



# Commission Annual Work Plan and Budget 2019/2020

Promoting value, choice, innovation, quality and competitive prices for all consumers

Statement

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## About this document

The Telecommunications Regulatory Commission of the British Virgin Islands (**Commission**) is tasked with the regulation and development of the telecommunications services industry in the Territory.

To achieve this, we promote and protect the interests of consumers and business in the British Virgin Islands with respect to price, choice, quality of service and innovation in telecommunications services, while encouraging a competitive market place.

Under section 63 of the Telecommunications Act 2006 (**Act**), the Commission is required to publish its Annual Work Plan and Budget.

Our Annual Work Plan outlines some of the key work that we propose to undertake in order to realise our objectives in the coming year. We also highlight our on-going work, which supports these goals. This document is our Annual Work Plan and Budget for the Commission's 2019/2020 financial year.

This Annual Work Plan takes into account stakeholder responses to our consultation on the proposed Plan.

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## Part 1: 2019/2020 Strategic Overview

### Background

- 1.1 The Commission is the independent regulator for telecommunications in the British Virgin Islands, established in 2007 in accordance with the Act. Our mandate is to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands.<sup>1</sup> Our principal statutory functions are set out in section 6 of the Act.
- 1.2 Our mission is to promote value, choice, innovation, quality and competitive pricing for consumers and businesses in the British Virgin Islands. We 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.
- 1.3 To promote transparency and accountability, the Commission is required to publish an Annual Work Plan containing 'a general description of the work and activities that the Commission plans to undertake in the financial year.'<sup>2</sup>
- 1.4 In accordance with its statutory obligations, this document is the Commission's 2019/2020 Annual Plan, which will guide the Commission's work in 2019 in the telecommunications sector, for which it has responsibility. Also included in this document is the 2019 Budget, as required by section 63 of the Act.

### Board of the Commission

- 1.5 The Minister, with the approval of the Council, made the following appointments to the Board of the Commission:
  - Chairman: Michael Thomas (Re-appointed: 13 February 2017 to serve for a term of two years and six months)
  - Board Members: Jerry Samuel (Appointed: 1 March 2017 to serve for a term of three years)
  - Chief Executive Officer and Board Member: Guy L. Malone: Re-appointed 1 March 2019 for a term of two years)
- 1.6 The Board of the Commission, as constituted, is continuing its objective of undertaking a thorough review of (a) work done by the Commission to date; (b) action required to bring the Commission into line and up to date with its duties under the Act; (c) the quality and speed of communications services being delivered in the Territory; (d) additional legislation that needs to be introduced to bring the BVI up to international standards and (e) staffing requirements to facilitate the delivery of the Commission's Work Plan.

### Our Principles of Regulation

- 1.7 We have adopted six essential principles of good regulation consistent with international standards and best practice:

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[http://www.trc.vg/images/attachments/040\\_G00050\\_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf](http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf)

<sup>2</sup> Section 63(2) of the Telecommunications Act 2006.

**Accountability:** Our decision-making powers should be, with the constraints of confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

**Focus:** We will concentrate on protecting the interests of consumers and business in the British Virgin Islands by ensuring the operation of a well-functioning and contestable market.

**Predictability:** We plan to provide a stable and objective environment, allowing all those affected by our regulation to anticipate the basis for further decisions and make long-term investment decisions with confidence.

**Adaptability:** The framework of our economic regulation will be flexible enough to respond to a quickly changing technology and services environment, continuing to be relevant and effective over time.

**Efficiency:** Where we intervene, policy interventions will be proportionate and cost-effective, and our decision-making should be timely and robust.

**Balance:** Our evidenced-based approach to decision-making and our adaptability will ensure that we remain proportionate, consistent, fair and just.

## Strategic Aims and Objectives 2019/2020

1.8 We have identified six strategic aims and objectives for the 2019/2020 financial year:

### 1.9 Improved Telecommunications Services

We believe that a resilient and first-class telecommunications services industry is a hallmark of competitive economies and we recognise that there are several other industries that are critically dependent upon having a competitive and robust telecommunications market and infrastructure. To ensure that the British Virgin Islands is equipped to compete regionally and internationally, we will promote the enhancement of telecommunications in the Territory, recognising its central nature in attracting and retaining targeted business activity and supporting overall economic growth.

### 1.10 Support Governmental Initiatives

The Government has identified several key plans which are geared towards the development of the Territory. Telecommunications has been specifically identified as having a direct impact upon the realisation of these plans. As such, we will be seeking closer relations with our Minister and the wider Government to bolster the view of telecommunications as a fundamental service and demonstrate our commitment to supporting local development plans. We will provide timely and high-quality advice to the Minister relating to telecommunications and consistent updates on our work and the development of the sector.

### 1.11 Heightened Consumer Awareness

The Commission recognises that as the regulator of telecommunications in the British Virgin Islands, we have a duty not only to protect the public's interest, but to ensure that the public is aware of our work and how it impacts their experience in this services industry. We will engage with local consumers and businesses to educate them on the telecommunications market and our work, and to hear any concerns or challenges that they may be experiencing in the industry. Through this initiative, we will be better able to prioritise work to ensure that we deliver the most benefit to consumers, business and visitors in the British Virgin Islands.

### **1.12 Positive Stakeholder Engagement**

Our interaction with stakeholders is critical as we prioritise our work plan with a view of providing a quick and effective response to market developments. In this regard, we will positively increase our interaction with local licensees to better understand the challenges they face and opportunities where we might better be able to support their work and assist their processes in relation to improvement of telecommunications infrastructure. We believe that a regulator who proactively engages with key participants in the industry is better equipped to realise advancement of the telecommunications experience.

### **1.13 International Best Practice**

We have improved our relationships with sectoral regulators including CANTO, OOCUR, CTU, OFCOM in the UK, and the FCC in the US. Our associations with other organisations including the GSMA, PCH, IANA and ARIN have also been enhanced. In this financial year, we will be seeking closer engagement with URCA in the Bahamas, OfReg in the Cayman Islands, SMA in Jamaica, and CICRA in the Channel Islands. This sharing of knowledge and best practice has allowed us to ensure consistency in our approach to economic regulation and ensure that we continue to follow international best practice in regulation and bring lasting benefits to the telecommunications services industry in the British Virgin Islands.

### **1.14 Enhanced Industry Oversight**

The Commission is committed to fair and proportionate regulation of the telecommunications industry. We will strategically monitor all licensees' compliance with the Act, their licences, the Telecommunications Codes and any Instructions issued by the Commission, and take enforcement action, as necessary. This is in line with our duties under the Act and our commitment to add value to the telecommunications industry in the Territory. By encouraging increased investment by operators, fostering competition in the market and protecting the welfare of users, we believe that the telecommunications experience can be first-rate.

## Part 2: The 2019/2020 Work Plan

**The Commission's objective for the British Virgin Islands' telecommunications market is to ensure that it satisfies all reasonable demands for telecommunications services by promoting competition and encouraging investment.**

**Our critical projects for 2019 and 2020 are set out below.**

*Ensure optimal spectrum efficiency so that this resource is used for the maximum benefit of consumers and enterprises.*

- 2.1 On 3 August 2018, the Commission commenced a consultation on the release of LTE TDD spectrum in the 2.3 GHz, 2.5 GHz and 3.4-3.6 GHz bands. This was done in keeping with our 2018 Spectrum Management Framework and the need to support the improvement of local fixed communications services. Following the close of the consultation, the Commission postponed the next stage of the release, considering responses received from the industry. As we continue to engage with industry to assess their demand for the spectrum and resultant benefit to the Territory, if it were released, the Commission will determine the appropriate time and format for the release of additional spectrum into the market. Thereafter, other activities identified in the Implementation Plan will be prioritised by the Commission.
- 2.2 Develop an Equipment Type Approval framework, which will include the establishment of preferred technical standards, to regularise the system of type approval and certification currently undertaken by the Commission and to allow for the collection of fees for this work.
- 2.3 We will upgrade the Commission's Radio Licensing programme to facilitate the processing of frequency authorisations within various radiocommunication services including, amongst other, maritime, aeronautical, broadcasting and land mobile services.
- 2.4 As the Commission puts to use the spectrum management software tool acquired during our 2018/2019 financial year, the Commission will now move to develop a frequency list showing spectrum allocated in the British Virgin Islands in various frequency bands.
- 2.5 Our work towards conducting a comprehensive network audit of the usage of spectrum frequencies by licenced operators has commenced and will continue into this financial year. This initiative will assess the efficiency and effectiveness of spectrum usage and the quality of services that currently exist in the Territory.

*Facilitate continued development of a first-class telecommunications infrastructure with enhanced quality of service while improving the internal ICT environment to allow for better service to consumers, enterprises and visitors to the British Virgin Islands.*

- 2.6 Develop an internal Information and Communications Technology policy to determine how and for what purposes ICTs will be used. The Commission recognises the need for strong capacity building within the regulator, and as such will use this initiative to provide the opportunity for employees to be further educated about ICTs and associated risks and rewards. This will seek to ensure better communication with licenced operators and other valued stakeholders. Additionally, we will continue to work closely with the CTU in contributing to the development of a national ICT Policy.
- 2.7 Improve telecommunications systems and services within the Commission to allow employees to better serve the public interest in regulation of the industry. By doing this, we hope to see positive performance transformation internally and equally constructive change in the market.

- 2.8 The Commission remains committed to improving the speed and reliability of internet services accessed in the Territory. We will examine broadband speeds in other jurisdictions to assist in determining appropriate quality of service targets. Following this, we will develop a Broadband policy for the benefit of telecommunications consumers in the British Virgin Islands.

*Review the licensing framework and support the implementation of recommended changes to the Telecommunications Policy, Act, Codes and Regulations.*

- 2.9 The Commission is cognisant that operator licences are due for renewal by 2022. Considering this, we will commence the review of operator licences during this financial year with a view to determining appropriate areas for amendment.
- 2.10 Introduce additional telecommunications Codes and Regulations to complement the recommendations for revisions to the Act and new areas identified in the revised telecommunications policy.
- 2.11 Continue with already commenced processes for the implementation of recommendations for a revised telecommunications policy, revision to the Act, and introduction of new Codes and Regulations.

*Enhance economic remedies and solutions to deliver choice and value to consumers and business in the British Virgin Islands.*

- 2.12 Fully develop an online database containing information on the state of telecommunications in the British Virgin Islands, to be updated periodically.
- 2.13 Develop an in-house Long Run Incremental Cost model for use in termination of interconnection tariffs and for market analysis purposes, with a view to improving market conditions if and where necessary.
- 2.14 The Commission recognises that consumer choice and satisfaction are crucial in any services industry. To assist consumers in the telecommunications sector, we will develop a user-friendly consumer choice tool using data to help consumers make informed decisions about telecommunications services plans in the Territory.

*Ensure that the Commission is adequately skilled, involved with telecommunications users, and has the appropriate financial framework to fulfil its duties under the Act.*

- 2.15 Hire a Compliance Officer to take forward the programme of work relating to regulatory compliance and the implementation of procedures to enhance oversight of and acquiescence in the industry.
- 2.16 Commence a public awareness campaign to create awareness in the Territory of projects being undertaken by the Commission and to educate citizens and consumers on key developments in and challenges affecting the telecommunications sector.
- 2.17 The Commission will go on a staff retreat aimed at improving focus within the organisation. Telecommunications, and equally its regulation, is vital in the British Virgin Islands. Therefore, to ensure that the Commission continues to serve the public interest, the time will be used to revise our mission and vision and to gain guidance on the best ways of performing our duties.
- 2.18 The Commission remains committed to becoming current in our financial reporting. Work is currently underway, and on schedule, for completion of audited financial statements for 2016, 2017,



and 2018 during the 2018/2019 financial year. Audited financial statements for 2019 are projected for completion during the second quarter of the financial year.

*Contribute positively to the environment and safeguard the Commission against disastrous impact to ensure the continued regulation of the telecommunications services industry.*

- 2.19 Develop a paperless strategy to create a green environment within the Commission. Through this initiative, the Commission hopes to accomplish more efficient operations, increased security, reduced costs and lessened environmental impact.
- 2.20 Finalise a disaster preparedness plan for the Commission to ensure life safety, stabilisation of the incident and property conservation in the event of incidents or severe weather patterns.

## Part 3: On-Going Work to Fulfil Our Duties

**Under section 6 of the Act, the Commission has a broad range of duties and responsibilities. Much of this work is non-discretionary and is outlined in the Act.**

**Our broader programme of on-going work, as outlined below, helps us to fulfill our wider mandate and supports the work identified in Part 2 above.**

### **3.1 Protecting consumer interests**

As one of the key safeguards of the public interest, we establish quality of service indicators and reporting requirements. We enforce and monitor the effectiveness of operator performance to ensure an optimum consumer experience in the telecommunications sector.

### **3.2 Addressing consumer complaints**

The Commission regularly investigates and resolve complaints by telecommunications users in the BVI in relation to telecommunications products and services and facilitates relief, as necessary, to create a firm and effective outcome where we see harm.

### **3.3 Monitoring industry compliance**

We assess compliance of all licensees with the regulatory framework, their licence and any relevant instruction or directives issued by the Commission. Where instances of non-compliance arise, we intervene, ensuring that our regulatory powers are exercised in a transparent, appropriate and non-discriminatory manner.

### **3.4 Enforcing competition conditions**

To ensure effective competition in the market, we investigate operator issues in relation to interconnection and shared facilities, enabling timely and amicable resolutions, as necessary. We also enforce regulatory conditions that we impose on communications providers to promote competition.

### **3.5 Managing spectrum usage**

The Commission ensures that the radio spectrum is used in the most efficient way, which limits interference between users and maximises benefits to consumers. We authorise the use of spectrum through the issuance of frequency authorisations. Where appropriate, we issue exemptions to allow spectrum use without a frequency authorisation.

### **3.6 Eliminating harmful radio interference**

We advise and assist spectrum users by monitoring marine traffic and handling reports of interference, while carrying out activities to protect the radio spectrum. The Commission has developed an awareness and enforcement programme, which includes notifications and coordination with Government to eliminate instances of harmful interference.

### **3.7 Frequency Coordination discussions**

Recognising the technical and regulatory process needed to remove or mitigate radio-frequency interference, the Commission remains engaged in formal discussions with the FCC towards establishing clear guidelines for frequency coordination between the British Virgin Islands and the US Virgin Islands.

### **3.8 Determining licence and frequency authorisation applications**

We assess applications for commercial TV and radio service, and other licences and frequency authorisations based on application policies and regulations. Where licence or frequency authorisations are granted, we monitor and enforce effective compliance.

### **3.9 Monitoring telecommunications developments**

Our policy work is informed by technical and commercial developments in the industry. Therefore, to ensure that we are properly informed of future opportunities and challenges, we monitor, analyse and consider respective developments to ensure that our regulation and promotion of expansion are appropriate.

### **3.10 Implementing technical development**

As telecommunications advances, the Commission determines the various implications of implementing technical initiatives. Work continues in this respect for number portability, as our consumer demand assessment will be completed during the 2018-2019 financial year. Additionally, we will continue to encourage the proliferation of IPv6 across the Territory.

### **3.11 Advising the Government of the Virgin Islands**

The Commission engages with the Government to advise on positions and policies relating to telecommunications issues and advancement in the telecommunications industry. We also work closely with other regulators in the Region to ensure a coordinated approach to regulation.

### **3.12 Engaging with international stakeholders.**

We believe that discussing best practice is of utmost important to ensuring consistency in our regulation of telecommunications. Considering this, the Commission engages with international stakeholders in the industry, to learn from their experiences and join policy discussions that may impact the BVI telecommunications sector.

### **3.13 Organising Industry Events**

The Commission celebrates telecommunications related occasions including, World Telecommunications and Information Society Day. In December 2018, we hosted our first cocktail reception for industry stakeholders. These events provide an opportunity for mutual engagement between the Commission, licensees, consumers and businesses.

### **3.14 Building our human resource**

We undertake comprehensive internal and external staff training and development to ensure increased knowledge and awareness of the communications and technology sector as well as the responsibilities of the Commission.

### **3.15 Collecting telecommunications fees**

We assess and collect fees and other charges payable to the Commission, including without limitation, licence fees, royalties, and spectrum fees. We anticipate discussions with stakeholders on the Industry Levy during the 2019/2020 financial year, with a view to determining a mutually agreeable plan concerning the timing and approach for collection.

## Part 4: Budget for the 2019/2020 Financial Year

### Estimated Income

FY 2020 Budget - Income	FY 2019 Budget	FY 2020 Budget
Domain Registration Fees	32,000.00	30,000.00
Industry Levy Fees	4,265,066.60	4,249,009.13
Radio License Fees	45,000.00	50,000.00
Royalty Fees	2,220,629.73	2,050,104.74
Spectrum Fees	516,650.00	516,650.00
Submarine Cable Fees	500,000.00	500,000.00
Finance Income	10,000.00	10,000.00
<b>Estimated Income</b>	<b>7,589,346.33</b>	<b>7,405,763.87</b>

## Estimated Expenditure

FY 2020 Budget - Expenditure	FY 2019 Budget	FY 2020 Budget
Non-Executive Members Honoraria and Expenses	40,800.00	40,800.00
Employee Compensation	1,242,445.01	1,342,822.48
Government Fees and Staff Benefits	591,036.99	634,283.44
Professional Services	801,950.00	689,745.00
Conferences, Training and Travel	244,822.86	261,834.58
Rent and Utilities	415,222.88	433,720.88
Maintenance Expenses	47,113.44	66,003.45
Consumers Education and Public Relations	48,000.00	55,000.00
General and Administration	217,622.20	205,007.94
Special Project	100,000.00	100,000.00
<b>Estimated Operating Expenditures</b>	<b>3,749,013.38</b>	<b>3,829,217.77</b>
Contingency Amount	<b>516,053.22</b>	<b>419,791.36</b>
<b>Total Estimated Expenditures with Contingency</b>	<b>4,265,066.60</b>	<b>4,249,009.13</b>
<b>Net Income before Regulatory Contribution</b>	<b>3,324,279.73</b>	<b>3,156,754.74</b>
Less: Regulatory Contribution	(2,220,629.73)	(2,050,104.74)
<b>Estimated Net Income (Loss) after Regulatory Contribution</b>	<b>1,103,650.00</b>	<b>1,106,650.00</b>
<b>Capital Expenditure</b>	<b>1,411,518.83</b>	<b>368,695.85</b>

## Overview of Budgetary Items

### Income

- **Domain Registration Fees:** This income comprises of new and renewal dot.vg subscribers. This is an emerging market that the Commission wishes to grow. The Commission hopes, in the future, that all local registered companies will have a DOT.Vg account.
- **Industry Levy Fees:** As per section 59 of the Telecommunications Act 2006, the Industry Levy represents the Commission's operating cost assessed by the Commission on all Licensees.
- **Radio Licence Fees:** This income represents fees from individual radio operators, boat captains, and registered boats that renew or apply for a radio licence to operate in the BVI.
- **Royalty Fees:** This income represents royalties received from the licensed operators annually. This amount is 3% of the gross income of the licensed operators. This income decreased by 8%, as a result of impact to the Territory during the 2017 Atlantic Hurricane Season.
- **Spectrum Fees:** This is a relatively new revenue stream for the Commission, since the LTE award process in 2016. This is a fixed annual fee, payable every August by the holders of the LTE spectrum.
- **Submarine Cable Fees:** A fairly new revenue stream for the Commission, because of CWC submarine cables that terminate or transit the BVI, pursuant to the Submarine Cable Directive dated 18th Dec 2014. This revenue is capped at \$500,000.00 per annum.
- **Finance Income:** Interest Income on bank deposits.

### Expenditures

- **Non-executive Members Honoraria and Expenses:** This represents the budgeted cost for all members of the Board of the Commission. This expenditure has remained the same over the financial periods reported (2019 and 2020).
- **Employee Compensation:** This represents remuneration for all employees, inclusive of 18 full time positions. However, there are currently 3 job vacancies – Legal Advisor, Tech Project, Graphic Officer and a Compliance Officer. This figure has increased by 8% over the prior budget year.
- **Government Fees and Staff Costs:** This represents employer social security, NHI, PAYE, pension cost, health benefits, staff recognition program, housing allowance, travel allowance, telephone allowance, entertainment allowance, performance management and gratuity scheme. This figure has increased by 7% over the prior budget year.
- **Professional Services:** This represents auditing services, economics service, legal and litigation services, research and development services, and technical and human resource services. This figure has decreased by 14% from prior periods.
- **Conferences, Training and Travel:** This represents travel, local and internationally, for members of the Board and employees, to attend meetings, conferences, seminars, and workshops for continued development on behalf of the Commission. This figure has increased by 7% compared to the prior year's budget. The priority of the Commission is to ensure that each member of staff is

adequately knowledgeable in their area considering ever-changing technology, while fostering business relationships with regulatory bodies worldwide.

- **Rent and Utilities:** This represent occupancy of the 2<sup>nd</sup> and 3<sup>rd</sup> floor of the LM Business Centre; the latter floor was leased by the Commission from December 2016 to accommodate increased staffing. This figure has increased 4% over the prior budget year due to increase insurance cost.
- **Maintenance Expenses:** This represents automobile maintenance, building maintenance, cleaning and cleaning materials, computers, equipment and site, fuel, and office equipment. This figure has increased by 40% over the prior budget year, due to new equipment maintenance cost.
- **Consumer Education and Public Relations:** This represents initiatives aimed at educating and informing consumer on various aspects of the telecommunications sector, including community outreach; utilisation of other media avenues; and acknowledgement of various telecommunications days/events. This expenditure has increased by 15% over the prior budget.
- **General and Administration:** This represents subscriptions, customs duties, general office expenses, and messenger services. This figure has decrease by 6% over the prior budget year due to reduction in cost for licenses and software subscription.
- **Special Projects:** Operator Compliance Audit. This represents the Commission's focus on investigating each operator's business operations and practices, in an effort to gain a better understanding of the business and ensure the compliance of all operators. While the Commission will be involved in this initiative, this project includes obtaining external services from its auditors and technical experts for the Commission to effectively carry out this audit.
- **Contingency Amount:** This represents 10% of the estimated expenditure, as per section 59(2) of the Telecommunications Act 2006.

## Annex: Responses to the Draft Annual Work Plan and Budget 2019/2020

We received one response to the Consultation on our Draft Annual Work Plan & Budget 2019/2020 within the specified consultation period. This response was submitted by Cable & Wireless (BVI) Limited (“FLOW”). Another response was submitted by Digicel (BVI) Limited (“Digicel”) after the consultation period had ended. The Commission, in its discretion, has also considered this response. Accordingly, in finalising our Annual Plan, we have considered the views of both respondents and have published their submission in full on our website. Below, we provide our response to key points raised during the Consultation.

### Part I: 2019/2020 Strategic Overview

Digicel was the sole respondent that submitted a comment in relation to the Commission’s 2019/2020 Strategic Overview. In summary, Digicel requested additional details in relation to the enhancements of telecommunications in the Territory that the Commission would be promoting, the plans that the Government has identified in relation to development of the Territory and investment by operators that the Commission intends to encourage. Furthermore, Digicel opined that the Commission must consider the challenges and concerns encountered by operators, including their own visions and plans.

As it relates to the Commission’s plans to enhance telecommunications in the Territory, these are outlined in the activities contained in Part 2 of the Annual Plan. The Commission will be meeting with the Premier to discuss the views of Government as to how the Commission can better support the overall plan for the Territory. Once known, this will be discussed with key stakeholders in the industry. Moreover, the Commission is cognisant of the difficulties experienced by operators and must, equally, balance this against the trials encountered by telecommunications users and the fact that the realisation of healthy socio-economic development is bolstered by resilient telecommunications services. Ultimately, it is the Commission’s responsibility to ‘promote the systematic development of telecommunications throughout the Virgin Islands’ (section 6(r) of the Telecommunications Act 2006). Therefore, any visions or plans that an operator has for the industry must be aligned with the Commission’s mandate.

This section of the Annual Plan remains unchanged. Notwithstanding this, we look forward to healthy discourse with the operators on all our activities throughout the financial year.

### Part 2: The 2019/2020 Work Plan

The Commission received several comments in relation to this Part of the Annual Plan.

*Ensure optimal spectrum efficiency so that this resource is used for the maximum benefit of consumers and enterprises.*

Digicel noted its expectancy of a second round of consultation in relation to the release of additional spectrum into the market. Conversely, it indicated its disappointment with the Commission’s acquisition of spectrum monitoring software and a mobile monitoring unit, which it had requested the Commission to provide details of in its response to the 2018/2019 Work Plan & Budget consultation. The Commission was equally disappointed with the fact that Digicel’s response to that consultation was after the closing date. Accordingly, in its discretion, pursuant to section 7(4) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010, the Commission decided not to consider Digicel’s response. Notably, this year’s consultation response from Digicel was similarly tardy. However, our discretion was exercised in their favour. However, we wish to take this opportunity to indicate that the Commission will be strictly enforcing its consultation deadline moving forward and the industry, with whom we look forward to engaging with, should be cognisant of this.



*Facilitate continued development of a first-class telecommunications infrastructure with enhanced quality of service while improving the internal ICT environment to allow for better service to consumers, enterprises and visitors to the British Virgin Islands.*

The Commission notes Digicel's comments in relation to engaging with the industry on the upcoming Broadband policy, noted at paragraph 2.8 of the Annual Plan, and ensuring that jurisdictions considered in the development of this document is comparable to the British Virgin Islands.

*Review the licensing framework and support the implementation of recommended changes to the Telecommunications Policy, Act, Codes and Regulations.*

Digicel essentially questions the basis for review of the legal framework that governs the telecommunications industry, while opining that such contributing factors should be made known to the industry and published for comments. Without this, in their opinion, it is difficult to appreciate why this exercise would be contemplated at this time.

Legislative good practice dictates that laws are reviewed every ten years to determine whether amendments are necessary. Given the rapid changes of the industry, there are several areas that the laws do not presently take into account, effectively making it unfit for purpose. Furthermore, a gap analysis of the legislation was done, identifying various legal lacunas, some of which are based on cases which have been tried before the local Courts. Furthermore, the CTU, in its development of a National ICT Policy noted at 2.6 above, identified the amendment of the legislation as necessary for better regulation of the industry. Accordingly, there is a strong supporting basis for this exercise, on which the Commission would have been aware of and considered in coming to such a determination. Consultation with the industry and the public will follow once initial drafts are in order.

*Enhance economic remedies and solutions to deliver choice and value to consumers and business in the British Virgin Islands.*

Both Digicel and Flow provided comments in relation to the Long Run Incremental Cost (LRIC) model, contained in paragraph 2.13 above. Flow opined that this model could only have limited application for market analysis purposes and should not be used for market analysis at the retail level. Further details were requested in relation to the objective of this initiative, and the likely costs and scope of the LIRC model, to better understand the basis and value of its development. On the other hand, Digicel expressed an openness to discussion on the intention of the LRIC model and a belief that consultation is necessary to agree the parameters within which the LRIC model would be applied. Further, Digicel cautioned the Commission to recall market considerations, operator challenges and the application of the LRIC model, in light of prior controversy surrounding the latter.

In recent times, there has been much concern about the British Virgin Islands and the costs associated with telecommunications services. Economic theory dictates that the risk of anticompetitive behaviour is the setting of prices above marginal costs. Therefore, the Commission intends to undertake an exercise to collect various market data; following which, it can develop an LRIC model to confirm or refute the legitimacy of claims associated with market prices and competition in the sector.

The LRIC modelling process looks at capital investments in detail, together with the cost of capital, depreciation, and operations and maintenance costs. It also determines, theoretically, what are the costs each year to produce a service on a particular network, while holding other services constant. Such information, when compared to market prices, is useful in assessing the effects of competition in the market and can as well be useful in other regulatory matters.

While the proposed LRIC model would indeed be helpful in any proceedings related to calculating interconnection tariffs, such proceedings are not the only use of the data. The Commission is charged with ensuring healthy competition in the Territory, and measurements of long-run incremental cost can assist both with understanding the nature of the unusually high fixed costs present in a small market, like the BVI,

as well as the level and intensity of competition in the market, which the Commission is charged with promoting.

Having hired a Chief Economist during our current financial year, this project will be undertaken in-house by our Economics Department. Accordingly, there is no additional costs associated with this project outside of staff remuneration.

The Commission has considered its obligations so far as consultation is concerned, as contained in the Act and section 4 of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010. Neither a request for information of the type which will be needed for the LRIC model nor the development of the model presently under contemplation are matters specified under the Act for which a public consultation is required. Furthermore, it appears that a public consultation is not necessary in these circumstances based on the requirements of the mentioned Code and, as of present, the Commission has not found it otherwise necessary to consult.

Nonetheless, we would certainly welcome dialogue with the operators as we build such a model, but a first step must be data collection. To foster the ensuing dialogue, we would like to encourage all the operators to schedule a meeting to meet with our Chief Economist, who brings a wealth of experience in these matters to the table.

*Ensure that the Commission is adequately skilled, involved with telecommunications users, and has the appropriate financial framework to fulfil its duties under the Act.*

Digicel opines that the outcome of the staff retreat, contained in paragraph 2.17 above, should be made known to the industry and/or published on the Commission's website. Additionally, clarity was sought on the costs associated with the staff retreat and the person/organisation by whom it will be conducted.

The Commission wishes to ensure its stakeholders that applicable information will be made known to the industry, including, without limitation, the new mission and vision of the Commission as well as related accomplishments, which will also be published in the Commission's 2019/2020 Annual Report. Other information may, however, be considered as confidential internal matters and, therefore, will not be discussed or disclosed. It should be noted that in the existence of the Commission over the past 13 years, it has never had a staff retreat and, consequently, we would expect the industry to welcome this step towards improvement. The cost of the staff retreat will be covered by the Commission's income, noted under Part 4 above and the Commission is in consultation with industry experts to determine who would be best suited to engage for this endeavour.

### **Part 3: On-Going Work to Fulfil Our Duties**

Digicel was the sole respondent who provided comments in relation to the Commission's On-going Work to Fulfil Out Duties. While appreciating this work, Digicel impressed upon the Commission that the industry should be provided with yearly reports showing the Commission's achievements and outcomes of work undertaken. The Commission acknowledges and agrees with this comment and is assiduously working towards compiling an Annual Report to allay this concern in the future. Additionally, the Commission welcomes and remains open, in the interim, for discussions with operators on any activities or otherwise, as we always aim towards transparent regulation.

### **Part 4: Budget for the 2019/2020 Financial Year**

The Commission received several comments in relation to the Budget for the 2019/2020 Financial Year. Digicel expressed disappointment that the Commission is still moving towards implementation of the Industry Levy, despite previous opposition from Digicel, which still stands, amongst other industry players. It is suggested that the budgeted amount was arrived at baselessly and is, overall, unjustified. Furthermore, Digicel indicated that the Commission provides yearly draft Work Plan & Budget consultation documents to the industry without providing a final document.

The Commission does not believe that the industry is able to oppose the implementation of the Industry Levy, as it is a statutory requirement under section 59 of the Act, which was further enshrined into each operator's licence. The Levy has been delayed, year-on-year, allowing the industry to better invest in the Territory, the results of which we do not properly see. Therefore, collection of the Levy will follow. The calculation of the Levy is based on the Commission's budget for a particular financial year, in this case 2019/2020, as per the requirements of the Act. The Commission will have further discussions with the industry, as requested by Digicel, as noted at paragraph 3.15 of the Annual Plan. Digicel notes that it is prepared to protect its position in relation to the implementation of the Industry Levy and the Commission is equally prepared to protect its rights, as contained under the Act.

As it relates to a final statement on the Commission's yearly Work Plan & Budget, the Commission categorically refutes Digicel's assertion and wishes to direct Digicel to the consultation section of our website where our annual final statements on the Work Plan & Budget can be found.

We are pleased that Flow has acknowledged a 14% reduction of the Commission's professional fees for the 2019/2020 financial year. Notwithstanding this, the Commission's overall budget was still viewed as excessive. It is noteworthy that 2019/2020 budget is \$16,057.47 less the 2018/2019 budget, which demonstrates the Commission's commitment to streamlined expenditure. The budget categories that raised particular concerns to both operators were employee compensation, government fees and staff costs, professional fees, conferences, training and travels, maintenance expenses, consumer education and public relations, and the contingency amount. The Commission provides additional information in relation to some of these line items, as requested by Flow and Digicel, below:

#### *Professional Fees*

The general components of this line items are noted under Part 4 above. As it relates to auditing services, the Commission is responsible for preparing and approving its own audited financial statements and the Auditor General only has responsibility for such where the Commission has not made an independent appointment, as noted under section 64(3) and 64(4) of the Act, respectively. Economic Services received no funding allocation for this financial year. Additionally, as it relates to research and development, this is for consultations for spectrum allocations.

#### *Conferences, Training and Travel*

The increase in this line item is as a result of the staff retreat, noted at 2.17 of the Annual Plan, which was added to the budget in this financial year. As noted above, this initiative is geared towards enhancing the organisation to better serve the telecommunications users and our valued stakeholders of the British Virgin Islands.

#### *Maintenance Expenses*

During the current financial year, the Commission is purchasing a mobile spectrum monitoring unit to assist our Spectrum team in ensuring that the use of spectrum in the Territory is authorised and efficient. The increase in this line item includes the maintenance of this new fixed asset.

#### *Consumer Education and Public Relations*

As a regulator for telecommunications in the BVI, the Commission's first responsibility is to the public, which starts by ensuring that they are aware of who we are, our work and finding out how best we can serve them. Accordingly, the increase in this line item relates to the Commission's desire to undertake a comprehensive public awareness campaign, which will be aimed at achieving the aforementioned objectives and conducted through various mediums and platforms. We note Digicel's comment as it relates to undertaking this initiative through social media. However, this view assumes that all telecommunications users are on social media, which is not accurate. The Commission has a duty to ensure that everyone has the benefit of

disseminated information in relation to the sector. This campaign is a new initiative, the pros and cons of which will be continually assessed throughout the financial year and adjusted accordingly.

*Contingency Amount*

The 10% contingency amount is not an increase on any particular line item. Rather, it is 10% of the Commission's budget for the financial year. Inclusion of a contingency is considered by the Commission as financial prudence, and has, therefore, been a component of our budget every financial year. Furthermore, under section 59(2) of the Act, a contingency amount of 10% is to be included by the Commission, in addition to the net estimated expenditure, when calculating the Industry Levy. The Commission's inclusion of this percentage is, accordingly, supported by our intent to discuss and agree with operators the timing and approach to collection of the Industry Levy during this financial year, as noted at paragraph 3.15 of the Annual Plan. Digicel's assertion as it relates to refunding the industry any unused portion of the Commission's budget is erroneous, as such amounts would be considered and treated as surplus, in accordance with section 65 of the Act.