Islands	-	US\$100 per Gbps (Gigabits per second) total capacity up to a maximum of US\$125,000
New international submarine cables connected to the BVI	US\$100,000 per system	US\$100 per Gbps total capacity up to a maximum of US\$125,000 per cable

2. The connection fee shall be paid prior to the physical landing of the international submarine cable system. The Commission will not grant approval for landing of the cable system prior to receipt of fee payment.
3. The annual operating fee shall be due on the 1 September on an annual basis with the first payment due on 4 September 2014
4. The Licensee is required to report the following information as at 31 March to the Commission on the 1 September on an annual basis:
 - 4.2 Location of cable landing stations and connections from submarine cable to land.
 - 4.3 Design capacity (in Gbps) of each connected international submarine cable and where applicable each physical segment of an international cable system that is connected to the BVI.
 - 4.4 Activated capacity (in Gbps) in each connected submarine cable and where applicable each physical segment of an international cable system that is connected to the BVI. There will be no distinction between activated & utilised capacity and activated & unutilised capacity
 - 4.5 Design and activated capacity owned by the Licensee and, where applicable, each member of an international submarine cable system consortium and/or owner of an international cable system consortium (in Gbps) and where applicable each physical segment of an international cable system that is connected to the BVI.
 - 4.6 For the purposes of this regulation capacity shall mean any and all capacity on an international cable system and/or each physical segment connected to the BVI irrespective of whether such capacity originates in, terminates in or transits the BVI; and regardless of whether that capacity is available for use in the BVI.
5. The Licensee shall be responsible for collecting fees and information from the other members of the submarine cable consortium in order to fulfil its requirements under this License. The

Commission will only accept a single payment for the full regulatory fee obligation for each submarine cable landed and operated in the territory of the British Virgin Islands.

- 6. The fees and reporting requirements may be revised in the future to keep abreast with changes in technology based on consultation with licensed public suppliers.**

All licensees and interested parties are invited to respond to this Notice of proposed Directive within 30 days. All parties may contact the Commission for further information and explanation if required. Any party wishing to propose substantive changes to the proposed Directive shall submit reasons and evidence for doing so.

The Commission proposes to hold a hearing for the Licensees and for any third party with a legitimate interest on a date and location in the VI to be confirmed with the Licensees such date being no sooner than ten (10) days after the date on which comments and objections to this Notice are due. The Commission shall submit a report and opinion on this proposed Directive following the hearing. In the absence of exigent circumstances which renders it difficult or impossible to do so, the proposed Directive, shall take effect, subject to such amendments as the Commission considers appropriate upon consideration of the comments and objections received in accordance with this Notice, on a date no sooner than ninety (90) days of the date of publication of this Notice. The Commission shall publish a notice in the Gazette and one other newspaper stating the adoption of this Directive on the said date.

Comments and/or objections to this proposed Directive must be submitted to the Commission **by 4.30pm on 4 July, 2014.**

The Chief Executive Officer
The Telecommunications Regulatory Commission
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LM Business Centre 3rd Floor
P.O. Box 4401
Road Town
Tortola VG1110
British Virgin Islands
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All responses containing confidential information should be clearly identified. Any person claiming confidentiality is required to clearly mark any information included in a response that is claimed to be confidential (including personal or proprietary information), and to provide reasons why that information should be considered confidential. Whenever confidential information is included in a response, the respondent is required to provide both a confidential and a non-confidential version of the response. Such confidential information should be kept to a minimum. The Commission will evaluate such a request to consider such information confidential in the light of the relevant legal provisions and principles and make a final decision in this regard.

Issued by the Telecommunications Regulatory Commission on the 20th day of May, 2014.

**(Sgd.) Guy Lester Malone
CHIEF EXECUTIVE OFFICER**

SCHEDULE

VIRGIN ISLANDS

THE TELECOMMUNICATIONS REGULATORY COMMISSION

DRAFT DIRECTIVE

[Gazetted 5th June, 2014]

With effect from the date of publication of this Directive in the Gazette, the licences of the following licensees:

- BVI Cable TV
- Cable and Wireless (BVI) Ltd (“LIME”)
- Caribbean Cellular Telephone Ltd (“CCT”)
- Digicel (BVI) Ltd

shall be amended as follows:

1. Article 5 shall be amended by inserting the following paragraph 5.6:

5.6 Submarine Cable Fees

The Licensee shall pay to the Commission an annual fee for the operation of an international submarine cable landing in the VI. The licensee shall pay an initial connection fee to land a new submarine cable in the VI. Fees are set out in Annex 10. No fees will be payable in connection with submarine cable systems that provide connections wholly within the BVI.”

2. The following shall be inserted as Annex 10:

ANNEX 10

SUBMARINE CABLE FEES AND REPORTING REQUIREMENTS

1. Effective from 1st September 2014, the following fee schedule shall apply to the Licensee landing and operating international submarine cable(s) in territory of the British Virgin Islands. No fees will be payable in connection with submarine cable systems that provide connections wholly within the BVI.

	Connection fee	Annual operating fee
Existing international submarine cables connected to the British Virgin Islands	-	US\$100 per Gbps (Gigabits per second) total capacity up to a maximum of US\$125,000

New international submarine cables connected to the BVI	US\$100,000 per system	US\$100 per Gbps total capacity up to a maximum of US\$125,000 per cable
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2. The connection fee shall be paid prior to the physical landing of the international submarine cable system. The Commission will not grant approval for landing of the cable system prior to receipt of fee payment.
3. The annual operating fee shall be due on the 1 September on an annual basis with the first payment due on 4 September 2014
4. The Licensee is required to report the following information as at 31 March to the Commission on the 1 September on an annual basis:
 - a. Location of cable landing stations and connections from submarine cable to land.
 - b. Design capacity (in Gbps) of each connected international submarine cable and where applicable each physical segment of an international cable system that is connected to the BVI.
 - c. Activated capacity (in Gbps) in each connected submarine cable and where applicable each physical segment of an international cable system that is connected to the BVI. There will be no distinction between activated & utilised capacity and activated & unutilised capacity
 - d. Design and activated capacity owned by the Licensee and, where applicable, each member of an international submarine cable system consortium and/or owner of an international cable system consortium (in Gbps) and where applicable each physical segment of an international cable system that is connected to the BVI.
 - e. For the purposes of this regulation capacity shall mean any and all capacity on an international cable system and/or each physical segment connected to the BVI irrespective of whether such capacity originates in, terminates in or transits the BVI; and regardless of whether that capacity is available for use in the BVI.
5. The Licensee shall be responsible for collecting fees and information from the other members of the submarine cable consortium in order to fulfil its requirements under this License. The Commission will only accept a single payment for the full regulatory fee obligation for each submarine cable landed and operated in the territory of the British Virgin Islands.
6. The fees and reporting requirements may be revised in the future to keep abreast with changes in technology based on consultation with licensed public suppliers.

Issued by the Telecommunications Regulatory Commission on the 20th day of May, 2014.

(Sgd.) Guy Malone
CHIEF EXECUTIVE OFFICER