



Vision: A model regulator that champions accessible,
leading-edge, and resilient communications.

BASIC DETAILS

Consultation Title: Draft Work Plan and Budget 2023 – 2024

To (Commission Contact):

Name of respondent: Ms. Desha Clifford – Deputy – General Counsel Regulatory

Representing (self or organisation/s): Address (if not received by email): Digicel.

CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing - Yes

Name/contact details/job title

Whole response

Organisation

Part of the response

Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name: Ms. Desha Clifford

Signed:



Digicel Response to the Public Consultation

By

**The Telecommunications Regulatory Commission of the
British Virgin Islands**

On

Draft Work Plan and Budget 2023/24

Reference Number: 02/23

Publication Date: 21st December 2023

Closing Date: 11th January 2024

Digicel BVI respectfully submit its comments and responses on the public consultation “Draft Work Plan 2023/24”, published on 21st December 2023.

The views submitted herein are not exhaustive and Digicel’s decision not to respond to any particular issue (s) raised in the proposed Work Plan or any particular issue(s) raised by any party relating to the subject matter does not generally represent agreement in whole or in part, nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel’s rights in any way.

Please do not hesitate to refer any questions or remarks that may arise as a result of the subsequent overview to: -

Name: Desha Clifford
Designation: Deputy General Counsel Regulatory
Organization: Digicel Group
Email: Desha.Clifford@digicelgroup.com

5. Part II Work Plan 2023/2024

A Competitive Telecommunications Market

Post-Liberalisation Analysis | Sustainable Competition | Sectoral Development

5.1. The current Telecommunications Liberalisation Policy of the Government of the British Virgin Islands was enacted on 10 January 2007. Noting the lapse of time, the Commission intends to review the intended regulatory objectives of this policy to determine the extent to which the objectives were realized and to understand how the industry has evolved since liberalisation occurred in 2006. Specifically, the Commission will analyze the telecommunications industry's social economic contribution to the Territory along with the state of competition in the sector.

Digicel Comment:

- Digicel notes and welcomes the TRC's intent to review and revise (where applicable) its Market Review Framework and overarching Telecommunications Liberalization Policy. Such an action bodes well for regulatory certainty in the telecommunications space of the British Virgin Islands.

A Compliant Regulatory Body

Standard-Bearer | Fiscal Responsibility | Overall Compliance

5.7. The Commission is presently undergoing its 2021 audit and will commence its 2022 audited process shortly, with an aim to produce the audited financial statements for both years by April 2024. Notably, the Commission's audited financial statements up to 2020 are in final draft form and awaiting execution. Additionally, work has been steadily underway towards coming into compliance with our reporting obligations in completing our annual report. A draft report covering the years 2018 through 2020 is presently being prepared. While some delays were experienced on this project, in 2023-2024 we will continue our work of producing the other outstanding annual reports for the years 2021 and 2022.

Digicel Comment:

- Digicel notes the TRC's commitment to meeting its financial reporting obligations in the forthcoming 2024 - 2025 work year.

A Reformed Regulatory Framework

Legal Regime | Policy Direction | Progressive Oversight

5.13. *The Commission has progressed its work relative to the review and revision of the telecommunications' legislative framework. To date, we have conducted a preliminary request for information from stakeholders, identified required changes to the current regime, conducted a regulatory impact assessment and prepared a legislative proposal for consideration by the Minister and Cabinet. The project was previously identified as being a multi-year project, which is estimated to extend beyond initially projected timelines. Accordingly, this project is now scheduled to be completed in the first quarter of the 2024-2025 work year.*

Digicel Comment:

- Digicel acknowledges the work previously undertaken by the TRC to review and revise the telecommunication legislative framework. Digicel also welcomes its completion in the first quarter of the 2024 - 2025 work year.

An Accelerated Network

Spectrum Efficiency | Licence Exemptions | Innovative Services

5.20. *In the 2022-2023 work plan, the Commission outlined its plan to release spectrum to support new and innovative wireless services, including Fifth Generation (5G) wireless technologies, along with the development of a 5G strategy to ensure the full realization and benefit of 5G in the Territory. While work has commenced on this project, it is not anticipated to be completed during the 2022-2023 work year. Further, the Commission has determined it appropriate to combine the 5G strategy and spectrum release into a single project, reflecting our perspective on the roll-out of 5G in the Territory and the allocation of valuable spectrum. Work will be undertaken on this project throughout the 2023-2024 work year, with an aim for completion by the first quarter of the 2024-2025 work year.*

Digicel Comment:

- Digicel notes and welcomes the TRC's plans pertaining to 5G wireless technologies and the development of an overarching 5G strategy.
- Digicel also anticipates the TRC's determination on the roll-out and allocation of spectrum for 5G.

7. Part IV: Budget for 2023/2024 Financial Year

Overview of Budgetary Items

Income

Royalty Fees: *This income represents royalties received from the licensed operators annually. This amount is 3% of the gross income of the licensed operators. This income increased by 4%, as a result of impact to the COVID-19 and consumers increasing their broadband packages during the lockdown.*

Digicel Comment:

- Does the aforementioned indicate that licensed operators should expect annual increments in regulatory fees (i.e., Royalty Fees) from the Commission in the short to medium term? This does not bode well for regulatory certainty as the risk of regulatory fee increments would have to be priced into investment decisions and this may reduce both foreign direct and domestic investment in the sector.
- Digicel brings to the Commission's attention that increments in regulatory fees (i.e., Royalty Fees) would also precipitate an increase in operating expenditure borne by Digicel.
- Digicel inquires as to whether any assessments/analysis on the impacts of proposed regulatory fee (i.e., Royalty Fees) increments on market participants and stakeholders were undertaken by the Commission?
- Digicel finds it prudent to seek clarification on the rationale behind the proposed 1% increment in Royalty Fees. What cost-drivers/methodologies were utilized to arrive at the proposed 1% increment in Royalty Fees.
- Digicel finds it prudent to remind the Commission that telecommunications is a network industry in which new users generate positive externalities for existing users by broadening the network. When undertaking reviews/assessments of its regulatory fee policies, the Commission needs to consider the trade-offs between revenue generation and the potential negative impact on the sector's development and performance. Katz and Jung (2023)¹ opined that there is a significant correlation between increments in regulatory fees, profit taxes and excise duties and negative impacts on investment.
- Telecommunication services prices are impacted directly through taxation over services and indirectly through obligations imposed on operators that can ultimately have an

¹ Raúl Katz, Juan Jung (2023). The impact of taxation in the telecommunications industry, Information Economics and Policy, Volume 62, 2023, 101016, ISSN 0167-6245, <https://doi.org/10.1016/j.infoecopol.2023.101016>.

impact on service prices (Katz & Jung 2023). Hence, Operators may try to recover this cost increments via upwardly revised tariffs on end-users of telecommunication services. Considering that these regulatory fee increments may act as a signal for Operators to set higher prices.

- The Commission should also consider that overall, the telecommunication industry is highly regulated, typically requires a license to operate in the local jurisdiction, is heavily invested in local infrastructure and is subject to full income taxation, regulatory fee obligations in the countries in which their respective customers reside.
- Digicel also requests that the Commission note the current regulatory and market imbalances prevalent in the internet ecosystem where operators undertake significant network investment to convey OTT generated traffic at cost. In layman terms, Operators are caught between an ever-increasing demand for data-intensive OTT services on the retail side to which they cannot respond with higher retail service prices (because of the competitive and regulated nature of the market as well as declining ARPU), while OTT providers are not subject to any regulatory oversight or constraints (i.e., concession/licence fees, spectrum fees, taxes) despite participating in the same internet ecosystem (Axon 2022²).

Overview of Budgetary Items

Income

Submarine Cable Fees: *A revenue stream for the Commission, because of CWC submarine cables that terminate or transit the BVI, pursuant to the Submarine Cable Directive dated 18 December 2014. This revenue is capped at \$125,000.00 per cable, annually. Submarine cable fees are shown as increased due to the Commission's intent to review and revise the submarine cable fee structure.*

Digicel Comment:

Digicel notes the Commission's position on submarine cable fees. Digicel also finds it prudent to request further clarification on the following:

- whether the submarine cables fees articulated in the budget are conservative estimates and /or maximum fees to be charged to an operator.
- How were the proposed submarine cable fee estimated or derived.

² Impact of OTTs on Caribbean networks and implications of their fair share contribution to countries' development, Axon Partners Group, September 2022.