



Digicel

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JUL 28 2015

TELECOMMUNICATIONS REGULATORY COMMISSION
BRITISH VIRGIN ISLANDS

Digicel (BVI) Limited
PO Box 4168
Road Town
Tortola
VG1110
British Virgin Islands
Tel: +1 (284) 300 1000
Fax: +1 (284) 494 0111
www.digicelbvi.com

July 28, 2015

Mr. Guy Malone
Chief Executive Officer
Telecommunications Regulatory Commission
27 Fish Lock Road
Road Town 1110
Tortola

Dear Mr. Malone,

Re: Consultation on the Spectrum Award 2015

Please see below Digicel's responses to the Questions listed in the Consultation Document for the Spectrum Award 2015.

A. Particulars of Responding Organisation

Name: Digicel BVI Limited
Principal Contact Person: Conor Looney, CEO
Address: 5th Floor Jayla Place, Wickhams Cay 1, Road Town Tortola
Telephone Numbers - (284) 300 4000
E-Mail – conor.looney@digicelgroup.com

B. Responses to Questions

1. Question 1: Do you agree that only the Unitary Licence Holders that operate mobile networks in the VI should be eligible to take part in the comparative evaluation process?

Digicel agrees that only the current holders of unitary licences up to the date of submission of this response to the consultation should be eligible to take part in the spectrum award process.

2. Question 2: Do you agree that a comparative evaluation award process is the most appropriate in light of the demand for valuable spectrum?

Digicel agrees that a comparative evaluation process, if implemented transparently in accordance with rules which require applicants to compete on an even playing field for prime



spectrum, is the most appropriate process by which spectrum may be awarded in the BVI at this time.

3. Question 3: Do you agree with the Commission's proposal not to include the 450 MHz band in the award?

Digicel agrees with the Commission's proposal not to include the 450 MHz band in the award process.

4. Question 4: Do you agree that the 700 MHz band should be included in this award? If not, please give reasons for your response.

Digicel agrees that the 700 MHz band should be included in this award process.

5. Question 5: Do you agree with the Commission's proposals for the packaging of the 700 MHz band? If not, please give your reasons and propose an alternative approach showing how it best meets the Commission's objectives in respect of competitive provision of high speed mobile services in the VI.

Digicel does not consider the packaging of Package 1 and Package 2 in 700 MHz band to be the most advantageous way in which the spectrum can be packaged for the benefit of the public. The Commission proposes that package 1 comprise Blocks A&B. This is not suitable because an operator can have no use of the spectrum packaged as such. Therefore, Digicel considers that Package 1 should consist of Blocks B&C. This combination represents Band 17, which is prime spectrum and not Blocks A+B.

It follows, therefore, that Package 2 should consist of Block A and not Block C.

Package 3 should remain as is.

6. Question 6: Do you agree that the 1900 MHz and AWS-1 bands should be included in this award? If not, please give reasons for your response.

Digicel agrees that the 1900 MHz and AWS-1 bands should be included in this award process.

7. Question 7: Do you agree with the Commission's proposals for the packaging of the 1900 MHz and AWS-1 bands? If not, please give your reasons and propose an alternative approach showing how it best meets the Commission's objectives in respect of competitive provision of high speed mobile services in the VI.

Digicel agrees with the proposals for the packaging of the 1900 MHz and AWS-1 bands.

8. Question 8: Do you agree with the Commission's proposal for a new provision in the draft Frequency Authorisation that requires operators to realign their spectrum holdings should they be requested to do so by the Commission? If not, please give your reasons.

Digicel agrees to realign spectrum holdings if requested to do so by the Commission. However, with new spectrum holdings, the Commission must take all necessary measures to first ensure



that the newly assigned spectrum is free from harmful interference e.g. that caused by the transmissions from cruise ships docking in Road Town.

9. **Question 9: Do you agree with the Commission's proposal not to include the 2500 MHz band in the award? If not, please give reasons for your response and indicate how you think the spectrum should be packaged to address interference with the USVI in line with the objectives and timetable for this Award.**

Digicel agrees that spectrum in the 2500 MHz band should not be included in the award.

10. **Question 10: Do you agree that the proposed comparative evaluation process (described in paras 5.8 - 5.12 above) is most appropriate for assignment of spectrum in the 700 MHz, 1900 MHz and AWS-1 bands?**

Subject to our submission on the packaging of 700 MHz spectrum in response to Question 5 above, we are in general agreement with the proposed comparative evaluation process as a whole.

11. **Question 11: Do you propose an alternative method of assignment? Please justify any such proposal in terms of the most efficient use of spectrum and other Commission objectives and the ease of implementation.**

Our response to Question 5 shall also apply here.

12. **Question 12: Do you agree that the spectrum caps of 60 MHz for an operator's holdings below 1 GHz and 170 MHz for all of an operator's spectrum holdings should be applied in this award? If not, please give your reasons.**

Digicel agrees with the proposed spectrum caps **ONLY** if it is the Commission's intention to apply the caps as follows:

- An operator's **total** holdings under 1 GHz shall be considered for the purpose of the 60 MHz spectrum cap and not the operator's holdings on each band under 1 GHz. Therefore, if an operator holds 50 MHz of spectrum on the 850 MHz band and 30 MHz of spectrum on the 900 MHz band, that operator's total holdings of spectrum under 1 GHz would total 80 MHz and that operator would have exceeded the spectrum cap;
- An operator would be considered to have exceeded the spectrum cap even if his total spectrum holdings do not exceed 170 MHz provided that his total holdings under 1 GHz exceed 60 MHz
- An operator would be considered to have exceeded the spectrum cap if his total holdings exceed 170 MHz although his total holdings under 1 GHz do not exceed 60 MHz

If it is the Commission's intention to apply the spectrum caps, as set out above, then we propose that the Draft ITA should do more to set this out in unequivocal terms.



13. Question 13: Do you agree that minimum service requirements be applied to all spectrum blocks awarded?

Digicel does not agree that minimum service requirements should apply to all spectrum blocks awarded. These minimum service requirements should be more appropriately applied only to the 700 MHz spectrum as this spectrum has stronger signal penetration. On the other hand, spectrum in the 1900 MHz/AWS-1 band has a much weaker signal penetration with less than half the coverage of 700 MHz spectrum i.e. two 1900/AWS sites will be required to cover the area covered by one 700 MHz site.

By imposing the same minimum service requirements to all spectrum blocks, the holder of 1900 MHz/AWS-1 spectrum who does not manage to secure 700 MHz spectrum will be unduly prejudiced as he would be compelled to double his investment to meet the minimum service requirements while paying the same spectrum fees as the holders of 700 MHz spectrum.

14. Question 14: Do you have any other comments on the minimum service requirements?

As discussed in the Commission's meeting with Digicel on July 8, 2015, Digicel understands that the following shall also apply:

- The means by which the 95% minimum coverage requirement of the population of each of the islands of Tortola, Anegada, Jost Van Dyke and Virgin Gorda are to be measured are not prescribed by the Commission. Applicants must set out in their respective applications how they propose coverage to be measured.
- There is no "use it or lose it" provision i.e. no period of time by which licensees who have been awarded spectrum must begin to use the spectrum. However, the minimum coverage requirements and speeds must be attained within 12 months of the date of the frequency authorization.

15. Question 15: Do you have any comments on the proposed evaluation criteria?

Digicel agrees with the proposed evaluation criteria

16. Question 16: Do you propose any changes to the evaluation criteria weightings? Please justify such changes in terms of the Commission's objectives and the ease of implementation.

Digicel proposes no changes to the evaluation criteria weightings.

17. Question 17: Do you have any comments on the Commission's proposals to assign lots in the 1900 MHz and AWS-1 as described in para 5.26?

Digicel has no comment on the Commission's proposals in this regard.

18. Question 18: Do you have any comments on the draft Invitation to Apply (ITA) that is published in a separate document?

- a. Clause 1.5 provides that Frequency Authorisations will be granted according to the procedure defined in the Telecommunications Code (Part 5) (Granting Frequency Authorisations (Interim Procedure)) Requirements, 2011.



However, Digicel considers that these Requirements are not at all appropriate for the award of spectrum under these circumstances for the following reasons:

- i. The Requirements were clearly intended to be an interim process until the Commission manages to publish more thorough procedures for the award of spectrum.
- ii. The very abbreviated procedure set out in the Requirements more appropriately apply to an application for spectrum by direct award. Reference is made to an application form being published on the website and for this form to be amended from time to time. This does not apply in this case.

Of greater concern however, is Section 6, which allows the Commission to reserve the right not to grant a frequency authorization which has been applied for and that compliance with the procedure and requirements is not a guarantee of obtaining a frequency authorisation. This provision allows the Commission, after the evaluation of applications tendered and upon the computation of scores which show a winning applicant for prime spectrum, to arbitrarily refuse to grant a frequency authorization to the winning applicant on the vacuous and ambiguous basis of "having regard to its functions and having considered the application". For these reasons, we consider that these Requirements add no value to the process and would only serve to compromise its robustness. Therefore, we recommend that the reference to the Requirements be removed from the Draft ITA.

- b. The spectrum fees set out in Table 4-1 to be amended to be consistent with para. 6.6 of the consultation document.
- c. Clause 2.6 provides that applicants who exceed the spectrum cap shall not be awarded spectrum in accordance with this ITA unless they agree to the release of spectrum to the Commission from Existing Frequency Assignments such that the 170 MHz spectrum limit is not exceeded. According to this provision, an applicant who exceeds the spectrum caps merely has to agree to release the excess spectrum to be granted a frequency authorization for additional spectrum in accordance with this spectrum award process. Therefore, there is a high likelihood that, for a period of time, this applicant will be allowed to retain both Existing Frequency Assignments and newly awarded spectrum to the disadvantage of other operators in the BVI.

In May 2013, the Commission advised Digicel that it had already begun the process of refarming spectrum on the 850 MHz band and that instructions were issued to CCT in January 2013 to vacate a portion of spectrum in the band. To date, CCT continues to occupy the spectrum. For this reason, Digicel has little confidence that an applicant who exceeds the spectrum caps will be sufficiently motivated to release spectrum after being granted a frequency authorization for spectrum pursuant to this spectrum award



process. Therefore, we recommend that Clause 2.6 of the Draft ITA should be amended to read as follows:

Applicants for whom the sum of their Existing Frequency Assignments in bands identified by the ITU for IMT Telecommunications Services and the quantity of spectrum bid for in all lots exceeds 170 MHz shall not be awarded spectrum in accordance with this ITA unless they surrender spectrum to the Commission from Existing Frequency Assignments such that the 170 MHz spectrum limit is not exceeded. Applicants are expected to vacate the spectrum surrendered before the date of award of the frequency authorization.

- d. Clause 7.2 requires applicants to notify the Commission of any changes of any material change to the information provided and/or any representation made in the Qualification Documents that occurs prior to the Frequency Authorisation Grant Date by no later than Three (3) Working Days before the Frequency Authorisation Grant Date. However, it will not be possible for an applicant to comply with this provision if the change occurred later than this. Therefore, Digicel recommends that the following should be added “.....except if the change occurred later than three (3) days before the frequency authorization grant date but before the frequency authorization date in which case the applicant shall notify the Commission of such change forthwith.”

19. Question 19: Do you have any comments on the draft frequency authorisation appended to the draft ITA?

- a. The spectrum fees set out in Clause 2.3.1 to be amended to be consistent with para. 6.6 of the consultation document.
- b. Clause 2 of Schedule B of the Draft Frequency Authorisation requires the Authorisation Holder to “provide, and thereafter maintain, an electronic communications network”. We submit that this inconsistent with Article 2.1 of Digicel’s Licence, which authorizes us (and we assume that similar provisions are contained in the licences of other operators) to operate a “telecommunications network”, this term being defined in the Act. The Telecommunications Act, 2006 of the Virgin Islands does not make provision for the regulation of electronic communications networks. Therefore, unless amendments are made to the Act and to operators’ licences to make provision for the operation of electronic communications networks in the BVI, we recommend that the term “electronic communications network” be replaced with the term “telecommunications network”.
- c. Clause 7(a) of Schedule B of the Draft Frequency Authorisation seeks to ascribe a specific definition to the term “population” as it appears in the requirement for the Authorisation Holder to provide coverage to 95% to the population of Virgin Gorda, Tortola, Anegada and Jost Van Dyke. However, in the meeting held on July 8th, the Commission indicated that “population coverage” will be determined by the applicant. Therefore, we recommend that this definition be deleted and replaced by such definition of “population” or “population coverage” as tendered by the applicant.



20. Question 20: Do you agree that licences should have a 15 year duration? If not, please propose an alternative with reasons.

Digicel considers that a fifteen year term to be reasonable.

21. Question 21: Do you agree that the Commission should not include a use it or lose it condition in licences?

Digicel agrees that the Commission should not include a use it or lose it condition in the frequency authorisations.

22. Question 22: Do you have any comments on the level of spectrum fees proposed by the Commission?

Digicel considers these fees to be reasonable to cover the Commission's administrative costs in releasing in managing the spectrum awarded.

C. Requirement to Publish Evaluation Scores

Digicel considers that the Commission has made a commendable attempt to adopt a spectrum award process which, on the face of it, appears to be a fair proposal for the award of spectrum. However, we are concerned that the process is not sufficiently transparent. In its letter dated July 20, 2015, which summarized the notes of meetings with operators, the Commission indicated that whilst it intends to publish the names of licensees awarded spectrum and the lots awarded to each licensee, it did not propose to publish evaluation scores. Therefore, there is absolutely no means by which applicants, and indeed, the public at large, can rest assured that the rules shall be applied, as prescribed. Although Digicel does not cast aspersions on the Commission's integrity, we are ever mindful of the keen interest that this award process has generated throughout the BVI and of the competing interests that the Commission must try to accommodate.

Therefore, regardless of the outcome of this award process, in order to give the public a greater sense of assurance that the Commission has made all efforts to ensure that the process is impervious to externalities, we consider it prudent for the Commission to publish at least a reasonable summary of its evaluation of applications received. In this regard, we request that the Commission reconsider its position.

Yours sincerely,

Conor Looney
CEO
Digicel BVI Ltd.