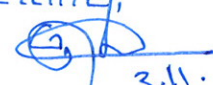


For the attention of the Chairman,
Mr. Scatliffe,

3.11.10

Response to Telecommunications Regulatory Commission Work Programme for 2010-2011¹

Response from: Digicel (BVI) Ltd
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BRITISH VIRGIN ISLANDS

- cc. Roxie Romney, Shareholder Digicel BVI Ltd.
- cc. Colin Scatliffe Chairman of TRC Board.
- cc. Honorable Julian Frazer, Minister for Communication and Works.

¹ The comments in this response are not exhaustive and Digicel's decision not to respond to any particular issue does not necessarily represent agreement, in whole or in part with the Commission's position on these issues; nor does any position taken by Digicel in this document mean a waiver of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights.

1. Summary

Almost 3 years on from the award to Digicel of the 4th mobile licence from the Government of the British Virgin Islands, Digicel BVI has invested US\$25.5m in rolling out a state-of-the-art GSM mobile network in the territory. Digicel Group is renowned both locally and internationally for delivering best value, best service and best network and now as the true choice of GSM mobile provider by the people of the British Virgin Islands.

Digicel is the lead sponsor of Caribbean, Central American and Pacific sports teams, including the Special Olympics, West Indies Cricket team and is also the title sponsor of the Digicel Caribbean Football Cup. In the British Virgin Islands, Digicel fully supports Rotary & Lions Clubs, KATS from a Community perspective and the national BVI rugby team and Youth Development Programme, and the BVI basketball league.

While we are very pleased that the Commission is at least inviting comments on its draft Work Programme for 2010 to 2011, we note that it does not appear to have adjusted its plans, nor even publicly responded to the significant concerns Digicel expressed verbally with respect to the cost of the TRC's last proposed Work Programme.

Indeed, instead of reducing its expenditure from the remarkable heights that were proposed on the last occasion, the Commission is proposing an increase. This will confirm the TRC as, by a huge margin, the most costly telecommunications regulator per capita in the region and certainly in respect of the very many jurisdictions in which Digicel operates. In return for the massive per capita expenditure proposed on this occasion and last year, we see little value being added to the BVI telecommunications market by the TRC.

We are compelled to ask what benefits the regulator has delivered to the BVI in the last 12 months with the exception of: a/ the visit by the Radiation and ionisation experts that allayed the community concerns regarding the placing of the cellular antennas, for which we are very grateful; and b/ the successful ICT roadshow with Digicel involved as a huge supporter and facilitating bringing CISCO and Research in Motion (RIM) representatives on island.

These items apart, we are sure that most of the approximately US\$4m proposed to be spent annually by the regulator would provide much more benefit to the population of the BVI if it was left in the hands of the providers to invest in networks and services, and if the regulator only employed a core group of people to regulate the market.

We invite the Commission to attempt to defend its record and indeed its existence in its current form. In our view its expenditure must immediately be cut to no more than 25% of the proposed level, and it must prioritise its work on a handful of key areas. Especially given the adverse economic climate, BVI consumers and the industry cannot afford the regulatory profligacy we are facing.

2. TRC's Estimates of Expected Expenditure and Income

Digicel has compared the annual proposed running costs of the Commission with the costs of regulators elsewhere. A sample of the comparator countries are illustrated in the Annex. We have chosen islands

with similar populations to BVI except in one instance as we have also included the costs of Ofcom, the UK regulator, given its international reputation. The results are graphed.

As can be seen, the per capita cost (i.e the cost per person for every man, woman and child in the BVI) of running the TRC based on its latest proposals is a jaw dropping US\$188 per year. The TRC's costs are a huge 370% of the cost of the next expensive regulator in the Turks and Caicos islands. They are a phenomenal 6100% of the cost of the regulator in the UK. This is outrageous.

There is no relationship between the cost of the TRC (based on its estimates of expenditure) and its performance and no prospect of the sky scraping costs of the regulator in the BVI delivering proportionate benefits to the BVI telecommunications sector or its population.

Instead, the great irony is that the regulator itself must, at the spending levels illustrated, now represent the biggest obstacle to telecommunications development in the BVI. The TRC is going to bleed the industry dry of the monies it needs to invest in networks and services.

By way of contrast Digicel does not have any dedicated regulatory staff for the BVI because of the level of costs this would impose on the business.

The level of information that the Commission provides with respect to its finances is insufficient for the public to bring it fully to account. We note in particular that:

1/ Providers are required to submit audited accounts to the Commission. Where then are the TRC's audited accounts from last year and its balance sheet? What did the Commission actually spend last year?

2/ The Commission appears to be awash with millions of dollars of cash in terms of retained revenues – where has this come from and why was it collected in the first place?

3/ The estimated retained reserves from last year were US\$355k, but the latest estimate says the Commission is bringing 10 times that amount - US\$3.9 million - in to this year's accounts. How is this possible?

4/ We need a break down in terms of what the US\$534k in professional fees were spent on previously, and what the Commission intends to spend the estimated over US\$1.2m in professional fees on in the coming year.

5/ We need to know how many staff the Commission has and in what positions.

6/ There is a large amount of capital expenditure (around US\$1.4m for last year and this year) – what is the Commission capitalizing? Its IT infrastructure builds? Why is this so expensive?

3. Work Areas for the TRC

There are far too many projects in the proposed Work Programme, is this realistic? – around 35 in all (as well as about 15 identified processes). It is no wonder therefore that the proposed costs are so high. A large number of these projects appear to be “blue sky” thinking, with continual references to creating “frameworks”, “reviews”, “position papers”, “surveys”, “evaluations”, and “awareness” and no specific deliverables or tangibles which benefit either consumers or the providers directly. Many of the project titles read almost as if they are wording extracted or copied from legislation imposing general duties on the regulator. No doubt all these projects are considered to represent “strategy” or to be “foundational”. However, the regulator has got to focus on where it can add value to the market that exceeds the cost of delivering that value, no matter how interesting it is to delve in to the esoterics of all the areas listed in its Programme.

In our professional opinion, the TRC is not a research institute and is not meant to be re-inventing the principles of modern regulation or developing regulatory approaches from the ground up. What we are looking for as a provider and investor in the BVI - that we are sure consumers and other providers want - is some concrete benefits that will be delivered now or in the fairly near term.

The regulator cannot create value in proportion to the huge sums it proposes burning up in costs. We are not sure what benefits it has delivered in the last 12 months apart from the two items we have mentioned, but we are clear that anything that has been done could have been delivered with an organization a fraction of the size of the TRC. The Commission should therefore cut back its Work Programme and the costs it levies on providers - and therefore also on consumers - via the higher call prices required to pay for regulatory fees. It is the providers who are the main engines and deliverers of value in the market, and not the money spent on regulating them. Only those regulatory projects which have the highest priority, and which will justify the cost of undertaking them, should be taken on. The regulator has also got to concentrate on being effective first (ie doing the right things) and efficient (how the things are done) second. There is no point efficiently doing something that delivers little or no value. That result in a net loss to everyone because of the cost involved.

The TRC said in its last Work Programme that it intended to “concentrate on areas where the maximum impact can be achieved”. This is a start point but it should also be stated that it should only be doing things that deliver significant benefits net of costs. But it is not doing this. The cost of paying for the regulator will stifle the industry it is regulating. Even when the Commission has identified the right things to do, these must be prioritized and Commission should not attempt to work on all of them concurrently. If the Commission tries to achieve everything it will probably achieve little or nothing.

4. Benchmarked Costs of Regulators

As a benchmark for appropriate costs of regulation in the BVI, we can take the average per capita expenditure in the Cayman Islands, the Turks and Caicos and Anguilla of US\$33 i.e the average cost for every man woman and child, and multiply that by the population of the BVI. This results in a figure of approximately US\$760,000 per year. This is the kind of budget the Commission should be working with and it should fit its staffing and Work Programme within that budget.

The Commission should not simply decide what it would like to do and then bill the operators the final total as seems to be happening. The providers cannot, in contrast for example, simply decide what they want to do and bill subscribers to the level they see fit since the providers face the disciplines of a competitive market. The Commission does not have to deal with the same market cost disciplines, and therefore it must be extremely aware of the need to regulate itself, and not make claims for excessive amounts when asking the Minister for budgetary approval.

5. Priorities

While we cannot speak for other stakeholders, we are confident that they would be familiar with Digicel BVI's opinion in this matter, Digicel's priorities in terms of what might be done by the regulator are:

1. A fair allocation of cellular spectrum or compensation for the market distortion as a result of the skewed allocation. As the TRC will be aware, CCT has all the available 900MHz spectrum and therefore it has an unfair competitive advantage against the other mobile providers in terms of its cost base since it requires less infrastructure to provide network coverage. Either the spectrum needs to be re-allocated or, more practically in the immediate term we feel, Digicel and LIME's mobile networks should be given a higher termination rate than CCT. If the Commission is going to do nothing about this however then it has inadvertently or otherwise effectively decided that the playing field does not have to be completely level.
2. Allocating additional spectrum we have asked for in other bands. This has been outstanding since July. There is no impediment to providing the spectrum we have requested other than the TRC's own bureaucracy as far as we can see. This is an obvious example where the Commission can immediately deliver benefits by helping a provider - and therefore consumers - but it is not taking the initiative to do so.

Annex

