



Commission
Annual Work Plan
and Budget 2016/2017 and
Introduction of the Industry Levy

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

Statement

Publication date: 27 September 2016

About this document

Under section 63 of the Telecommunications Act 2006 (the **Act**), the Telecommunications Regulatory Commission of the British Virgin Islands (**Commission**) is required to publish its Annual Work Plan and Budget. The Annual Work Plan sets out our priorities and discusses the work that the Commission is planning for the coming year and the anticipated costs for the work.

The Annual Work Plan and Budget includes the details of the Commission's intention to impose an industry levy fee on each licensee and authorisation holder and how that industry levy will be calculated.

This Annual Plan takes into account stakeholder responses to our consultation on the proposed Plan. It also builds in actions arising from the recent Spectrum Award 2016.

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PART I: 2016 and 2017 Strategic Plans

1. Overview

- 1.1 The Annual Work Plan and Budget describes the work we intend to carry out in the coming year to fulfil our duties. It also identifies the nature and scope of our functions and our strategic aims and objectives. We also include our proposed budget for the 2016/2017 financial year.
- 1.2 The Minister, with the approval of the Council, made the following appointments to the Board of the Commission:

Chairman: Michael Thomas (Appointed: 13 February 2015)
Deputy Chairman: Ian S. Smith (Appointed: 13 February 2015 and Resigned: 31 March 2016)
Board Member: Delroy Williams (Appointed 1 May 2015)
Chief Executive Officer and Board Member: Guy Lester Malone (Reappointed on 1 March 2015)
- 1.3 The newly constituted Board of the Commission is 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 Telecommunications Act, 2006 (**Act**); (c) staffing requirements to facilitate the delivery of the Commission's Work Plan; and (d) the need for additional office space to accommodate an enlarged staff.
- 1.4 The Board has made recommendations to the Minister of Communications and Works with respect to the appointment of a new Deputy Chairman of the Commission to replace Mr. Ian Smith and the appointment of an additional Commissioner with a telecommunications services background from outside the Virgin Islands, as specified in section 7 (2) of the Act.
- 1.5 Our **mission** is to enable and facilitate the availability of adequate telecommunications infrastructure and services with a view to promoting value, choice, innovation, quality and competitive pricing for consumers and businesses in the 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.
- 1.6 To achieve these goals, we will be consultative, transparent and proportionate. We will ensure we behave in a professional manner with fairness, integrity and independence.
- 1.7 We have adopted six essential principles of good regulation consistent with international standards and best practice.

- 1.7.1 **Accountability:** Our decision making powers should be, with the constraints of confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.
- 1.7.2 **Focus:** We will concentrate on protecting the interests of consumers and businesses in the Virgin Islands by ensuring the operation of a well-functioning and contestable market.
- 1.7.3 **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.
- 1.7.4 **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.
- 1.7.5 **Efficiency:** Where we intervene, policy interventions will be proportionate and cost-effective and our decision making should be timely and robust.
- 1.7.6 **Balance:** Our evidenced based approach to decision making and our adaptability will ensure that we remain proportionate, consistent, fair and just.

2. Nature and Scope of Function

- 2.1 The Commission is the regulatory body established in 2007 in accordance with the Act to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands – 10 January 2007¹.
- 2.2 The Commission's activities have so far been funded through the royalty fees paid by licenced operators in the Virgin Islands. The Commission is also entitled to charge licenced operators an annual Industry Levy. The Commission will implement the Industry Levy for the first time in this financial year by assessing the proportion to be paid by each operator in accordance with section 59 of the Act.
- 2.3 The Commission's goal is to ensure that the interests of consumers and businesses in the Virgin Islands are promoted and protected with respect to price, choice, quality of service and innovation in telecommunications services. We believe this goal is best achieved by encouraging a fair and

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http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf

competitive market place and promoting the systematic development of telecommunications in the BVI.

3. Strategic Aims and Objectives 2016/2017

3.1 **Review, Amend and Implement the Spectrum Management Framework and Action Plan**

In 2011, the Commission consulted upon its vision for spectrum management in the Virgin Islands. The implementation of this plan has been underway, and will be reviewed and modified in the upcoming financial year as necessary to accommodate changes in the market, technology and the business requirements of the operators. The Action Plan associated with the review is also now being implemented.

3.2 **Create a Culture of Compliance**

We will be increasing our monitoring and enforcement activities in line with our duties under the Act to ensure that all operators are in compliance with the Act, their licences, the Telecommunications Code and any Instructions or Directions made by the Commission.

3.3 **Engagement with Consumers and Businesses**

We are committed to supporting local businesses and consumers in the Virgin Islands. The thriving Financial Services and Tourism industries are critically dependent upon having a competitive and robust telecommunications market and infrastructure to deliver their services. We plan to engage in a communications program with businesses and consumers to promote understanding of the market and our work. We are also looking forward to gaining a better understanding of their needs and concerns.

3.4 **Our Stakeholders**

We will increase our interaction with stakeholders. This dialogue will be critical as we prioritise our work plan and will provide us with the ability to respond quickly and effectively to market developments.

The landscape of our communications market is changing, with two of the licenced operators in the BVI being acquired directly or indirectly by significant international companies. Liberty Global plc announced the purchase of Cable & Wireless Communications plc (the parent company of Cable & Wireless (BVI) Limited). Atlantic Tele-Network, Inc. has announced its acquisition of B.V.I. Cable T.V. Ltd.

The Commission expects that the new ownership of these companies will not result in a change to the fundamental market structure in the BVI and are likely to be beneficial to the BVI as a result of the strong technical qualifications and extensive experience both acquirers have in providing a wide product range and customer service.

3.5 Government

We will continue to advise the Minister for Communications and Works and the Government of the Virgin Islands on policies and positions – providing timely and high quality advice. For example, the Commission recommended approval of the transactions described above to the Minister.

3.6 International Best Practice

We will ensure that we follow international best practice in regulation and competition law. We are seeking closer relationships with sectoral regulators including CANTO, the CTU, ICTA, OOCUR, Ofcom in the UK, the FCC in the US and CICRA in the Channel Islands. We also expect to attend Mobile World Congress and engage with the GSMA, the ITU and other international associations with a particular emphasis on the needs of smaller economies. Sharing knowledge and best practice will allow us to ensure consistency in our approach to economic regulation.

3.7 Improved Performance

We recognise the need to focus on increasing our level of activity as well as the speed of our responses and efficiency of our work. We will prioritise work that delivers the most benefit to the consumers, enterprises and visitors in the British Virgin Islands.

PART II: Introduction of the Industry Levy

1. History and Background

- 1.1 On 10 January, 2007, the Government of the Virgin Islands produced the *Telecommunications Liberalisation in the British Virgin Islands* document as the passage way to close the telecommunication monopoly and introduce competition in the telecommunications industry in the BVI.
- 1.2 It has been nine years since the Act has been enacted. Under this Act, the Commission is intended to have two revenue streams from the licensees, namely the Annual Industry Levy and Annual Royalty Fees.
- 1.3 The Annual Industry Levy is a charge on the licensed operators intended to financially maintain the Commission in the performance of its duties pursuant to section 6 of the Act, as the regulator of telecommunications in the British Virgin Islands.
- 1.4 The Royalty Fee is a fee charged by the Commission to each Licensee equal to the amount of 3% of its gross revenues derived from services provided under the License collected by the Licensee. The Licensees are required to provide the Commission with Audited Accounts each year on which the Commission bases the calculation of Royalty Fees. Royalty Fees are due to be paid by each Licensee no later than 5 April of each year.
- 1.5 For the past nine years the Commission has been collecting and using the Royalty Fees alone to carry out the functions of the Commission. The Commission has so far not implemented or collected the Industry Levy. The Commission collected revenues from the Licensees, as if the licensees were still only accountable for Royalties as applied under the former Telecommunications Act, Cap. 171, as amended.
- 1.6 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 Royalties collected in the past were used to support the work of the Commission. In the future, any Royalties which are collected from operators and are income surplus to the Commission, will be paid to the Government of the Virgin Islands as specified in section 65 of the Act.
- 1.7 The Commission intends to begin collecting the Industry Levy for the financial year 2016/2017, following approval by the Minister of Finance of the Commission's Annual Work Plan and Budget. The Commission does not intend to collect industry levies for prior years. The Commission gave notice to the

Licensees on 23 February 2016 of its intent to implement the Industry Levy for the Commission's 2016/2017 financial year.

- 1.8 The Commission has given the Licensees more than enough time to recoup their capital investment, pay their shareholders and other stakeholders in the industry. The Commission thanks the Licensees for the investment that they have made in the telecommunication industry of the BVI. To encourage continuing investment by the operators and discourage the costs being passed through to consumers, the Commission has decided to introduce the Industry Levy gradually over three years. For the first year 2016/2017, only 50% of the Industry Levy will be due. In the second year 2017/2018, the Industry Levy charge will rise to 75%. The full Industry Levy will be charged in the Commission's 2018/2019 financial year.

2. Legislation

- 2.1 Section 59 of the Act, sets the legislative framework enabling the imposition of the industry levy. The section states:

(1) Following a public consultation and within four weeks of the approval by the Minister responsible for finance under section 63, of its estimates in respect of a financial year, the Commission shall

a) set an industry levy for that financial year in accordance with subsection (2); and

b) assess the proportion of the industry levy to be paid by each licensee and authorization holder.

(2) The industry levy for a financial year shall be calculated by adding 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 percent of the net estimated expenditure, and by adjusting the sum of the net estimated expenditure and the contingency by

a) the addition of the deficit, if any, shown in the audited accounts of the Commission for the previous financial year; or

b) the subtraction of the surplus, if any, shown in the audited accounts of the Commission for the previous financial year.

(3) The amount assessed by the Commission on a licensee or an authorization holder shall be paid to the Commission

within four weeks after receiving notification of the assessment.

(4) Without prejudice to any other enforcement action available to the Commission, a licensee or an authorization holder that does not pay an assessment made in accordance with this section is liable to pay interest to the Commission at the rate of five percent annum or such other prescribed rate.

(5) The assessment and any interest payable under subsection (4) may be recovered by the Commission as a civil debt in summary proceedings.

(6) Monies received by the Commission by way of the industry levy shall be retained by the Commission for its own use, unless the Minister responsible for finance, with the approval of the Council, otherwise directs.

2.2 The obligation to pay the Industry Levy has been included in the licence agreement of each authorization holder, entitled *Licence for the Operation of a Telecommunication Network Providing Telecommunications Services in the British Virgin Islands*. The relevant article reads:

Article 5. Fees

(5.1) Payment of Industry Levy and Royalty Fees.

In consideration for the granting of this License and for the License to be effective, the license shall pay to the Commission (1) an annual Industry Levy (2) an annual Royalty fee in the amount three percent 3% of the gross revenue from services provided under this License collected by the Licensee, payable in US Dollars no later than 5 April of each year, commencing on 5 April, 2007. The Licensee may seek adjustment from the Commission in the following year for payment on gross revenue not collected by the Licensee during the prior year. Any such fee not so paid by the date due shall thereafter accrue interest at a rate equal to five percent (5%) per annum or such other prescribed rate.

3 Process for Implementation 2016 -2017

3.1 **Step 1:**

Approval of Commission Work Plan and Budget 2016/2017 by the Commission Board Members (Completed on May 30, 2016)

3.2 **Step 2:**

Notice of Consultation published at least 14 days prior to the Consultation (completed on June 2, 2016) and conduct a 28 day public consultation on the Work Plan and Budget 2016/2017 and introduction of the Industry Levy and publishing of responses received and reporting on the results of the Consultation (Completed on September 27, 2016).

3.3 **Step 3**

Approved Work Plan and Budget sent to the Minister responsible for finance to be approved by the House of Assembly (Completed on September 27, 2016).

3.4 **Step 4**

Upon approval of the Work Plan and Budget by the Minister of Finance, the Commission shall assess the proportion of the Industry Levy to be paid by each licensee and authorization holder. Each licensee will be issued an invoice for the Industry Levy fee for which they have four weeks to pay the assessment.

Please note that for this first time implementation the Commission will not be adding or subtracting the previous financial year, because it is nine years delayed in its implementation.

4 Industry Levy Calculation 2016 - 2017

4.1 In exercising the power conferred on the Commission pursuant to Section 59 of the Act, the Industry Levy will now be implemented following Consultation and the issuance of this Statement.

4.2 Each authorization holder shall pay the appropriate industry levy fee to the Commission as specified in the paragraph below.

4.3 Generally, the computation of the regulatory industry levy applicable to a licensee in the telecommunication sector is calculated on the basis of the following formula (and shall be payable within four weeks presentation of invoice by the Commission):

Schedule of Regulatory Industry Levy Calculation

Regulatory Industry Levy Formula			
$RF^a = Ra/Rt \cdot TB$			
Where:			
Rf^a = Annual Regulatory fee for company "A"			
R^a = Applicable revenues for Company "A"			
Rt = Total applicable revenue of all relevant companies			
TB = Total applicable budget for telecommunications activities			

4.4 Section 59 (3) states that the amount assessed by the Commission on a licensee or an authorization holder shall be paid to the Commission within four weeks after receiving notification of the assessment.

4.5 For example, for a prior year of operation, with four telecommunication service providers in the BVI with Revenues as set out below:

Example Calculation of the Industry Levy Fee

Table 1	
Licensees	Total Turnover (Revenues)
Company A	\$ 15,000,000.00
Company B	\$ 20,000,000.00
Company C	\$ 30,000,000.00
Company D	\$ 550,000.00
Total Applicable Revenues By All Operators	\$ 65,550,000.00

4.6 If the total budget expenditure for a year of operation is \$3,000,000.00, this amount will be prorated and invoiced among the four licensed service providers. See Table 2, for an example of this calculation:

Table 2			
Licensees	Total Turnover (Revenues)	Total Applicable of Expenditure Budget of TRC	Total Industry Levy Due By Licensees
Company A	\$ 15,000,000.00	\$3,000,000.00	\$686,498.86
Company B	\$ 20,000,000.00	3,000,000.00	\$915,331.81
Company C	\$ 30,000,000.00	3,000,000.00	\$1,372,997.71
Company D	\$ 550,000.00	3,000,000.00	\$25,171.62
Total Applicable Revenues By All Operators	\$ 65,550,000.00	Total Expenditure Budget TRC	\$3,000,000.00

4.7 For additional clarity, if Company A's, Industry Levy charge is \$686,498.86; the formula calculation is as follows: (Total revenue of Company A / Total Applicable Revenue by all Operators) x Total Applicable Expenditure Budget of the Commission ((15,000,000/65,550,000) x 3,000,000).

5 Gradual Implementation of the Industry Levy 2016 – 2019

- 5.1 The Commission is required to implement the Industry Levy. We appreciate that this additional expense to the operators is of concern. The Commission is very interested in encouraging the operators to invest in the BVI. The current infrastructure, speed and performance of our networks are behind other comparable jurisdictions and well below international standards. In response to operator concerns and to encourage investment, the Commission has decided to implement the Industry Levy in three stages.
- 5.2 For the year 2016/2017, the Commission will charge each operator 50% of the assessed Industry Levy. Invoices will be issued immediately after the Minister of Finance approves the Commission's Work Plan and Budget. Payment will be due four weeks from the date of the invoice.
- 5.3 For the year 2017/2018, the Commission will charge each operator 75% of the assessed Industry Levy. Invoices will be issued immediately after the Minister of Finance has approved the Commission's Work Plan and Budget for that year. Again, payment will be due four weeks from the date of the invoice.
- 5.4 For the years 2018/2019 and beyond, the Commission will commence charging each operator 100% of the assessed Industry Levy. Each year, invoices will be issued immediately after the Minister of Finance has approved the Commission's Work Plan and Budget for the relevant year and payment will be due four weeks from the date of the invoice.

PART III: 2016/2017 WORK PLAN

The Commission's objective for the 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 2016 and 2017 are set out below.

1. Ensure optimal spectrum efficiency, so that this resource is used for the maximum benefit of consumers and enterprises.
 - 1.1 The Commission completed the Spectrum Award 2016 on August 23, 2016. We will now turn our attention to reviewing and revising the Spectrum Management Framework (2011) to take into account current spectrum usage, the most efficient use of the spectrum, the need for revised spectrum caps and re-farming and develop a schedule for the award of future spectrum in the Virgin Islands in coordination with operators. This activity will also include benchmarking and considering appropriate charges for spectrum usage.
 - 1.2 The Commission expects to undertake a preliminary Consultation on the new Spectrum Management Plan (SMP), which will update the existing Spectrum Management Framework in the second quarter of the coming financial year. The SMP will identify the technology and demand trends that might lead to change of use of spectrum. Technology trends will be taken into account as an increase in technology performance may reduce the requirements for spectrum in a given band. It may also introduce new services that previously have not had specific allocations. The SMP will most importantly consider the current and most efficient use of existing spectrum taking account of any local circumstances and international trends and best practice. The Commission will consider 5G and other spectrum band developments.
 - 1.3 In the meantime, we expect to continue to audit the use of allocated spectrum for compliance and efficiency and take action to re-farm spectrum as necessary in the interest of efficiency.
 - 1.4 In tandem with the development of the SMP, we will commence development and implementation of a national frequency allocation table listing out spectrum by frequency and showing what the ITU regional allocations is and the national allocation (which might be the same or different) in the first quarter of the financial year.
 - 1.5 In accordance with section 37 of the Act, we will construct a fixed monitoring station at Sabbath Hill for monitoring of the use of radio spectrum in the BVI to ensure compliance with the Act. Construction will include the acquisition of appropriate monitoring equipment. This is a project that the Commission

estimates will span over two financial years. We will commence construction in the second quarter of the financial year.

- 1.6 We will continue to audit bands used by mobile and fixed broadband access services.
- 1.7 We will assess availability of frequencies for TV services and consult on potential demand. If there is demand, we will assign frequencies for fixed and mobile TV services. This will be commenced in the second half of the financial year.
- 1.8 The Commission has commenced an initiative to monitor interference from marine traffic. We will put in place appropriate notifications through working jointly with HM Customs, the Port Authority, Shipping Registry, Ship Agents and the Department of Disaster Management to educate marine traffic in BVI Territorial Waters and eliminate the risk of harmful interference.

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.

- 2.1 We plan to conduct a consumer satisfaction survey including quality of service, billing, customer services and the ability to switch provider. We will promote consumer awareness based upon the survey, as well as coordinate with the operators to address concerns that are raised by the survey. Implement a streamlined consumer complaints system including the possible introduction of a software based system. This will be commenced in the first quarter of the financial year.
- 2.2 We will conduct forums throughout the year to promote citizen and consumer awareness of the safe use of the internet and promotion of privacy of personal data.
- 2.3 Meet with business users of telecommunications services in the Virgin Islands throughout the year to identify telecommunications related issues which may be inhibiting their business as well as enhanced services that they may be seeking. Consider appropriate regulatory action to respond to their concerns. We will also liaise with operators to provide feedback and make enquiries based upon the information we gather.
- 2.4 Ensure that consumers and businesses are so far as possible protected from “bill shock” through a program of education and explore opportunities to reduce roaming and data charges.
- 2.5 Hold quarterly meetings with operators to allow them to brief the Commission on their businesses and issues that are of concern and for the Commission to

make enquiries of the operators. We will work with the operators to establish an agreed information program to facilitate consumer awareness.

- 2.6 The Commission will celebrate its tenth anniversary in 2017 and will use this opportunity to educate citizens and consumer on the work of the Commission and the communications market generally.
- 2.7 Conduct quarterly Commission visits to Islands throughout the BVI to meet consumers and understand local issues as well as educate consumers on their rights and how to complain if necessary.
- 2.8 Conduct a nation-wide fixed, mobile network and internet signal coverage and performance audit and validate the minimum population coverage for each fixed, mobile and ISP operator's telecommunications network. This will be completed in the first half of the financial year.
- 2.9 Work with operators to address common concerns regarding late payment and bad debt.

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.

- 3.1 Conduct a targeted compliance audit of each of the operators (**BVI Cable TV Limited, Cable & Wireless (BVI) Limited, Caribbean Cellular Telecommunications Limited and Digicel BVI Limited**) to review any areas of inefficient use of their licence and non-compliance. We will also work with each operator to bring them into compliance as the Commission deems to be necessary, proportionate and appropriate.
- 3.2 Consult upon and implement guidelines which the Commission will consider when exercising its discretion in taking enforcement action for any breach of the Act, any licence, the Regulations, the Telecommunications Code and any instructions issued by the Commission. We would expect to consult on this in the second half of our fiscal year.
- 3.3 Enforce compliance with all rules and regulations in relation to broadcast radio usage and licences.
- 3.4 Support the Government in the development of legislation in relation to cyber security and cybercrime and its implementation. Consider how each of the operators is preparing for and implementing cyber security programmes for the benefit of consumers and businesses in the BVI. This will be commenced in the second quarter of the financial year.

- 3.5 We have now hired a Chief Legal Advisor, as well as an assistant Legal Advisor for the Commission, who will advise the Commission, assist in the compliance with and enforcement of the Act and attendant regulations, propose new legislation and regulations and regularly monitor and report on operator compliance.
 - 3.6 In an effort to cut the significant outside professional fee costs incurred as a result of litigation, the Commission has run an Invitation to Tender for a local law firm(s) to provide any necessary external legal services to the Commission, as may be needed from time to time to fulfil our duties.
 - 3.7 We have also now hired a Chief Technology Officer to enhance the Commission's ability to monitor and enforce the Act as well as advising on new technologies and recommending action in relation to the Virgin Islands telecommunications infrastructure and services.
4. Reviewing the legislative framework and proposing the introduction of new or revised Telecommunications Codes and replacing historic legislation.
- 4.1 Review the Act and Telecommunications Code to update and improve the legislative framework and propose suitable changes, where necessary. This will be done throughout the financial year.
 - 4.2 Review the Telecommunications Act and Amendment (CAP. 171) to update and incorporate historic legislation into the legislation as Codes. Specific priorities include (a) radio, ship, marine, aeronautical, amateur and broadcast licencing; and (b) the forms of licence required. We expect to consult on any proposed legislation in the second half of our financial year.
 - 4.3 Prepare and consult upon a new part of the Telecommunications Code to cover Consumer Protection issues and Access to Emergency Services. Consider introducing a Code to facilitate number portability in the BVI.
 - 4.4 Amend Part 5 of the Telecommunications Code in relation to the Granting of Frequency Authorisations (Interim Procedure) Requirement, 2011 to provide a complete and up to date Code in relation to the granting of frequency authorisations. We expect to consult on this amendment in the second half of our financial year.
 - 4.5 Establish Equipment Type Approval framework for the BVI through a study and review of international best practice to ensure the safe for public use of telecommunications equipment. This will be done throughout the financial year.

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.

- 5.1 Complete the second stage of our consultation on the retail and wholesale fixed broadband markets which focuses on the appropriate regulatory remedies to achieve better fixed broadband performance from the dominant supplier. Put in place measures to ensure quality of service is adequately measured and reported and, if necessary, regulation to remedy poor performance. Set up customer satisfaction reporting mechanism. This will be commenced in the second quarter of the financial year.
- 5.2 Set out a new Market Review Consultation Programme updating the 2010 Market Review with consideration of new markets following further consultation on the priority markets for future reviews.
- 5.3 Review markets for possible failures constraining the development of the sector or having a negative effect on consumer or business interests and set remedies to address identified market failure.
- 5.4 Consider with the Minister of Communications and Works whether to implement a Universal Service requirement in the BVI in accordance with section 28 of the Act.
- 5.5 Investigate matters raised by complainants and practices by operators that may breach the Act, their licences, the Telecommunications Code or which may be anti-competitive. Take appropriate enforcement action.
- 5.6 Hire a new Chief Economist to take forward the programme of work relating to market reviews and the implementation of policies and procedures to enhance fair competition.

6. Ensure that the Commission is adequately staffed and compensated and has the appropriate financing framework to fulfil its duties under the Act.

- 6.1 Following our Consultation, we are implementing the Industry Levy this year to ensure that the Commission has adequate finances to hire additional management and staff to fulfil its duties and complete its work plan.
- 6.2 We will be following up on financial information recently delivered by the operators to evaluate whether additional royalty fees are due and taking enforcement action as necessary.
- 6.3 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. This will be done on a monthly basis.

- 6.4 Undertake third party review of the levels of Board and staff compensation to reflect industry standards and international best practice.
- 6.5 Lease additional premises on the second floor of 27 Fish Lock Road to accommodate increased staffing and security requirements. This will be completed in the first quarter of the financial year.

PART IV: Budget for the 2016/2017 Financial Year

	FY 2016 Budget	FY 2017 Budget
Non-Executive Members Honoraria and Expenses	40,800.00	40,800.00
Executive Members Compensation	993,962.21	1,102,431.72
Staff Costs	317,273.43	338,396.75
Office Services	176,176.49	192,400.44
Professional Services	859,251.00	1,325,200.00
Conferences, Training and Travel	127,173.46	200,863.23
Rent and Utilities	212,581.33	378,426.66
Maintenance Expenses	48,010.00	54,502.17
Consumers Education and Public Relations	48,000.00	48,000.00
General and Administration	134,546.00	149,689.24
Special Project	-	250,000.00
Estimated Operating Expenditures	2,957,773.92	4,080,710.21
Contingency Amount.	-	541,360.51
Total Estimated Expenditures with Contingency	2,957,773.92	4,622,070.72
Capital Expenditure	1,041,494.43	1,332,894.93

Annex

Responses to the Draft Annual Work Plan and Budget 2016/2017 and Introduction of the Industry Levy

We received three written responses to the Consultation on our Draft Annual Work Plan and Budget 2016/2017 and Introduction of the Industry Levy (**Annual Plan**) from Caribbean Cellular Telephone Limited (**CCT**), Digicel (BVI) Limited (**Digicel**) and Cable and Wireless (BVI) Limited (**FLOW**). We have considered all responses in setting our Annual Plan and have published all non-confidential responses in full on our website. Below, we provide our response to key points raised by stakeholders during the Consultation.

Part I: 2016 and 2017 Strategic Plans

1. Overview
2. Nature and Scope of Function
3. Strategic Aims and Objectives 2016/2017

We are pleased that the operators generally agree with our strategic aims and objectives for the coming year. Digicel made some helpful comments in relation to the Nature and Scope of Function and Strategic Aims and Objectives for the coming year. We have amended sections 2 and 3 to incorporate these comments.

Most of the comments we received relate to the introduction of the Industry Levy. We would remind operators that there is a cost to increasing our pace of development and ensuring compliance by all – including the Commission.

Part II: Introduction of the Industry Levy

- A. General Concerns:** The Commission has evaluated the responses of CCT, Digicel and FLOW (the “responses”) and is particularly cognisant of the concern expressed by all operators with respect to the additional payments which will be due from the operators to cover both the industry levy and the royalty fee payments with the change in fee structure. In light of this, and the concern over the consequential effect on investment in the territory, the Commission has decided to introduce the Industry Levy gradually. Please see Part II, new section 5 of the Annual Plan and paragraph I below.
- B. Commission Audited Accounts:** Concern has been expressed that the Commission has not provided the industry with audited financials. The Commission’s financial statements are complete but have not yet been placed before the House of Assembly. Until such time, they are management accounts,

which are subject to change. This notwithstanding, they are accurate and thus were relied upon to quantify the budget and attendant Industry Levy. Until these accounts are completed and presented to Government, they will not be publicly available.

C. Professional Fees: The bulk of the professional fees incurred by the Commission is spent on external legal advice. It has been necessary for the Commission to seek external legal advice in the course of the investigations it has carried out and in the resulting litigation. The judicial review process, once invoked puts an enormous strain on the Commission's resources and in order to fulfil its obligations, the Commission has had to expend significant resources on external legal advice and representation. It is this effort which has augmented the figure for professional fees to the level projected. The Commission has recently hired a Chief Legal Advisor and an Assistant Legal Advisor and hope that the budgeted amount will reduce in the coming years.

D. Funding of Commission versus Funding of other Regulators in the Region.

CCT referenced the ratios of payroll cost to professional services for **ECTEL** and for the **OUR** in Jamaica suggesting that the Commission's low ratio of 1.1 to 1.0 is unusual. Digicel references total levies payable by operators in the Eastern Caribbean states as not exceeding 5% of gross annual turnover on average including universal service contributions. Conversely, the Commission draws reference to the Cayman Islands, who boast a population of 60,500 people, has a 6% royalty fee, coupled with an industry levy, which is their regulating authority's cost pro-rated across the licensees in the sector. Similarly, Turks and Caicos, with a population of 35,000, has a royalty fee of \$250,000.00 or 7% (whichever is greater) plus an industry levy of \$75,000.00 or a percent of operating cost representing their market share (whichever is greater). By this comparison, it is noteworthy that the Commission has made every effort, as far as possible, to benchmark the industry levy in a manner comparable to jurisdictions of like population size.

In arriving at the required budget for the Commission, it has been important to balance all the competing priorities of the sector. Unlike **ECTEL** or **OUR** and Regulators which cover a larger population, the Commission is unable to benefit from economies of scale. With a Telecommunications Law applicable only to the British Virgin Islands, the Commission is in the same position as any other regulator when it comes to carrying out the functions of that Act. The small size of the Virgin Islands does not translate into a reduced scope of regulation. As a proactive Regulator, we deal with the same issues as other larger and better resourced Regulators. For example, despite our size we deal with the complexities of termination rate regulation, international connectivity, submarine cables, spectrum allocation, broadband development, quality of service measurement as well as the day to day matters of radio licensing. In order to cover this breadth of regulation, it is necessary to employ a staff which is experienced and skilled to deal with this wide range of regulatory issues.

As the operators are well aware, the Commission is no stranger to litigation and has been involved in legal proceedings with each operator. The Commission has experienced a high proportion of litigation compared to other regulators in the region. This is partly, we believe, because the Commission has attempted to grapple with issues which have not been dealt with across the Caribbean. Consequently, the operators may be prepared to invest significant resources in litigation in the BVI in order to “fight it out” for the benefit of other jurisdictions in which they operate.

Significant resources were expended by the Commission in the investigation into Calls to Caribbean destinations upon the request of CCT. The reluctance of all the operators to engage in this matter to arrive at an expedited solution effectively required that the Commission reallocate resources from other areas to this one matter. The resources are now required to return our attention and resources to matters that now need to be dealt with. The Commission is obliged to investigate such matters and to do so for the sake of the public interest. We remind the operators that all requests for regulatory intervention come about from industry’s failure to deliver fair and efficient services for the benefit of consumers. In short, if the telecommunications industry worked efficiently and competitively, the need for regulatory intervention would be minimal. This is the state that we strive for.

- E. **Delay in Implementation:** The operators have benefited from a delay in the introduction of the industry levy by paying only the Royalty Fee. The mandate of an Industry Levy is contained in the Act, which took effect in 2006, and in each operator’s unitary licence; all signed in 2007. Thus, each operator has been aware that the Industry Levy would be implemented at some point. The Commission’s budget as presented in the Statement, which the Industry Levy is based upon, is the first budget as would have been the case if the Industry Levy had been implemented in 2007. The Royalty Fee was not designed to fund the Commission. All or a portion of it should essentially be a surplus payable to Government under section 65 of the Act. We did not think it would be fair, proportionate or appropriate to charge the operators an Industry Levy for all prior years. Government has directed the Commission to implement the Industry Levy this year and every year going forward in accordance with section 59 of the Act and to submit any surplus to Government in accordance with section 65 of the Act. The Commission is performing its duties in accordance with the Act by collecting both Royalties and the Industry Levy. The Commission is not in any way acting *ultra vires* (as one operator suggests) or contrary to the intent or spirit of the Act. The Commission is indeed in the process of coming into compliance. Implementing the Industry Levy is one part of this process.
- F. **Low Tax Environment:** The operators argue that the increased contribution from roughly 3% to 7% of revenues will be detrimental to planned and future investment. However, the additional 4% fee resulting from the change in fee structure, should be viewed in the context of a low tax environment. The operators reference other jurisdictions such as ECTEL countries and Jamaica

and it is highly significant that whilst regulatory contribution may be lower as a proportion of revenue, corporation tax ranges from 25-30% in these countries.

- G. No Other Government Levy or Spectrum Auction:** At present, the BVI Government does not collect any revenue directly from the telecommunications industry for operating in the territory. The BVI has so far avoided the imposition of an airtime tax, given the expected detrimental effect on consumer welfare. The Government and the Commission decided to allocate valuable spectrum in the Spectrum Award 2016 by way of comparative tender rather than by Auction. The operators will be aware of the very high auction prices attracted for this spectrum in other jurisdictions. The operators are also reminded that there are few jurisdictions in the world where the telecommunications industry does not make a direct payment to the Treasury based up on its operational activities or by way of auction proceeds.
- H. Commission as Facilitator:** The Commission is a facilitator in the debate over financial contributions from the communications industry to the Treasury. The Commission can make recommendations but ultimately must follow the direction of the Minister for Finance. The Minister of Communications and Works has directed the Commission to institute the Industry Levy and the Minister of Finance has directed the Commission, in accordance with section 65 of the Act, to deliver any surplus to the Government.
- I. Encouraging Investment:** Overall, the Commission views the Introduction of the Industry Levy as particularly important for the advancement of the telecommunications industry in the British Virgin Islands and in the best interest of consumers and businesses. The Commission has carefully considered the operators' comments with respect to investment. We are very concerned about the effect of the change in fee structure on investment. Taking into account the responses to the Consultation, the Commission has determined to gradually implement the Industry Levy over three years to incentivize the operators to invest in network infrastructure in the near term and to have the opportunity to plan for future payments.
- J. Working Group:** While the Commission acknowledges and appreciates the suggestion by one operator with respect to the creation of a working group, it is not practicable at this time and would significantly impede the advancement of the Work Plan, Budget, and the Introduction of the Industry Levy.

Part III: 2016/2017 Work Plan

We thank the operators for their comments on our Work Plan. We look forward to executing it as efficiently as possible in accordance with the Annual Plan. We have amended the Work Plan in light of the comments we received to (i) delete the reference to the Spectrum Award as this has now been completed in the Commission's 2015/2016 fiscal year, (ii) add target timeframes for conducting consultations in the coming year- particularly relating to the review of the efficient use of spectrum and the Spectrum Management Framework which is of high

priority, (iii) add investment incentives in the form of the gradual introduction of the Industry Levy over three years; (iv) indicate that the Commission will consult on new regulations and legislation and provide an explanation of its policy objectives with respect to each and (v) indicate that we will reflect international best practice and policies in reviewing our out of date or incomplete legislative framework.

As observed by the operators, the Commission's Work Plan is heavily focused on compliance and enforcements. This is particularly so, considering the protracted period of non-compliance in the telecommunications industry in the BVI. Compliance is a significant policy objective for the Commission. Notwithstanding this, the Commission is mindful of competing needs that have been identified and have endeavoured, as far as possible, to address these concerns as well.

Notably, we have received comments in relation to Commission staffing. As an accountable regulatory body, we have been making every effort to ensure that the Commission's staff is competent, has the right skills to fulfil its duties and its compensation and structure is as it should be. Additional staff is one of our priorities to ensure the Commission remains effectively able to carry out its duties as the regulator of the telecommunications industry in the British Virgin Islands, with little to no disruption in its performance and to ensure adequate succession planning.

Part IV: Budget for the 2016/2017 Financial Year

	FY 2016 Budget	FY 2017 Budget
Non-Executive Members Honoraria and Expenses	40,800.00	40,800.00
Executive Members Compensation	993,962.21	1,102,431.72
Staff Costs	317,273.43	338,396.75
Office Services	176,176.49	192,400.44
Professional Services	859,251.00	1,325,200.00
Conferences, Training and Travel	127,173.46	200,863.23
Rent and Utilities	212,581.33	378,426.66
Maintenance Expenses	48,010.00	54,502.17
Consumers Education and Public Relations	48,000.00	48,000.00
General and Administration	134,546.00	149,689.24
Special Project	-	250,000.00
Estimated Operating Expenditures	2,957,773.92	4,080,710.21
Contingency Amount.	-	541,360.51
Total Estimated Expenditures with Contingency	2,957,773.92	4,622,070.72
Capital Expenditure	1,041,494.43	1,332,894.93

Non-executive Members Honoraria and Expenses: This represents the budgeted cost for all members of the Commission Board. This expenditure has remained the same over the financial periods reported (2016 and 2017).

Executive Members' Compensation: This represents remuneration for all employees, inclusive of 18 full time positions. However, there are currently four job vacancies – Assistant Financial Officer; Chief Economic Officer; Licensing Officer; and a Compliance Officer. Therefore, this figure has increased by 11% over the prior budget year due to the new job posts created and competitive compensation for international recruitment.

Staff Costs: This represents employer social security, PAYE, housing allowance, travel allowance, telephone allowance, entertainment allowance, performance management and gratuity scheme. This figure has increased by 7% over the prior budget year due to the new jobs created and increased cost associated with hiring employees.

Other Services: This represents the staff recognition program, pension costs, and health benefits paid by the Commission on behalf of the employee. This figure has increased by 9% over the prior budget year due to cost associated with increased staffing.

Professional Services: This represents auditing services, legal and litigation services, research and development services, spectrum advisory services, engineering, and technical and human resource services. This figure has increased by 54% due to the costs associated with litigation matters, as projected budgets are based upon past activities. In the current year, there have been several unplanned and unforeseen litigation matters. Therefore, the Commission saw it best to be prudent on this matter by increasing the budgeted expenditure. We hope to reduce this budgeted amount in future years as the operators come into compliance and we work together to constructive solutions.

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 58% over the prior budget year due to a new priority of the Commission to ensure that each member of staff is adequately knowledgeable in their area in light of ever-changing technology, while fostering business relationships with regulatory bodies worldwide.

Rent and Utilities: This represents occupancy of the 2nd and 3rd floor of the LM Business Centre; the latter floor is to be leased by the Commission from the first quarter of the financial year to accommodate increased staffing. Accordingly, this figure has increased 78% over prior budget year due to additional rental space attendant fit out and technology needed to carry out our efficient role as the regulator.

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 14% over the prior budget year due to server and computer maintenance, cloud backup and numerous software renewals.

Consumers Education and Public Relations: This represents initiatives aimed at educating and informing consumer on various electronic communications sector, including community outreach; utilization of other media avenues; and acknowledge of various telecommunications days/events. This expenditure has remained the same over the financial period reported (2016 and 2017).

General and Administration: This represents subscriptions, customs duties, general office expenses, and messenger services. This figured has increase by 11% over the prior budget year due to anticipated expenditure for office supplies and printing supplies for additional office floor.

Special Project: 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 percent of the estimated expenditure, as per section 59(2) of the Telecommunications Act 2006.