



EVALUATION REPORT CARIBBEAN CELLULAR TELEPHONE LIMITED

LICENSE PERFORMANCE FROM MAY 2007 – MAY 2021

Telecommunications Regulatory Commission

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1. EXECUTIVE SUMMARY

- 1.1. On the 25 day of May 2007, pursuant to **section 15 of the Telecommunications Act 2006**, the Telecommunications Regulatory Commission (the Commission) granted a License to Caribbean Cellular Telephone Ltd. (the Licensee).
- 1.2. The Licence is for fifteen (15) calendar years, effective from 25 May 2007, and gave the Licensee authority to establish, install, operate, maintain, exploit, and use within, into and from the British Virgin Islands and all territorial waters a telecommunications network consisting of transmission, reception, switching and related equipment, including without limitation cable (coaxial, metallic or fiber optic) and microwave, radio and satellite transmission, reception, and related facilities.
- 1.3. The Licensee is authorized to provide telecommunication services comprising basic telephony services including local, national and international telephony services; cellular mobile telecommunications services; trunk capacity resale services, including the provision of leased lines and circuits; satellite telecommunications services; third party private network services; paging services; store and forward messaging services; telex services; telegraph services; value-added services; the sale and maintenance of subscriber premise wiring and terminal apparatus; private telecommunications services; internet services; wireless video programming; and cable television service via wireline network.
- 1.4. **Article 16 of the Licence** outlined certain obligations that had to be fulfilled on the signing of the Licence for the Licence to be effective namely:-
 - 1.4.1. pursuant to **Article 5.1 of the Licence**, the payment by the Licensee to the Commission of an annual industry levy and of an annual royalty fee in the amount of 3% of the gross revenues for services provided under the Licence collected by the Licensee payable no later than 5 April of each year;
 - 1.4.2. the reception of frequencies and frequency bands as assigned by the Commission;
 - 1.4.3. the delivery to the Commission of an officer's certificate certifying the representations and warranties of the Licensee contained in **Article 17 of the Licence**;
 - 1.4.4. the delivery to the Commission of all corporate documents;
 - 1.4.5. the delivery to the Commission of consortium agreements;
 - 1.4.6. the delivery to the Commission of originals of the Licence agreement;
 - 1.4.7. complying with its obligations under **Article 7 of the Licence**.
- 1.5. Additionally, under the License agreement, there were obligations that had dates of fulfillment attached to the fifth anniversary of the Effective date, which was May 24, 2012. The Commission carried out an evaluation of the Licensee' performance and assessed the level of fulfillment these obligations. It was observed that by the end of the first five years,

the Licensee had duly complied with the relevant obligations although the requisite reports were not found on the Commissions files. The Commission has continued to monitor the Licensee's performance.

- 1.6. The Licensee's Licence expires on 24 May 2022 and in accordance with **Article 3.2 of the Licence**, on 24 May 2021, the Licensee submitted its application for the renewal of the Licence for another fifteen (15) years.
- 1.7. The Commission has been monitoring the Licensee's operations throughout the Licence period and has carried out assessments of the Licensee's compliance with its obligations under the Licence and pursuant to the relevant laws, including the Telecommunications Acts and Codes.
- 1.8. The Commission has an obligation pursuant to **Article 3.3(b) of the Licence** to prepare an Evaluation Report stating if and to what extent the Licensee has complied with its obligations under the Licence, and the legislative framework; has abided by directives and orders of the Commission; and has provided the Licensed services and conduct its business in accordance with the laws of the British Virgin Islands.
- 1.9. The evaluation contained within this Evaluation Report (the Evaluation) is intended to assist the Commission in its determination of the Licensee's application for renewal of the Licence, and if it is determined that the Licence should be renewed, the requisite terms and conditions to be included in the renewed Licence.
- 1.10. The Evaluation will focus on the extent to which the Licensee has complied with its financial, legal, technical, regulatory, and other obligations.
- 1.11. The Evaluation reveals that the Licensee has been barely compliant with its obligations, and that there are numerous matters that need to be rectified, in order for the renewal application process to progress.

2. BACKGROUND

- 2.1. On the 25 day of May 2007, the Commission granted to the Licensee a Licence to provide telecommunications services in the British Virgin Islands for a period of fifteen (15) calendar years.
- 2.2. The Licence is scheduled to terminate on 24 May 2022 and in accordance with **Article 3.2 of the Licence**, the Licensee on 24 May 2021 applied for the renewal of its Licence for a further period of fifteen (15) years.
- 2.3. **Article 3.3(a) of the Licence** states that within ten (10) working days from the date on which the application was received, the Commission shall give notice to the public by publication in the Gazette and at least one (1) other domestic newspaper of general circulation which notice shall state:-
 - 2.3.1. that the Licensee has applied for renewal of the Licence Term;
 - 2.3.2. the length of the renewal sought;
 - 2.3.3. the time within which comments or objections to the proposed application shall be made in writing by any interested third party, such time not being less than thirty (30) nor more than forty-five (45) Working Days from the date of the publication of the notice;
 - 2.3.4. the fact that the Commission shall send to the Licensee an evaluation report (the "Evaluation Report") within ninety (90) working days from the date of receipt of the application, which report shall be a matter of public record at the Commission; and
 - 2.3.5. the date and the place for a hearing during which the Licensee and any third party with a legitimate interest may make comments or objections, such date being within ten (10) working days of the date of publication of the Evaluation Report.
- 2.4. Additionally, **Article 3.3(b) of the Licence** indicates that the Evaluation Report prepared by the Commission shall state if and to what extent the Licensee has during the preceding Licence period up to the date of the application:
 - 2.4.1. complied with its obligations under this Licence;
 - 2.4.2. complied with the regulations and orders adopted from time to time by the Commission; and
 - 2.4.3. generally provided the Licensed Services and conducted its business in accordance with the laws of the British Virgin Islands.
- 2.5. In compliance with **Article 3.3 of the Licence**, the Commission ensured that the public notice was issued in the Gazette and in the Beacon Newspaper on 3 June 2021 (the Notice), thereby complying with its obligation to inform the public of the Licensee's application for

renewal. As indicated in the Notice, the deadline for comments or objections to the application was 30 July 2021.

- 2.6. In accordance with **Article 3.3(a) of the Licence**, the Commission must send this Evaluation Report (the Evaluation) to the Licensee within ninety (90) working days from the date of receipt of the application, which will be a matter of public record at the Commission. Accordingly, the Commission must send the Evaluation to the Licensee no later than 30 September 2021.
- 2.7. The Commission has abided with its obligation to prepare the Evaluation in accordance with **Article 3.3 of the Licence** and for transparency it has also taken the further step of detailing within said report efforts that have been taken by the Licensee to bring itself into compliance up to the time of finalization of the Evaluation.
- 2.8. The Evaluation will be made available at the reception desk of the office of the Commission located at 3rd Floor, LM Business Centre, Fish Lock Road, Road Town, Tortola, British Virgin Islands. Alternatively, a copy of the Evaluation will be available on the Commission's website (www.trc.vg).
- 2.9. On 13 October 2021, a public hearing will be held at Maria's by the Sea during which the Licensee and any third party with a legitimate interest may make comments or objections on the application. Participation in this hearing will be limited to those persons who submitted a relevant comment or objection on the application in response to the Notice.
- 2.10. The person responsible for this matter is Mr. Guy L. Malone, Chief Executive Officer, and he can be contacted at gmalone@trc.vg concerning this Notice. All queries in relation to this matter should be copied to Chantal L. Flax-Ward, Chief Legal Advisor, at cflaxward@trc.vg.
- 2.11. Thus, in fulfillment of its obligations under the Licence and **section 24 of the Telecommunications Act 2006**, the Commission issues this Evaluation relative to Caribbean Cellular Telephone Ltd.

3. EVALUATION PROCESS

3.1 Purpose of the Evaluation Process

- 3.1.1 The Evaluation is meant to guide the Commission, the Licensee, and the public on the fundamental issues that that ought to be and were considered by the Commission in evaluating the Licensee's performance of its obligations under the Licence and forms the basis for the Commission's decision regarding the Licensee's application for renewal of its Licence.
- 3.1.2 The evaluation process helps to determine whether the Licence should be renewed. In order for the Commission to make this decision it has to determine the following:-
 - 3.1.2.1 the extent to which the Licensee has complied with the terms and conditions of the Licence throughout the term of the Licence from May 2007 to present;
 - 3.1.2.2 the extent to which the Licensee has observed the conditions attached to the resources assigned to it in accordance with the relevant legislation and the Licence;
 - 3.1.2.3 the extent to which the Licensee has complied with the Telecommunication Acts, the Telecommunication Code, directives, standards, and other orders issued by the Commission over the fourteen-year period since May 2007;
 - 3.1.2.4 the Licensee's Telecommunications Network capability to provide the Licensed Services.

4. METHODOLOGY

4.1. The Commission used the following methodology in evaluating the Licensee's operations:-

- 4.1.1. Reviewing the Licensee's obligations under its Licence;
- 4.1.2. Reviewing the Licensee's obligations under the Telecommunications Acts and Codes;
- 4.1.3. Review of the records on file submitted by the Licensee over the years, including quality of service reports, coverage reports and maps, financial reports and fulfillment of financial obligations, resource authorisations, et cetera;
- 4.1.4. Consideration of the independent evaluation of the Licensee's compliance with its legal and regulatory obligations carried out by Harneys Fiduciary in May 2019;
- 4.1.5. Verifying the provision of emergency communication services and related measures, especially during the passage of Hurricanes Irma and Maria in September 2017;
- 4.1.6. Confirming that customers are provided adequate access to customer care services;

4.2. Assessing the Licensee's performance was guided by the following considerations:-

- 4.2.1. The terms and conditions contained in the Licensee's Licence;
- 4.2.2. The relevant laws and Codes that have been in operation throughout the term of the Licence;
- 4.2.3. The response and/or adherence of the Licensee to the orders and/or directives that were issued by the Commission during the term of the Licence.

4.3. Prior to publishing this Evaluation, the Commission provided the Licensee with the opportunity to review and comment on its findings. On 1 September 2021, a draft version of the Evaluation was sent to the Licensee, who responded on 15 September 2021 that the Licensee met "the standards articulated in **Article 24 of the Telecommunications Act, 2006**, in regard to licence renewal" and that it considered that any material concerns had been addressed in its 21 May 2021 letter regarding the Harneys Audit and in its Unitary Licence renewal application. The Licensee provided no additional evidence in support of its position or to counter the findings of the Evaluation Report. Notably, the Licensee failed to address any of the issues outlined under paragraph 8.5.2 below despite the Commission's indications in paragraph 1.11 above.

4.4. The Commission notes that this Evaluation Report takes the Licensee's 21 May 2021 letter into account, where relevant. However, in accordance with **Article 3.3(b) of the Licence**, this Report focuses on the Licensee's performance prior to the date of Unitary Licence renewal application.

STRUCTURE OF THE REPORT

5.1 This Evaluation provides a summary of how the Licensee has complied with its legal and licence obligations over the past fourteen (14) years. To arrive at this summary, the Commission has reviewed and assessed the Licensee's compliance with the following categories of obligations:

5.1.1 Technical performance and obligations

5.1.1.1 This section looks at the Licensee's general obligations under the Telecommunications Act 2006, including, the obligations not to assign its Licence without the prior written approval of the Commission; upon written request made by the Governor to collaborate with the Governor in matters of internal security; to comply with the Act, the Regulations, the Telecommunications Code, the terms and conditions of its Licence and any instructions; not to allow a person owning or holding a significant interest in it to sell, transfer, charge or otherwise dispose of his interest, or any part of his interest unless the prior written approval of the Minister has been obtained; not to cause, permit or acquiesce in any said sale, transfer, charge or other disposition unless the prior written approval of the Minister has been obtained; not to merge or consolidate with another company, unless the prior written approval of the Minister has been obtained; and not to issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in a person acquiring a significant interest in it or a person who already owns or holds a significant interest in it, increasing or decreasing the size of his interest, unless the prior written approval of the Minister has been obtained, unless its listed on a recognized stock exchange in which case the obligation may be waived.

5.1.1.2 It also includes obligations under the Licence such as the provision of telecommunications services, provision of leased lines and circuit services, interruption of operations, telecommunications during a public emergency, public payphone requirements, service quality requirements, inspection procedures and control requirements, customer and subscriber assistance requirements, assistance to disabled persons, amongst other considerations.

5.1.2 Financial and Reporting Obligations

5.1.2.1 This part gives an overview of the Licensee's compliance relative to its financial obligations under the Licence. These include the obligation to pay the industry levy, royalty fees, payment for resources, including spectrum and numbering range, accounting requirements, record keeping and reporting requirements.

5.1.3 Consumer, competition, and other regulatory obligations

5.1.3.1 This section includes matters such as compliance with the relevant laws and codes, compliance with orders and/or directives issued by the Commission, the establishment of a Master Service Agreement, and the establishment of interconnection agreements with other operators, the appointment of a Compliance Officer.

5.1.4 Audit by Harneys Fiduciary in 2019

5.1.4.1 This section gives an overview of the audit of the Licensee carried out by Harney Fiduciary Limited (Harneys) in May 2019, the recommendations made by Harneys and the Licensee's response to the audit.

5.2 The Commission has summarized its findings on these obligations in this report.

6 FINDINGS ON FULFILLMENT OF LICENSEE'S OBLIGATIONS

6.1 TECHNICAL PERFORMANCE AND OBLIGATIONS

- 6.1.1 The Commission has assessed the Licensee's technical performance to evaluate the extent to which the Licensee's technical operations are compliant with its obligations under the technical provisions of its Licence, the Telecommunication Acts, the Telecommunication Code, and industry standards.
- 6.1.2 This appraisal indicates that the Licensee has throughout the term of the Licence been fairly compliant with the various technical requirements, as discussed below: -

6.1.2.1 Obtaining Licence Permits, and Frequency Authorization

6.1.2.1.1 Article 13.1 of the Licence states that the Licensee shall be obligated to obtain all authorisations, permits and licences which are necessary under the Telecommunications Act, 2006, the Commission Regulations and the Laws of the British Virgin Islands for the provision of Telecommunications Services in accordance with the Licence.

6.1.2.1.2 Section 15 of the Telecommunications Act, 2006 requires that any person who wishes to operate a telecommunications network or provide a telecommunications service must apply to and obtain from the Commission a Licence in accordance with the Telecommunication Code.

6.1.2.1.3 Section 19 of the Telecommunications Act, 2006 requires that any person who wishes to use the spectrum, must apply to the Commission in accordance with the Telecommunication Code.

6.1.2.1.4 Section 94(4) of the Telecommunications Act, 2006 states that where any person who is licensed under the Telecommunications Act operates a telecommunications network or provides a telecommunications service, radiocommunications service or broadcasting service and is required to obtain a licence or frequency authorisation under this Act to continue such operation or provision of service, he shall during the period referred to in subsection (3), apply to the Commission for such a licence or frequency authorisation to continue operating such network or providing such service as he operated or provided the day this Act comes into force.

6.1.2.1.5 Section 3.1.9 of Frequency Authorisations Numbers VRGM/003/2016, VRGM/004/2016 and VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016) indicate that the Licensee/Frequency Authorisation Holder shall obtain all required approvals and rights of access for access to lands and/or for the construction or erection of the facilities or of any equipment or other installation in relation to the use of the assigned frequency band.

6.1.2.2 Evaluation of Licensee's compliance with obtaining Licence, permits and Frequency Authorization

6.1.2.2.1 The Evaluation notes that in compliance with the requirement to obtain a Licence, there is a signed and legally binding Licence in place for the operation of a telecommunications network and the provision of telecommunications services in the Virgin Islands for the Licensee. The Licence was issued 25 May 2007 and expires 25 May 2022.

6.1.2.2.2 The Evaluation notes that there were several radio frequency authorisations assigned to the Licensee by the Commission during the Licence term, namely:

6.1.2.2.2.1 Sixty-seven (67) frequency authorisations (radio-frequency channels) were issued from 7 July 2016 to expire on 6 July 2017, VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016);

6.1.2.2.2.2 Authorisation Number, VRGM/003/2016, frequency authorisations for 824 MHz – 838 MHz paired with 869 MHz – 883 MHz, 892 MHz – 915 MHz paired with 937 MHz – 960 MHz, 1850 MHz – 1865 MHz paired with 1930 MHz – 1945 MHz, 2570 MHz – 2600 MHz, was issued from 23 August 2016 to expire on 24 May 2022;

6.1.2.2.2.3 Authorisation Number, VRGM/004/2016, frequency authorisations for 1865 MHz – 1880 MHz paired with 1945 MHz – 1960 MHz was issued from 23 August 2016 to expire on 22 August 2031.

6.1.2.2.3 Instances of non-compliance

6.1.2.2.3.1 The Evaluation reveals that a letter was sent by the Commission to the Licensee dated 14 January 2013 which indicated that by letter dated March 2003, the Telecommunications Unit of the Ministry of Communications and Works made certain assignments of spectrum to the Licensee, specifically 824-849 MHz Uplink, 869-894 MHz Downlink; 890-915 MHz Uplink, 935-960 MHz Downlink; 1710-1785 MHz Uplink, 1805-1880 MHz Downlink; and 1850-1910 MHz Uplink, 1930-1960 MHz Downlink.

6.1.2.2.3.2 In accordance with **section 94(4) of the Telecommunications Act, 2006** the Licensee was required to apply for frequency authorisations to continue its operations under this new Act. As pointed out in the letter of 14 January 2013, the Licensee failed to apply for frequency authorisations as required by **the Telecommunications Act, 2006**.

- 6.1.2.2.3.3 Within the said letter of 14 January 2013, the Licensee was given certain directives by the Commission including being required to apply to the Commission for the grant of a frequency authorization for the use of spectrum for 824 to 830 MHz paired with 869 to 875 MHz by 18 February 2013. The Licensee requested an extension of time by letter dated 11 February 2013 and subsequently responded on 6 March 2013.
- 6.1.2.2.3.4 The Commission responded by email to the letter of 11 February 2013 granting the request for extension and responded to the Licensee's letter of 6 March 2013, by a letter dated 15 March 2013. The Commission reiterated its directives in this letter and gave new timelines. The Licensee was given until 12 April 2013 to apply to the Commission for the grant of a frequency authorization for the use of spectrum for 824 to 830 MHz paired with 869 to 875 MHz. The Licensee responded by a legal letter dated 5 April 2013.
- 6.1.2.2.3.5 The Commission responded to the Licensee's legal letter of 5 April 2013, by a letter dated 24 April 2013, giving the Licensee thirty (30) days to show cause why enforcement action should not be brought for failing to comply with directives, which included the submission of the application for frequency authorisation. The Licensee responded by letter dated 24 May 2013.
- 6.1.2.2.3.6 The Commission responded to the Licensee's letter of 24 May 2013, by a letter dated 30 May 2013, restating its directives, and giving new timelines. The Licensee was given until 6 August 2013 to apply to the Commission for the grant of a frequency authorization for the use of spectrum for 824 to 830 MHz paired with 869 to 875 MHz. This letter was retracted by the Commission by correspondence dated 3 June 2013 and it was indicated to the Licensee that the Commission would provide a more thorough response to the Licensee's letter of 24 May 2013. There is no indication on the Commission's file that this promised response was sent nor that the Spectrum was returned as directed.
- 6.1.2.2.3.7 The Commission sent a letter to the Licensee dated 22 October 2015 relative to the applications for microwave fixed link frequency authorisations and requiring the Licensee to make the required applications by November 6, 2015. The letter further stated that thereafter the Commission will impose a fine of \$500.00 per day until the Licensee complies with the order. There is no indication on the Commission's files that the Licensee responded to this letter.
- 6.1.2.2.3.8 The Commission's files indicate that the Licensee did not apply for frequency authorisations until 2016 when it was required to

do so via undertakings to the Commission in order to qualify to apply for spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency bands. Following the requisite applications being submitted to the Commission by the Licensee, VRGM/003/2016, VRGM/004/2016 and VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016) were issued by the Commission to the Licensee.

6.1.2.2.3.9 The Commission issued a notice of non-compliance to the Licensee on 12 February 2019 in relation to micro-wave link authorisations VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016) which were issued from 7 July 2016 and expired on 6 July 2017 but were not renewed.

6.1.2.2.3.10 On 05 May 2021, the Commission wrote to the Licensee indicating that its authorisations for microwave links had expired on 6 July 2017 and attached the requisite application form to be completed and returned to the Commission by 21 May 2021. There was no response by the Licensee to this letter.

6.1.2.2.3.11 On 9 June 2021, the Commission again wrote to the Licensee, referencing and attaching its letter of 05 May 2021. It was given a new deadline of 23 June 2021.

6.1.2.2.3.12 The Licensee's response

6.1.2.2.3.12.1 The Licensee responded to the Commission's letter of 14 January 2013 by a letter dated 11 February in which it sought an extension to carry out the Commission's directives from the deadline of 11 February 2013 to 11 March 2013. On 6 March 2013, the Licensee replied to the Commission's letter of 14 January 2013 but the issue of applying for frequency authorisation was not addressed and thereafter there is nothing on the Commission's file indicating that said application was submitted by the Licensee to the Commission.

6.1.2.2.3.12.2 In its response of 5 April 2013 to the Commission's letter of 15 March 2013, the Licensee's legal practitioner challenged the legality and validity of the Commission's directives.

6.1.2.2.3.12.3 In its letter of 24 May 2013, the Licensee referenced the Commission's letter of 24 April 2013 sent to its legal Counsel and sought sixty (60) days to respond due to its recent ownership change.

6.1.2.2.3.12.4 In a letter dated 21 June 2013, the Licensee referred to the Commission's letter of 14 January 2013 and the

initiative contained within and indicated that it did not accept the initiative contained within.

6.1.2.2.3.12.5 The Evaluation notes that the directive to apply for the use of spectrum for 824 to 830 MHz paired with 869 to 875 MHz was based on the initiative in the 14 January 2013 letter and thus the Licensee would have effectively refused to apply for said spectrum.

6.1.2.2.3.12.6 After numerous correspondences, dating from August 2015, between the Commission and the Licensee regarding the contents of Undertakings to be entered into with the Commission by the Licensee, on 7 July 2016, as part of its Undertakings to be able to take part in the 2016 Spectrum Award process, one of the undertakings entered into by the Licensee was to apply for mobile frequency authorisations and microwave fixed link frequency authorisations for point-to-point microwave fixed links required for the support of its mobile telecommunications network.

6.1.2.2.3.12.7 Based on the Commission's files, applications for the renewal of VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016) were finally received by the Commission on 24 June 2021, although the Licensee's correspondence is dated 23 June 2021.

6.1.2.3 Collaborate with the Governor on matters of internal security

6.1.2.3.1 Under **section 16(1)(b) and 20(1)(c) of the Telecommunications Act, 2006** the Licensee has an obligation to collaborate with the Governor on matters of internal security.

6.1.2.4 Evaluation of the Licensee's compliance to collaborate with the Governor

6.1.2.4.1 The Evaluation found that in 2017, post Hurricanes Irma and Maria, the Offices of the Governor of the Virgin Islands issued a request to three (3) telecommunications operators, including the Licensee, for there to be implemented an interim commercial arrangement between said operators. The operators were unable to reach an agreement regarding said arrangement and the Governor's request was not implemented. The Evaluation notes that there was no follow-up from the Governor's Offices regarding his request.

6.1.2.4.2 The Evaluation notes correspondence by the Licensee to a Government Department in which the Licensee implied its willingness to comply with the order and lamented the unwillingness of the other operators to abide by the order.

6.1.2.4.3 All the operators were meeting with the Commission three times per week – Mondays, Wednesdays, and Fridays – to discuss service

restoration progress. In those meetings the issue of charging one of the Licensees for the service ordered by the Governor arose, and this was rejected by the said Licensee. Thereafter, the Governor's request was not carried out by the operators, including the Licensee.

6.1.2.5 Changing significant interest in the Licensee

6.1.2.5.1 Under **Article 11 of the Licence and sections 16 and 20 of the Telecommunications Act, 2006**, the Licensee is obligated not to allow a person owning or holding a significant interest in it to sell, transfer, charge or otherwise dispose of his interest, or any part of his interest unless the prior written approval of the Minister has been obtained; not to cause, permit or acquiesce in any said sale, transfer, charge or other disposition unless the prior written approval of the Minister has been obtained; not to merge or consolidate with another company, unless the prior written approval of the Minister has been obtained; and not to issue or allot any shares or cause, permit or acquiesce in any other reorganization of its share capital that results in a person acquiring a significant interest in it; or a person who already owns or holds a significant interest in it, increasing or decreasing the size of his interest, unless the prior written approval of the Minister has been obtained, unless it is listed on a recognized stock exchange in which case the obligation may be waived.

6.1.2.6 Evaluation of Licensee's compliance with duty not to change significant interest without approval

- 6.1.2.6.1 The Evaluation notes correspondence indicating that in 2012 permission was sought from the Minister of Communications and Works for BVCT Partner L.P., a shareholder in the Licensee's parent company, SCBF Ltd., to dispose of significant interest in SCBF Ltd. to Sage Investment Holdings Ltd., another shareholder in SCBF Ltd. The Commission issued a letter of non-objection to the said Minister dated 25 October 2012.
- 6.1.2.6.2 Correspondence dated 8 May 2013 from Sage Investment Holdings Ltd., sought the support of the Commission in its application to the Minister of Communications and Works for the disposition of significant interest in SCBF Ltd. to TGM Holdings Limited. The Commission granted approval to the transfer by letter to the said Minister dated 13 May 2013.
- 6.1.2.6.3 In compliance with **section 16(2) of the Telecommunications Act, 2006**, the Evaluation found evidence of the Licensee seeking permission from the Minister of Communication and Works, via a letter dated 27 June 2017, for the transfer of interest in B.V.I. Cable TV Ltd. to TGM Holdings Limited. The Commission granted initial approval to the transfer by letter to the said Minister dated 20 July 2017. The approval for the transfer was granted by the said Minister by letter dated 26 July 2017.

6.1.2.6.4 The Evaluation found further correspondence from the Commission dated 23 August 2017 which outlined the processes that had to first be undertaken before the transaction could be completed, including the amendment of the Licence and implementing Merger Guidelines. There is correspondence in reply to the Commission from TGM Holdings Limited indicating that the transaction, which was not a merger, had concluded on 18 August 2017 following receipt of approval from the said Minister. This letter also served as notification to the Commission of the completion of the transaction as required by the said Minister.

6.1.2.7 Strictly adhere to the designated frequency band

6.1.2.7.1 Under **section 20(1)(a) of the Telecommunications Act, 2006**, the Licensee is mandated to strictly comply with the designated frequency bands.

6.1.2.8 Evaluation of Licensee's compliance with duty to adhere to frequency band

6.1.2.8.1 The Evaluation found evidence that the Commission took action against the Licensee for not adhering to its designated band.

6.1.2.8.2 The Commission was contacted regarding the Licensee's alleged unauthorized use of the 700 MHz Spectrum. The Licensee was contacted by the Commission via correspondence dated 14 March 2014 and was required to respond by the close of business of 14 March 2014. The Licensee responded by the deadline.

6.1.2.8.3 Based on the Licensee's reply, the Commission sent a further correspondence to the Licensee on 14 March 2014 indicating that the Licensee's response was unclear in that the Commission's inquiry as to whether the Licensee had launched or planned to launch any 4G service through unauthorized use of the 700 MHz bandwidth had not been answered. The Licensee did not respond to this second correspondence until 17 March 2014.

6.1.2.8.4 The Commission sent correspondence to the Licensee on 17 March 2014 about the unauthorized use of 700 MHz spectrum and the evasive reply that it had received on 14 March 2014, pointed out instances of unauthorized use of the said spectrum, and indicated that the Licensee should cease and desist any use or activity for whatever purpose of the said band. The Licensee was ordered to confirm in writing by noon of the 17 March 2014 that it had vacated said frequency. The Licensee responded by letter on 17 March 2014.

6.1.2.8.5 The Commission responded on 17 March 2017 to the Licensee's letter of 17 March 2017 again indicating that the Licensee's response had been evasive and had not answered the Commission inquiry and that the information requested on 14 March 2014 was still outstanding and was to be provided by 19 March 2014. The Licensee responded on 19 March 2014.

- 6.1.2.8.6 On 7 April 2014 the Commission responded to the Licensee's letter of 19 March 2014, indicating the unauthorized usage of the 700 MHz band, the unacceptable nature of this usage, and giving the Licensee the opportunity to provide comments before 30 April 2012 following which the Commission, having considered said comments, would make a final decision on the matter. The Licensee did not respond to this letter.
- 6.1.2.8.7 On 9 May 2014, the Commission wrote to the Licensee, indicating that it had received no reply to its letter of 7 April 2014. The Licensee was informed that the Commission had taken a decision under **subsection 75(1) of the Telecommunications Act 2006** and found that the Licensee had breached **section 20(1)(a) of the Telecommunications Act 2006**. The Commission imposed a fine on the Licensee pursuant to **section 75(2)(b) of the Telecommunications Act 2006** in the sum of US\$50,000.00 to be paid by 23 May 2014.
- 6.1.2.8.8 The Commission responded to the Licensee's letter of 22 May 2014 (see paragraph 6.1.2.8.10.4 below). It indicated that it rejected the Licensee's arguments and gave reasons for said rejection. It gave the Licensee the opportunity to make submissions by 18 June 2014 regarding why there should be an extension to pay the fine. The Licensee did not respond to this letter. Thus, on 2 July 2014, the Commission wrote the Licensee indicating that having not received the requested submissions, the payment of the fine was due on 16 July 2014.
- 6.1.2.8.9 The fine was not paid by said date and eventually after various correspondence, a payment agreement was entered into for the payment of same.
- 6.1.2.8.10 **The Licensee's response**
- 6.1.2.8.10.1 The Licensee responded to the Commission's letter of 14 March 2014 by the said deadline indicating that the Licensee had not commercially launched any telecommunications services that use the 700 MHz band.
- 6.1.2.8.10.2 The Licensee responded to the Commission's letter on 17 March 2014 by a letter dated same date indicating that it had not launched any commercial telecommunications service on the 700 MHz band and will immediately cease all testing within said band pursuant to the Commission's directive.
- 6.1.2.8.10.3 In the response of 19 March 2014, the Licensee admitted to using the 700 MHz spectrum without authorisation and proffered a reason for so doing.
- 6.1.2.8.10.4 On 22 May 2014, the Licensee wrote to the Commission referring to the Commission's letter of 7 April 2014 and offered several arguments. It also asked for an extended payment term as it stated that three (3) weeks was extremely punitive.

6.1.2.8.11 The Evaluation did not note any further evidence thereafter that the Licensee did not adhere to its designated band.

6.1.2.9 Spectrum Management (Numbering and Domain Name)

6.1.2.5.1. **Section 38 (1) of the Telecommunications Act, 2006** requires that the Licensee operates its facility, terminal equipment or other equipment in a manner that is not likely to cause harmful interference.

6.1.2.10 Evaluation of the License's spectrum management

6.1.2.10.1 The Evaluation found no indication of harmful interference caused by the Licensee on the Commission's files.

6.1.2.11 Provision of telecommunications services

6.1.2.11.1 Under **Article 7.1 of the Licence**, the Licensee is obligated to provide the Licensed Services within, into and out of the British Virgin Islands in accordance with the terms of the Licence, the Telecommunications Act, 2006, the Telecommunications Code and the Commission Regulations, and the Laws of the British Virgin Islands.

6.1.2.11.2 According to **Article 2.1(b) of the Licence**, the Licensed Services are basic telephony services including local, national and international telephony services; cellular mobile telecommunications services; trunk capacity resale services, including the provision of leased lines and circuits; satellite telecommunications services; third party private network services; paging services; store and forward messaging services; telex services; telegraph services; value-added services; the sale and maintenance of subscriber premise wiring and terminal apparatus; private telecommunications services; internet services; wireless video programming; and cable television service via wireline network.

6.1.2.12 Evaluation of compliance with provision of telecommunications services

6.1.2.12.1 The Evaluation reveals that the Licensee provides a range of services including, cellular mobile telecommunications services; Dedicated Internet Access; Internet Exchange Point; Fixed Radio Communication Links; Internet Service; Wi-Fi networks; value-added services; the sale of cellular mobile telecommunications handset equipment; Pay Television; Wi-Fi network equipment; private and public trunking.

6.1.2.12.2 There are a few services that have not been provided although they were part of the services for which the Licensee was licensed, for example, satellite communication services. Additionally, there are a few services that became obsolete in view of the advance in technology, for example, paging services; telex services; telegraph services.

6.1.2.12.3 There is no evidence on the Commission's file that there were any discussions between the Commission and the Licensee regarding licensed services that were not provided or were discontinued.

6.1.2.13 2Provision of leased lines and circuit services

6.1.1.13.1 In **Article 7.2 of the Licence**, the Licensee was obligated to provide leased line and circuit services.

6.1.2.14 Evaluation of compliance with provision of leased lines and circuit services

6.1.2.14.1 The Evaluation does not reveal that the Licensee ever provided leased lines and circuit services.

6.1.2.15 Telecommunications during a public emergency and Force Majeure

6.1.2.15.1 Under **Article 7 of the Licence**, the Licensee is mandated to develop plans for operating networks and providing services during force majeure and where there is serious and substantial interruption in the provision of telecommunications services. This is also reiterated by **section 89(5) of the Telecommunications Act, 2006** which also indicates that the Licensee shall cooperate in the development and implementation of any such plans.

6.1.2.15.2 **Article 7.4(e) of the Licence** mandates that the Licensee provide an emergency alert system on all programmed channels of a cable or wireless cable television system.

6.1.2.15.3 **Article 20 of the Licence** deals with Force Majeure events and what is expected in such situations. This article indicates that if any of the listed force majeure event occurs and causes damage to the telecommunications network operated by the Licensee, the Licensee shall be obligated to repair or rebuild the network pursuant to a timetable and workplan to be established by the Licensee and approved by the Commission, and subject to adequate changes in the provisions of this Licence to be agreed upon between the Parties.

6.1.2.16 Evaluation of Compliance with Public Emergency and Force Majeure Provisions

6.1.2.16.1 The Licensee provided hurricane preparedness and business continuity plans to the Commission on the deadline date of 28 July 2016 based on a request from the Commission dated 26 July 2016. However, despite a request from the Commission on 23 May 2019 to provide updated plans in this regard by 30 May 2019, the Licensee has not done so. However, in its response to the Harneys Audit dated 21 May 2021, detailed under paragraph 7.2 below, the Licensee provided an Emergency and Business Continuity Plan.

6.1.2.16.2 Following the hurricanes of September 2017, by correspondence dated 19 October 2017, the Commission sent a **section 70** notice in writing to the Licensee requesting information on the Licensee's network recovery and restoration, to be provided by 25 October 2017. This information had been requested verbally on 4 October 2017 but had not been provided. The Evaluation found no evidence of a document being submitted to the Commission from the Licensee providing information on the Licensee's network recovery and restoration.

- 6.1.2.16.3 By correspondence dated 25 October 2017, the Commission sent an **Article 20 Request** to the Licensee requesting a detailed report which would include information pertaining to the state of network after Hurricane Irma, the estimated cost of damage suffered, the baseline detail including assets prior to Hurricane Irma, indicators, specific restoration and/or rebuilding activities and timetable including proposed, start, duration and completion date of each activity, the expected date of completion of entire restoration and/or rebuilding exercise, the estimated development cost, the provision of a description of customer engagement, any plans for refunding costs of services not delivered, and its funding source. This information was to be provided by 22 November 2017.
- 6.1.2.16.4 The Evaluation notes a letter from the Commission to the Licensee dated 6 December 2017 acknowledging the Licensee's email of 22 November 2017 and its concerns regarding possible dissemination of its confidential information. The Commission addressed these concerns and requested the information that it asked for in its letter of 25 October 2017 to be provided by 11 December 2017.
- 6.1.2.16.5 The Evaluation found evidence on the Commission's files of an email sent from the Licensee to the Commission on 6 July 2018 indicating the Licensee's progress in rebuilding its broadcast infrastructure and indicating the percentage of cellular sites restored relative to its respective allocated spectrum bands. Apart from this information, the Evaluation did not locate a detailed report as outlined in the **Article 20 Request** referred to in paragraph 6.1.2.16.3.
- 6.1.2.16.6 The Evaluation reveals that a further letter was sent from the Commission to the Licensee on 13 August 2018 requesting a Network status update, including the areas of the network fully restored and those there were not yet restored; blind spot areas or areas of significant sub-optimal coverage; detailed plan of action, with timelines, to achieve full network restoration; copy of current data costs and details of the level of efficiency agreed in the plans compared to what was being provided; customer complaints procedure for reporting discrepancy between what was agreed to be provided as opposed to what was being provided by the Licensee; any available details regarding ranking/rating of the Licensee's data plans in comparison with other territories in the region in terms of level of efficiency, dependability and costs. The information was to be provided by 20 August 2018. The Evaluation did not locate any response to this correspondence.

6.1.2.17 Public payphone requirements

- 6.1.2.17.1 **Article 7.6 of the Licence** places an obligation on the Licensee to install and maintain Public Pay Telephones in accordance with a plan submitted to and approved by the Commission.

6.1.2.18 Evaluation of Compliance with installation and maintenance of Public Pay Telephones

6.1.2.18.1 The Evaluation found no documentation on the Commission's files indicating that the Licensee ever installed and maintained public pay telephones or submitted a Public Pay Telephones plan for approval by the Commission.

6.1.2.19 Service Quality Requirements

6.1.2.19.1 **Article 7.7 of the Licence** states that the Licensee shall be obligated to provide minimum quality of service of its Telephony Services for calls carried within the Telecommunications Networks of the licensee in accordance with Annex 3.

6.1.2.20 Evaluation of compliance with Service Quality Requirements

6.1.2.20.1 The Quality-of-service metrics provided by the Licensee as required by Annex 3 of the Licence exceeded the targets that were specified within the said Annex.

6.1.2.20.2 However, as discussed in paragraphs 6.2.5.8-6.2.5.10 below, relative to its obligations under **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee has failed to provide certain QoS reports and coverage maps to the Commission, has not published its QoS reports on its website, and has failed to provide complaints reporting and statistics within the statutory timeframe or at all.

6.1.2.20.3 The Evaluation notes that on the Licensee's website under the FAQs section, which is found via an entry in the menu on the right-hand side of the web page, under the question "What is CCT's coverage area?", there is a "4G LTE Coverage Map", [4G LTE Coverage Map | CCT BVI | Life, unlimited](#) but the Evaluation was unable to locate any QoS reports.

6.1.2.21 Inspection procedures and control requirements

6.1.2.21.1 **Section 45 of the Telecommunications Act, 2006**, specifies that all installations to be used for a public telecommunication network or a public telecommunication service need to be tested by the Commission unless the requirement of pre-installation testing is waived by the Commission.

6.1.2.21.2 Under **section 45 of the Telecommunications Act, 2006**, the Commission is authorized to enter, search and inspect any premises, place, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or telecommunications service is provided, or from which any person is using spectrum for telecommunications, for the purposes outlined under that section, including for the examination of records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications service or the use of spectrum.

- 6.1.2.21.3 Additionally, under **Article 7 of the Licence** the Licensee is mandated to comply with information requests and with inspection procedures and reporting requirements established from time to time by the Commission with regard to fulfilment of the provision of telecommunications services and services quality requirements.
- 6.1.2.21.4 **Sections 3.1.9 of Frequency Authorisations Numbers VRGM/003/2016 and VRGM/006/2016 and sections 3.1.11 of Frequency Authorisations Numbers VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016)** indicate that the Licensee/Frequency Authorisation Holder shall allow the Commission upon receiving reasonable notice to inspect the facilities, equipment, and related assistance to the Commission to ensure compliance with the frequency authorisations.

6.1.2.22 Evaluation of Licensee's compliance with Inspection procedures and control requirements

- 6.1.2.22.1 It is expected that over time new or replacement equipment would have been needed for the provision of services by the Licensee. Based on the data available, there is no evidence on the Commission's file that the Licensee has sought and was given permission by the Commission for any new equipment over the term of its Licence.
- 6.1.2.22.2 The Evaluation notes that in a **Section 70 Notice** letter sent to the Licensee dated 6 July 2015 the Commission indicated that it would be conducting a compliance inspection of the Licensee on 9 July 2015. This was due to the non-provision of the Licensee's Audited Financial Statement. The Licensee responded by letter dated 7 July 2015, providing its 2009 Audited Financial Statement. There is no indication on the Commission's files as to whether this inspection was carried out.
- 6.1.2.22.3 By letter dated 20 November 2015 the Commission informed the Licensee that pursuant to **section 70(3) of the Telecommunications Act, 2006**, it was giving notice of its intention to conduct a themed compliance inspection of the Licensee from January 4, 2016, to January 15, 2016, and indicated on what the review would focus.
- 6.1.2.22.4 The Commission sent a follow-up letter on 15 December 2015 stating the objective of the visit and requesting the provision of listed pre-inspection materials that were to be provided by 24 December 2015.
- 6.1.2.22.5 On the 31 December 2015, the Commission wrote to the Licensee on several matters including the themed compliance inspection, indicating that it would delay the inspection until 16 February 2016. It also referred to the Licensee's failure to provide the pre-inspection materials by 24 December 2015. An extension was given to 15 January 2016, failing which enforcement action would be taken in the form of a fine of US\$500.00 per day until the requested information was provided by the Licensee to the Commission. The Licensee responded to these letters by a letter dated 15 January 2016.

- 6.1.2.22.6 On 22 January 2016 the Commission responded to the Licensee's letter of 15 January 2016 indicating that the inspection team would be attending the Licensee's offices on 16 February 2016 and outlined that all the documents requested in the **Section 70 Notice** had not been delivered. The outstanding documents were outlined and requested by 29 January 2016. The Commission indicated that failure to provide the materials would incur an additional penalty of US\$5,000.00 and if the Licensee refused to cooperate with the inspection, a search warrant would be applied for **under section 71(2) of the Telecommunication Act 2006**. The Licensee responded via legal Counsel by letter dated 29 January 2016.
- 6.1.2.22.7 The Commission responded to the Licensee's Counsel letter of 29 January 2016 by a letter dated 4 February 2016 outlining the history of the matter and answering the issues outlined therein. The Commission also wrote directly to the Licensee indicating that the compliance audit would proceed on 16 February 2016, requesting immediate provision of the outstanding documents and informing the Licensee that the fine will be imposed for failure to deliver the documents as directed.
- 6.1.2.22.8 However, the Evaluation could not locate any further correspondences from the Commission relative to this matter. The Evaluation notes a letter from the Licensee dated 15 January 2016 relative to requirements for the postponement of the audit and thereafter the audit was not carried out.
- 6.1.2.22.9 There are no recorded instances of denied access to the Licensee's facilities. However, by a letter dated 18 February 2019 a request was made by the Commission of the Licensee to allow access to personnel of the Commission and Harney's Fiduciary to carry out an independent review of the Licensee's compliance over the term of the Licence by Harneys. This request was effectively denied.
- 6.1.2.22.10 While the Commission has the power under **section 48 of the Telecommunications Act, 2006** to apply to a Magistrate for a warrant, this is obviously not a route that the Commission will take unless it is necessary, as the Licensee has an obligation to abide by reasonable requests made by the Commission.
- 6.1.2.22.11 **The Licensee's Response**
- 6.1.2.22.11.1 The Licensee responded to the Commission's letters of 20 November 2015, 31 November 2015 and conversations and emails between the it and the Commission by letter dated 15 January 2016 asking that it be given until 30 June 2016 to complete all outstanding financial audits including that for 2015.
- 6.1.2.22.11.2 By letter dated 29 January 2016, Counsel for the Licensee wrote to the Commission regarding the audit, that is, the themed compliance inspection, and the grievances of the Licensee regarding the Audit.

6.1.2.22.11.3 The Licensee also wrote to the Commission on 29 January 2016 repeating its request for an extension to 30 June 2016 to complete all outstanding financial audits from 2012 to 2015, providing some of the requested information and giving its reasons for not providing some of the requested information.

6.1.2.22.11.4 By letter dated 15 February 2016 the Licensee agreed to certain conditions from the Commission to postpone the compliance audit scheduled for 16 February 2016.

6.1.2.22.11.5 Regarding the Harney's Audit, the Licensee responded to the Commission's letter of 18 February 2019 by a letter dated 1 March 2019 and indicated that the Licensee could not agree to cooperate with an undefined compliance audit with no defined scope and that it required the Commission to outline the licence renewal process to the operators and the public before the Licensee's cooperation would be forthcoming.

6.1.2.23 Customer and subscriber assistance requirements

6.1.2.23.1 Under **Article 7 of the Licence**, the Licensee is required to set up directory assistance services for its customers. It is also required to operate a database publicly accessible as well as produce a phone book to be free of charge.

6.1.2.24 Evaluation of Customer and subscriber assistance requirements

6.1.2.24.1 There is no evidence that the Licensee set up directory assistance services for its customers.

6.1.2.25 Assistance to disabled persons

6.1.2.25.1 Under **Article 7.11 of the Licence**, the Licensee is obligated to provide equipment or services during the licence term for disabled Customers and Subscribers.

6.1.2.25.2 **Article 7.11(a) of the Licence** states that the Licensee shall, at the request of the Commission, arrange for the supply of, and the provision of maintenance services for telecommunications apparatus designed or adapted to meet the reasonable demands of disabled people; the connection to the telecommunications networks of said telecommunications apparatus; and the Licensee's participation in any advisory group established to address the needs of persons who are disabled.

6.1.2.25.3 **Article 7.11(b) of the Licence** states that the Licensee shall use its reasonable endeavours to ensure that there are available for supply in such a way as to meet all reasonable demands for customer premises, equipment capable of being inductively coupled to hearing aids which have been designed to be so coupled to Customer Premises Equipment; and equipment incorporating sound amplification

facilities, provided that this condition shall be deemed to be satisfied if the Licensee uses its reasonable endeavours to ensure that there is available for supply either one type of customer premises equipment which meets both descriptions or two types of customer premises equipment each of which meets one of the requirements set forth in **Article 7.11 (a) or (b)**.

6.1.2.25.4 **Article 7.11(c) of the Licence** states that the Licensee take all reasonable steps to install and keep installed in at least fifty percent (50%) of Public Pay Telephone Service, apparatus enabling persons using hearing aids designed for use in conjunction with Public Pay Telephones to use such hearing aids in connection with Voice Telephony Services. The target specified in the immediately preceding sentence shall be achieved as soon as practicable but, in any event, no later than the fifth (5th) anniversary of the Effective Date. On the fifth (5th) anniversary of the Effective Date the percentage of such Public Pay Telephones at which the Licensee shall be obligated to install and keep installed such apparatus shall be agreed between the Licensee and the Commission.

6.1.2.26 Evaluation of Assistance to disabled persons

6.1.2.26.1 The Evaluation found nothing in the Commission's file that indicates that the obligation under **Article 7.11(a) of the Licence** was invoked by the Commission.

6.1.2.26.2 The Evaluation was unable to determine whether the obligations under **Article 7.11(b) and (c) of the Licence** were adhered to base on the Commission's files.

6.2 FINANCIAL AND REPORTING OBLIGATIONS

6.2.1 The Commission has assessed the Licensee's financial and reporting performance to evaluate the extent to which the Licensee's financial and reporting operations are compliant with its obligations under the financial and reporting provisions of its Licence, the Telecommunication Acts, the Telecommunication Code, and industry standards.

6.2.2 This appraisal indicates that the Licensee has throughout the term of the Licence been barely compliant with the various financial and reporting requirements, as discussed below.

6.2.3 Financial Provisions

6.2.3.1 The Licensee is required to maintain accounting records in accordance with Generally Acceptable Accounting Principles in accordance **with Article 7.1 of the Licence**.

6.2.3.2 Under both **Article 5.1 of the Licence** and **section 59(1) of the Telecommunications Act, 2006**, the Licensee has an obligation to pay to the Commission an annual Industry Levy. The Act indicates that the industry levy is payable and due to be paid within four (4) weeks of receiving a notification from the Commission.

- 6.2.3.3 Under both **Article 5.1 of the Licence** and **section 60(1) of the Telecommunications Act, 2006**, the Licensee has an obligation to pay to the Commission an annual Royalty fee in the amount of three percent (3%) of the gross revenues from services provided under the Licence collected by the Licensee, payable in US Dollars no later than 5 April of each year. The Licence indicates that this payment shall commence on 5 April, 2007.
- 6.2.3.4 Under **Article 5.3 of the Licence**, the Licensee has an obligation to pay to the Commission the annual charges for use of the radio spectrum.
- 6.2.3.5 Under **Article 5.6 of the Licence**, the Licensee shall pay the annual fee for operation of an international submarine cable landing in the British Virgin Islands.

6.2.4 Reporting Provisions

- 6.2.4.1 **Article 7.3(a) of the Licence** states that the Licensee should not interrupt the operation of the telecommunications network or any portion thereof or to suspend the provision of any licensed service in the normal course of business, without giving written notification to the Commission.
- 6.2.4.2 Under **Article 7.14 of the Licence**, the Licensee has an obligation to establish and maintain adequate records to permit the effective supervision and enforcement of the terms of the Licence. Within ninety (90) working days of the end of each fiscal year, the Licensee shall deliver to the Commission its year-end balance sheet and related states of operation, equity, and cash flow, accompanied by an independent public accountant's report, in accordance with **section 69 of the Telecommunications Act 2006**.
- 6.2.4.3 According to **Article 7.14 of the Licence**, within ninety (90) working days following each anniversary of the effective date of the Licence, the Licensee shall deliver to the Commission, in accordance with **section 69 of the Telecommunications Act 2006**, a report on the operations and services of the Licensee and the extent to which the conditions of the Licence have been followed during the preceding twelve(12) months, substantially in the form of Annex 4 of the Licence.
- 6.2.4.4 **Annex 10 of the Licence** indicates that the Licensee shall report on submarine cable locations and capacity by May 1 each year.
- 6.2.4.5 Under **section 4(3) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is obligated to notify the Commission no later than thirty (30) days after the end of each quarter of the commercial launch of any services within that quarter.
- 6.2.4.6 Under **section 4(4) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is obligated to measure and report on quality of service in accordance with the quality of service (QoS) targets set by the Commission.

- 6.2.4.7 Under **section 8(3) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, requires the Licensee to provide to the Commission a QoS report in terms of services provided under Schedules 1, 2 and 3 on paper and by email, in Microsoft Excel format, no later than thirty (30) days after the end of the reporting period. As per **section 11 of the said Code**, the report needs to contain a comparison with the same performance data in the previous period along with the proposed level of service for the next twelve (12) months.
- 6.2.4.8 As per **section 8(4) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee is required to provide coverage maps as well as calculations of coverage in terms of territory and population, against an outline map of the Virgin Islands, indicating the areas in which each of the services covered in the Requirements are available, and in the case of a wireless service, the map should indicate the signal strength in dBm (decibels referenced to 1 milliwatt) at the edge of the coverage area.
- 6.2.4.9 As per **section 11(1) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee must publish its QoS on its website no later than thirty (30) days after the end of the reporting period.
- 6.2.4.10 Under **section 13 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, the Licensee shall include in the quality of service measurements the number of requests received for services that the Licensee cannot provide to a user because it is not technically feasible to install the service, or the Licensee does not supply the particular service in the requested geographical area.
- 6.2.4.11 In the event of a force majeure affecting the QoS, as estimated and reported, under **section 14 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010** the Licensee is required to provide a second set of data showing the effect of the force majeure along with a note explaining the differences in detail; or the Licensee can apply for an exemption to submit said report.
- 6.2.4.12 **Section 15(2) of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, indicates that the Licensee shall notify the Commission of planned service interruptions at least forty-eight (48) hours in advance.
- 6.2.4.13 In the case of unplanned service interruptions, **section 16 of the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, mandates that the Licensee notify the Commission, by email and SMS, of the service interruptions within three (3) hours of the service disruption event and include details on areas and number of users affected; provide continuous updates every twelve (hours) detailing progress in resolving the issue; and provide a full report within twenty-four (24) hours of the disruption.
- 6.2.4.14 **Sections 3.3.2 of Frequency Authorisations VRGM/003/2016, VRGM/006/2016, and VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016)** indicate that the

Licensee/Authorisation Holder shall provide a quarterly report to the Commission specifying accurate, up-to-date, and detailed technical data, as outlined in section 3.3.1, in relation to its use of the assigned frequency bands.

6.2.5 Analysis of compliance with Financial and Reporting Obligations

- 6.2.5.1 The Evaluation finds no written evidence of the Commission granting formal approval for the accounting system adopted by the Licensee. However, given that the Licensee has been submitting its financial statements for the past fourteen (14) years without there being any complaints from the Commission, then it can be concluded there had been some approval given to the Licensee albeit not in writing. Additionally, the Evaluation notes a **Section 70 Notice** dated 29 May 2009 which asked that financial information be provided in accordance with GAAP.
- 6.2.5.2 The Evaluation reveals that the Licensee has not paid the Industry Levy throughout the term of the Licence. However, the Levy was not implemented until February 2017. The Commission's efforts in this regard have been met with resistance and the matter is presently before the High Court being judicially reviewed and payments have been stayed pending the outcome of the review.
- 6.2.5.3 The Licensee has for the most part made timely payment of the assessed Spectrum fees.
- 6.2.5.4 The Evaluation notes that the Licensee does not operate an international submarine cable in the Territory and therefore, the requirements under paragraphs 6.2.4.4 and 6.2.3.5 are inapplicable.
- 6.2.5.5 The Evaluation notes numerous correspondence from the Commission to the Licensee regarding outstanding Royalty payments, including,
- 6.2.5.5.1 a letter dated 3 April 2008 indicated that payments for the 4th quarter of 2005 and all quarters of 2006 were outstanding. Same was to be paid by 5 April 2008.
 - 6.2.5.5.2 a letter dated 17 June 2008 indicated that payments for the 4th quarter of 2005 and all quarters of 2006 plus interest from 5 April 2008 were outstanding.
 - 6.2.5.5.3 a letter dated 4 May 2012 indicating that the balance of the royalty fees for 2007, 2008 and 2009 had not been paid and that there had been no payment of royalty fees for the years 2010 and 2011.
 - 6.2.5.5.4 a letter dated 17 July 2013 indicating that while the balance of the royalty fees for 2008 to 2011 was covered by a payment plan, the 2012 royalty payment had not been paid by 5 April 2013.
 - 6.2.5.5.5 a letter dated 8 April 2015 indicating the 2014 royalty payment had not been paid by 5 April 2015. The Commission acknowledged payment of same on 10 April 2015.
 - 6.2.5.5.6 a letter dated 15 February 2016 discussed terms acceptable to the Commissions for entering another payment plan for outstanding royalty payments.
 - 6.2.5.5.7 a letter dated 4 October 2018 indicating the 2017 royalty payment had not been paid by 5 April 2018. By letter dated 23 January 2019, the

- Commission acknowledged receipt of payment of 2017 royalty fees on 9 January 2019.
- 6.2.5.5.8 a letter dated 8 April 2019 indicating the 2018 royalty payment had not been paid by 5 April 2019. This payment was received by the Commission later in April.
 - 6.2.5.5.9 a letter dated 19 June 2020 indicating the 2019 royalty payment had been paid on 8 June 2020.
- 6.2.5.6 There are also numerous correspondences from the Commission to the Licensee regarding the Licensee's failure to submission of audited financial statements, including
- 6.2.5.6.1 the letter dated 3 April 2008 requested the audited financial statements by 5 April 2008;
 - 6.2.5.6.2 an email dated 7 April 2009 acknowledged the receipt by the Commission of unsigned financial statements for 2006 and 2007;
 - 6.2.5.6.3 the letter dated 4 May 2012 requested the audited financial statements for 2009, 2010 and 2011.
 - 6.2.5.6.4 the letter of 17 July 2013 noted that the letter dated 4 May 2012 requesting the audited financial statements for 2009, 2010 and 2011, had not been complied with and requested same by 31 July 2013.
 - 6.2.5.6.5 a letter dated 9 May 2014 indicated that the audited financial statements for 2009 to 2013 were outstanding and requested they be provided to the Commission by 9 June 2014.
 - 6.2.5.6.6 a **Section 70 Notice** was sent on 29 May 2015, requesting the Licensee's financial information for 2009 to 2014 as required by **Article 7.14 of the Licence**. The information was to be provided by 15 June 2015 but was not supplied. A second deadline was given of 29 June 2015.
 - 6.2.5.6.7 a letter dated 6 July 2015 was sent to the Licensee indicating that it had failed to provide a reasonable excuse in its letter of 26 June 2015 as to why it had not complied with the **Section 70 Notice**. This letter indicated that the audited financial statements for 2011 to 2014 were to be provided by 7 July 2015 and that failure to provide same would lead to enforcement action including a compliance inspection that was to take place on 9 July 2015. The Licensee responded by letter date 7 July 2015 and provided its 2009 Audited Financial Report and indicated t was working on 2010-2012, and once completed then 2013 and 2014 with the aim to finalize all by the end of 2015.
 - 6.2.5.6.8 a letter dated 5 April 2017 granted an extension to the Licensee to provide the audited financial statement for 2016 by 1 July 2017.
 - 6.2.5.6.9 the letter dated 23 January 2019 requested the audited financial statement for 2017.
 - 6.2.5.6.10 a letter dated 31 May 2019 requested the audited financial statements for 2016, 2017 and 2018 by 14 June 2019. The Licensee replied by letter dated 3 June 2016 requesting an extension to provide the 2017 the audited financial statement by 31 July 2019. No reference was made to the 2016 audited financial statement or when the 2018 audited financial statement would be provided.
 - 6.2.5.6.11 a **Section 70 Notice** was sent on 17 January 2020, demanding the production of the Licensee's audited financial statements for 2016, 2017 and 2018 by 31 January 2020.

- 6.2.5.6.12 a second **Section 70 Notice** dated 11 May 2020 referred to the **Section 70 Notice** sent on 17 January 2020 and demanded the production of the Licensee's audited financial statements for 2018 and 2019 by 1 June 2020.
 - 6.2.5.6.13 the letter dated 19 June 2020 indicating the 2019 audited financial statement was outstanding.
 - 6.2.5.6.14 a letter dated 9 October 2020 indicating that the Licensee had not delivered the 2018 and 2019 audited financial statements by September 2020 as it had verbally indicated and requesting them by 16 October 2020.
 - 6.2.5.6.15 a letter dated 1 April 2020 indicating that the 2019 audited financial statement which should have been received by the Commission on 31 March 2021 was outstanding and should be provided by 8 April 2021
- 6.2.5.7 The Licensee provided to the Commission the audited financial statements for 2016 and 2017 on 31 January 2020 while the 2018 audited financial statement was provided on 15 January 2021 along with the 2019 audited financial statement. The 2020 audited financial statement has not been received.
- 6.2.5.8 The Evaluation reveals numerous correspondences from the Commission to the Licensee relative to outstanding QoS reports since the implementation of **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**, including,
- 6.2.5.8.1 a letter dated 16 February 2012 indicating that the data for the 1st and 2nd periods (3rd and 4th quarters of 2011) were outstanding and requesting same by 27 February 2012. On 24 April 2012 the Commission acknowledged the receipt of the reports but indicated that required data was omitted or incorrectly calculated and provided instructions for correct completion of future reports.
 - 6.2.5.8.2 a letter dated 24 July 2012 indicating that the data for the 1st and 2nd quarters of 2012 were outstanding and requesting same by 31 July 2012.
 - 6.2.5.8.3 a **Section 70 Notice** dated 16 January 2017 which indicated that the QoS Reports that are required to be posted on the Licensee's website are not there, namely quarter 4 of 2014, quarter 4 2015 and quarters 1, 2 and 3 of 2016.
 - 6.2.5.8.4 a letter dated 14 February 2017 indicating that the data for the 1st and 2nd periods (3rd and 4th quarters of 2011) were outstanding and requesting same by 27 February 2017.
 - 6.2.5.8.5 a letter dated 14 December 2017 indicating that the data for the 1st and 2nd quarters of 2017 were outstanding and requesting same by 15 January 2017 and that the data for the 3rd and 4th quarters of 2017 should be submitted by 15 February 2018. The Licensee was exempted from the timely submission of quarter 3 of 2017 due to the September hurricanes.
 - 6.2.5.8.6 a letter dated 27 September 2018 indicating that the data for the 2nd to 4th quarters of 2017 and the 1st and 2nd quarters of 2018 were outstanding and requesting same by 12 October 2018. The Licensee was again given instructions on completing the template.

- 6.2.5.8.7 a letter dated 8 February 2019 indicating that the data for the 2nd to 4th quarters of 2017 and the 1st to 3rd quarters of 2018 were outstanding and requesting same by 28 February 2019 by which date the 4th quarter of 2018 would also be due.
 - 6.2.5.8.8 a letter dated 27 August 2019 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018 and the 1st and 2nd quarters of 2019 were outstanding and requesting same by 13 September 2019.
 - 6.2.5.8.9 a letter dated 17 February 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018 and the 1st to 4th quarters of 2019 were outstanding and requesting same by 17 March 2020.
 - 6.2.5.8.10 a letter dated 6 July 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018, the 1st to 4th quarters of 2019 and the 1st quarter of 2020 were outstanding and requesting same by 31 July 2020.
 - 6.2.5.8.11 a letter dated 28 September 2020 indicating that the data for the 2nd to 4th quarters of 2017, the 1st to 4th quarters of 2018, the 1st to 4th quarters of 2019 and the 1st and 2nd quarters of 2020 were outstanding and requesting same by 13 October 2020.
- 6.2.5.9 The Evaluation shows that since 2012 the Licensee has been sent numerous correspondence from the Commission indicating outstanding QoS reports and notes a lack of response from the Licensee to these correspondences.
- 6.2.5.10 Thus, regarding QoS reporting obligation, the Licensee has
- 6.2.5.10.1 neglected to provide the majority of the data required in the QOS template;
 - 6.2.5.10.2 failed to include complaints reporting and statistics;
 - 6.2.5.10.3 only submitted QoS reports for Quarters 2 to 4 of 2017, Quarters 1 to 4 of 2018 on 21 May 2021 (reference to this letter is made in paragraph 7.2.6 below). The remaining reports are still outstanding;
 - 6.2.5.10.4 not included coverage maps;
 - 6.2.5.10.5 not been publishing its QoS reports on its website as promised in its letters of 9 January 2017 and 1 February 2017.
- 6.2.5.11 The Evaluation indicates that additional information from the Licensee is required for the Commission to be able to accurately assess the Licensee's service coverage.
- 6.2.5.12 The Evaluation found no evidence of correspondence from the Licensee to the Commission outlining the launch of new services and products over the period of the Licence.
- 6.2.5.13 The Evaluation did not locate a second set of QoS data for 2017 showing the effect of the force majeure, Hurricanes Irma and Maria, compared with any projected QoS. There is no evidence on the Commission's files that the Licensee applied for an exemption from the requirement to provide this second set of data.

- 6.2.5.14 The Evaluation notes there are no written notifications of service disruption, whether planned or unplanned, from the Licensee to the Commission on the Commission's files.
- 6.2.5.14.1 It is noted that on 22 April 2013, based on certain occurrences, the Commission wrote to the Licensee indicating that the Licensee should let the Commission know of any service disruptions in relation to internet service disruption. There was no response to this email.
- 6.2.5.14.2 On the 24 April 2013, the Commission wrote to the Licensee and expressed its dissatisfaction with the fact that the Licensee had failed to inform the Commission of issues that it was having with its network and once again requested that the Commission be informed in a timely manner of any outages or technical issues. However, the Evaluation was unable to determine whether this directive was carried out as no reply was seen on the Commission's file.
- 6.2.5.15 The Evaluation notes correspondence on 20 December 2016 from the Commission to the Licensee regarding non-compliance with sections 3.3, 3.3.1 and 3.3.2 of the terms and conditions of Frequency Authorisations VRGM/003/2016 and VRGM/004/2016, in that the Licensee failed to provide technical records to the Commission on 23 November 2016. It was given until 15 January 2017 to be compliant and reminded that its next report was due on 23 February 2017. The Licensee did not reply to this letter.
- 6.2.5.16 The Evaluation notes a **Section 70 Notice** dated 16 January 2017 from the Commission to the Licensee indicating, that the Licensee had failed to complete the information in relation to 2014 and 2015 ITU and Market Data request (as requested via email on 29 November 2016 and non-compliance with sections 3.3 of the terms and conditions of Frequency Authorisations VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016), in that the Licensee failed to provide technical records to the Commission on a quarterly basis, namely on 7 October 2016 and 7 January 2017. It was given until 1 February 2017 to be compliant. The Licensee responded by letter dated 1 February 2017.
- 6.2.5.17 The Evaluation notes a correspondence dated 20 January 2017 from the Commission to the Licensee regarding non-compliance with sections 3.3 of the terms and conditions of Frequency Authorisations VRGM/003/2016 and VRGM/004/2016, in that the Licensee failed to provide technical records to the Commission on a quarterly basis and given a new date of 31 January 2017 to be compliant. The Licensee responded by letter dated 1 February 2017. The Licensee did not reply to this letter.
- 6.2.5.18 The Evaluation notes another correspondence dated 20 January 2017 from the Commission to the Licensee regarding non-compliance with sections 3.3 of the terms and conditions of Frequency Authorisations VRGFX/0217/2016 to VRGFX/0285/2016 (excluding VRGFX/0257/2016, VRGFX/0262/2016), in that the Licensee failed to provide technical records to the Commission on a quarterly basis, namely on 7 October 2016 and 7 January 2017. It was given a

new date of 15 February 2017 to be compliant. The Licensee did not reply to this letter.

6.2.5.19 The Evaluation notes correspondence dated 3 March 2017 from the Commission to the Licensee acknowledging its letter dated 1 February 2017, acknowledging the receipt of certain documents, and indicating the matter that were not addressed including the completed 2014 and 2015 ITU and Market Data request which was not provided by the deadline of 20 February 2017. The Licensee responded on 10 March 2017.

6.2.5.20 The Evaluation notes correspondence on 12 February 2019 from the Commission to the Licensee regarding non-compliance with sections 3.3 and 3.3.2 of the terms and conditions of Frequency Authorisations VRGM/003/2016 and VRGM/004/2016, in that the Licensee failed to provide technical records to the Commission on a quarterly basis and requesting the first and second quarter reports for August to November 2018 and November to February 2019. It was given until 5 March 2019 to be compliant. The Evaluation found no reply to this correspondence.

6.2.5.21 The Evaluation found correspondence from the Commission to the Licensee dated 25 March 2019 regarding the Licensee's failure to reply to its email of 17 January 2019 concerning the provision the relevant information for the 2019 ITU Questionnaire. It was given until 1 April 2019 to provide same. The Licensee did not reply to this letter.

6.2.5.22 The Evaluation notes a **Section 70 Notice** dated 5 April 2019 from the Commission to the Licensee indicating, that the Licensee had failed to provide the relevant information for the 2019 ITU Questionnaire and giving it until 16 April 2019 to be compliant. There is no indication on the Commission's file that the Licensee complied with this notice.

6.2.5.23 **The Licensee's response**

6.2.5.23.1 The Licensee responded on 1 February 2017 to the Commission's letter of 16 January 2017 indicating that it will post the reports on its website by 28 February. This has not been done. It also provided some information relative to the 2014 and 2015 ITU and Market Data request which was incomplete.

6.2.5.23.2 The Licensee responded on 10 March 2017 to the Commission's letter of 3 March 2017 and provided additional information.

6.3 CONSUMER, COMPETITION, AND OTHER REGULATORY OBLIGATIONS

6.3.1 The Commission has assessed the Licensee's consumer, competition and other regulatory obligations to evaluate the extent to which the Licensee operations are compliant with these obligations under its Licence, the Telecommunication Acts, the Telecommunication Code, and industry standards.

6.3.2 This appraisal indicates that the Licensee has throughout the term of the Licence been fairly compliant with the various obligations, as discussed below: -

6.3.3 Conditions for effectiveness of Licence

6.3.3.1 As indicated previously, **Article 16 of the Licence**, set out some conditions for the effectiveness of the Licence, including providing to the Commission an officer's certificate signed by a duly authorised officer of the Licensee certifying that the representations and warranties of the Licensee are correct in all material respects.

6.3.3.2 The Licensee was also mandated to provide a certified copy of the Licensee's articles of association within ten (10) working days from effective date, a copy of the resolutions passed by the board of directors authorising the execution, delivery and performance of the Licence, a certified copy of the Licensee's registration certificate within ten (10) working days of the effective date, certified copies of the Licensee's by-laws, and signature and incumbency certificates of the officers of the Licensee executing the Licence.

6.3.4 Evaluation of compliance with the above conditions for effectiveness of Licence

6.3.4.1 On 29 May 2015 the Commission sent a **Section 70 Notice** to the licensee requesting amongst other things, the name of its Board members and senior management, articles of incorporation and current ownership of the Licensee. The Evaluation found correspondence from the Licensee to the Commission referring to a **Section 70 Notice** dated 7 July 2015 and providing to the Commission amongst other things, its Certificate of Incorporation, its Memorandum and Articles of Association, Senior Management Organizational Chart, Certificate of Incumbency, Register of Directors and Officers, Register of shareholders.

6.3.4.2 The Evaluation also notes that in its response to the Harneys Audit dated 21 May 2021, detailed under paragraph 7.2 below, the Licensee provided a diagram of the ownership structure of the Licensee.

6.3.4.3 The review did not locate copies of the other documentation required under **Article 16 of the Licence**.

6.3.5 Price Obligations

6.3.5.1 **Section 29 (3) of the Telecommunications Act 2006** imposes an obligation on the Licensee to publish its prices and terms and conditions.

6.3.5.2 Additionally, **Article 8 of the Licence** imposes certain price caps where a public supplier is designated a Dominant Public Supplier.

6.3.6 Evaluation of the Licensee's compliance with its price obligations

6.3.6.1 The Evaluation notes that Licensee was designated a Dominant Public Supplier on the 22 day of September 2011 in the wholesale market for voice call termination on its mobile network and **Article 8.1 of the Licence** was amended accordingly and Annex 8 implemented. Pursuant to **Annex 8 of the Licence**, the prices for voice call termination services on the Licensee's mobile network were fixed by the Commission. There is nothing on the Commission's files that

indicates that the Licensee has failed to follow the procedure laid out under **Annex 8**.

6.3.6.2 The Evaluation did not find any documentations from Licensee to the Commission informing the Commission of rate plans, changes in price, changes to Mobile Terms and Conditions, et cetera.

6.3.6.3 The Evaluation found that the Licensee has published rates, prices, and plans on the home page of its websites. Terms & Conditions are published here in relation to the various services provided: [Terms and Conditions | CCT BVI | Life, unlimited.](#)

6.3.7 Interconnection (Access, Agreements and Numbering)

6.3.7.1 **Article 9 of the Licence** imposes an obligation on the Licensee to provide interconnection to other operators. This obligation is reiterated by the **Part IV of the Telecommunications Act, 2006** and the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**.

6.3.7.2 Relative to interconnection Access, **section 16 of the Telecommunications Act, 2006** states that the Licensee shall provide for the transmission and routing of the services of other public suppliers at such technically feasible point and on such terms as may be specified by the Commission.

6.3.7.3 In relation to Interconnection negotiation timelines, **Article 9.3 of the Licence** required that the Licensee conclude interconnection agreements within six (6) months following the effective date of the other operator's Licence. This obligation was modified by **section 6 (3) of the Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**, which states that *"every public supplier must offer to provide and provide interconnection on a timely basis not to exceed 90 days subject to section 8, after requested by another public supplier, and on the basis of terms and conditions that are transparent and reasonable, having regard to economic feasibility"*.

6.3.7.4 Interconnection Agreements

6.3.7.4.1 Under **Article 9.1(c) of the Licence**, it is indicated that the Licensee must file with the Commission an application for the Commission's approval or re-approval, as the case may be, of each proposed interconnection agreement to be entered into at least thirty (30) working Days before the effective date of such agreement and each interconnection agreement already approved by the Commission on the fifth anniversary of the effective date of such interconnection agreement and on each successive five (5) year anniversary thereof.

6.3.7.4.2 Under **Article 9.3** of the Licence, the Licensee has an obligation to file with the Commission for the Commission's approval each interconnection agreement which it intends to enter no later than six (6) months following the effective date of the other operator's Licence.

- 6.3.7.4.3 Further guidance is provided by the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011 (sections 5, 9, 11 and 13)** which stated that once a request for interconnection is received by the Licensee a standard written interconnection agreement, which complies with the said Requirements, must be provided to the requester within thirty (30) days of receipt of the request. Once the agreement is concluded, a copy of the agreement must be provided by the Licensee to the Commission within twenty-eight (28) days.
- 6.3.7.4.4 If the Licensee is deemed a dominant supplier, then it must publish the interconnection agreement on its website within twenty-eight (28) days of conclusion of the agreement.
- 6.3.7.4.5 Under **Annex 8 of the Licence**, the Licensee was required to execute revised Interconnection Agreements with each licensee or operator of telecommunications services interconnected to the Licensee's networks to give effect to the rates prescribed from 1 August 2012 and submit each such Agreement to the Commission no later than 8 August 2012.
- 6.3.7.4.6 The Licence and the Code imposes an obligation on the Licensee to negotiate in good faith.

6.3.7.5 Access to Facilities

- 6.3.7.5.1 Under **section 27 of the Telecommunications Act, 2006** access to facilities and utility installations shall not be unreasonably denied by the Licensee and access shall be negotiated on a non-discriminatory and equitable basis.

6.3.8 Evaluation of Licensee's Interconnection Obligations

- 6.3.8.1 In respect to the Licensee's interconnection obligation, the Evaluation found evidence that the Licensee has concluded interconnection agreements with Cable and Wireless (BVI) Ltd.
- 6.3.8.2 Although the Evaluation found no interconnection agreement with Digicel (BVI) Ltd., it notes that there are correspondences dated from 13 November 2011 regarding interconnection between the Licensee, Digicel and Cable and Wireless (BVI) Ltd. in a letter dated 27 November 2011 to the Licensee, Digicel (BVI) Ltd. and Cable and Wireless (BVI) Ltd. the Commission indicated that there should be an interim indirect interconnection between Digicel (BVI) Ltd and Cable and Wireless (BVI) Ltd. through the existing CCT-C&W interconnection agreement dated 9 March 2007 and amended on 20 November 2007. It indicated that there was no requirement for the Licensee and Digicel (BVI) Ltd to submit an interconnection agreement in the interim period. The interim agreement was not concluded, and the Commission wrote to the parties on 12 December 2012 requesting information relating to said failure. There was no response to this request and the Evaluation notes no further correspondence on the issue.
- 6.3.8.3 The Evaluation notes correspondence from the Commission to the Licensee indicating that it had not received the final interconnection agreement and had not received any response to its letters of 24 January 2007 and 26 January 2007.

The Licensee was requested to file the agreement and supporting information justifying cost basis of negotiated interconnection prices.

6.3.8.4 The Evaluation found evidence on the Commission's files that an application was submitted to the Commission for interconnection agreement between the Licensee and Cable and Wireless (BVI) Ltd. in 2007, specifically, a letter from the Commission to the Licensee dated 14 December 2007 which referred to the Commission reviewing the "First Amending Agreement to C&W – CCT Standard Interconnection Agreement" dated 20 November 2007 and granting its approval of a revision made to said agreement. The letter noted that the amendment was not provided to the Commission until 13 December 2007, in violation of **Article 9.1(d) of the Licence**.

6.3.8.5 In reference to the original C&W – CCT Standard Interconnection Agreement, the Evaluation did not reveal when the application for same was filed with the Commission (although it notes that the correspondence referred to in paragraph 6.3.8.2 from the Commission indicated that the agreement was dated 9 March 2007) and thus no conclusion can be made relative to the Licensee's compliance with the prescribed time from the time of the request of interconnection, application for, establishment of the interconnection and the receipt of the interconnectivity agreement.

6.3.8.6 The Evaluation found on the Commission's files the following documents relative to interconnection between the Licensee and Cable and Wireless (BVI) Ltd., namely, an interconnectivity agreement between the Licensee and Cable and Wireless (BVI) Ltd, the Joint Working Manual on Interconnection Procedures, a Service Schedule, a Parameter Schedule, a Tariff Schedule, Standard Interconnection Agreement Legal Framework, Definitions, Service Descriptions. These documents were dated 7 May 2007 and were attached to a letter from the Licensee to the Commission dated 21 March 2014. There was also provided to the Commission a Precommercial Start of GSM/GPRS Roaming services between the Licensee and Cable and Wireless (BVI) Ltd dated 2 January 2013.

6.3.8.7 The Commission's files do not reveal that subsequent interconnection agreements were filed by the Licensee after this initial interconnection agreement as required by **Article 9.1(c) of the Licence**.

6.3.8.8 Additionally, the dates of the documents referred to in paragraphs 6.3.8.4 indicates that no new agreements were entered into between the Licensee and Cable and Wireless (BVI) Ltd. or alternatively, not provided to the Commission, as required under the revision to **Annex 8 of the Licence** which required the Licensee to submit revised interconnection agreements by August 1, 2012.

6.3.8.9 Based on the Commission's file, the Evaluation did not find evidence that access to facilities have been unreasonably denied by the Licensee.

6.3.9 Disclosure of information to the Commission

6.3.9.1 **Section 69 of the Telecommunications Act, 2006** requires the Licensee to make returns, or furnish documentation, to the Commission for statistical

purposes or where the disclosure would facilitate the carrying out of the Commission's functions, powers or duties, or is in the public interest.

6.3.9.2 **Section 70 of the Telecommunications Act, 2006** allows the Commission to serve a notice on a Licensee to produce or furnish to the Commission at a time and place specified in the notice any documents specified or described in the notice that are in that person's possession or custody or under his control, where it appears to the Commission that a Licensee may be contravening, or may have contravened the Act, the Regulations, the Telecommunications Code, any instructions or any term or condition of a Licence or frequency authorization; or it is reasonably required for the purpose of discharging the Commission's functions or ensuring compliance with the Act, the Regulations, the Telecommunications Code or any term or condition of a Licence or frequency authorization.

6.3.9.3 **Annex 8 of the Licence** stated that the Licensee must submit revised interconnection agreements within one week, August 1st, 2012.

6.3.10 Evaluation of Licensee's Information Disclosure Obligations

6.3.10.1 The Evaluation shows that the Licensee does not ordinarily comply with general requests for information.

6.3.10.2 Section 70 requests must generally be invoked to obtain requested data and are still not generally complied with.

6.3.11 Designation of a Compliance Officer

6.3.11.1 It is a statutory requirement that the Licensee appoint a compliance officer under **section 72 of the Telecommunications Act, 2006**, which indicates the qualifications that person must possess.

6.3.12 Evaluation of Licensee's compliance with requirement to appoint a Compliance Officer

6.3.12.1 The Evaluation found no documentation of a compliance officer being approved by the Commission. The Evaluation was unable to determine who the current compliance officer is. Additionally, the Commission wrote to the Licensee on 8 April 2019 requesting that it be provided with the name of its compliance officer so that the Commission's Chief Economist would be able to liaise with said officer for the provision of essential data requests. The Licensee neither acknowledged nor responded to said correspondence.

6.3.12.2 The Evaluation notes a **Section 70 Notice** sent on 16 January 2017 which demanded, amongst other things, the production of the Licensee's Annual Compliance Report as set out in Annex 4 of the Licence, and which was due on 4 October 2016 by 1 February 2017.

6.3.12.3 The Evaluation reveals that there was a follow up request for the Annual Compliance Report from the Commission on 23 January 2017 and again indicated that it was due by 1 February 2017. There was no response to this letter.

6.3.12.4 The Evaluation found no evidence of the Commission being provided with the statutory required compliance manual or any submitted written reports confirming compliance with the relevant legislation and the Licence by the Licensee and its staff.

6.3.12.5 Notwithstanding, paragraph 6.3.12.1 above, the Evaluation notes that in its letter dated 21 May 2021, referred to in paragraph 7.2.6 below, the Licensee proposed that its CEO would be its Compliance Officer.

6.3.13 Management of Consumer Complaints

6.3.13.1 **Article 7 of the Licence** states that the Licensee shall establish an efficient conflict resolution procedure.

6.3.13.2 The **Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010**, contains detailed guidance in relation to the complaint procedures. It outlines the period for acknowledgment and resolution of complaints, the requirement for an efficient complaint resolution procedure, and lists the duties of the Licensee in dealing with customer complaints.

6.3.13.3 **Section 5 of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall acknowledge receipt of a complaint within five (5) business days and where possible, in writing and outline the time frame for resolution and contact details of the person dealing with the complaint and any other relevant information.

6.3.13.4 **Section 6 of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall resolve the complaint within twenty (20) business days where possible.

6.3.13.5 **Section 17 (1)(c-d) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that the Licensee shall establish and maintain channels for customers to submit complaints, must have a number available for this, and make the complaints submission process known to the public.

6.3.13.6 **Section 17 (1)(e) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** requires that the Licensee create a reasonable process for registering, investigating and resolving complaints where customers are informed of the recourse.

6.3.13.7 **Section 17 (1)(g) of the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** indicates that no more than ten (10) business days after the end of each reporting quarter, the Licensee must submit to the Commission a report of all the complaints received. The report should contain the number of complaints received related to billing and rates, and QoS; how many were

resolved and rejected relative to each area; the number of complaints where Licensee fully or partially satisfied the grievances; the total value of reimbursements, compensations, credits et cetera in monetary reimbursements or compensations (services).

6.3.14 Evaluation of Licensee's compliance with management of Consumer Complaints

6.3.14.1 The Evaluation notes correspondence from the Commission to the Licensee dating back to 8 March 2012 requesting Consumer Complaints Data for the periods 01 July 2011 to 30 September 2011 and 1 October 2011 to 31 December 2012 to be provided by 31 March 2012. In a letter dated 6 September 2019, these reports were acknowledged to have been received by the Commission although the receipt date was not stated.

6.3.14.2 In the Commission's letter to the Licensee of 6 September 2012, it indicated that the Consumer Complaints Data for the of 2012 1st and 2nd Quarters were outstanding and requested same by 19 September 2012.

6.3.14.3 In a letter from Commission to the Licensee dated 3 May 2013, it indicated that the Consumer Complaints Data for the 3rd and 4th Quarters of 2012 were outstanding and requested same by 16 May 2013. The Commission also indicated that the Complaints Procedure was outstanding.

6.3.14.4 The Evaluation shows that the Licensee first provided the Commission with its Complaints Procedures in 2014. Since then, no updated versions have been provided to the Commission.

6.3.14.5 It is also a requirement that the Licensee submit to the Commission a report of all the complaints that it received and resolved in that quarter. Apart from quarter 4 of 2016, the Licensee has failed to provide complaints statistics in its quarterly QoS reporting nor does it comply with the requirement to provide to the Commission complaints statistics and reporting on a monthly basis as per **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010**.

6.3.14.6 Additionally, although the Licensee's website has a "FAQ/Support" section at [Support | CCT BVI | Life, unlimited](#), with FAQs and a customer service number, it does not contain specific information in relation to conflict resolution or complaint submission.

6.3.14.7 Notwithstanding, paragraph 6.3.14.4 above, the Evaluation notes that in its response to the Harneys Audit dated 21 May 2021, detailed under paragraph 7.2 below, the Licensee provided a Complaints Procedure.

6.3.15 Competition Rules

6.3.15.1 Under **Article 10 of the Licence**, the Licensee is mandated not engage in any activities, whether by act or omission, which have or are intended to or likely to have, the effect of unfairly preventing, restricting, or distorting competition in relation to any business activity relating to communications services.

6.3.15.2 Additionally, the Licensee must comply with reasonable requests by the Commission to submit periodic reports, statistics, and other data and to inspect the Licensee's facilities, files, records, and other data as well as request additional information with a view to supervise and effectively enforce the terms of this Article.

6.3.15.3 Under **section 26(4) of the Telecommunications Act, 2006**, where the Commission determines that a public supplier is dominant in any market, the Commission shall include in the Licence of the public supplier, upon issuing or by amending the Licence, such additional terms and conditions to the Licence for the purposes of regulating tariffs, protecting the interest of users and other Licencees including the provision of adequate facilities and interconnection and access services, and of ensuring fair competition among Licencees as it considers appropriate.

6.3.16 Evaluation of the Licensee's compliance with competition rules

6.3.16.1 The Licensee was designated a Dominant Public Supplier on the 22 day of September 2011 in the wholesale market for voice call termination on its mobile network. The Licensee had an obligation to enter into a new interconnection agreement and to file it with the Commission in accordance with Annex 8 of the Licence. The Evaluation did not find any new interconnection agreements on the Commission's files.

6.3.16.2 Since 2012 the Licensee has not complied with a request to liaise with the Commission's Chief Economist to improve the data being collected and monitored to better determine whether any anti-competitive or monopolistic practices are in place.

6.3.17 Confidentiality Obligations

6.3.17.1 Under **Article 7 of the Licence**, the Licensee shall maintain the confidentiality of the content of all communications over its network from interference, eavesdropping or recording by Licensee.

6.3.17.2 Additionally, the Licensee shall institute reasonable measures and procedures to safeguard the confidentiality of business secrets and personal data concerning its subscribers which it acquires during its business.

6.3.17.3 Furthermore, the Licensee shall appoint one of its officers to oversee the implementation, compliance and supervision of such measures and procedures. On 15 February every year, the Licensee shall submit to the Commission an annual report for the preceding calendar year, or portion thereof, setting forth such measures and procedures which have been established by the Licensee and describing the effectiveness thereof and any necessary changes and improvements thereto.

6.3.17.4 Under the **section 7 of the Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011**, the Licensee is required to protect personal information and details from disclosure.

6.3.18 Evaluation of Compliance with Confidentiality Obligations

- 6.3.18.1 The Evaluation finds that the Licensee has complied with its obligation in relation to protecting its customers' personal details and usage, through eavesdropping, recording and disclosure, through its Privacy Policy available on its website through its Terms & Conditions, specifically Clause 3: <https://www.cctbvi.com/content/terms-and-conditions>.
- 6.3.18.2 The Evaluation finds no evidence on the Commission's files of an annual report being submitted to the Commission in relation to the effectiveness of its confidentiality and privacy obligation.
- 6.3.18.3 Based on the fact that the Licensee shares the same management structure with BVI Cable TV, there is cause for concern as to the protection of the confidentiality of the Licensee's customers' information against disclosure to BVI Cable TV.
- 6.3.18.4 On 29 April 2008, the Licensee wrote to the Commission pertaining to **section 72 of the Telecommunication Act 2006**, Appointment of Compliance Officers, and indicated that Mr. Jose Luis Fernandez was the Compliance Officer and that the Commission would be informed when this changed. Since, then there is no indication of an officer appointed to oversee the implementation, compliance and supervision of confidentiality measures and procedures.
- 6.3.18.5 The Evaluation notes no annual compliance report provided by the Licensee during the term of its Licence.

6.3.19 Other Duties and Obligations

- 6.3.19.1 In accordance with **Article 7.1(b) of the Licence**, the Licensee shall not reduce or cease to provide a service unless, with the Commission's consent, it is substituted by a service more advantageous for customers.
- 6.3.19.2 According to **Article 7.10(d) of the Licence**, within three (3) months from the effective date of the Licence, the Licensee shall submit to the Commission for its approval a form of service agreement containing the terms and conditions for the provision of licensed services to subscribers and customers, the Master Service Agreement.
- 6.3.19.3 In accordance with **Article 7.10(d) of the Licence** the Licensee must file its consortium, shareholders, partnership or other such agreements with the Commission.
- 6.3.19.4 **Article 6.1 of the Licence** outlines the Licensee's right to place and maintain telecommunications lines.
- 6.3.19.4.1 This must be done in accordance with the provisions of the **Physical Planning Act, 2004**, the development plan for the area and the provisions of the **Road Ordinance** and any other relevant written law.
- 6.3.19.4.2 The Licensee's is obligated to obtain plans from the Chief Planner showing all utility installations that might be affected, to submit detailed

plans of intended works to affected utility installation owners and, if applicable, obtain their written permission.

6.3.19.4.3 The Licensee must inform the Commission of intended works and the Commission shall notify other operators and public utilities.

6.3.19.5 **Article 6.2 of the Licence** outlines the Licensee's obligation to repair and restore.

6.3.19.5.1 If the Licensee damages any utility installation in carrying out works, it shall immediately request the utility installation owner to repair the damage to the utility installation and shall compensate the utility installation owner for the full cost of repair.

6.3.19.5.2 The Licensee shall, as speedily as possible, complete all works and restore any road or public grounds affected, including the removal of any debris, to the written satisfaction of the Chief Planner, and if the Licensee fails to comply it shall be held liable for any expenditure that the Chief Planner incurs in such restoration and for any other loss by any other person for a period of two years.

6.3.19.6 **Article 7.3(a) of the Licence** states that the Licensee should not interrupt operation of the telecommunications network or any portion thereof or to suspend the provision of any licensed service in the normal course of business, without providing reasonable advance notice to affected customers.

6.3.19.7 **Article 7.3(d) of the Licence** indicates that the Licensee shall give reasonable notice to the affected public of scheduled routine maintenance on the network which results in disruption of service exceeding thirty (30) minutes. The Licensee is obliged to perform all routine maintenance on the network which will result in service disruption between the hours of 2.00 a.m. and 5.00 a.m.

6.3.19.8 In cases of emergency interruptions, **Article 7.3(b) of the Licence** provides that the Licensee shall maintain adequate diagnostic equipment and shall employ sufficiently trained staff locally to ensure prompt restoration of licensed services.

6.3.19.9 Under **Article 13.3 of the Licence**, the Licensee is required to comply with the Commission Regulations concerning the implementation of the Numbering Plan and domain name management.

6.3.19.10 Under **Article 13.3 of the Licence**, the Licensee is required to obtain all necessary licences and permits including building permits to build and maintain installations and buildings.

6.3.19.11 Under **section 77(2) of the Telecommunications Act 2006**, the Commission has the power where it is considered necessary for the effective performance of its functions and prudential supervision of telecommunications services business to issue directives of a special or general nature not

inconsistent with the provisions of this Act, the Regulations or the Telecommunications Code.

6.3.20 Evaluation of compliance with other duties and obligations

- 6.3.20.1 There is corporate documentation on the Commission's files on behalf of the Licensee including Certificate of Incorporation, its Memorandum and Articles of Association, Senior Management Organizational Chart, Certificate of Incumbency, Register of Directors and Officers, Register of shareholders.
- 6.3.20.2 As indicated in paragraph 6.2.5.14.1 above, the Evaluation notes that in April 2014 the Commission wrote to the Licensee in relation to internet service disruption and expressed its dissatisfaction with the way the Licensee had handled the issue and indicating its responsibility to inform the Commission of any service disruption.
- 6.3.20.3 The Evaluation does not note that the Licensee has made applications to the Commission for the assignment of national codes and short codes over the years. However, there are no complaints from the Commission relative to the Licensee using numbers or short codes without first obtaining the authorisation of the Commission. The Evaluation notes a correspondence from the Commission to the Licensee dated 13 April 2007 indicating that the Commission was withdrawing certain ISPC Codes due to conflicts until receipt of new signaling area network code assignment from ITU.
- 6.3.20.4 The Evaluation notes a notice dated 28 January 2014 issued by the Planning Department against the Licensee and copied to the Commission, concerning the erection of a base station on the site of Bougainvillea Clinic in Road Town. The Evaluation did not locate a response from the Licensee but notes an appeal by the owner of the premises against the decision of the Planning Authority. The Evaluation was unable to determine the outcome of the matter based on the Commission's file. Apart from this complaint, there was no other evidence of failure to obtain relevant permissions.
- 6.3.20.5 The Evaluation notes that the Licensee entered various payment arrangements with the Commission regarding outstanding payments for royalties and fines. There were also noted numerous correspondences from the Commission to the Licensee regarding late payments of these instalments despite its signed Undertakings of 7 July 2016.
- 6.3.20.6 The Evaluation notes that on 5 May 2014 a special directive was issued to the Licensee to vacate two 4-MHz blocks of spectrum in the 850 MHz band, 834-838 uplink and 879-883 downlink, by 8 August 2008. The Commission outlined its reasons for this directive to the Licensee. By correspondence dated 8 May 2014 the Licensee responded indicated that it does not accept the Commission's directive. There was ongoing correspondence between the Commission and the Licensee regarding this issue with the Licensee refusing to abide by the Directive. The Licensee eventually filed for Judicial Review of the directive on 11 September 2015. The Licensee has a frequency authorisation for 824-838 MHz paired with 869-883 MHz and thus the Directive was not implemented.

7. Harneys's Audit in 2019

7.1 The Audit

- 7.1.1 In or around February 2019, the Commission appointed Harneys Fiduciary to conduct an audit of the Licensee to identify areas of compliance and non-compliance with telecommunications obligations and to make any necessary recommendations.
- 7.1.2 Based on the audit done, the following recommendations were made to the Licensee:
- 7.1.2.1 Ensure to clarify, document, and regularise the relationship between CCT BVI and BVI Cable TV. Document an outline of the operational platform and describe what is integrated, shared and what is stand-alone and share all relevant underlying documentation with the Commission. The information should seek to clarify what functions are shared/separate, what governance boards/committees are shared and not (if any) and, most importantly, how do BVI Cable TV and CCT BVI handle and clearly segregate customer records.
 - 7.1.2.2 Ensure that an experienced and suitably qualified Compliance Officer with sufficient resources is appointed and approved by the Commission. The role of the Compliance Officer, acting as the main liaison between the Commission and the Licensee's senior management, is an essential one as it relates to the implementation, maintenance, monitoring and reporting of an effective compliance monitoring system with documented procedures. The Licensee needs to submit such policies and manuals to the Commission for review and approval.
 - 7.1.2.3 Put measures in place to ensure that a consistent exchange is established with the Commission.
 - 7.1.2.4 Diarise events (recurring or otherwise) to ensure that regulatory deadlines and notification/submission dates are not overlooked.
 - 7.1.2.5 Commit to paying the applicable fees in a timely manner, possibly with the assistance of CCT BVI's Compliance department highlighting to the board of CCT BVI (the Board) of any outstanding liability exceeding 90 days.
 - 7.1.2.6 Ensure that i) adequate resources are allocated to the preparation of QoS reports, ii) systems have the ability to capture the correct data in the prescribed format with the right level of detail and iii) timely updates to the website include QoS reports. Resume QoS reporting and include projected service levels whilst adopting a more collaborative approach and encouraging more open communication and exchanges with the Commission.
 - 7.1.2.7 Establish an exchange with the Chief Economist of the Commission to improve the data being collected by the Commission's economists to elevate the territory's telecommunications services.
 - 7.1.2.8 Undertake a detailed analysis and submit a document describing the actions to be taken to resume QoS Reporting to the Commission with a clear timeline.

- 7.1.2.9 Ensure that all legal and regulatory obligations are met in terms of submitting documentation and responding to requests for information and data in a timely manner. Maintain an adequately resourced compliance function to enable a higher level of compliance with the documentation requirements.
- 7.1.2.10 Submit a detailed assessment of facilities and equipment along with a timetable and workplan for any required restorative works for approval by the Commission (demonstrated to support the projected service levels provided in the QoS reports).
- 7.1.2.11 Establish policies and procedures and allocate resources responsible for ensuring adherence with the requirements for testing and inspection.
- 7.1.2.12 Present the Commission with a detailed plan on how to achieve a higher level of compliance and ensure that correct and timely QoS reporting is in place (both to the Commission and to its website)
- 7.1.2.13 Implement a procedure that enables all required notifications to be submitted to the Commission. Such a procedure may be supported by the Licensee allocating resources to tasks of this nature and define accountability and responsibilities.
- 7.1.2.14 Appoint qualified resource(s) to act as the Licensee's Complaints' Officer and Confidentiality Officer to ensure that documented policies and procedures in these areas are firmly in place (and made available to the public) and is compliant with the legislation. Such policies will also need to be submitted to the Commission for approval.
- 7.1.2.15 Ensure that aged liabilities are escalated to senior management, possibly through a reporting mechanism managed by CCT BVI internal compliance department.
- 7.1.2.16 Ensure to allocate a dedicated resource to ensure that an internal compliance monitoring mechanism is fully operational and enabling the Licensee to comply with all requirements, especially driving notifications of events and triggers.
- 7.1.2.17 Instigate review of current disaster recovery procedures to ensure they are effective, shared with and approved by the Commission.
- 7.1.2.18 Urgently submit a detailed workplan and timetable of restorative works required in order to resume service to the Commission for review and approval.
- 7.1.2.19 Implement procedures to ensure that all of the required information is available for viewing on its website in a timely manner, such as QoS data, coverage maps, directory services, inter-connectivity agreement/s and complaint submission forms/procedure.
- 7.1.2.20 Submit an outline to the Commission to describe how CCT BVI and BVI Cable TV operate considering the cross ownership structure,

- 7.1.2.21 Ensure that documented complaints procedures are in place and forwarded to the Commission for review and that the policy is regularly reviewed and updated on an on-going basis.
- 7.1.2.22 Include Complaints statistics in QoS reports and comply with the requirement to submit monthly reports to the Commission with complaints details.
- 7.1.2.23 Ensure that the website is updated with helpful overviews and details of CCT BVIs conflict resolution procedure.
- 7.1.2.24 Adopt a more collaborative and transparent approach to the Commission by improved compliance with reasonable requests for information; ensuring that the Commission is in receipt of all up-to-date policies and procedures, due diligence, relevant notifications and required approvals as well as facilitate access for the Commission for onsite inspections of records, facilities and equipment..
- 7.1.2.25 Create and document a risk management framework and foster a healthy compliance culture that enables timely and correct prioritisation of technical fixes and regulatory notifications as well as areas of investment and improvement

7.2 The Licensee's response to the Audit

- 7.2.1 By letter dated 18 February 2019, the Commission informed the Licensee that Harneys was appointed to conduct an audit to identify areas of compliance and non-compliance with telecommunications obligations and to make any necessary recommendations. To allow the Licensee the opportunity to make relevant input, the Licensee was asked by the Commission to provide the name of a person with whom Harneys can liaise when carrying out the audit.
- 7.2.2 The Licensee was not in agreement with the audit as indicated in paragraph 6.1.2.22.11.5 above. The audit went ahead using the Commission's records and resources. On 11 June 2020, written correspondence was sent by the Commission to the Licensee indicating that the audit was completed, and a copy of the audit results was provided to the Licensee.
- 7.2.3 The said letter indicated that contact would be made to set a mutually convenient time to discuss the findings of the audit. The Licensee was asked to peruse the audit and contact the Commission if there were any questions or concerns. Furthermore, in an informal meeting in April 2021 between the Commission and the Licensee, mention was made of liaising with the Commission to set up a meeting to discuss the audit. These proposed meetings between the Commission and the Licensee have not taken place.

In its letter dated 18 February 2019, the Commission informed the Licensee that the findings of the audit would help to inform the Commission in coming to its decision as to whether it is in the public's best interest to renew the Licence. The finding of the audit was that the Licensee was *non-compliant* and the above recommendations, outlined under paragraph 7.1.2, were made by Harneys for the Licensee to become compliant.

- 7.2.4 By correspondence dated 20 May 2021, the Commission requested that the Licence provides an update as to what has been done to implement the recommendations made by Harneys, excluding the issue of Industry Levy.
- 7.2.5 The Licensee responded to this correspondence by letter dated 21 May 2021 indicating that it was complaint in that it has operated within the terms of the current licence or frequency authorisation, has complied in material respects with, or is not in persistent breach of, any of the provisions of this Act, the Regulations, the Telecommunications Code or the terms and conditions of the license or the frequency authorisation, and has complied in material respects with, or is not in persistent breach of, any instructions.
- 7.2.6 It addressed some of the issues of the Harneys Report stating that in relation to the fine that was imposed on it for unauthorized use of spectrum, it had paid its fine and explained that it had never used said spectrum for commercial purposes. This issue was outlined above under paragraph 6.1.2.8.
- 7.2.7 It also indicated that it had been willing to abide by the Governor's request. It also noted that it had received the permission of both the Commission and the Minister of Communications of Works for the cross-ownership of BVI Cable Ltd and thus could not be said to be non-compliant with its Licence. This issue was outlined above under paragraph 6.1.2.4.
- 7.2.8 Relative to the failure to provide its 2016, 2017 and 2018 Audited Financial Statements to the Commission, the Licensee disputed this, indicating that it did provide these Audited Financial Statements to the Commission. However, it must be noted that the Harney's Audit was conducted in May 2019 and the Audited Financial Statements were provided to the Commission thereafter. This issue was outlined above under paragraphs 6.2.5.6 and 6.2.5.7 above.
- 7.2.9 The Licensee stated that it had not previously thought that not providing QoS reports, Consumer Complaints Reports and ITA reports were material non-compliances and would rectify this by providing these documents in a timely fashion in the future. However, at the time of finalization of this report, four (4) months after the Licensee's May 2021 letter, the outstanding documents were still not provided to the Commission.
- 7.2.10 The Licensee disputed that it had not provided a workplan and timetable in relation to restoration works following the Hurricanes and provided a copy of an email sent to the CEO of the Commission on 7 February 2008 in which it stated that it had a Recovery Plan but was concerned about disclosure of confidential information and thus had not provided said information in the plan it stated it provided to the Commission on 24 October 2014. The Evaluation notes that a plan was not provided to the Commission in this email of 7 February 2008. The Evaluation notes that the Licensee seemed to have provided answers to questions asked by the Commission in its correspondence of 13 August 2018 referred to in paragraph 6.1.2.16.6 above.
- 7.2.11 The licensee also indicated that it had updated its Complaint Procedure and provided a one-page document that was updated in 2021. It also provided a Business Continuity Plan. The Licensee further indicated that its CEO would serve as its Compliance Officer.
- 7.2.12 Apart from these issues, the Licensee failed to address the other recommendations outlined by Harneys as detailed under paragraph 7.1.2 above.

8. CONCLUSION

- 8.1. **Section 24 of the Telecommunications Act, 2006** states that subject to the terms and conditions of a licence or frequency authorisation, the Commission may renew the licence or frequency authorisation provided that the licensee or authorisation holder has operated within the terms of the current licence or frequency authorisation; has complied in material respects with, or is not in persistent breach of, any of the provisions of this Act, the Regulations, the Telecommunications Code or the terms and conditions of the licence or the frequency authorisation, and has complied in material respects with, or is not in persistent breach of, any instructions.
- 8.2. Before determining not to renew a licence or a frequency authorisation, the Commission shall give the licensee or the authorisation holder adequate advance notice, which, absent exigent circumstances and except as provided for in subsection (1), shall not be less than thirty (30) days, in writing of its intention not to renew such licence or frequency authorisation, specifying the grounds on which it proposes not to renew, and shall give the licensee or the authorisation holder the opportunity to present its views, and to submit to the Commission within such time as the Commission may specify a written statement of objections to the decision not to renew the licence or the frequency authorisation, which the Commission shall take into account before reaching a decision on renewal
- 8.3. This is reinforced by **Article 3.3(b) of the Licence** which requires the Commission to prepare an Evaluation Report stating the extent to which the Licensee has generally complied with its obligations under the Licence, the regulations and orders adopted from time to time by the Commission, generally provided the licensed services and conducted its business in accordance with the laws of the British Virgin Islands.
- 8.4. This is reinforced by **Article 3.3(b) of the Licence** which requires the Commission to prepare an Evaluation Report stating the extent to which the Licensee has generally complied with its obligations under the Licence, the regulations and orders adopted from time to time by the Commission, generally provided the licensed services and conducted its business in accordance with the laws of the British Virgin Islands.
- 8.5. Based on the findings of the Evaluation contained herein, the Commission finds that:-
 - 8.5.1 The Licensee has to a large extent provided uninterrupted telecommunication services to the Territory of the British Virgin Islands during the term of its Licence in accordance with the terms of its Licence, and the relevant laws and Codes;
 - 8.5.2 the Licensee has barely complied with most of its licence and regulatory obligations. As outlined in this Evaluation Report, there are numerous outstanding areas of non-compliance that must be addressed before the Commission can progress the Licensee's renewal application including:-
 - 8.5.2.1 ensuring that its website has been updated to reflect the requirements of the Telecommunication Act and the Codes so that:-

- 8.5.2.1.1 coverage maps (for 2G and 3G network) and QoS reports are available in accordance with **the Telecommunications Code (Part 3)(Quality of Service)Requirements 2010;**
 - 8.5.2.1.2 having been deemed a Dominant Public Supplier, interconnection agreements are posted on its website in accordance with the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities and Utility Installations) Requirements, 2011;**
 - 8.5.2.1.3 customers can easily find the procedure on how to submit a complaint in accordance with **the Telecommunications Code (Part 4) Investigation of Complaints, Facilitation of Relief and Resolution Procedures, 2010** and if possible, be able to submit a complaint via the website.
- 8.5.2.2 providing to the Commission the relevant outstanding documents, procedures, manuals, and agreements referred to within this Evaluation , including, but not limited to:
- 8.5.2.2.1 the outstanding QoS reports, dating back to Quarter 1 of 2019 formatted in accordance with the Code and the guidelines given by the Commission;
 - 8.5.2.2.2 the coverage maps that are to accompany the QoS reports which have been outstanding since 2017;
 - 8.5.2.2.3 any outstanding ITU Market Data;
 - 8.5.2.2.4 interconnection agreements and all supporting/accompanying documentation;
 - 8.5.2.2.5 the information relative to the designated officer in charge of the implementation, compliance and supervision of confidentiality measures and procedures in compliance with **Article 7.9 of the Licence**, indicate whether or not this is a separate person to the Compliance Officer;
 - 8.5.2.2.6 manual of Compliance Procedures;
 - 8.5.2.2.7 annual compliance reports in compliance with **Article 7.9 of the Licence;**
 - 8.5.2.2.8 written reports on the Licensee's compliance with the provisions of this Act, the Regulations, the Telecommunications Code, the conditions of its licence and any instructions in compliance with **section 72 of the Telecommunications Act, 2006;**
- 8.5.2.3 address the applicable outstanding issues in the Harneys Audit as detailed under paragraph 7.1.2 above, especially those were reports or documents are required, including but not limited to paragraphs 7.1.2.1, 7.1.2.8, 7.1.2.10, 7.1.2.12 and 7.1.2.20.

Dated this 30 day of September 2021

For and on behalf of the Telecommunications Regulatory Commission

**Guy L. Malone
Chief Executive Office**