

ICT 2017 - 3 Consultation – Radio Broadcasting Licence Template



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A. Introduction

1. The Utility Regulation and Competition Office (the '**Office**' or '**OfReg**') is the independent regulator established by **section 4 (1)** of the Utility Regulation and Competition Law (the '**URC Law**') for the electricity, information and communications technology ('**ICT**'), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Prior to the coming into force of the URC Law, and the creation of OfReg on **16 January 2017**, the ICT Sector was regulated by the Information and Communications Technology Authority (the '**Authority**') which was established in 2002 under the *Information and Communications Technology Authority Law* to, among other things, determine and regulate the ICT services and ICT networks which are required to be licensed. Radio broadcasters were among the earliest persons licensed by the Authority. For example, **Radio Cayman, Hurley's Entertainment Corporation** and the **International College of the Cayman Islands ('ICCI')** were first licensed under the Information and Communications Technology Authority Law 2002 on 11 December 2003.¹
3. **Section 23 (2)** of the Information and Communications Technology Law (2017 Revision) (the '**ICT Law**')² requires the Office to specify, "*by notice published in the Gazette*", the ICT services and ICT networks which are required to be licensed. The Section 23 (2) Notice includes a **Type F** ICT Network Licence for Broadcast Networks and **Type 8** ICT Services Licence for Sound Broadcasting.
4. At the present time, the Office has licensed eight [8] entities and the annual turnover of the FM radio broadcasting sector stood at some CI\$ 4 million for the 2016 calendar year.³
5. The Office notes that the terms and conditions of the ICT licences issued to **CI Conference of Seventh-Day Adventists ('CICSDA')**, **Radio Cayman, Hurley's Entertainment Corporation, ICCI, dms**

¹ See <http://www.icta.ofreg.ky/licences>

² Section 23 (2) in the ICT Law is unchanged from the Information and Communications Technology Authority Law, 2002 and all subsequent revisions.

³ <http://www.icta.ofreg.ky/upimages/commonfiles/1496085645CaymanIslandsICTstatisticsQ12017.pdf>

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- Broadcasting Ltd, Interactive Broadcasting and Media Ltd., Grace Broadcasting Ltd., and Spread the Word International Ministries Ltd. (*‘Spread the Word’*)** (collectively, the ***‘Radio Broadcasters’*** and ***‘radio broadcasting licences’*** as applicable) are, in many respects, the same as those of the ICT licences first issued in 2003.
6. The Office considers that the ICT Sector, including the radio broadcasting sector, has changed materially since 2003; for example, the technology over which the radio content is broadcast now includes digital transmissions and the Internet, and that it is necessary to update the terms and conditions of the licences issued to the Radio Broadcasters (previously called the FM Broadcasters, the change in name is proposed to reflect the developments in ICT technology referenced above) to ensure they remain fit for purpose.
 7. The purpose of this Consultation is to set out the Office’s proposed determination in draft as to the radio broadcasting licence template, and allow persons a reasonable opportunity to comment on that draft.

B. Radio Broadcasting Licensees

8. The entities currently licensed to operate Type F Broadcast Networks and provide Type 8 Sound Broadcasting Services are:

No.	Name
23	CI Conference of Seventh-Day Adventists (‘CICSDA’);
R1	Radio Cayman;
R2	Hurley’s Entertainment Corporation;
R3	International College of the Cayman Islands (‘ICCI’);
R4	dms Broadcasting Ltd;
R11	Interactive Broadcasting and Media Ltd.;
R12	Grace Broadcasting Ltd.; and,
R13	Spread the Word International Ministries Ltd.

The Term of each Type F and Type 8 Licences are to 30 September 2017, apart from CICSDA.⁴

Cayman Islands Conference of Seventh-Day Adventists (CICSDA)

9. On **6 March 2008**, a consolidated ICT licence was issued to CICSDA,⁵ which included a Type 8 Sound Broadcasting ICT Service licence for a term from 15 June 2006 to **20 September 2011**.⁶

Radio Cayman

10. On **28 February 2009**, the ICT licence issued to Radio Cayman was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on **28 February 2014**.⁷

Hurley's Entertainment Corporation

11. On the same date, the ICT licence issued to Hurley's Entertainment Corporation was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on **28 February 2014**.⁸

International College of the Cayman Islands

12. On the same date, the ICT licence issued to ICCI was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on **28 February 2014**.⁹

dms Broadcasting Ltd

13. On **8 October 2009**, the ICT licence issued to dms Broadcasting Ltd. was renewed, which included a Type F Broadcast Network ICT Network

⁴ For historical reasons, the term of the Type F Licence Term for CICSDA is to **14 June 2021**.

⁵ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417648919.pdf

⁶ http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1_1417648940.pdf

⁷ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417645398.pdf

⁸ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417645069.pdf

⁹ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417644454.pdf

licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term from 15 September 2009 to **15 September 2014**.¹⁰

Interactive Broadcasting and Media Ltd

14. On **5 May 2011**, an ICT licence was issued to Interactive Broadcasting and Media Ltd., which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term from 6 May 2011 to **5 May 2016**.¹¹

Grace Broadcasting Ltd.,

15. On **5 October 2011**, an ICT licence was issued to Grace Broadcasting Ltd., which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term from 6 October 2011 to **5 October 2016**.¹²

Spread the Word International Ministries Ltd.

16. On **21 April 2017**, an ICT licence was issued by the Office to Spread the Word, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence, each for a term ending on **30 September 2017**.¹³

C. Radio Broadcasting Licensing History

17. On **3 October 2013**, Annex 2 of the Radio Broadcasters' licences (apart from Spread the Word) was amended, amending the definitions of "*Annual Turnover*", "*Audited Financial Statements*" and "*Quarterly Turnover*."¹⁴

¹⁰ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417647399.pdf

¹¹ http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417649995.pdf

¹² http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417650173.pdf

¹³ http://www.icta.ofreg.ky/upimages/licencedocument/SpreadtheWordInternationalMinistriesT-AVoice97.7Licence-signed_1496270522.pdf

¹⁴ Radio Cayman -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2_1417645420.pdf, dms Broadcasting Ltd -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2_1417647426.pdf,

Hurley's Entertainment Corporation -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2_1417645106.pdf

ICCI - http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1_1417644474.pdf

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18. On **11 February 2014**, the Authority wrote separately to each of **Radio Cayman, Hurley’s Entertainment Corporation, ICCI, and dms Broadcasting Ltd.**, noting that their Type F and Type 8 ICT licences were due to expire shortly. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them, following which it would invite applications for renewal of FM broadcasting licences pursuant to section 26 of the ICTA Law. In order to allow sufficient time to complete the process, the Authority extended the duration of those licensees’ Type F and Type 8 ICT licences until **31 December 2014**.
 19. On **12 February 2014**, the Authority wrote to **CICSDA**, noting that CICSDA’s Type 8 ICT licence had expired on 20 September 2011 and that CICSDA was in the process of applying to the Authority to renew that licence. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them, following which it would consider CICSDA’s application for renewal of its Type 8 licence. In order to allow sufficient time to complete the process, the Authority granted CICSDA a short-term Type 8 ICT licence until **31 December 2014**.
 20. On **5 December 2014**, the Authority wrote separately to each of **Radio Cayman, Hurley’s Entertainment Corporation, ICCI, and dms Broadcasting Ltd.**, noting that the duration of their Type F and Type 8 ICT licences had been extended until **31 December 2014**. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended the duration of those licensees’ Type F and Type 8 ICT licences until **31 July 2015**.
 21. On **5 December 2014**, the Authority wrote to **CICSDA**, noting that CICSDA had been granted a short-term Type 8 ICT licence until **31 December 2014**. The Authority further noted that that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended CICSDA’s short-term Type 8 ICT licence until **31 July 2015**.
 22. On **29 July 2015**, the Authority wrote separately to each of **Radio Cayman, Hurley’s Entertainment Corporation, ICCI, and dms**

Interactive Broadcasting Media -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1_1417650012.pdf

Grace Broadcasting Ltd -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment3_1417650231.pdf

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- Broadcasting Ltd.**, noting that duration of their Type F and Type 8 ICT licences had been extended until **31 July 2015**. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended the duration of those licensees' Type F and Type 8 ICT licences until **31 December 2015**.
23. On **29 July 2015**, the Authority wrote to **CICSDA**, noting that CICSDA had been granted a short-term Type 8 ICT licence until **31 July 2015**. The Authority further noted that that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended CICSDA's short-term Type 8 ICT licence until **31 December 2015**.
24. On **15 December 2015**, the Authority wrote separately to each of **Radio Cayman, Hurley's Entertainment Corporation, ICCI, and dms Broadcasting Ltd.**, noting that the duration of their Type F and Type 8 ICT licences had been extended until **31 December 2015**. The Authority further noted that the C.I. Government intended to set-up a Utilities Regulator which would have statutory responsibility for the regulation of the ICT, water, electricity and petroleum industries and that new legislation was being drafted that would bring the regulation of the four different sectors under the one regulatory body. The Authority noted that it had been reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order for the Authority to do this within the context of the proposed utilities regulatory framework, the Authority extended the duration of those licensees' current Type F and Type 8 ICT licences until **31 December 2016**.
25. On **15 December 2015**, the Authority wrote to **CICSDA**, noting that the duration of CICSDA's Type 8 ICT service licence had been extended until **31 December 2015**. The Authority further noted that the C.I. Government intended to set-up a Utilities Regulator which would have statutory responsibility for the regulation of the ICT, water, electricity and petroleum industries and that new legislation was being drafted that will bring the regulation of the four different sectors under the one regulatory body. The Authority noted that it had been reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order for the Authority to do this within the context of the proposed utilities regulatory framework, the Authority extended the duration of CICSDA's current Type 8 ICT licence until **31 December 2016**.
26. By letter dated **30 December 2016**, the Authority advised all Radio Broadcasters (including those whose licence terms were extended until

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- 31 December 2016) that the legislation to establish a new utilities regulator and to bring the regulation of the ICT, water, electricity and petroleum industries under the one regulatory body, had been Gazetted and was due to commence the next month.
27. In order for it to update and formally finalise licences within the context of the new utilities regulatory framework, the Authority extended the duration of all FM radio broadcasters' current Type F and Type 8 ICT Licences until **30 September 2017**. The Authority noted that any licences granted between now and 30 September 2017 would be done on a conditional basis. The Authority also noted that, as part of its review of the standard FM broadcasting licence conditions, the new Office would seek to re-establish the previous FM Broadcasting Working Group in order to facilitate a collaborative effort towards updating Licence conditions.
28. On **21 April 2017**, the Office issued a short-term ICT licence to **Spread the Word**, which included a Type F Broadcast Network ICT network licence and a Type 8 Sound Broadcasting ICT service licence. Consistent with the Authority's 30 December 2016 notice to the other Radio Broadcasters, the ICT licence was issued for a term ending on **30 September 2017**.¹⁵
29. **In consideration of the above, the Office hereby provides a short term extension to the Term of the Licences until 28 February 2018, in order to provide the Office with the necessary time to complete the radio broadcasting relicensing exercise.**

D. Legal Framework

30. In making this consultation document, the Office is guided by its statutory remit, in particular as set out in the URC Law and ICT Law, each where applicable. In this regard, the Office notes among others the following provisions:
31. **Section 6** of the URC Law states in part:

(2) In performing its functions under this Law or any other Law, the Office may –

[...]

¹⁵ http://www.icta.ofreg.ky/upimages/licencedocument/SpreadtheWordInternationalMinistriesT-AVoice97.7Licence-signed_1496270522.pdf

(d) *make administrative determinations, decisions, orders and regulations;*

[...]

(j) *grant, modify and revoke authorizations;*

[...]

(n) *issue, suspend, vary or revoke licences, permits and exemptions;*

[...]

(y) *define relevant markets, assess the competitiveness of relevant markets and identify sectoral providers that have significant market power in such markets;*

(z) *adopt remedies to deter anti-competitive conduct by sectoral providers in any relevant market;*

[...]

(dd) *conduct public consultations;*

[...]

32. **Section 7** of the URC Law states in part:

(1) *Prior to issuing an administrative determination which, in the reasonable opinion of the Office, is of public significance, and subject to specific procedures under sectoral legislation, the Office shall –*

(a) *issue the proposed determination in the form of a draft administrative determination;*

(b) *allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination; and*

(c) *give due consideration to those comments with a view to determining what administrative determination (if any) should be issued.*

[...]

(4) *Where the Office intends to issue an administrative determination, the Office shall –*

(a) *give written notice of that intention, to any person with sufficient interest or likely to be affected by the proposed determination; and*

(b) *afford that person an opportunity to make written representations to show cause why the Office ought not to make such a determination.*

33. **Section 9** of the ICT Law states in part:

(1) Subject to this Law, the Office has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Law.

(2) For the purposes of this section, the Office shall -

[...]

(c) issue licences authorising the use of specified portions of the electromagnetic spectrum, including those used on any ship, aircraft, vessel or other floating or airborne contrivance or spacecraft registered in the Islands; and

(d) institute procedures for ensuring the compliance by licensees with any obligations regarding the use of the electromagnetic spectrum,

(3) Without prejudice to subsections (1) and (2), the principal functions of the Office are-

[...]

(ba) to encourage the maintenance of a sufficient plurality of providers of different television and radio services;

(bb) to promote the application, in case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive or harmful material in such services;

[...]

(e) to license and regulate ICT services and ICT networks as specified in this Law and the Electronic Transactions Law (2003 Revision);

[...]

34. **Section 23** of the ICT Law states in part:

(1) *The Office may grant licences in accordance with this [ICT Law].*

(2) *Subject to subsections (3) and (3A), the Office, by notice published in the Gazette, shall specify the ICT services and ICT networks that are required to be licensed.*

[...]

(6) **A licence may specify-**

(a) *the operations which the licensee may undertake under that licence; and*

(b) **the conditions to which the licensee is subject**, including but not limited to pricing, service standards, Universal Service provision, infrastructure sharing, interconnection and spectrum utilisation.
[Emphasis added]

35. **Section 26** of the ICT Law states:

(1) *A person who wishes to apply for a licence or the renewal of a licence shall, in accordance with a procedure determined by the Office submit an application for consideration by the Office, and the application shall be in the prescribed form and accompanied by such fees as may be determined by the Office.*

(2) *The Office may, where necessary, before granting or renewing a licence under this section, take into account the [matters as listed therein];*

36. **Section 28** of the ICT Law states:

A licence –

(a) *shall be for the period specified in the licence and shall not be granted for a period longer than twenty years; [...]*

37. **Section 29** of the ICT Law states:

(1) *Where an application for renewal of a licence under section 26 is made, the Office may refuse to renew that licence if the licensee is or has engaged in conduct that materially contravenes this Law or any regulations.*

(2) *Where the Office has reasonable grounds for not renewing a licence under subsection (1), it shall inform the licensee by written notice as soon as practicable of its intention not to renew the licence.*

(3) *A licensee referred to under subsection (2) shall have thirty days from the date of service of the said notice to make written submissions to the Office in respect of the refusal.*

(4) *The Office shall consider any written submissions made under subsection (3), and shall inform the licensee within seven days of the receipt of the submission of its decision on the matter.*

38. **Part 5** (sections 55 to 57) of the ICT Law establishes duties and obligations in respect of “*local programming*” (defined in **section 2** of the ICT Law to mean “*sound or television broadcasting content made available in the Islands, by a licensee, without subscription, and includes things such as advertisements and announcements*”).

55. *It shall be the duty of a licensee to ensure that local programming broadcast by the licensee –*

- (a) *protects persons under the age of eighteen;*
- (b) *includes nothing which –*
 - (i) *offends against good taste or decency;*
 - (ii) *is likely to encourage or incite to commit a crime or lead to disorder;*
 - (iii) *is likely to be offensive to public feelings; and*
 - (iv) *is an offensive representation of, or reference to, a person (living or deceased); and*
- (c) *presents with due accuracy and impartiality any news broadcast.*

56. (1) *It shall be the duty of the Office to set, review and revise, such standards for the content of such broadcasts as appear to it best calculated to secure the standards specified in section 55.*

(2) *The standards set by the Office shall be contained in one or more published codes and, in setting or revising the codes, the Office may consult with such persons as it sees fit.*

(3) *In setting or revising standards, the Office may consult with such persons as it sees fit and shall have regard to –*

- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;*
- (b) the likely size and composition of the potential audience for programmes included in local programming generally, or in local programming of a particular description;*
- (c) the likely expectation of the audience as to the nature of a local programme's content and the extent to which the nature of that content can be brought to the attention of potential members of the audience; and*
- (d) the likelihood of persons who are unaware of the nature of a local programme's content being unintentionally exposed, by their own actions, to that content.*

(4) *The Office shall ensure that the standards in force under these Regulations include –*

- (a) minimum standards applicable to all local programmes; and*
- (b) such other standards applicable to particular descriptions of local programmes as appear to the Office to be appropriate for securing the standards' objectives.*

57. (1) *A licensee shall retain a recording of the local programming in a viewable and accessible form for a period of twenty-eight days after its broadcast.*

(2) *For the purpose of maintaining supervision of local programming, the Office may make and use recordings of those programmes or any part of them and such use shall be*

deemed not to infringe any intellectual property rights in that programming.

(3) Nothing in this Law shall be construed as requiring the Office to view or listen to local programmes in advance of their being included in local programming services.

(4) The Office may issue guidelines as to the duties of licensees under sections 55, 56 and subsection (1) of this section.

E. Proposed Changes to the Radio Broadcasting Licence Template testing on two three testing

E.1 Introduction

39. The Office is proposing a number of modifications to the current radio broadcasting ICT licence template, which is to be offered to the Radio Broadcasters pursuant to the forthcoming licence renewal application process (see paragraph 74 *et seq.* below).
40. For representational purposes, these proposed modifications are shown in the draft ICT licence template attached to this consultation document at **APPENDIX 1**, in underline and strike-through format, and are summarised in the paragraphs below. Separately, the proposed template being consulted on as the draft administrative determination is set out at **APPENDIX 2**.
41. The Office recommends that respondents read, in particular, the draft ICT licence template set out at **APPENDIX 2** prior to submitting comments on the draft radio broadcasting licence template or to answering the consultation questions in the next section.
42. In particular, and noting the reference in paragraph 5 above that, although the radio broadcasting licences are in many respects the same as those of the ICT licences first issued in 2003, there are differences between them. Therefore, the modifications represented at **APPENDIX 1**, while intended to be comprehensive in showing what modifications are proposed, may not show all the modifications proposed to a particular licensee's licence.
43. Therefore, each current licensee should, in particular, compare its ICT licence with the template set out at **APPENDIX 2** – and provide its comments accordingly.

E.2 Proposed Changes

44. In the following paragraphs 49 to 53, the Office summarises the proposed amendments to the radio broadcasting licence template, as set out at **APPENDIX 1**.
45. These paragraphs aim to describe the material modifications that are proposed to be made to the radio broadcasting licence template – as indicatively shown in **APPENDIX 1** and as set out as the draft determination in **APPENDIX 2**.
46. Noting that Spread the Word’s licence was issued subsequent to the establishment of OfReg, some of the modifications proposed below have already been made in that Licence – which includes references to the Office, references to administrative determinations, insertion of licence conditions relating to change of control and applicable sections of the ICT Law.
47. Generally, minor typographical or contextual amendments have been proposed to the template, which are not reflected in the narrative below but which are set out in the **APPENDICES**, amendments to the Table of Contents have been proposed to reflect the reordering of certain identified licence conditions, and amendments have been proposed to reflect that it is the Office now empowered to grant ICT licences.
48. In addition, references to the Office issuing a directive, rule or regulation have been amended in places to refer to include the issuance of an administrative determination.
49. In the draft radio broadcasting licence template provided at **APPENDIX 1**, the Office has tracked the proposed following modifications, which are also reflected in the draft administrative determination at **APPENDIX 2**:

The Licence

- a. In **Table of Contents**, to make appropriate amendments to reflect the rearrangement and retitling of certain identified Licence clauses;
- b. the **Term** of the licences proposed to be **five years** – which reflects the Terms of the current Licences and which the Office considers reasonable to maintain;

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- c. in **Condition 1.1**, to add definitions for “*Confidentiality Regulations*”, “*Control*”, “*Dispute Resolution Regulations*”, “*Emergency Organisations*”, “*ICT Law*”, “*Information Services*”, “*Office*”, “*Ultimate Controller*” and “*URC Law*”; in particular, the definition of “*Information Services*” is proposed to set out a service provided by the Licensee to the User to provide that User with current and accurate information about the Licensee and its ICT Services, and includes such a service provided by electronic means (“*by electronic means*” as further defined for the purposes of the definition);
 - d. in **Condition 1.1**, to delete the definition for “*ICTA Law*”;
 - e. in **Condition 1.2 (g)**, to add a reference to definitions in the ICT Law and the URC Law;
 - f. in **Condition 2.1**, to clarify the obligation to “*establish, operate and maintain the Licensed ICT Networks and/or provide the Licensed ICT Services*” and to comply with the Conditions of the Licence as well as “*all decisions, determinations, directions, orders, regulations, resolutions and rules made by the Office, and all applicable Laws and regulations of the Cayman Islands*”;
 - g. in **Condition 2.5(a)**, to add the requirement that the Licensee be able to respond in an accurate manner to the information requirements of the Office;
 - h. In **Condition 2.5(b)**, to clarify that the required management systems and management be “*appropriate*” and that that management, including the officer of the Licensee, can legally commit the Licensee, by being “*duly authorised to act on behalf and bind the Licensee*”;
 - i. in **Condition 2.6**, to clarify that the binding representations of the Licensee include “*any undertakings given by the Licensee*” in its ICT licence application, and that material deviation from those representations, including such undertakings, would now be considered fundamental breaches of the Licence the consequence of which may be the revocation of the Licence;
 - j. in **Condition 3.1**, to clarify that the Licence Fees are payable for “*the establishment, operation and management of the Licensed ICT Networks and/or provision of the Licensed ICT Services,*” similar to the change proposed to Condition 2.1;

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- k. to delete the former **Condition 3.2** which specified that the Licence Fees for each class of Licensee would be non-discriminatory, as this was not an obligation appropriate to be established in Licences;
 - l. to divide the former **Condition 4.1** into two new Conditions - 4.1 and 4.2 for clarification, and to add the requirement that the Licensee provide the applicable documents, accounts, returns, estimates, reports or other information including where they are in the control of Affiliates;
 - m. in **Condition 4.4** (formerly Condition 4.3), to clarify that the scope of the examination, investigation or audit conducted under that Condition includes the Licensee’s compliance with all applicable Laws and regulations of the Cayman Islands, not just the ICT Law;
 - n. in **Condition 4.9** (formerly Condition 4.8), to change the form of the procedural instructions from a “*direction*” to a “*notice*”, for clarity;
 - o. in **Condition 4.10(c)** (formerly Condition 4.9(c)), to clarify that the requirement to provide information applies to *all* audits, not just a “*public interest*” audit, which was an undefined term only referenced in this condition;
 - p. in **Condition 5.1(b)**, to clarify the types of obligations to which the Licensee must comply;
 - q. to add new **Conditions 5.2 through 5.4** to require the Licensee to (1) inform the Office when it becomes aware of a potential breach of the ICT Law, URC Law or Licence as applicable, (2) ensure it has access at all times to adequate resources and systems and (3) obtain prior written consent for contracts or commercial arrangements with an “*Ultimate Controller*” (see new definition in Condition 1.1) – which are obligations already reflected in **Hurley’s TV Ltd’s** licence¹⁶ and, in part, in Spread the Word’s licence;
 - r. in **Condition 6.1(a)**, to clarify that the notice to the Office must be made “*as soon as practicable*” in order that the Office is made aware of potential impacts on the Licensee’s operation of its ICT networks and provision of its ICT services;
 - s. to insert the words “*within one hundred and eighty (180) calendar days of the end of the Licence Term, but no later than three months before the determination of the Licence, requesting a renewal of*

¹⁶ <http://www.icta.ofreg.ky/hurleys-tv-ltd>

this Licence” at the end of **Condition 7.2** – to provide an appropriate time for the Office to consider the application prior to the determination of the Licence;

- t. to insert the words “*Within the one hundred and eighty (180) calendar days provided for in **Condition 7.2***” at the beginning of Condition 7.3 – to provide a time by when the Office should respond to a notice made under **Condition 7.2**;
- u. to rename Part II of the Licence to be “*General Provisions*” and to rename Part III to be “*Service Obligations*”;
- v. to move the former **Condition 8** (“*Universal Service*”) to Part III, to renumber it as **Condition 16** (and to renumber all other Conditions accordingly), and to simplify the text of the Condition;
- w. to combine the former Conditions 9.1 and 9.2 into the new **Condition 8.1** and to clarify that the relevant standards and/or specifications are standards and/or specifications to “*establish, operate and manage the Licensed ICT Networks (including ICT Network equipment) and/or provide the Licensed ICT Services,*” similar to the change proposed to the text of **Condition 2.1**;
- x. in **Condition 8.2** (formerly Condition 9.3), to replace “*Confidentiality Rules*” with the new defined term “*Confidentiality Regulations*”;
- y. in **Condition 9.1** (formerly Condition 10.1) to reference “*Information Services*” as a term defined in **Condition 1.1**;
- z. in **Condition 9.3** (formerly Condition 10.3), to clarify that the Licensee must comply with the requirements set out in Annex 5;
- aa. in **Condition 9.4** (formerly Condition 10.4) to clarify that the Licensee, including its terms and conditions for the provision of its ICT service, are subject to the Office’s Dispute Resolution Regulations or such other regulations, rules or conditions as the Office may prescribe;
- bb. in **Condition 9.5** (formerly Condition 10.5), to replace the obligation to “*develop listener feedback procedures*” with the obligation to “*develop Terms of Service*” and the obligation to comply with such procedures with the obligation to comply with “*the Audience Feedback Procedures in Annex 5*”;
- cc. to add the new **Conditions 9.7 and 9.8** to require the Licensee to provide the terms and conditions of service, as applicable, to

subscribers, to provide service in accordance with such terms and conditions of service, and to comply with applicable laws, directives and regulations of the Office in respect of such terms and conditions;

- dd. to delete the former **Condition 11** (“*Regulatory Compliance*”) as it is a duplication of obligations set out elsewhere in the Licence and applicable legislation;
- ee. to move **Conditions 10** (“*Assignment*”), **11** (“*Licence Commencement Date*”), **12** (“*Amendments*”) and **13** (“*Compliance with Laws*”) (formerly Conditions 12, 13, 14 and 15, respectively) from Part III to Part II to reflect their status of General Provisions;
- ff. to delete former **Condition 12.2** to reflect recent amendments to section 27 of the ICT Law;
- gg. to insert the words “*as amended from time to time*” at the end of the first sentence of **Condition 13.2** - to reflect that the reference is to the referenced subject-related law as amended.
- hh. in **Part III** (“*Service Obligations*”), to add the new **Conditions 14** (“*Content Standards*”) and **15** (“*Local Content*”) clarifying the Office’s powers to regulate broadcasting content (both of which are considered further below at paragraphs 55 to 56 of this consultation document);
 - ii. to add the new **Condition 17** (“*Significant Market Power*”) to reflect the Office’s power to impose specific conditions of licence on sectoral providers determined to have significant market power in one or more relevant markets;

ANNEX 1B

- 50. In **Annex 1B** of the draft radio broadcasting licence template, when referencing Caymanian participation, the Office proposes to replace the word “*of*” with the word “*from*” – to clarify that the obligations apply throughout the Term of the Licence.

ANNEX 2

- 51. In **Annex 2** of the draft radio broadcasting licence template, the Office proposes:

Definitions

- a. to insert new definitions for “*Allowable Expenses*”, “*Statement of Cash Flows*”, “*Statement of Comprehensive Income*”, “*Statement of Financial Position*” and “*Wholesale Services*”;
- b. to amend the definitions of “*Annual Revenue*” and “*Quarterly Revenue*” to refer more specifically to the new definition of “*Allowable Expenses*”;
- c. to reflect the amended definitions of “*Annual Turnover*”, “*Audited Financial Statements*” and “*Quarterly Turnover*” that were inserted into relevant licences on 3 October 2013 (as discussed in paragraph 17 above), such amendments intended to clarify what monies need to be reported and allow the Licensee to choose what level of Audit is needed;¹⁷
- d. to clarify, in the definitions of “*Annual Turnover*” and “*Quarterly Turnover*”, that turnover includes “*any fees derived from the use by the Licensee or a third party to advertise, whether directly or indirectly, on the channels broadcast by the Licensee;*”
- e. to clarify, in the definition of “*Licensee Financial Year*”, that the Licensee’s financial year consists of a period of twelve (12) consecutive months at the end of which books are closed and annual financial reports are prepared”.
- f. to amend the definition of “*Audit*” to clarify audits may be performed by independent firms of either “*chartered accountants or certified public accountants;*”, to provide Licensees with greater flexibility as to how they comply with the obligation while ensuring that the appropriate standards are met when doing so;
- g. to amend the definitions of “*Audited Financial Statements*” and of “*Unaudited Financial Statements*” to refer more specifically to the statements required to be filed;
- h. to delete the word “*One*” from the definition of “*ICT Sector One*” to more accurately reflect the scope of the definition;
- i. to amend the definition of “*Regulatory Fee*”, to delete references to July 1, 2003 obligations as such obligations are now historic, and to delete the reference that the fee shall not exceed six hundred

¹⁷ This amendment is already included in the licence of Spread the Word.

thousand Cayman Islands dollars (CI\$600,000.00) for any Regulated Financial Year - as such a sum was determined in 2003 and no longer reflects the Office's appropriate costs, this latter amendment being proposed to ensure that the costs of the Office are shared appropriately throughout all its Licensees (see also paragraph 62 below for further consideration);

- j. to amend the definition of "*Regulatory Fee*", to insert the wording "*relating to the ICT Sector*" in the first sentence, which reflects that, after the coming into force of the URC Law and that the Office regulates other sectors, there needs to be a prior allocation of the Office's costs between the relevant sectors (e.g. ICT, electricity and fuel) before the allocation can be made between licensees in the ICT Sector;

Text

- k. in **clause 1.2 (a)**, to correct a typographical error and to clarify that the Licensee may be required to provide "*a description of how the Licensee arrived at the Quarterly Turnover*,"
- l. in **clause 2.1**, to extend the period of time within which the Office may serve a Dispute Notice to 90 calendar days, in order to provide both parties to any dispute an appropriate time in which to negotiate a settlement prior to moving to a formal dispute;
- m. in **clauses 2.2, 2.3 and 2.4**, to widen the scope of eligible persons who may arbitrate the dispute to include both accountants and attorneys and, in paragraph 2.2, to specify that the dispute is to be determined "*in accordance with the Arbitration Law, 2012 (as may be amended from time to time)*;"
- n. in **clause 2.4**, to clarify further who should pay the fees of the Arbitrator, being "*the party against whom the said Dispute was resolved*";
- o. in **clause 3.1**, to remove an erroneous reference to clause 2.2, to replace the amount specified for the Authorised Frequency Fee per radio transmitter per year with a reference to a fee "*as determined by the Office from time to time for each radio transmitter per channel*," as the previous reference is historic;
- p. in **clause 3.2(b)**, to modify the requirement that the Authorised Frequencies Fee be the same for all transmitters to be "*the same for all the same types of transmitters*," to emphasise that the same types of transmitters should be treated similarly;

- q. to added a new **clause 3.2(c)**, to apply the Authorised Frequency Fee to additional radio transmitters or additional channels added during the Regulated Financial Year;

ANNEX 3B

52. As was previously inserted for Universal Service obligations, the Office proposes to insert a new Annex for the specific conditions applicable to persons who have been determined to have Significant Market Power in one or more relevant markets. See paragraphs 55 to 56 below for further discussions.

ANNEX 5

53. In Annex 5 of the draft radio broadcasting licence template, the Office proposes to replace the “*Listener Feedback Procedures*” with an updated “*Audience Feedback Procedures*”, as further described at paragraphs 64 to 67 below.

E.2.0 Introduction

54. The proposed amendments to the previous Licence Template are set out as underlines/strike-throughs in the document at **APPENDIX 1 for indicative purposes**. While many of the proposed changes set out are not material changes, or are intended to remove obsolete references, the Office considers that, in addition to the explanations set out at paragraphs 44 to 53 above, there are three sets of changes in particular that should be described in further detail.

E.2.1 Local Content, Universal Service, Significant Market Power

55. The ICT Law and the URC Law give OfReg the power to establish conditions of licence relating to, among others, local content, universal service and significant market power obligations. The Office has not done so to date, and the Office notes that such action would be taken following a consultative process and subject to specific procedures set out in those Laws as may be relevant (for example, in sections 7 and 44 to 45 of the URC Law and in sections 55 to 57 and 59 to 64 of the ICT Law).
56. To provide for the Office to establish such licence conditions in the future, the Office proposes as part of this consultation exercise to include **Conditions 15 through 17** and **Annexes 3A and 3B** to facilitate their

implementation, as set out in the draft administrative determination. While the Office notes that the licences currently issued to the Radio Broadcasters already contain certain conditions or annexes applicable to universal service or local content matters, the Office considers it appropriate to make such conditions and annexes clearer as to what is intended. The Office intends to insert a question as part of the Office’s broadcasting licence application form, to ask an applicant to set out in general terms how it proposes to comply with its obligations under section 55 ICT Law – which is set out at paragraph 32 of the Office’s Broadcasting Licence application form referenced at paragraph 74 below.

E.2.2 Annex 2 – Licence Fees

57. The Office proposes to make a number of changes to the Annex 2 (“*Licence Fees*”) as part of the proposed radio broadcasting licence template, which are in addition to those made in 2013 (see paragraph 17 above for a description and paragraph 58 below for an explanation).

Definitions

58. In 2013, the Authority modified Annex 2 of the licences of all of the Radio Broadcasters. These changes clarified the definitions of “*Annual Turnover*” and of “*Quarterly Turnover*”, and provided the Licensees with greater flexibility in the form of Annual Financial Statements they were required to provide – such changes are reflected in the **Appendices**. In addition to those changes, in the Annex 2 to the proposed radio broadcasting licence template, the Office proposes to retain the flexibility in respect of Annual Financial Statements, and to make further changes to the definitions of Annual and Quarterly Turnover, by removing the references to “*receipts*” and by clarifying that “*Turnover*” includes any fees derived from the use by the licensee or a third party to advertise, whether directly or indirectly, on the channels broadcast by the licensee.
59. The Office is also proposing to amend the definitions of “*Annual Revenue*” and “*Quarterly Revenue*” by modifying the types of expenses which may be deducted from “*Annual Turnover*” and “*Quarterly Turnover*” for the purposes of calculating licence fees, and which are to be defined as “*Allowable Expenses*”. While payments made to other licensees for interconnection, infrastructure sharing and wholesale services may be deducted, settlement payments made to international carriers for international traffic no longer would be. The deletion of the reference to such settlement payments is proposed as a large majority of licensees do not claim deductions for such settlement payments made to international carriers, which the Office considers potentially creating an unfair disadvantage for those licensees in terms of their contribution to the

payment of Licence Fees for the ICT Sector. The effect of the inclusion of settlement payments, if it were maintained, could also mean a misallocation of the regulatory costs of the Office among relevant ICT licensees. A new definition for “*Wholesale Services*” is also proposed to reference specifically that it applies to the ICT services provided by the licensee to an Other Licensee as required under its licence or an order, decision, determination, rule or regulation of the Office.

Dispute Resolution procedures

60. The dispute resolution procedures in section 2 of Annex 2 currently require the Office to serve a dispute notice within 28 days of receipt of the licensee’s financial statements. This has proved problematic in a number of cases due to timing issues; between being provided the relevant information from licensees and trying to resolve any identified matters informally with licensees; the Office proposes to extend this period to 90 calendar days. The Office considers that this extension will provide an appropriate period of time during which the Office and the licensee can attempt to resolve any matters without having to engage in the more formal arbitration process.
61. Moreover, and noting that Annex 2 deals with both legal and accounting issues, the Office proposes to widen the range of potential independent arbitrators by including lawyers in addition to accountants, in order to provide the parties with the expertise necessary to address legal in addition to accounting issues. The Office also proposes to clarify which party shall bear the costs of the dispute resolution process, being the party “*against whom the said Dispute was resolved.*”

Regulatory Fee Cap

62. The Office proposes to remove the cap on the “*Regulatory Fee*” payable by a licensee, to ensure that the fees collected cover the costs of regulating the ICT Sector. This is an historic sum that was set in the first ICT Licence issued by the Authority in 2003 and then copied into subsequent licences. Since then, the ICT Sector has grown materially in size, including more licensees entering the ICT Sector, and the general costs of regulating the ICT sector have increased not least due to inflationary pressures. Noting the developments in the ICT Sector, and that the Office’s costs should be shared across the ICT licensees in a proportionate manner based on each licensees’ revenue as set out, the effect of the cap if it were maintained could mean a misallocation of the regulatory costs of the Office among relevant ICT Licensees.

Authorised Frequencies Fees

63. The Office also proposes to modify the provisions for determining and charging Authorised Frequencies Fees. These changes would remove the limit on the Authorised Frequencies Fees, which has not been reviewed since 2003, and would give the Office the flexibility to charge different amounts for different types of frequencies or transmitters. The flexibility relates to charging different amounts for different transmitters, in other words, allocating those costs differently among cell, microwave and radio transmitters, for example, in a more appropriate manner where relevant (e.g. to better reflect different costs of administration).

E.2.3 Annex 5 – Audience Feedback Procedures

64. The licences issued to the Radio Broadcasters currently include an Annex 5 (“*Listener Feedback Procedures*”) which sets out requirements for handling listener complaints and comments. The Annex 5 (“*Audience Feedback Procedures*”) in the proposed radio broadcasting licence template is broadly consistent with the current Annex 5 but the proposals seek to clarify and strengthen in places those procedures to ensure that appropriate Audience protections are in place, such as:
- defining “*Audience*”, “*Audience Feedback*”, “*Complaint*”;
 - setting out more specifically how a Licensee is to accept, handle and respond to Audience Feedback (including complaints);
 - clarify such things as the Audience knowledge and accessibility of such feedback procedures;
 - provide for Audience protection measures, to include that every person authorised to perform work on behalf of the Licensee to carry an identification card (which includes that person’s name/picture, who that person works for, and a contact number to check the authenticity of that person), and the Licensee having a published policy on the protection of Audience information; and,
 - provide for relevant Licensee information to be retained for an appropriate period of time.
65. Additionally, the proposed Annex 5 would specify a four-week timeframe within which Licensees are to handle and respond to complaints and comments. It would also clarify that Licensees must comply with applicable data protection laws and must establish policies and procedures to do so, noting that the Cayman Islands Data Protection Law 2017 is intended to come into effect in 2019.

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66. The proposed Annex 5 would also impose time limits for the retention of information, including keeping anonymised information on complaints for a period of one (1) year and retaining recordings of broadcasts for a period of twenty-eight days after its broadcast, which is in line with section 57 (1) of the ICT Law.
67. The Office considers that such amendments are appropriate either to reflect the Licensees' current good practices or strengthen Audience protections, being appropriate in order to protect the short and long-term interests of the Licensees' Audience. The Office considers that, subject to this consultation, the costs of implementation of the proposed amendments will not be material over and above what is already required and, in any event, any additional costs for implementing each of the proposed amendments to Annex 5 are proportionate given the aim of each suggested amendment. The Office intends to insert a question as part of the Office's broadcasting licence application form, to ask an applicant to set out in general terms its proposed approach when receiving, acknowledging and dealing with Audience Feedback (including complaints) – which is set out at paragraph 30 of the Office's Broadcasting Licence application form referenced at paragraph 74 below.

F. Section 7 Statement

68. As noted above, **section 7 (1)** of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall "*issue the proposed determination in the form of a draft administrative determination.*" The Office considers the draft licence template set out in **APPENDIX 2** to be a "*draft administrative determination*" for the purposes of section 7(1).

G. Consultation Questions

69. Based on the above, including the draft template for radio broadcasting licences as set out for indicative purposes at **APPENDIX 1** and as a draft determination at **APPENDIX 2**, the Office invites all interested parties to submit their comments, with supporting evidence, on any or all of the following questions:

QUESTION 1: Provide your views on the proposed changes to the radio broadcasting licence template.

QUESTION 2: Are there other aspects of the radio broadcasting licence template which should be amended? If yes, provide the

proposed amendments as well as a detailed explanation of the changes and the reasons for the changes, and documents in support, if applicable.

QUESTION 3: Provide your views on any other matters you consider relevant to this Consultation.

H. How to Respond to This Consultation

70. All submissions on this consultation should be made in writing, and must be received by the Office by **5 p.m. on 18 November 2017** at the latest. When responding, please repeat the entire question above the corresponding response to each question.

71. The Office reserves the right not to accept comments submitted after this deadline.

72. Submissions may be filed as follows:

By e-mail to: consultations@ofreg.ky

Or by post:
Utility Regulation and Competition Office
P.O. Box 2502
Grand Cayman KY1-1104
CAYMAN ISLANDS

Or by courier:
Utility Regulation and Competition Office
3rd Floor, Alissta Towers
85 North Sound Road
Grand Cayman
CAYMAN ISLANDS

Or by fax to: (345) 945 8284

73. OfReg expects to issue a Determination on the matters addressed by this Consultation by **31 December 2017**, after which the Office will commence the radio broadcasting relicensing exercise, more on which is below.

I. Radio Broadcasting Licensing - Next Steps

74. Pursuant to **section 26 (1)** of the ICT Law, the Office intends to commence the radio broadcasting relicensing exercise in **early January 2018** on completion of this consultation process and the finalisation of the radio broadcasting licence template, and expects all such licensing applications to be received to be licensed on that basis by the Office **no later than 31 January 2018**, such applications to be in the format as set out in the Broadcasting Licence application form at <http://www.ofreg.ky/ict/application-forms> (which includes the proposed amendments referenced in this consultation document).
75. Once the relicensing application has been received by the Office, including the cleared application fees,¹⁸ the Office will contact the particular Licensee to discuss its application: in particular, in relation to the ICT Services and ICT Networks to be provided, level of Caymanian participation, rollout and coverage, frequencies, power and transmitters to be used.
76. As set out in paragraph 29 above, in order to allow sufficient time to complete the renewal process outlined, and to ensure that the referenced Radio Broadcasters hold current Licences, the Office notes that it has extended the duration of the radio broadcasting licences until **28 February 2018**.

¹⁸ <http://www.icta.ofreg.ky/application-fees>

Appendix 1: Draft Radio Broadcasting Licence Template – Redline Version, prepared for illustrative purposes

Appendix 2: Draft Radio Broadcasting Licence Template – Draft Determination