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VG 1110

July 28, 2016

The Telecommunications Regulatory Commission
LM Business centre
P.O Box 4401
27 Fish Lock Road
Road Town, Tortola
British Virgin Island

Dear sirs:

By e-mail to: consultations@trc.vg

Re: Consultation on the Annual Work Plan and Budget 2016/2017 and Introduction of the Industry Levy (the Workplan and Levy)

Flow is in receipt of the captioned document and thanks the TRC for the opportunity to respond.

Overall, Flow has no issues with the TRC's proposed 2016/17 Workplan provided that the TRC will rely on an evidence based approach to its proposed Workplan to:

1. Ensure optimal spectrum efficiency, so that this resource is used for the maximum benefit of consumers and enterprises.
2. Facilitate continued development of a first class integrated telecommunications Infrastructure that delivers choice, value and quality of service for consumers, enterprises and visitors to the Virgin Islands.
3. Ensure compliance by each of the operators with the Act, the Telecommunications Code, their licences and any relevant directive or instruction given by the Commission.
4. Reviewing the legislative framework and proposing the introduction of new or revised Telecommunications Codes and replacing historic legislation.
5. Targeting economic regulation so that it is aimed at those areas where market forces alone are not sufficient to protect consumer and business interests.
6. Ensure that the Commission is adequately staffed and compensated and has the appropriate financing framework to fulfil its duties under the Act.

Deployment of Levy Contrary to Intent and Spirit of Act

On the matter of the levy the TRC has not demonstrated that there is actually a need for the levy. Nor has the TRC provided the industry with its audited financials for at least fiscal

2015/16 for an assessment to be made of its financial circumstances nor has the TRC even claimed that the current royalties of 3% of industry revenues is insufficient to fund its operations. The TRC has provided insufficient information to the industry and the public to assess whether a levy is warranted.

Flow is well aware that Section 59 empowers the Commission to impose a levy. Yet, as with many provisions of the Act, such a provision is to be deployed only if there is a need and the TRC has not said or been able to say that industry royalties of 3% has been insufficient for funding the TRC, notwithstanding the TRC's assertion that "*the industry regulated by the Commission has become more complex based upon new technologies, products and services, as have the issues that have come before the Commission. Consequently, the costs of fulfilling its duties have increased substantially. It is now necessary for the Commission to begin collecting the Industry Levy from each of the Licensees to fund the work of the Commission going forward.*" The TRC needs to produce its financial statements to support this general claim.

In the same paragraph 1.6, the TRC states that '*... In the future, a portion of Royalties will be paid to the Government of the Virgin Islands*'. However no provision in the Act specifically allows the TRC to pay a portion of royalties to the Government of the BVI. Clause 65 allows for a budget surplus to '*... be paid into the Consolidated Fund, unless otherwise agreed upon with the Minister responsible for finance.*' The intention of Part XI of the Act was never to provide an indirect means of funding for the Government of the BVI, but rather to fund the TRC and absent the TRC providing its annual financials for scrutiny and those financials proving the need for the levy, the TRC proposal to impose a levy is contrary to the spirit and intention of the Act.

Approach to Determining Levy Ultra Vires Act

Further, with regard to the proposed levy formula presented in paragraph 4.3 of the Workplan and Levy, we have a number of concerns.

- The formula identifies "TB" as the total funds collected from the levy, from all licensees. TB is defined in the document as the "Total applicable budget for telecommunications activities." The Act, however, is more precise than this. Section 59 (2) limits funds collected by the levy to:

"The net estimated expenditure of the Commission as set out in the estimates approved by the Minister responsible for finance and a contingency of ten per cent of the net estimated expenditure."

Therefore, the Act limits funds collected from the levy specifically to the Commission's expenditures, and not more generally to "telecommunications activities."

- The Act further limits funds collected from the levy to the Commission's *net* expenditures, which are the Commission's budgeted expenditure for the upcoming period adjusted by the addition or subtraction of a surplus or deficit, respectively, in the period just ended. Therefore, according to the Act, the funds collected from the

¹ Paragraph 1.6, Page 10, 'Consultation on the Annual Work Plan and Budget 2016/2017 and Introduction of the Industry Levy', 30 June 2016.

levy for the current year are to be adjusted based on the adequacy of the funds collected in the prior year.

- The funds collected from the levy for the current period must not only take into account the prior year ending balance (surplus or deficit funds), but also other funds collected from licensees to support the Commission. Namely, the funds that the levy need collect for the current period must be reduced by the amount of funds licensees already pay to the Commission in Royalties.
- Lastly, it appears the Commission has chosen not to apply these netting adjustments in the initial year the levy is imposed. The Commission explains at Part II, Section 3 of the Workplan and Levy *'that for this first time implementation the Commission will not be adding or subtracting the previous financial years, because it is nine years delayed in its implementation.'* This approach is not supported by the Act and the passage of time has in no way diminished the authority of the Act. Accordingly the Commission must bring itself into compliance with the Act.

Excessive Budgetary Line Items

Our final set of concerns apply to the budget figures for FY 2016 and FY 2017, presented in Section IV of the document. The budgets for these two periods are disaggregated into 11 line items:

1. Non-executive members honoraria and expenses;
2. Executive members compensation;
3. Staff costs;
4. Office services;
5. Professional services;
6. Conferences, training and travel;
7. Rent and utilities;
8. Maintenance expenses;
9. Consumer education and public relations;
10. General and administrative; and
11. Special project

Our ability to comment on the appropriateness of these expenditure line items, however, is limited by the fact that they are not discussed, described or even defined in the document. For instance, it is difficult to evaluate the appropriateness of a \$250,000 expenditure on a "special project" when that project is not identified. It is also not clear, for instance, why office services expenditure and general and administrative expenditure are presented separately, when the former would appear from its label to be a subset of General and administrative. Likewise, it is unclear why over \$50,000 is budgeted on maintenance when the Commission's office space is rented and, as is typical in such arrangements, maintained by the property owner.

We are also concerned by the magnitude of certain line items and their trends from FY2016 to FY2017. For starters, there is a 38% increase in the FY 2017 budget over the FY 2016 budget. This is an extraordinary year-on-year increase that we believe requires a detailed explanation.

Other specific items of concern in the budget are executive staff compensation, staff costs, staff honoraria, training, and professional services. As summarized in the table below, the Commission has budgeted almost US\$1.5 million for staff compensation, honoraria and training in FY 2016, and it budgets this amount to increase by 14% to US\$1.7 million in FY 2017. These are very large figures, especially given that the Commission is comprised of only 12 staff—5 executive staff and 7 non-executive staff.² Compensation for executive staff alone averages US\$200,000 per executive in FY 2016, and increases by 11% to US\$220,000 per executive in FY 2017. Taking into account compensation, honoraria and training costs, each employee (executive and non-executive) is budgeted to receive on average US\$123,000 in FY 2016, increasing by 14% to US\$140,000 in FY 2017. These are astonishing figures, especially when considering the average GDP per capita in BVI is approximately US\$38,500.

Analysis of compensation, honoraria and training costs

Expense Item	FY 2016 budget	FY 2017 budget
Honoraria	\$ 40,800.00	\$ 40,800.00
Compensation executive	\$ 993,962.21	\$ 1,102,431.72
Compensation staff	\$ 317,273.43	\$ 338,396.75
Training	\$ 127,173.46	\$ 200,863.23
Total compensation, honoraria and training	\$ 1,479,209.10	\$ 1,682,491.70

Commission Staff*		
Executive staff	5	5
Non-executive staff	7	7
Total # of staff	12	12

Average compensation per employee		
Average compensation per executive (excluding honoraria and training)	\$ 198,792.44	\$ 220,486.34
Average compensation per non-exec staff (excluding honoraria and training)	\$ 45,324.78	\$ 48,342.39
Average compensation, honoraria and training per total staff	\$ 123,267.43	\$ 140,207.64

With regard to professional services, the Commission budgets approximately 30% of its entire annual budget to third-party consultants and lawyers—US\$860,000 in FY 2016 and US\$1.33 million in FY 2017. It is unclear why the Commission budgets such a large amount to third-party consultants and lawyers, on top of the already handsome compensation, honoraria and training it provides to its in-house staff. In particular, if these two expenditures—third-party expenditure and staff compensation—are by proxy substitutes for one another, it is unclear why both expenditures are budgeted to increase by very large percentages in FY 2017. Would not an increase to one precipitate a decrease to the other?

² See, for example, <http://www.trc.vg/index.php/about-us/staff>, last accessed Wednesday 27 July 2016. It is unclear how the Commission distinguishes executive from non-executive staff. For purposes of our analysis, we define the 5 executive staff to be: Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, Chief Spectrum Officer and Chief Legal Advisor.

Conclusion

In closing, we trust that the TRC will seriously consider Flow's comments and provide the information necessary to properly assess the TRC's proposal to implement the levy. The TRC has provided insufficient information on which to assess whether or not the TRC needs to implement a levy. Because of this the TRC's approach fails on even its own standard of accountability promoted in paragraph 1.7.1 of its Workplan and Levy. We also invite the TRC to review its budget and to reduce expenditure where excessive.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Ringsdore', with a large, stylized flourish above the name.

Tim Ringsdore
Managing Director

Cover sheet for response to a Commission consultation

BASIC DETAILS

Consultation title: Consultation on the Annual Work Plan and Budget 2016/2017 and Introduction of the Industry Levy

To (Commission

Contact): consultations@trc.vg

Name of

respondent: Tim Ringsdore

Representing (self or organisation/s): Cable & Wireless (BVI) Limited

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Tim Ringsdore

Managing Director

Tel: 1 284 543 6387 (M)

Whole

response Organisation

Cable & Wireless (BVI) Limited

Part of the response

Details of Confidential Information

None

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 Signed (if hard copy)