



November 20, 2017

Mr. John Williams
Director General
Turks & Caicos Islands
Telecommunications Commission
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Digicel

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Dear Mr. Williams,

We would like to thank you for affording Digicel the opportunity to provide its comments on the issue of the Provision and Licensing of Television Services (including Internet Protocol Television (IPTV) Services) in the Turks and Caicos Islands. Digicel is of course available, and would be happy, to discuss our submission further.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the consultation document or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily 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. Digicel expressly reserves all its rights in this matter generally. This submission should not be considered to be our final position on the subject. If given the opportunity to do so, we may raise further arguments in support of our general position on the proposals made.

We have structured our submission by providing individual responses to the consultation questions posed.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to Stephen.murad@digicelgroup.com.

Yours sincerely,

Stephen Murad
Chief Commercial Officer
Digicel TCI

Responses to individual consultation questions

- **Do you agree with the definition of IPTV [in section 4.5]?**

Digicel is of the view that the focus on the definition of IPTV is misplaced.

To the extent that some working definition of IPTV is required then the proposed definition is adequate. However for the purposes of a regulatory definition of the service to be regulated this should be focussed on the end-user experience.

In looking at the issue of what types of services and operations and services should be comprehended by the regulatory framework Digicel believes that the principle of technology neutrality should apply. Where there is a public policy imperative to regulate a particular retail service then if different delivery mechanisms deliver equivalent functionality to end users in respect of this service then the service should be covered by regulation irrespective of the delivery mechanism. This regulatory approach has been summarised by the GSMA as “same service, same rules”.

There is therefore a requirement to separate regulation of the service from authorisation to provide the network over which it is delivered. This is broadly reflective of the Commission’s own position as set out at section 7.3.6 of the consultation document.

- **Do providers of IPTV services in the TCI need to be licensed for the business activity of television broadcasting under the Business Licensing Ordinance and Regulations?**

Our review of the various correspondences on this issue which have been included in the consultation document indicate that the question seems to have turned on whether the per channel distribution between the IPTV server and set-top box is fundamentally different to the multi-channel distribution that would occur between a cable operators content servers and its set-top box.

Provided both set-top boxes are proprietary then the demarcation point for the service to the end-user is the interface to the set top box and not the distribution network interface to the content servers.

When considered from this perspective the end-user is blind to whether the set top box is served on a multichannel or single channel basis. Provided all users can access the same channel on their individual set top boxes at the same time the content has been broadcast to them.

In the light of this we believe that the provisions of the Business Licensing Ordinance and Regulations apply to provider of IPTV services in TCI

- **Does the 2006 licence under the Telecommunications Ordinance authorise a holder to provide IPTV services in TCI?**

Digicel is of the view that the correct framing of this issue is more general and should seek to clarify whether the 2006 licence under the Telecommunications Ordinance authorise a holder to provide TV services in TCI. If the answer is always yes then whether it is via IPTV is moot.

Digicel notes that even if the answer is no there is currently no licensing regime for TV services in TCI and that any enabling legislation introducing such a scheme must deal with the issue of making sure that it applies equally to all market participants irrespective of the technology they utilise

- **Do you agree with the objectives we have set out for television in TCI? If not, what is an appropriate set of objectives?**

Digicel believes that these are a reasonable approach to the public policy issues relating to TV distribution and content.

- **Do you agree with our assessment of how well the market currently delivers against these objectives?**

Digicel agrees with the Commission's assessment set out at section 7.3. The market in TCI operates to largely deliver against these objectives and therefore we believe there is limited justification for market intervention save to ensure equality in the applicability of regulation to providers who use different technologies to deliver equivalent services

- **Do you agree with our assessment of the potential for regulation, appropriately and proportionately designed, to play a role in helping to deliver these objectives?**

Digicel believes that the Commission has overstated the potential for regulation to help deliver these objectives. The Broadcasting Commission of Jamaica which currently has licensing and supervisory powers of the type proposed by the Commission estimates that it can regulate as little as 25% of the content accessible in Jamaica. This is due to the operation of both subscription and advertising funded OTT audio visual services.

It is clear therefore that a regulatory approach which does not fully consider the implications of such on-line content is unlikely to deliver the expected or desired outcomes and may in fact cause damaging market distortions.

- **Do you agree with our two priority areas for regulation: promoting the wide availability of local television content, and seeking to protect consumers from harmful and offensive content?**

Digicel notes that the reason that part of the rationale that the Commission has put forward for choosing these two areas is that the market has largely dealt with the other policy objective. On this basis Digicel agrees prioritising these two areas is appropriate.

- **Which of the options suggested for regulating television in TCI is most appropriate and why?**

Digicel notes that in Section 8.3 of the Consultation Document the Commission has set out that it favours Option 2C. While there aspects of this option that Digicel supports with there are other which it believes are not the optimum for delivering the stated policy objectives. The proposed regulatory framework for TV is overly narrow in focus. International trends in Audio Visual content indicate that where the quality of Broadband improves there is a shift away from traditional TV to subscription based OTT services such as Netflix or advertising funded content such as YouTube. On their face requirements on local content and must carry obligations hold the prospect of delivering on the policy objectives they are unlikely to deliver in practice unless the content itself is attractive to viewers. Even scenarios where such content is compelling international trends indicate that it will have to be delivered via OTT platforms as end-user connectivity and consumption preferences evolve. In the light of this it is not clear that mandated locally

produced content carrier of licensed TV stations will be commercially viable. Forcing a cross-subsidisation of un-economic content by commercially viable channels means that the overall channel mix is more expensive. This would expose domestic subscription TV providers to arbitrage threats from foreign based OTT services who do not face the cost burden imposed by such regulation. In the longer term this dynamic could in fact deliver an outcome diametrically opposite to that intended by undermining the viability of local television distribution networks

The Commission set out at Section 7.4.3 that there is competitive differentiation in respect of local content between the three delivery platforms. Homogenising this by forcing must carry obligations on all operators for this content remove the competitive dynamic to maintain content quality and also removes commercial incentives for the distribution networks to pay a premium for premium local content. In the event that must carry obligations are imposed on network operators then these must also come with protections. These include prohibitions on channels charging for this content and indemnities relating to rights holders charges related to the content on these channels.

Digicel believes that the issue of public service broadcasting is a wider public policy issue and requires a more fulsome discourse with a broad base of civil society before a position can be reached. Digicel notes that similar issues are being grappled with in other regional countries such as Jamaica.

- **Are there any other options that should be considered?**

The thrust of the Commission's proposals would require the enactment of primary broadcasting legislation. Digicel notes that based on the Commission's assessment of the market many if not all of the six policy goals set out at section 7.2 of the consultation document. In the light of this we believe that an alternative approach would be more in keeping with the approach to regulation which the Commission has set out at section 8.1. Specifically we believe that it would be possible to leverage the existing Business Licensing Ordinance and Regulations to address the limited area where the current market dynamics and regulatory framework don't fully address public policy objectives. This might be possible by either attaching them as requirements to the television broadcasting license itself or making them a pre-condition for award of the licence.

Whatever mechanism is used Digicel strongly endorses the concept that channels should not be carried unless there are appropriate consents in place.