



Digicel

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June 23, 2016

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

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A.M.

TELECOMMUNICATIONS REGULATORY COMMISSION
BRITISH VIRGIN ISLANDS

Dear Mr. Malone,

Re: Consultation on the Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award

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: Rob Mayo-Smith, CEO
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Telephone Numbers - (284) 300 5000
E-Mail – Rob.Mayo-Smith@digicelgroup.com

B. Responses to Questions

1. Question 1: Do you agree with the modified timetable proposed for the Award? If not, please give reasons for your response.

Digicel does not object to the modified timetable proposed for the Award.

2. Requirement to Surrender Unoccupied Spectrum

The Commission proposes a spectrum cap which prohibits an operator from holding spectrum in excess of 170 MHz with no more than 60 MHz of such spectrum below 1 GHz, as set out in the Spectrum Management Framework (SMF).

Digicel submits that, at this time, this spectrum cap is unsuitable for the market and runs counter to the overriding objectives of the SMF. Section 10 of the SMF, which sets out the Commission's policy objectives for meeting the demand for spectrum for the provision of public mobile and wireless broadband services identifies the Commission's goals in this regard as "meeting future requirements for spectrum to support fixed and mobile broadband services to meet the goals of stimulating the deployment of affordable widely available fixed and mobile broadband services and in ensuring that every capable operator has access to enough spectrum to operate efficiently."

Therefore, although the Commission's focus in this LTE spectrum award process is on "stimulating the deployment of affordable widely available fixed and mobile broadband services", it is also the responsibility of the Commission to ensure that "every capable operator has access to enough spectrum to operate efficiently" whether for the delivery of LTE services or otherwise.

The SMF then proceeds to describe in paragraphs 10.2 – 10.6, the mobile telecommunications market as of 2009, as one in which *inter alia* "no 3G or other broadband mobile systems have been installed in the Virgin Islands. The fastest data rates are from EDGE technology introduced into GSM systems and EVDO Rev.0 deployed at 850 MHz by the only current CDMA operator CCT."

It is hardly disputable that the market has changed considerably since 2009. All operators in the BVI have launched 4G services with mobile broadband service offerings that are far superior to those enjoyed by consumers in the BVI in 2009. In addition, within the last couple years, due to the increased shipping activity into and out of the BVI and the unauthorised usage of spectrum by seafarers, very acute levels harmful interference have been experienced in the 1900 MHz band, which affects more than one third of one operator's spectrum holdings in the BVI and over 60% of the spectrum which that operator uses to provide 4G services to its customers. This is well documented.

Therefore, Digicel considers that this spectrum award process must not only focus on the award of spectrum for the deployment of LTE networks and services but must also maximise on the opportunity to ensure that every operator has access to enough spectrum to operate efficiently, regardless of the services offered. Digicel considers that the Commission can attain this objective by imposing the requirement that all operators must surrender the spectrum which it holds in any band, which has not been actively used for at least 3 months prior the date of Registration.

Digicel is aware that the conduct of this modified spectrum award process has been influenced by the Judgement published on April 11, 2016 in the matter between Caribbean Cellular Telephone Limited and the Commission. If the implications of this Judgement are such that the surrender by any operator of its unused spectrum must be done in accordance with the procedures set out by the court, then Digicel accepts that this is the process that the Commission must follow in this regard.

However, we consider that the imposition of the requirement for unused and unoccupied spectrum to be freed up and made available for assignment is the only way to ensure that operators have access to the spectrum that they require to operate efficiently. Even if such spectrum is assigned outside of the spectrum award process, we believe that the Commission should take advantage of the opportunity presented by this spectrum award process to provide the required incentive to operators to surrender spectrum which is currently not in use.

N.B. We consider the above submission to be confidential as it may give some indication as to Digicel's overall strategy for the submission of bids for spectrum. The Commission is requested not to disclose the fact that the submission was made by Digicel.

- 3. Question 2: Do you agree with permitting an Applicant to change its Lot preferences? If not, please give reasons for your response.**

Digicel agrees that an Applicant should be permitted to change its Lot preferences.

- 4. Question 3: Do you agree with permitting an Applicant to change its Additional Commitments? If not, please give reasons for your response.**

Digicel agrees that an Applicant should be permitted to change its Additional Commitments.

- 5. Question 4: Do you agree with the proposed change to the time frame to agree and sign Undertakings at least 2 working days prior to Registration? If not please give reasons for your response.**

Digicel agrees with the proposed change to the time frame to agree and sign the Undertakings at least 2 working days prior to Registration.

- 6. Question 5: Do you agree with the replacement of guarantees in the Undertakings with a compliance incentive in the Frequency Authorisation? If not please give reasons for your response.**

Although Digicel does not object to the proposal to replace guarantees in the Undertakings with compliance incentives in the Frequency Authorisation, we consider that this can only properly be done in accordance with the Telecommunications Act.

Section 76 (1) of the Act provides that, subject to this section, the Commission may terminate the licence or frequency authorisation of a licensee or authorisation holder if:

- a. the licensee or authorisation holder has failed to commence or ceased to carry on the business for which it was licensed or authorized; or
- b. the licensee or authorisation holder applies to the Commission for its licence or frequency authorisation to be terminated.

According to s.76 (1), the Commission's power to terminate or revoke a licence or frequency authorisation can only be exercised in these specific circumstances i.e. if the licensee or authorisation holder ceased to carry on business or has itself applied to have its licence or frequency authorisation

terminated. Any attempt to terminate a licence or frequency authorisation or to include in a licence or frequency authorisation a term which affords the Commission the power to terminate a licence or frequency authorisation in circumstances other than those specifically set out in the Act, would be ultra vires.

Section 76(2) of the Act sets out the circumstances under which the Commission may proceed to suspend a licence or frequency authorisation. If the Commission is entitled to take enforcement action against the licensee or authorisation holder under section 75 of the Act, the Commission may suspend the licence or frequency authorisation for a period not exceeding 60 days. The court may extend this period for one or more periods not exceeding 30 days each.

According to Section 75(1), the Commission may take action against a licensee or authorisation holder if the latter has failed to follow any instructions of the Commission or has breached any term or condition of its licence or frequency authorisation.


Section 76(5) provides that before exercising the power of suspension or termination conferred by this section, the Commission shall give the licensee or the authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety days. The licensee or authorisation holder must also be afforded the opportunity to presents its views and to remedy the breach.

In light of the above, Digicel submits that in addition to any other enforcement action that the Commission may take against an authorisation holder in breach of the Undertakings, if the Commission wishes to include a compliance incentive in the Frequency Authorisation, this must be limited to the Commission's power to suspend the Frequency Authorisation for a limited period and cannot properly include the power to terminate or to revoke the Frequency Authorisation.

Therefore, the following changes are recommended to the proposed wording of Clause 2.5.3:

Without prejudice to any other right of action available to the Commission, the Commission shall have the right, **subject to Section 76 of the Act**, to **suspend** ~~revoke~~ this Frequency Authorisation upon **90** days written notice if the Authorisation Holder is in breach of the Undertakings and has failed to cure the breach to the Commission's satisfaction within the **90** day notice period.

Yours sincerely,



Rob Mayo-Smith
CEO
Digicel BVI Ltd.

BASIC DETAILS

Consultation title: **Consultation on the Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award**

To: consultations@trc.vg

Name of respondent: **Digicel (BVI) Limited**

Address (if not received by email): *Road Town, Tortola, BVI*

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

Details of Confidential Information : **Only the whole section titled "Requirement to Surrender Unoccupied Spectrum"**

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: **Rob-Mayo Smith**

Signed (if hard copy)

