

CABLE & WIRELESS

Response to TRC Consultation on

Commission Draft Annual Work Plan and Budget

2017/2018

November 27, 2017

COVER SHEET FOR RESPONSE TO A COMMISSION CONSULTATION

BASIC DETAILS

Consultation title: Commission Draft Annual Work Plan and Budget 2017/2018

Name of respondent: Mr. Colin MacDonald

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Organisation: Cable & 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If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the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: Colin MacDonald

Signed (if hard copy)

1. INTRODUCTION

1.1 Cable and Wireless (BVI) Limited dba Flow is pleased to provide comments and remarks on the TRC's Draft Annual Work Plan and Budget 2017/2018 (the Consultation Document) published September 4, 2017.

1.2 The Commission's Consultation Document is comprised of the following four sections:

- I. The Commission's strategic plans for 2017/2018;
- II. The industry levy;
- III. The Commission's work plan for 2017/2018; and
- IV. The Commission's budget for 2017/2018.

We address each topic in our comments below.

1.3 Flow expressly states that failure to address any issue raised in the Workplan and Budget (the 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 Documents at a later date.

1.4 Please send all responses to this Consultation Document and any matters arising to Colin MacDonald at colin.macdonald@cw.com and Melesia Sutherland at melesia.campbell@cw.com .

2. Part I: 2017 and 2018 Strategic Plans

2.1 The Commission notes at paragraph 1.5 on the above captioned heading that;

"1.5 Our mission is to promote value, choice, innovation, quality and competitive pricing for consumers and businesses in the British Virgin Islands. We will work for consumers and

businesses by promoting investment, effective competition, informed choice and the opportunity to have access to a wide range of telecommunications services.”

2.2 Flow BVI wholeheartedly supports this mission and give it its full endorsement. We appreciate the useful information that the Commission has provided on the Board appointments.

2.3 The Commission’s strategic plans must focus on the expeditious reconstruction of vital infrastructure. Flow notes that the Commission’s strategic plans for FY 2017/18 largely mirror its strategic plans for the preceding fiscal period, 2016/17. We have no specific objection with this repetition, but suggest that the Commission’s priorities must now be reconsidered in light of recent events.

2.4 Since the Commission initiated this Consultation, Mother Nature has intervened in the form of a direct hit to BVI by Category 5 Hurricanes, Irma and effects of another Category 5 Hurricane, Maria. Considering the vast destruction caused by these events, Flow believes the Commission’s primary strategic objective for the upcoming fiscal period must be an expeditious reconstruction of vital infrastructure in the British Virgin Islands, which means that all barriers interfering with this objective be addressed and resolved immediately. This includes eliminating delays in assigning spectrum requested by operators for speedier re-establishment of broadband services.

3. PART II: The Industry Levy

3.1 The Commission states that it intends to start collecting the Industry Levy and has proposed a methodology by which the Levy should be calculated in paragraph 1.7:

“1.7 The Commission has now proposed an amended approach to the implementation of the Industry Levy in the initial years of its introduction. The Commission will introduce a path for payment of the Industry Levy, will credit measurable, reasonable and objectively verifiable investment by each operator in its Network and Services to the payment of the Industry Levy and allow the operators to establish a payment plan for payment. The Industry Levy from each of the Licensees will fund a portion of the work of the Commission going forward. The Royalties collected in the past were used to support the work of the Commission. In the future, any surplus

will be paid to the Government of 11 the Virgin Islands, which is typical in the sector and anticipated by the section 65 of the Act.”

3.2 Flow, Digicel and CCT, together as an industry has engaged the Commission on the matter of the levy during the course of this calendar year. The industry has written three (3) letters to the Commission on the matter dated March 2, 2017; May 17, 2017 and July 11, 2017. There are plans for the industry and the Commission to meet to discuss the levy but because of intervening natural disasters the meeting has not yet been held.

3.3 In summary, and extracting from the letters sent to the Commission, the industry has indicated with regards to the proposed levy that:

1. As an industry, we continue to maintain the position that Industry Levy has not been implemented in accordance with the Telecommunications Act (“the Act”). **Section 59** of the Act, which sets out the procedure by which the Industry Levy must be implemented, envisions a regularly reporting Commission that has audited financial statements that form the basis for operators to develop reasonable expectations about the relative size of both the Commission’s budget and their relative contribution to this budget. However, the Commission has never provided operators (or the public at large) with audited financials for any year of the Commission’s existence, in spite of repeated requests by operators and Section 64 of the Act, which specifically requires the Commission to present such audited financials to the Minister within six months of the end of each fiscal year.
2. Section 66 of the Act further requires the Minister to lay such audited financials before the Legislative Council within three months of receipt of these statements, making them incontrovertibly public documents that operators can review and rely upon to develop forecasts and expectations. Furthermore, even Section 59 of the Act, upon which the Commission currently relies to implement the Levy, makes specific provisions to adjust the Commission’s budget up or down by the relative surplus or deficit reported in the previous years’ audited financials.

3. In the absence of audited financials and public reporting which permits true transparency, the Commission's efforts to establish this Levy breach fundamental legal guarantees to the industry against arbitrary rulemaking and unreasonable interference with our revenues, under basic principles of administrative law. In short, we believe that the Levy is unlawful both because of the manner of its imposition and unreasonable magnitude.
4. In our individual responses, we have consistently argued that:
 - a. the manner of Implementation of the Levy is unlawful and breaches the rules of natural justice;
 - b. there are excessive budgetary line items, and that the total amount of the Levy is exorbitant, unnecessary and unreasonable; and
 - c. the imposition of such an extraordinary Levy on operators will lead to higher prices for all consumers, drastically reduce investment in the BVI and generally would not be in the best interest of the public. We maintained that the Commission should more appropriately be focused on spurring investment, further developing electronic communications infrastructure and increasing access to electronic communications goods and services in all parts of the Territory for the greater good of the public.

3.4 The industry and the Commission are yet to arrive at a satisfactory resolution on the proposed industry levy. Note is made of paragraph 3.7 of Part I, where the Commission has committed to providing an annual report for 2016/17.

3.5 If the levy is implemented Flow would pay approximately 10% of revenues to the Commission in fees. Moreover the Commission is proposing charges for new spectrum, in another consultation, which could be significant, which would further increase fees paid to the Commission. This is untenable.

3.6 Flow reiterates that in light of the devastation of the networks in BVI by the hurricanes, the focus of the Commission must be on restoration / rebuild of the networks. As the Commission knows from its many meeting with industry subsequent to the hurricanes, this is the sole focus of operators at this time. Matters such as further discussion on the levy are secondary to the priority of connecting BVI and powering the economy.

4. Part III: 2017/2018 Workplan

4.1 The Commission continues to improve the industry through its extensive workplan.

4.2 It would be useful for the Commission to attach dates to its workplan, where the issues are not day to day operational matters, so that the Commission and the industry can consider how achievable the plan is for the new fiscal, which is only one (1) year. Too, when dates are attached to the Workplan the Commission and the public will be empowered with another tool to assess the effectiveness of the Commission. Without dates attached to the activities in the Workplan, the industry cannot plan and the Commission creates a wishlist of activities that may or may not happen.

4.3 While all the objectives in the Workplan are laudable, it will be difficult to achieve them all in a single fiscal considering the extent of the Workplan and the resources available to both the Commission and the operators.

4.4 The devastation wreaked by Hurricanes Irma and Maria will adversely affect the Commission's ability to deploy its Workplan for fiscal 2017/2018.

5. PART IV: Budget for 2017/2018 Financial Year (FY)

5.1 We are concerned by the magnitude of certain line items and their rate of increase over the previous two fiscal periods, especially considering the low level of inflation the British Virgin Islands has experienced during this time.

5.2 With the exception of two expense line-items—Professional Services and Special Projects, which are slated to decline “due reduce litigation matters” (sic)—all other expense line-items in the Commission budget are set to increase by an average of 16%, from US\$2.5 million in FY 2016/17 to US\$2.9 million in FY 2017/18; and this is after already increasing by

19% in the previous fiscal period, from US\$2.1 million in FY 2015/16 to US\$2.5 million in FY 2016/17. See Table 1 below. These are very large rates of increase and are concerning considering that annual inflation during these periods in the British Virgin Islands has remained below 1%.

5.3 This trend is especially concerning, given that these increases to the Commission’s budget are being driven largely by increases to staff compensation and benefits, which are already well outside the norm of average compensation levels in the British Virgin Islands. The compensation and staff benefits are identified in four separate line items to the Commission’s budget. They include: staff honoraria, staff compensation, staff benefits, and staff training. These budget items are identified in Table 1 below.

Table 1

Expense item	FY 2015/16	FY 2016/17	FY 2017/18
Honoraria	\$ 40,800.00	\$ 40,800.00	\$ 40,800.00
Compensation	\$ 993,962.21	\$ 1,102,431.72	\$ 1,259,884.88
Staff benefits	\$ 493,449.92	\$ 530,797.19	\$ 594,590.76
Training	\$ 127,173.46	\$ 200,863.23	\$ 343,937.44
Total staff compensation and benefits	\$ 1,655,385.59	\$ 1,874,892.14	\$ 2,239,213.08
Commission staff			
Total # of staff	18	18	18
Annual compensation per staff			
Average compensation and benefits per employee	\$ 91,965.87	\$ 104,160.67	\$ 124,400.73
<i>Annual % increase</i>		13%	19%

5.4 As demonstrated in this table, the Commission continues to increase staff compensation and benefits at rates that vastly exceed the rate of inflation in the British Virgin Islands. In FY

2015/16, the Commission budgeted US\$1.7 million for staff compensation and benefits; increased this in FY 2016/17 to US\$1.9 million; and now projects another large increase in FY 2017/18 to US\$2.2 million. This represents an increase of 13% in FY 2016/17 and an increase of over 19% in FY 2017/18.

5.5 These are not only large annual increases, but they are very large compensation figures, especially given that according to information from the Commission there are only 18 (eighteen) members of staff. This implies that in FY 2017/18 the average annual compensation and benefits per staff will be US\$124,401. These are astonishing figures, especially when considering the average GDP per capita in BVI is approximately US\$38,500. And for comparative purposes, note the amount budgeted by the Commission for consumer information and education is only US\$48,000—approximately a third of what it has budgeted on average for a single employee in FY 2017/18.

6. Conclusion

6.1 In closing, Flow trust the Commission will give thoughtful consideration to Flow’s comments. We also invite the Commission to reconsider its budget and reduce expenditure where identified as excessive.