



## **Telecommunications Decision 2019 - 4**

### **Flow's Regulated Fixed Services Review Decision**

issued by the

**Turks and Caicos Islands  
Telecommunications Commission**

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## **OVERVIEW**

*In this Decision, the Turks & Caicos Islands ("TCI") Telecommunications Commission (the "Commission") sets out its determinations on its review of the current regulatory regime applicable to Cable & Wireless (TCI) Limited's ("Flow") regulated fixed services. As part of its review, the Commission collected comprehensive market data and information from Flow and other operators in TCI. The Commission then conducted a preliminary market assessment of the regulated fixed service markets under consideration (including fixed access, domestic/international calling, and domestic/international private leased circuits) and, based on its findings, proposed options for a new forbearance regime for Flow's regulated fixed services. The results of the market assessment and the proposed forbearance options were included in a public Consultation Document issued by the Commission in February 2019.*

*Based on the results of the public consultation process the Commission has decided to continue to forbear from regulating the prices of vast majority of Flow's fixed services, subject to the following "price cap" forbearance conditions:*

***Residential Access at a Fixed Location:*** *The maximum allowable increase in Flow's residential standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.50/month in any given year.*

***Business Access at a Fixed Location:*** *The maximum allowable increase in Flow's business standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$1.25/month in any given year.*

***Domestic Calling from a Fixed Location:*** *The maximum allowable increase in Flow's standalone basic domestic FTF and FTM call services price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.005/minute and \$0.010/minute in any given year, respectively.*

*The prices of all other regulated fixed services offered by Flow, whether provided on a standalone or bundled basis, are not subject to ex ante regulatory oversight by the Commission.*

*The Commission considers that this forbearance determination is consistent with the telecommunications policy objectives for TCI and the Ordinance.*

*The forbearance rulings adopted by the Commission in this Decision come into effect on **1 September 2019**. The Commission intends to review the Decision by 1 April 2025.*

## **1 Introduction**

In this Decision, the Turks & Caicos Islands ("TCI") Telecommunications Commission (the "Commission") sets out its determinations on its review of the current regulatory regime applicable to Cable & Wireless (TCI) Limited's ("Flow") regulated fixed services.<sup>1</sup> Based on evidence on the record of the consultation process conducted for this review, the Commission has decided to continue to forbear from regulating the prices of the vast majority of Flow's regulated fixed services, subject to several forbearance conditions – i.e., Flow must continue to provide residential and business standalone basic fixed access and domestic calling services and the prices of these services will be allowed to increase by no more than the annual rate of inflation each year. The Commission notes that, other than the noted inflation-based price cap, this decision effectively maintains the forbearance regime previously established in Telecommunications Decision 2013-3 ("Decision 2013-3").<sup>2</sup>

The forbearance determinations adopted by the Commission in this Decision come into effect on 1 September 2019. The Commission intends to review this Decision by no later than 1 April 2025, although parties are permitted to request an earlier review if they consider market conditions have or are expected to change significantly. Any such applications for review should comply with the filing requirements set out in the *Telecommunications Competition Guidelines* (the "Guidelines").

This Decision is organized as follows: Section 2 provides an overview of the regulated fixed service markets review process leading to this Decision. Section 3 provides a summary of the responses of interested parties to Public Notice 2019-1, *Review of Flow's Fixed Regulated Services Consultation Document* (the "Consultation Document") issued 22 February 2019, along with the Commission's responses and determinations in each case, as applicable. Lastly, Section 4 sets out the Commission's determinations regarding the new forbearance regime that will apply to Flow's regulated fixed services going forward, including related administrative provisions.

## **2 Decision 2013-3 Review Process**

The review of the existing forbearance regime applicable to Flow's regulated fixed services consisted of two main components:

- i) *Market Data and Information Collection*: Over the period September 2016 to November 2018 the Commission collected market data and information directly from Flow and other licensed operators in TCI, including Andrew's Communications Ltd. ("ACL") and Digicel (TCI) Ltd ("Digicel"). In this respect, the Commission issued three sets of Requests for Information ("RFIs") to collect data and information relevant to the review and assessment of fixed service markets in TCI. The RFI process also provided an opportunity for the operators to comment on Decision 2013-3 or other matters related to the review of Flow's regulated fixed services.<sup>3</sup> Only Flow provided comments in this

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<sup>1</sup> Note that "fixed" services refer to services provided to a fixed location, including residential and business fixed access services, domestic and international calling services, and domestic and international private leased circuit services.

<sup>2</sup> Telecommunications Decision 2013-3, *Fixed Services Price Regulation Review Decision*, issued 27 March 2013.

<sup>3</sup> Flow's Initial Comments were submitted 31 January 2018.

regard (i.e., “Flow’s Initial Comments”). The market data and information collected through the RFI process was also supplemented with the additional market materials collected by the Commission from internal as well as publicly available third-party sources.

- ii) *Public Consultation*: The Consultation Document included the results of the Commission’s preliminary market assessment of the regulated fixed service markets under review and, based on those results, set out a proposed new forbearance regime for Flow’s regulated fixed services. These proposals included two options in the case of residential and business standalone basic fixed access and domestic calling services (i.e., involving nominal and inflation-based price cap constraints). Interested parties were asked to provide their comments on the Consultation Document, including the Commission’s preliminary market assessment results and proposed forbearance regime. In this respect, the Consultation Document included a number of Consultation Questions that interested parties were invited to address in their submissions.

Parties’ submissions in response to the Commission’s RFI process are listed in the Consultation Document. Given the competitively sensitive nature of the market data and information provided, the Commission has treated these submissions as confidential.

Interested parties were invited to provide comments as well as reply comments in response to the Consultation Document. In this regard, Flow and Digicel provided Comments on the Consultation Document, whereas ACL acknowledged receipt of the Consultation Document but provided no specific comments on it.<sup>4</sup> In addition, Flow provided Reply Comments, whereas Digicel acknowledged receipt of Flow’s Comments but indicated that it had no reply comments.<sup>5</sup>

The Commission notes that the Consultation Document and interested parties’ submissions in response to the Consultation Document are available on the Commission's website at <http://www.telecommission.tc>.

### **3 Review of Consultation Question Responses**

There were six Consultation Questions included in the Consultation Document. This section provides an overview of each question, a summary of parties’ comments in response as well as Commission’s determinations in each case. Before considering the specific Consultation Questions, the Commission first addresses parties’ general comments on the Consultation Document.

#### **3.1 General Comments on the Consultation Document**

In its Comments, Flow stressed the economic and social importance of the telecommunications sector to TCI. In its view, to maximize benefits for consumers and investors in the industry, Flow

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<sup>4</sup> Flow’s, Digicel’s and ACL’s comments/submissions in response to the Consultation Document were submitted on 25 March 2019, 16 April 2019 and 21 March 2019, respectively.

<sup>5</sup> Flow’s and Digicel’s reply comments/submissions were submitted 14 May 2019 and 16 May 2019, respectively.

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considered that a “forward-looking” regulatory model that is technologically neutral and provides parity among the competitors should be adopted by the Commission. As well, Flow noted that the telecommunications sector is highly dynamic and added in this regard that the scope of services offered by providers in recent years has expanded dramatically – i.e., from traditional telecommunications to “total communications and entertainment” services. In such an environment, Flow considers that continued reliance on “static” price caps on basic fixed access and domestic calling services, as contemplated by the Commission, is out of step with sector trends. Flow supported unconditional forbearance for all its fixed services. Otherwise, Flow indicated that it was generally encouraged by the tenor of Consultation Document.

In its Comments, Digicel recognized the regulatory approach proposed by the Commission relies on light-touch forbearance conditions rather than direct market interventions in markets where Flow is designated as dominant. It also recognized that minimizing regulatory burden is an important consideration when choosing the appropriate regulatory approach. However, Digicel cautioned the Commission to “pay special attention to areas where this lighter touch regulation might introduce or facilitate the leveraging of dominance”.

The Commission acknowledges and thanks Flow and Digicel for their comments on the Consultation Document. The Commission agrees that the telecommunications sector is dynamic and rapidly evolving and, moreover, is a key enabler for the TCI economy as whole. As well, the services provided by operators in the sector are of essential importance to the general public and well as businesses for a multitude of communications needs.

In designing a regulatory approach for addressing ongoing dominance concerns, the Commission has taken into account sector trends as well as current and expected market conditions. As noted, the Commission has also attempted to keep *ex ante* regulatory measures to a minimum – i.e., light touch in nature. In this respect, the Commission has decided to retain pricing safeguards on a narrowly targeted subset of basic fixed access and calling services for which Flow is the dominant service provider. The new forbearance regime provides additional pricing flexibility for Flow for these basic fixed services. Importantly, the new forbearance regime continues to provide Flow with the flexibility to bundle regulated fixed services or regulated fixed and unregulated services without *ex ante* regulatory requirements – i.e., to compete on a total communications services basis.

The Commission considers that the existing forbearance regime has helped promote competition, innovation and investment in the sector, while also safeguarding basic fixed service consumers with no direct competitive alternatives. The Commission considers that the new forbearance regime established in this Decision will continue to help promote competition, innovation and investment in the sector going forward, while also protecting against any potential abuses of dominance.

## 3.2 Question 1: Relevant Markets

### 3.2.1 Overview

In the Consultation Document, the Commission indicated that for the fixed services market review it would rely on the same set of six relevant market definitions used in Decision 2013-3. The Commission noted that the process used to arrive at those relevant market definitions is fully consistent with the Guidelines. Table 1 lists the preliminary defined relevant markets and provides a description of the main services covered in each case. The geographic scope of each defined relevant markets remains TCI-wide or national in scale.

<b>Table 1 – Preliminary Defined Relevant Markets</b>		
<b>No.</b>	<b>Relevant Market</b>	<b>Service Inclusions</b>
<b>1.</b>	Residential Access at a Fixed Location	<ul style="list-style-type: none"> <li>• Standalone (basic) local access (i.e. Residential Direct Exchange Line (“DEL”))</li> <li>• Residential value-added services (“VAS”), including services such as caller ID and voice mail</li> <li>• Bundled local access services (including bundled basic local access, VAS and/or domestic and/or international calling services, etc.)</li> <li>• Includes all related services, such as installation, activation or re-connection</li> </ul>
<b>2.</b>	Business Access at a Fixed Location	<ul style="list-style-type: none"> <li>• Standalone or basic single-line local access (e.g., a Business DEL)</li> <li>• Multiline local access (including PBX and Government)</li> <li>• Business VAS</li> <li>• Bundled local access services (e.g., including single-line or multiline local access, VAS and/or domestic and/or international calling services, etc.)</li> <li>• Includes all related services, such as installation, activation or re-connection</li> </ul>
<b>3.</b>	Domestic Calling from a Fixed Location	<ul style="list-style-type: none"> <li>• On-Island and Inter-Island Fixed-to-Fixed (“FTF”) calling (including "on-net" and "off-net" calling)</li> <li>• Domestic Fixed-to-Mobile (“FTM”) calling (including "on-net" and "off-net" calling)</li> </ul>
<b>4.</b>	International Calling from a Fixed Location	<ul style="list-style-type: none"> <li>• International calling – all destinations</li> <li>• International calling card services</li> </ul>
<b>5.</b>	Domestic Private Leased Circuits (“DPLC”)	<ul style="list-style-type: none"> <li>• All DPLC services (i.e., all transmissions speeds and technologies)</li> <li>• Includes all related services, such as installation, activation or re-connection</li> </ul>
<b>6.</b>	International Private Leased Circuits (“IPLC”)	<ul style="list-style-type: none"> <li>• All IPLC services (i.e., all transmissions speeds and technologies)</li> <li>• Includes all related services, such as installation, activation or re-connection</li> </ul>

Several relevant market definition issues were also addressed in the Consultation Document:

- i) The Commission explained that these definitions are technology neutral – i.e., the services in each market could be delivered over any feasible medium (wireline or wireless) and feasible transmission protocol (e.g., circuit switched or IP).

- ii) In response to Flow's Initial Comments, the Commission explained why it continues to consider mobile and over-the-top ("OTT") services to be more complements rather than substitutes for fixed access and domestic calling services and, therefore, considered on a preliminary basis that it would be appropriate to exclude mobile and OTT services from the defined relevant markets for fixed access and domestic calling services.
- iii) In relation to concerns raised by Digicel,<sup>6</sup> the Commission also addressed the scope of the DPLC and IPLC services included in Markets #5 and #6, and concluded on a preliminary basis that while these markets include all forms of domestic and international connectivity services, Market #5 does not include access to underground ducting infrastructure. The Commission added that consideration of access of network support infrastructure is outside the scope of the review of Decision 2013-3.

In this respect, parties were invited to respond to the following question:

**QUESTION 1: Relevant Markets: Do you agree with the Commission's proposed set of defined fixed service relevant markets for forbearance review purposes? If not, explain why not and provide any suggested modifications you consider appropriate with supporting rationale.**

### **3.2.2 Summary and Assessment of Parties' Submissions**

In its Comments, Flow agreed with the proposed simplified market definition framework used by the Commission. Flow otherwise disagreed with Commission's proposed exclusion of mobile and OTT services from fixed access and calling service markets. Flow argued that "the evidence, while it may not be conclusive, is more than sufficient to demonstrate that mobile services, and possibly also OTT services, are effective substitutes for fixed-line access and calling in TCI". Further, Flow asserted that "two products need not be identical, functionally equivalent, or even of equal quality" to be substitutes and that "it is not necessary for *every* consumer to have a wireless telephone, let alone to drop wireline service, for mobile access to be an effective substitute for fixed access". On this basis, Flow suggested the Commission reconsider its proposal not to include fixed and mobile access and calling in the same relevant markets.

Flow also added the additional comments on a market-by-market basis:

- **Markets #1 and #2:** Flow agreed with the Commission's proposed treatment of residential and business fixed access as two separate markets. However, as noted, it disagreed with the exclusion of mobile access and OTT access services from these markets. Flow stated that it believes the "data on trends and even a basic understanding of how consumers use mobile and OTT services" provide sufficient evidence to include

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<sup>6</sup> These concerns relate to Digicel's complaint, filed 31 October 2017, regarding certain alleged anti-competitive conduct by Flow arising from Hurricane Irma (i.e., "Digicel's Complaint"). The Commission addressed Digicel's Complaint in Decision Notice 2018-6, issued 26 October 2018 in which it concluded that Digicel's claims of alleged anti-competitive conduct by Flow were unfounded. However, in the context of its Complaint, Digicel also proposed that certain fixed services provided by Flow be subject to *ex ante* price regulation. Consideration of this aspect of Digicel's Complaint is addressed in this Decision.

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them in these two defined markets. Further, Flow added that given “the relative insignificance of fixed access, relative to mobile access, we believe that even a common-sense understanding of these services would find them to be effective substitutes.”

- **Market #3:** Flowed agreed with the proposed single residential and business domestic calling services market. Otherwise, once again, Flow disagreed with the Commission’s proposal to exclude mobile calling and OTT calling from services in this market for the same reasons noted above. Flow reiterated that “the data on trends, corroborating evidence, and even a basic understanding of how consumers use mobile and OTT services today should provide a sufficient basis to include them in Market #3”.
- **Market #4:** Flowed agreed with the proposed single residential and business international calling services market. Once again, Flow otherwise disagreed with the Commission’s proposal to exclude mobile calling and OTT calling from services in this market for the same reasons noted in regard to Markets #1 to #3.
- **Market #5:** Flowed agreed with the proposed definition of the DPLC market, which it also agreed should cover all transmission speeds.
- **Market #6:** Flowed agreed with the proposed definition of the IPLC market, which it also agreed need not be sub-divided on a route-specific basis.

For its part, Digicel broadly agreed with the Commission’s six proposed relevant market definitions. In relation to Market #5 and #6, Digicel noted that the basic functionality of DPLC and IPLC services are identical. They both provide connectivity from the customer’s premises to the service provider’s network node but, importantly, IPLC services provide “upstream off-island” connectivity. Consequently, Digicel suggested that Market #6 should be more correctly be defined as “Off-Island International Capacity”. Digicel added that this is an important distinction as Market #6 services are used to provide off-island connectivity by licensees for services such as access to Internet content for fixed and mobile broadband services, fixed and mobile international voice both inbound and outbound, and also access to non-satellite TV content for distribution. Therefore, in Digicel’s view potentially limiting the scope of Market #6 could run the risk that the Commission’s analysis of the forbearance criteria will cover too narrow a range of matters and, as a result, arrive at incorrect conclusions.

As well, in regard to Markets #1 to #4, Digicel asserted that OTT is not a substitute for fixed access and, further, that it considers mobile to be a complement rather than substitute for domestic calling from a fixed location. In effect, Digicel agreed with the Commission’s proposed exclusion of mobile and OTT services from Markets #1 to #4.

In its Reply Comments, Flow disagreed with Digicel’s views on the substitutability of fixed access and calling services and OTT as well as mobile services. In the latter case, Flow provided an example domestic FTF and FTM calling scenario<sup>7</sup> for which the monthly cost would be

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<sup>7</sup> The price comparison example compared Flow’s existing residential basic fixed rates to its prepaid pay-as-you-go mobile service rates for 100 minutes of calling to fixed customers and 100 minutes of calling to mobile customers per month in TCI (page 3 of Flow’s Reply Comments).

similar under Flow's current basic fixed access and calling rates as well as its current prepaid mobile rates – suggesting as a result that the two services are similarly priced, provide the same calling functionality and, therefore, could be considered effectively substitutable. Flow did not otherwise reply to Digicel's comments on the substitutability of fixed access/calling and OTT services.

### **3.2.3 Commission Conclusions**

#### ***The Treatment of OTT Services***

Flow suggested that OTT services could “possibly” be a substitute for fixed line access and calling services; however, it provided no evidence in support of its position. It simply claimed that the substitutability of these services is self-evident or common-sense. In contrast, Digicel claimed that these services are not substitutes in view of the underlying requirement to purchase broadband access to make use of OTT services.<sup>8</sup>

The Commission continues to consider that OTT services are not effective substitutes for fixed access and calling services because of the significant additional cost of acquiring a broadband connection as well as the fact that OTT services do not provide customers with the equivalent of a local telephone number. That said, the Commission does consider that OTT services provide some indirect pricing pressure on fixed access rates and likely somewhat greater indirect pricing pressure on calling rates, especially in the case of calls to international destinations given the higher per minute costs of these calls.

The Commission is also not aware of any other comparable jurisdiction that considers fixed access and calling and OTT services to be in the same relevant market. Consequently, the Commission considers it appropriate to continue to exclude OTT services from Market #1 to #4 at this time.

#### ***The Treatment of Mobile Services***

Flow also argued that mobile is a substitute for fixed access and calling services; however, here as well, it provided little evidence in support of its position. It claimed that not all consumers need to view mobile as a substitute, just some. As well, in reply to Digicel's Comments, Flow provided an example of a domestic calling scenario that would be similar in cost whether using Flow's basic fixed access/calling rates or Flow's prepaid mobile service plan rates, suggesting that the two services are therefore substitutable. Otherwise, Flow simply claimed that it considers the substitutability of fixed and mobile services is self-evident or common-sense. In contrast, Digicel stated that it considers fixed and mobile services to be complements rather than substitutes, though it too provided no evidence to support its position.

The Commission continues to consider that mobile services are not effective substitutes for fixed access and calling services for several reasons:

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<sup>8</sup> Flow's residential broadband access services currently start to \$70/month and can be as high as \$295/month.

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- The Commission considers that there should be clear evidence that the majority, not just a small subgroup, of fixed service customers consider mobile to be a substitute for fixed service before the two services should be included same product market. The only currently available TCI consumer survey<sup>9</sup> that provides evidence on this question indicates that a very high percentage of both residential and business subscribers to fixed services also subscribe to mobile services, which suggests that they view the services more so as complements rather than substitutes. While this survey may be somewhat dated, recent trends in both fixed and mobile telephony demand and revenues do not provide a compelling basis to reverse this conclusion at this time.
- In terms of relative fixed versus mobile service pricing, Flow provided a single domestic call scenario example where the cost of the two services would be similar. However, for the most part, the prices of Flow's basic and Home fixed calling plans fall well below Flow's mobile service plans.<sup>10</sup> Indeed, Flow acknowledged this fact in its Reply Comments when it noted that the "price premium for mobile relative to fixed" reflects the additional service functionality of mobility. Consequently, in the Commission's view, existing longstanding price differentials between fixed and mobile services suggest that these services are not effective substitutes at this time.
- Lastly, the Commission is not aware of any other comparable jurisdiction that considers fixed access and calling and mobile services to be in the same relevant market. Flow failed to provide any such example in its submissions.

Consequently, the Commission considers it appropriate to continue to exclude mobile services from Market #1 to #4 at this time.

***The Definitions of Markets #5 and #6***

Digicel's comments on the nature of the services included in Markets #5 and #6 are noted by the Commission. The Commission agrees that the "connectivity" services included in these markets are similar in nature. DPLCs (Market #5) cover domestic connectivity services, while IPLCs (Market #6) cover "off-island" or international connectivity services (though there may be a domestic connectivity component as well in this latter case). The Commission also considers that these connectivity services should be broadly defined to cover all transmission speeds and protocols. It also recognizes that, in some cases, these services may be required by other operators to provide downstream services. That said, the Commission remains of the view that the present definitions of these two relevant markets adequately captures these considerations and, therefore, require no definitional modifications. Consequently, the Commission has decided to retain its proposed definitions of Markets #5 and #6.

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<sup>9</sup> Flow (at the time LIME) TCI Research, *Telephone Use Change Survey among Residential and Business Consumers*, 12 December 2012.

<sup>10</sup> Flow instance Flow's Home 500, 800 and Unlimited fixed service plan are \$35, \$40 and \$50/month whereas Flow's postpaid mobile plans start at \$69/month (which includes 300 minutes) and run as high as \$199/month (although these mobile plans also include data services).

## **3.3 Question 2: Preliminary Market Assessment Results**

### **3.3.1 Overview**

In the Consultation Document, the Commission also relied on the same set of market-based forbearance assessment criteria used in Decision 2013-3. Here as well, the Commission noted that the proposed criteria are fully consistent with the Guidelines. The market assessment criteria applied to assess each relevant market include:

- i) relevant market specific data (e.g., historical volume, price and revenue data);
- ii) competitive alternatives (including consideration of all existing and potential competitive alternatives as well as evidence of rivalrous behaviour);
- iii) market shares (based on revenues and volumes as may be available)
- iv) market/sector trends (e.g., consumer behaviour, usage trends and technological changes);  
and
- v) barriers to entry (including financial, technical and/or regulatory).

As also noted in the Consultation Document, the data and information relied on to develop its preliminary market assessment results included:

- RFI responses provided by Flow, Digicel and ACL which provide over 5 years of historical subscriber, usage and revenue data for the fixed services in question as well as mobile services (where applicable);
- Flow's Initial Comments;
- Submissions made by Digicel and Flow in relation to Digicel's Complaint regarding alleged anti-competitive conduct by Flow;<sup>11</sup>
- Historical financial statements filed with the Commission by Flow and Digicel;
- Market information and announcements sourced from operators' websites and media reports, including information of mergers and acquisitions affecting TCI; and
- General market data and information for the Caribbean region for comparative purposes.

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<sup>11</sup> Op cit.

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On this basis, the Commission reached the preliminary forbearance conclusions set out in Table 2.<sup>12</sup>

<b>Table 2 – Preliminary Forbearance Conclusions</b>		
<b>No.</b>	<b>Relevant Market</b>	<b>Forbearance</b>
<b>1.</b>	Residential Access at a Fixed Location	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on a <u>conditional</u> basis</li> </ul>
<b>2.</b>	Business Access at a Fixed Location	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on a <u>conditional</u> basis</li> </ul>
<b>3.</b>	Domestic Calling from a Fixed Location	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on a <u>conditional</u> basis</li> </ul>
<b>4.</b>	International Calling from a Fixed Location	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on an <u>unconditional</u> basis</li> </ul>
<b>5.</b>	Domestic Private Leased Circuits (“DPLC”)	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on an <u>unconditional</u> basis</li> </ul>
<b>6.</b>	International Private Leased Circuits (“IPLC”)	<ul style="list-style-type: none"> <li>• Forbearance continues to be appropriate on an <u>unconditional</u> basis</li> </ul>

In this respect, parties were invited to respond to the following question:

**QUESTION 2: Preliminary Market Assessment Results: Do you agree with the Commission's preliminary market assessment results for each of the six relevant markets listed above and as supported by market assessment evidence provided in the Annex? Please provide your responses separately for each relevant market, as may be applicable, and, in each case, provide supporting rationale for your position, including any additional market data and/or information that you believe the Commission should take into account when assessing the extent of competition in the defined relevant markets in question.**

### **3.3.2 Summary and Assessment Parties' Submissions**

In its Comments, Flow focussed its response to this question on the Commission’s preliminary market assessment results for Markets #1 to #3. Flow again argued that it considers mobile to be an effective substitute for the fixed access and calling services in these markets. On this basis, it claimed that regulated price caps of any form in Markets #1 to #3 are inappropriate and unnecessary. In effect, Flow suggested that, like Markets #4 to #6, Markets #1 to #3 should be forborne on an unconditional basis.

In its Comments, Digicel addressed the Commission’s preliminary market assessment results on market-by-market basis:

- **Markets #1 and #2:** Digicel agreed with the Commission’s preliminary market assessment of residential and business fixed access markets. However, it claimed that the impact of OTT on this market to be overstated by the Commission since OTT requires a broadband connection and, therefore, according to Digicel, OTT is not a competitive

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<sup>12</sup> The detailed basis for the preliminary findings is set out in Tables A1 to A6 in the Annex to the Consultation Document.

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substitute for Flow's fixed access services. Digicel also claimed that Flow has *de facto* monopoly in the residential fixed access market and a near monopoly in the business fixed access market given its persistently high market share in that market.

- **Market #3:** Digicel agreed with the Commission's preliminary market assessment of the market for domestic calls from a fixed location. However, it disagreed with the Commission's view that mobile provides an "indirect competitive alternative" to fixed calling. Digicel considers that that "any substitution effects that do exist are as a result of the complementary nature of fixed and mobile services." Digicel added that to the extent that there might be any indirect downward pricing pressure from mobile, it "has been insufficient to force Flow to reduce its pricing below the price cap level". In Digicel's view this "indicates that absent the price cap, Flow could increase prices without effective constraint by market."
- **Markets #4 and #5:** Digicel agreed with the Commission's preliminary market assessment of these two relevant markets.
- **Market #6.** Digicel disagreed with the Commission's preliminary market assessment of the IPLC market. Digicel acknowledged that it signalled its intent to provide sub-sea connectivity to TCI, but claimed that new, alternative international capacity is unlikely to exercise any competitive impact on the market in the short term. In this respect, it claimed that international capacity contracts tend to be multiyear and in the case of IRUs up to 15 years, which it suggested implies that even when such capacity does come on the market, the current market position of Flow is likely to be reflected in capacity pricing for some time after that. Consequently, Digicel argued that it would be premature for the Commission to entirely forbear from regulating Market #6 as Flow would be in a position both to exercise and benefit from its monopoly position for a number of years. Further to this point, Digicel reiterated that off-island international capacity is used as an upstream input to a range of telecommunications services provided to end users in TCI and, according to Digicel, the potential harm from the forbearance could be high and would not promote the interests of consumers or encourage licensees to operate efficiently.

In its Reply Comments, Flow disagreed with comments made by Digicel regarding the market definition and market assessment results relating to Market #1 to #3. In particular, Flow disagreed with Digicel's view that mobile is not a substitute for fixed services as well as Digicel's claim that mobile provides insufficient pressure to constrain Flow's fixed access and calling prices. Flow claimed that Digicel's remarks in this regard reflected a misunderstanding of the marketplace. For one, Flow noted that the pricing structure of its fixed services differs from mobile services – i.e., the former has a two-part tariff structure (access and calling), whereas mobile is typically based on a single incremental (per minute) price structure. According to Flow, this limits the applicability price comparisons between fixed and mobile services. That said, as noted above, Flow provided a fixed versus mobile service price comparison example that suggested that the cost of the two services can be similar in TCI in some cases. In addition, Flow also noted that any attempt on its part to "rebalance" or redesign its fixed service plans (e.g., reduce its fixed access rates and increase call rates) would violate its current price cap; therefore, Flow claimed that it is unable to redesign its fixed service plans to mimic existing mobile pricing plans.

In its Reply Comments, Flow also addressed comments made by Digicel regarding IPLC services, Market #6. It disagreed with Digicel's characterization of competition in this market. Flow argued that a market assessment must be forward looking, therefore, entry and alternative sources of supply are meaningful indicators of competition, which in this case includes Digicel's planned sub-sea transmission facilities. As well, Flow noted that not all customers purchase IPLCs under multi-year contracts. Flow noted that it offers IPLC services on both a short-term (monthly) basis and long-term (multi-year) basis. Consequently, contrary to Digicel's assertion, Flow claimed that there is "nothing in the current market structure or conduct that locks customers into long-term arrangements".

### **3.3.3 Commission Conclusions**

#### ***Forbearance Determinations for Markets #1 to #3***

Flow's position that Market's #1 to #3 should be subject to unconditional forbearance rests largely, if not entirely, on the premise that mobile and possibly OTT services be included in these relevant markets. As concluded in response to Consultation Question 1, the Commission does not agree with this position. The Commission considers that Flow holds a virtual or near monopoly in the residential and business fixed access and domestic calling markets, which is a position supported by Digicel. At the same time, the Commission considers that mobile and possibly OTT services provide some indirect degree of constraint on Flow's service prices in these markets. Consequently, the Commission continues to consider that conditional rather than unconditional forbearance is appropriate for Markets #1, #2 and #3, but that the forbearance conditions applied need only be light touch in nature (as discussed below).

#### ***Forbearance Determinations for Markets #4 and #5***

The Commission notes that both Flow and Digicel are in agreement with the Commission's preliminary forbearance determinations for Markets #4 and #5. Therefore, the Commission concludes that unconditional forbearance remains appropriate in the case of these two relevant markets.

#### ***Forbearance Determination for Market #6***

In terms of the current and expected competitiveness of Market #6, the Commission agrees with Flow that the fact that Digicel had announced its intention build sub-sea transmission facilities to TCI and that the facilities should soon be in operation is an important indicator of expected competition in the IPLC market in TCI. In addition, given Digicel's market position in TCI and, more generally, the Caribbean region, the Commission considers that Digicel has significant countervailing bargaining power when it comes to purchasing domestic as well as international connectivity services from Flow. Consequently, the Commission does not consider that there is a significant risk to the provision of downstream domestic services that depend on access to international connectivity services provided by Flow at this time. Therefore, the Commission continues to consider that unconditional forbearance remains appropriate in Market #6. That said, in the context of Consultation Question 4 discussed below, the Commission notes that there are competitive safeguards in place that protect against any attempt by Flow to abuse its

dominance in Market #6 until such time that Digicel completes its sub-sea facility connection to TCI.

## **3.4 Question 3: Forbearance Condition Options for Market #1 to #3**

### **3.4.1 Overview**

In its Initial Comments, Flow suggested that all existing conditional forbearance conditions applicable to Markets #1 to #3 be eliminated; however, if they were to be retained, Flow proposed that the price cap on residential and business standalone basic fixed access and domestic calling services be set equal to the rate of inflation. Under the Decision 2013-3 forbearance regime, the prices of these services are capped at existing rate levels. In other words, Flow suggests that the existing “nominal” (i.e., current-level) price cap be replaced with a “real” (i.e., inflation-based) price cap.

Given the results of its market assessment for Markets #1 to #3, the Commission concluded on a preliminary basis that there is a continued need for price caps on Flow's residential and business standalone basic fixed access and domestic calling services. At the same, the Commission was prepared to consider Flow's suggestion for the adoption of inflation-based rather than nominal price caps for these services.

Two price cap options were included in the Consultation Document. Option (a) involved the continued application of the existing nominal price caps on residential and business standalone basic fixed access services and domestic FTF and FTM calling services. Option (b) involved the application of inflation-based price caps on these same services, where the inflation rate would be set equal to the annual rate of change in the TCI inflation rate.<sup>13</sup> In addition, caps on the maximum annual price increases were also proposed for each of the services subject to a price cap.

It is important to note that both options are based on a price cap that determines the maximum price that Flow would be permitted to implement for each of the services in question. Both options allow Flow to decrease prices below the specified price cap or maximum price level. As well, neither option obligates Flow to set prices at the maximum price level. The decision to set prices at or below the specified price cap rests with Flow.

In this respect, parties were invited to respond to the following question:

**QUESTION 3: Forbearance Condition Options for Relevant Markets #1 to #3: The Commission asks interested parties to provide comments on the suggested forbearance condition options for Flow's residential and business standalone (basic) access services and domestic FTF and FTM call rates which collectively fall in Relevant Markets #1 to #3. All**

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<sup>13</sup> As measured by the Turks and Caicos Statistics Department, <https://www.gov.tc/stats/>

**comments and, as may applicable, alternative forbearance condition suggestions should include supporting rationale and evidence.**

### **3.4.2 Summary and Assessment of Parties' Submissions**

In its Comments, Flow claimed that competition in the sector today suggests that all regulated price caps are unnecessary and could even be harmful as they introduce unnecessary asymmetry that could potentially distort further development of efficient and effective competition. Otherwise, assuming price caps are adopted, Flow indicated that it supported Option (b) since such an approach would provide it with some additional pricing flexibility. It added that it believes that the application “fixed (static)” price caps, as proposed under Option (a), is no longer appropriate given consumers’ increasing reliance on mobile access and calling services. As well, Flow asserted that greater pricing flexibility – i.e., the ability to quickly and easily raise, lower and experiment with prices – is vital to the competitiveness of all service providers, including Flow, and would help promote competition, innovation and investment.

As further support for Option (b), Flow noted that there are inflation-based price caps for fixed access and calling services in place in Barbados as well as the five Eastern Caribbean Telecommunications Authority (“ECTEL”) Member States. Flow suggested that the Commission consider using these markets as benchmarks to support its proposed Option (b) to Flow’s services in Markets #1 to #3.

In its Comments, Digicel agreed that the proposed forbearance conditions are necessary in the case of Markets #1 to #3. As to the two options, Digicel also supported Option (b), noting that inflation-based price caps would allow Flow to reflect general price increases in TCI in its retail prices. Digicel suggested that this was important since general price increases can be driven by external factors such as global energy prices, global foreign exchange movements or other geopolitical considerations.

In its Reply Comments, Flow acknowledged and supported Digicel’s position on the adoption of Option (b).

### **3.4.3 Commission Conclusion**

Having considered the positions of both Flow and Digicel on this matter as well as the fact that the prices of Flow’s residential and business standalone basic fixed access services and domestic call services have effectively been capped at current price levels for roughly 10 years now, the Commission agrees that inflation-based price caps would be appropriate under the new forbearance regime. Consequently, the Commission concludes that Option (b), as set out in the Consultation Document, will apply to Flow’s residential and business standalone basic fixed access services and domestic call services and the new forbearance regime. The Commission notes that while adoption of Option (b) sets a higher allowable maximum price, it does not obligate Flow to implement such higher prices; that decision rests with Flow.

The Commission notes that while Option (b) allows rate increases up to the rate of inflation each year and also allows unused price cap headroom to be carried forward, it also places specific

constraints on the maximum residential and business standalone basic fixed access service and domestic call service price increases that can be implemented in any given year. Neither Flow nor Digicel commented on these additional pricing constraints. Consequently, the Commission adopts them as set out in the Consultation Document.

Therefore, the following price caps and related price increase limits apply as forbearance conditions in Markets #1 to #3 under the new forbearance regime:<sup>14</sup>

**Relevant Market #1 - Residential Access at a Fixed Location:** The maximum allowable increase in Flow's residential standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.50/month in any given year.

**Relevant Market #2 - Business Access at a Fixed Location:** The maximum allowable increase in Flow's business standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$1.25/month in any given year.

**Relevant Market #3 – Domestic Calling from a Fixed Location:** The maximum allowable increase in Flow's standalone basic domestic FTF and FTM call services price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.005/minute and \$0.010/minute in any given year, respectively.

In addition, the following conditions also apply:

- The rate of inflation is to be measured using that latest available annual inflation rate for TCI reported by the Turks and Caicos Statistics Department.
- Unused headroom in the price cap or maximum allowable price applicable to each standalone basic service in question may be carried forward.
- The start date for the new forbearance regime is 1 September 2019 and the annual update of the regime occurs on April 1<sup>st</sup> each year. For the initial bridge period from 1 September 2019 to 31 March 2020, the inflation rate adjustment to the above-noted price caps at the outset of the regime would be prorated to reflect the 7 rather than 12-month term of this bridge period.<sup>15</sup>
- In the case of Flow's FTM rate, the Commission notes that Telecommunications Decision 2014-4, *Decision on the Review of Interconnection Rates*, 20 June 2014, requires Flow to "flow-through" any Commission-directed reductions in the price cap for the domestic Mobile Termination Rate ("MTR") simultaneously to its FTM price cap on

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<sup>14</sup> Note that the going-in rate levels for the services subject to price caps as forbearance conditions are \$20/month and \$45/month for residential and business standalone basic fixed access service, respectively, and 15¢/minute and 28.25¢/minute for standalone basic domestic FTF and FTM call, respectively.

<sup>15</sup> I.e., the most recent available inflation rate (i.e., 2.2% for 2018 as published by the Turks and Caicos Statistics Department) would be multiplied by 7/12 to calculate the price caps for the services covered by the noted forbearance conditions.

a 1 to 1 basis. This existing MTR flow-through requirement remains in effect under the new forbearance regime.

## **3.5 Question 4: Forbearance Determinations for Markets #5 and #6**

### **3.5.1 Overview**

As discussed in the Consultation Document, in the context of its Complaint, Digicel effectively proposed that certain *ex ante* regulatory measures be imposed on Flow primarily in the context of DPLC services, Market #5. Digicel's proposed regulatory measures effectively included the following:

- **DPLC Services:** impose an obligation on Flow to provide underground backhaul fibre connectivity services on a regulated basis (i.e., where the terms and conditions of offer are no less favourable than those by which Flow provides such services to its own business units or affiliates).
- **Network Support Structures:** impose an obligation on Flow to provide access to its underground ducting infrastructure on a regulated basis (i.e., where the terms and conditions of offer are no less favourable than those by which Flow provides such services to its own business units or affiliates).

Digicel noted that these regulatory measures need only be “interim” in nature until it completes construction of its own domestic fiber network.

As explained in the Consultation Document, the Commission was of the preliminary view that the DPLC market remedy proposed by Digicel is unnecessary since it is too narrowly focussed. The proposed remedy does not appear to be aimed at addressing dominance concerns per se, but rather emergency preparedness requirement, which in the Commission's view could be better addressed through a formal Emergency Preparedness Agreement (“EPA”)<sup>16</sup> or, alternatively, addressed as part of a broader a Telecommunications Emergency Preparedness and Response Policy (“TEPR Policy”) for TCI.<sup>17</sup>

In the second case, as also explained in the Consultation Document, the Commission considers that Digicel's proposal relating to mandated access to underground ducting infrastructure to be outside the scope of the current proceeding, since it does not apply to fixed service markets covered in Decision 2013-3. The Commission notes that pursuant to the *Telecommunications (Interconnection and Access to Telecommunications Facilities) Regulations* (the “Interconnection Regulations”) a carrier has the ability to seek access to the telecommunications facilities of another carrier and, should a dispute arise in this respect, it can apply to the

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<sup>16</sup> The Commission notes that a process to address emergency preparedness requirements was established in Decision Notice 2018-6.

<sup>17</sup> The Commission notes that it intends to soon initiate a public consultation process to develop a TEPR Policy for TCI.

Commission to seek a resolution.<sup>18</sup> Therefore, to the extent that Digicel requires access to the underground ducts of Flow, where spare capacity exists, and if Flow does not respond in a timely and reasonable, Digicel may wish to consider such an application.

Otherwise, the Commission reached the preliminary conclusion that continued unconditional forbearance remains appropriate for both Markets #5 and #6. In regard to the Commission's preliminary market forbearance conclusions for these two markets as well as Digicel's proposals, parties were invited to respond to the following question.

**QUESTION 4: Preliminary Forbearance Determinations for Relevant Markets #5 and #6: Do you agree with the Commission's preliminary forbearance determination with respect to Relevant Market #5 and #6. If not, please explain why not. In addition, please provide any modifications and/or additions you consider warranted along with the supporting rationale and evidence.**

### **3.5.2 Summary and Assessment of Parties' Submissions**

In its Comments, Flow indicated that it agrees with the Commission's preliminary forbearance determinations with respect to Markets #5 and #6. Flow added that it had no further comments on Digicel's proposals at this time, beyond what it previously submitted to the Commission in the context of Digicel's Complaint that deal with services included in these two relevant markets.

For its part, Digicel agreed with the Commission's preliminary forbearance determinations with respect to DPLC services, Market #5. Digicel offered no further comments on or in support of its previous proposals to impose obligations on domestic underground backhaul fibre connectivity services or access to underground ducting facilities.

Digicel otherwise disagreed with the Commission's preliminary forbearance determination with respect to IPLC services, Market #6. It claimed that the Commission's proposal to forebear unconditionally from regulating Market #6 would not be appropriate. Digicel also claimed that the scope for Flow to leverage its current monopoly on international capacity into the downstream markets is high and that the multi-year nature of international capacity agreements means that any such leveraging could persist for a number of years after there is active competition in this market (i.e., when Digicel's planned sub-sea facility to TCI is completed). Consequently, Digicel claimed that forbearance conditions in Market #6 are necessary and appropriate.

In this respect, Digicel proposed that: "Flow be subject to a non-discrimination obligation whereby the pricing for any international capacity provided to other licensees should be no higher than the equivalent cost attribution it uses for the off-island capacity input for its downstream products." Digicel further proposed that this condition be automatically lifted once alternative supply for international capacity becomes available.

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<sup>18</sup> Pursuant to Part VII of the Interconnection Regulations.

Digicel added that its proposed forbearance condition would be reasonable and proportionate since it would not involve setting absolute pricing levels, while at the same time it would ensure that Flow's upstream monopoly would not result in downstream competition issues. As well, according to Digicel, its proposed automatic forbearance condition removal provision would protect the market in the event of delays in the introduction of alternative sources of international capacity and would also not disadvantage Flow if alternative supply became available in the short term.

In its Reply Comments, Flow stressed that competition assessments should be forward looking. Therefore, the fact that Digicel plans to provide sub-sea connectivity to TCI in the near term is a relevant and meaningful indicator of expected entry and alternative source of supply in the market. As well, Flow noted that IPLC customers have the choice of short (monthly) or long term (multi-year) contract options; consequently, IPLC customers are not locked into long-term arrangements as suggested by Digicel. While Flow did not otherwise comment on Digicel's specific forbearance condition proposal, it effectively argued that it is unnecessary.

### **3.5.3 Commission Conclusion**

With respect to Market #5, DPLC services, both Flow and Digicel supported the Commission's preliminary determination that continued unconditional forbearance is appropriate. Therefore, the Commission has decided to adopt this proposal as part of this Decision.

With respect to Market #6, IPLC services, the Commission notes Digicel's comments about the current structure of the market for international connectivity services and its related proposal that a "short-term" non-discrimination obligation be placed on Flow as a forbearance condition. Such a condition would effectively set the price of Flow's international connectivity services equal to Flow's cost of the services. The Commission considers that this proposed forbearance condition is unnecessary and, moreover, would be complex and burdensome to implement and administer (especially given it would only be intended as a short-term measure). The Commission agrees with Flow that the fact that Digicel has announced its intention to build sub-sea transmission facilities to TCI, and that those facilities should soon be in operation, is an important indicator of expected competition in the IPLC market in TCI. In addition, given Digicel's market position in TCI and, more generally the Caribbean region, the Commission considers that Digicel has significant countervailing bargaining power when it comes to purchasing domestic as well as international connectivity services from Flow. Therefore, the Commission does not consider that there is a significant risk to the provision of downstream domestic services that depend on access to international connectivity services provided by Flow at this time.

That said, to the extent Flow were to attempt to restrict access to or charge excessive prices for international connectivity services to another licensee (including Digicel), then that licensee could apply to the Commission pursuant to the Interconnections Regulations to address any such dispute. In this way, any such matters could be handled on a case-by-case basis rather than on a blanket *ex ante* basis as proposed by Digicel. The Commission considers that this would be a more efficient and effective manner to address disputes relating to access to international connectivity services until such time that Digicel's interconnection connectivity services become available and, for that matter, after that point in time as well.

Therefore, the Commission has decided that unconditional forbearance remains appropriate in the case of Market #6 at this time.

## **3.6 Question 5: Forbearance Determination for Market #4**

### **3.6.1 Overview**

As indicated in the Consultation Document, based on its preliminary market assessment, the Commission concluded on a preliminary basis that there is no reason to alter the existing Decision 2013-3 unconditional forbearance determination with respect to the market for international calling from a fixed location, Market #4.

In this respect, parties were invited to respond to the following question:

**QUESTION 5: Preliminary Forbearance Determination for Relevant Market #4: Do you agree with the Commission's preliminary forbearance determination with respect to Relevant Market #4, International Calling from a Fixed Location. If not, please explain why not. In addition, please provide any modifications and/or additions you consider warranted along with the supporting rationale and evidence.**

### **3.6.2 Summary and Assessment of Parties' Submissions**

In their respective Comments, both Flow and Digicel agreed with the Commission's forbearance proposal for international call services from a fixed location, Market #4.

### **3.6.3 Commission Conclusion**

Therefore, the Commission has decided that unconditional forbearance remains appropriate in the case of Market #4.

## **3.7 Question 6: Other Matters**

### **3.7.1 Overview**

In the Consultation Document, the Commission proposed that the existing reporting requirements under the current forbearance regime be retained going forward. In addition, the Commission proposed that the forbearance determinations in this Decision should remain in effect until they are next reviewed, and that it expects to conduct such a review within 5 years. That said, in accordance with the procedures and filings requirements set out in the Guidelines, the Commission notes that parties can request a forbearance review be conducted at any time.

With respect to these and any other matters deemed relevant to this consultation, parties were invited to respond to the following question:

**QUESTION 6: Other Matters: Do you agree with the Commission's reporting requirement and forbearance review timing proposals? If not, please explain why not. In addition, please provide your comments on any other issues you consider relevant to the Commission's decision in this consultation.**

### **3.7.2 Summary and Assessment of Parties' Submissions**

In its Comments, Flow generally agreed with the Commission's proposed reporting requirements. As well, in regard to the timing of a subsequent review of this Decision, Flow did not object to a maximum 5-year review period, as long as it has the option to request a review at any time during the term of the new forbearance regime.

For its part, Digicel also agreed with the proposed reporting requirements. In terms of the review period, Digicel stated that it considers that a maximum period of 5 years represents a practical approach, again as long as it is balanced by the ability of parties to request a review at any time.

### **3.7.3 Commission Conclusion**

Both Flow and Digicel supported the proposed reporting requirements for the new forbearance regime as well as the proposed 5-year review period. As acknowledged by the Commission, the option to review the regime at an earlier point in time remains open to parties, and the Guidelines set out the application process and filing requirements for doing so.

Therefore, the Commission has decided to adopt the existing reporting requirements, although they must be modified slightly to reflect the inflation-based price caps applied to residential and business standalone basic fixed access and domestic calling service prices as forbearance conditions. The additional reporting requirements to accommodate these new forbearance conditions as set out in Section 4.3 below.

The Commission otherwise plans to conduct a review of the new forbearance regime by April 2025. To be clear, the forbearance regime will remain in effect until such time a review, either initiated by the Commission or another party, by the has been completed and through that process either renewed, modified or terminated.

## **4 Forbearance Determination**

### **4.1 Forbearance Determinations and Conditional Price Constraints**

For the reasons set out above and in the Consultation Document, the Commission has determined that it is appropriate to continue forbear from regulating the vast majority of Flow's retail fixed services. In the case of Markets #1 to #3, the Commission's forbearance determination includes

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specific forbearance conditions applicable to residential and business standalone basic fixed access and domestic FTF and FTM call services. Flow is otherwise free to create, modify and price bundled fixed access, domestic/international call services and calling features as it wishes as well as bundle fixed services with other regulated/unregulated services without seeking prior approval from the Commission. In the case of the Markets #4 to #6, the Commission's forbearance determinations are unconditional. A summary of the Commission's forbearance determinations is provided in Table 3.

<b>Table 3 – Forbearance Determinations</b>			
<b>No.</b>	<b>Relevant Market</b>	<b>Forbearance</b>	<b>Forbearance Conditions</b>
<b>1.</b>	Residential Access at a Fixed Location	Conditional price deregulation	The maximum allowable increase in Flow's residential standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.50/month in any given year.
<b>2.</b>	Business Access at a Fixed Location	Conditional price deregulation	The maximum allowable increase in Flow's business standalone basic fixed access service price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$1.25/month in any given year.
<b>3.</b>	Domestic Calling from a Fixed Location	Conditional price deregulation	The maximum allowable increase in Flow's standalone basic domestic FTF and FTM call services price is equal to the annual rate of inflation in TCI, subject to a maximum annual increase of \$0.005/minute and \$0.010/minute in any given year, respectively.
<b>4.</b>	International Calling from a Fixed Location	Unconditional price deregulation	None
<b>5.</b>	Domestic Private Leased Circuits	Unconditional price deregulation	None
<b>6.</b>	International Private Leased Circuits	Unconditional price deregulation	None

## **4.2 Scope of Forbearance**

As noted in the Consultation Document, the Commission considers that the scope of forbearance determination in this Decision should remain the same as set out in Decision 2013-3. Accordingly, the resulting forbearance determinations under Section 29 of the Ordinance would apply to *ex-ante* price-related regulatory provisions for all Flow's fixed services in the six relevant markets under consideration, with the exception of those services that would continue to be subject to specific forbearance conditions. The specific *ex-ante* price-related regulatory provisions addressed by the forbearance determination include: Sections 17(b), 27(2)(a), 27(2)(b) and 27(3) to 27(11) of the Ordinance as well as Sections 4, 5, 6 and 7 of the Pricing Regulations.

The Commission notes that no comments were received on this aspect of the Consultation Document. Therefore, the Commission considers that it remains appropriate for the new forbearance regime.

### **4.3 Compliance with the Ordinance**

Based on the record of this proceeding, the Commission is of the view that its forbearance determinations set out above are consistent with the forbearance provisions set out in Section 29(1) of the Ordinance. Subject to Flow's ongoing compliance with the proposed forbearance conditions, the Commission considers view that:

- the scope and extent of forbearance set out in this Decision is consistent with the telecommunications policy objectives for TCI;
- the regulated fixed services provided by Flow in the defined relevant markets are currently or will be subject to sufficient competition to protect the interests of users; and
- refraining from regulating the regulated fixed services provided by Flow in the defined relevant markets in question will not unduly impair the establishment or continuance of competitive markets for the services in question.

The Commission will, however, monitor conditions in the markets subject to this Decision to ensure these conditions continue to hold of the term of the new forbearance regime. As well, any adversely affected parties are able to file complaints related to these markets with the Commission pursuant to the Guidelines and Interconnection Regulations.

### **4.4 Reporting Requirements**

Under the new forbearance regime, Flow will be required to comply with the following annual filing requirements:

- i) The filing of Flow's annual audited statutory financial statements (which is a condition of licence in any event).
- ii) The filing of an annual Forbearance Compliance letter (on April 1<sup>st</sup> each year) confirming ongoing full compliance with established forbearance conditions, specifically including:
  - a. A listing of the actual prices in effect for Flow's residential and business standalone basic fixed access services and domestic FTF and FTM calling services.
  - b. Calculation and reporting of the price cap indexes ("PCI") and actual price indexes ("API") applicable to Flow's residential and business standalone basic fixed access and domestic FTF and FTM calling services, including confirmation of compliance with each applicable PCI.

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- c. Provision and, as necessary, explanation of the inflation rate for TCI used in the calculation of the PCI.<sup>19</sup>
- d. Confirmation of compliance with any flow-through interconnection rate price cap reductions that may have been ordered by the Commission in any given year during the term of the new forbearance regime.

The Commission notes that this Decision will become effective **1 September 2019**. Therefore, an initial Forbearance Compliance letter should be filed by Flow on that same date. Subsequently, the annual filing date would be April 1<sup>st</sup> starting in 2020.

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<sup>19</sup> The Commission understands that it is the objective of the Turks and Caicos Statistics Department to publish the previous year's inflation rate for TCI before the end of the first quarter each year. However, if there is a delay in the inflation rate in any given year (i.e., published beyond March 31<sup>st</sup>), Flow could delay filing its Forbearance Compliance letter until the inflation rate is published or, if sufficient partial year inflation rate information is available, Flow could rely on an estimate of the annual inflation rate. In the former case, Flow should inform the Commission of its plans to delay its Forbearance Compliance letter. In the latter case, Flow should provide an explanation of the basis for its inflation rate estimate. Any such inflation rate estimates should be subsequently updated once the official annual inflation is published by the Turks and Caicos Statistics Department.