

CABLE & WIRELESS
CAYMAN ISLANDS LIMITED

Response to

ICT 2023 – 3 - Consultation
Revision of the Fees for Mobile (Cellular) and
Fixed Wireless Licences Spectrum

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1. INTRODUCTION

1.1 Cable and Wireless (Cayman Islands) Limited, t/a Flow is pleased to provide comments on the Office's Consultation ICT 2023 – 3 – '**Consultation Revision of the Fees for Mobile (Cellular) and Fixed Wireless Licences Spectrum**' (the Consultation Document), published October 13, 2023 with responses required by November 17, 2023.

1.2 Flow expressly states that failure to address any issue raised in the Consultation Document does not necessarily signify its agreement in whole or in part with any position taken on the matter by the Office or respondents. Flow reserves the right to comment on any issue raised in the Consultation Document at a later date.

1.3 Kindly send any communication in relation to this Consultation Document to:

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2. PROCEDURE ON CONSULTATION DOCUMENT AND DRAFT DETERMINATION

2.1 Before addressing the substantive matter of the Consultation, Flow brings to the attention of the Office Section 7 of URCA Act (2021 Revision) "**the Act**"

Duty to consult

7. (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 (emphasis added)

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

(2) The Office shall, within six months of the date of commencement of this section, publish its procedures for seeking comments, which shall include —

(a) how the Office will issue draft administrative determinations under subsection (1);

(b) how consultations will be published;(emphasis added);

(c) the minimum time for responding to consultations;

(d) how the Office will publish comments or summaries of comments received;

(e) guiding principles as to how the Office will consider comments received and how it will publish its reasons for its decisions after it has considered those comments.....

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.

2.2 OF 2017 – 1 – Determination Consultation Procedures Guidelines (the Guidelines) published July 7, 2017 states at:

J. Decisions Made by the Office Following a Consultation

33. The Office will review and assess each response carefully and with an open mind. All submissions will be considered and analysed. The Office’s analysis of the responses will be included with its administrative determination (i.e. its statement). The statement by the Office, which will also serve as a report on the consultation, will provide a general review of the submissions that were given during the consultation process. It will detail the Office’s response to the submissions, and give reasons for its final position.

34. The Office will publish its administrative determinations in accordance with the URC Law, by publishing the m on its website and maintaining copies at its principal office for inspection by the public on request during normal business hours without charge.

2.3 Flow refers to section C.14 of the Consultative Document in which the Office states that proposed changes are considered draft determinations and the Office welcomes feedback which is to be considered when making the final determination and at section D.7, the paragraph is headed “Conclusions and Proposals (Draft Determination)”. Flow further refers to section F.51 in which the Office states “*The Office considers that because the proposed changes are published as part of this consultation, this consultation will be conducted as a single phase consultation over a period of thirty (30) days*”. In light of the above procedures as specified in the Act and Guidelines, Flow seeks clarity as to whether the steps for this determination are in accordance with the Act as the Consultation document does not state that the Office will provide guiding principles as to how it will consider comments received prior to making a determination. Further, Flow ought to be given the opportunity to make written representations should Flow object to the basis for the proposed determination. The Office therefore appears to be acting with procedural impropriety.

3. EXISTING POLICY ON MANAGEMENT AND ALLOCATION OF SPECTRUM DOES NOT SUPPORT THE APPROACH OR FORMULA PROPOSED BY THE OFFICE

3.1 There is an existing policy, **Decision and Further Process – Policy for the Management and Allocation of Spectrum in the Cayman Islands** (the Existing Policy), dated March 6, 2008. No reference is made to the Existing Policy itself in the Consultation Document, although it appears that reference is made to some elements of the Existing Policy.

3.2 The Existing Policy states:

6. When allocating spectrum, the Authority attempts to balance the following, sometimes competing, requirements:

- *To encourage the provision of quality and innovative ICT services to consumers;*
- *To satisfy Licensees’ spectrum requirements;*
- *To ensure the effective and efficient use of spectrum, a scarce national resource; and*
- *To promote sustainable competition in the ICT sector.*

7. Of the se requirements, ensuring the effective and efficient use of spectrum has been considered the most important. Accordingly, wherever possible, spectrum has been allocated on a non-exclusive basis. This maximises spectrum efficiency by allowing, for example, one Licensee to

operate a point-to-point back-haul system in one part of the country, with another Licensee operating a similar system at the same frequency at another location. A second example is the deployment of a “canopy” system that is designed to detect and operate on unused frequencies. Licensees have been encouraged to adopt a “good neighbour” policy, making each other aware of where each intends to operate within a particular spectrum band, and ensuring that interference does not occur. The Authority also consults with existing users of a particular spectrum band before authorising an additional user.

Licensing Issues

45. *Spectrum in the Cayman Islands has never been auctioned or sold, but rather has been assigned on a first-come first-served basis, provided the applicant can demonstrate that: (emphasis added)*

a. The spectrum will be used to provide, directly or indirectly, new or enhanced ICT services which will be of benefit to the Cayman Islands.

b. The new or enhanced services will be commercially launched within a timescale acceptable to the Authority.

c. Efficient use will be made of the spectrum.

d. His use of the spectrum will not cause interference with the systems of other Licensees or third parties.

e. His use of the spectrum is consistent with the allocations recommended for ITU Zone

f. The assignment will not adversely impact the development of competition in the ICT sector.

46. *The Authority has no plans to change this procedure.* (emphasis added)

3.3 To date the Office is still guided by the Existing Policy. Despite that the Office proposes in paragraph A.5 that it intends to ‘...*update spectrum fees for these services and any associated policies or regulations*’, the Consultation Document has considered only increases in spectrum fees and has not proposed any changes to associated policies or regulations or the Existing Policy..

3.4 Paragraph 7 of the Existing Policy sets out that efficient and effective use of spectrum is achieved by *ensuring the effective and efficient use of spectrum has been considered the most important. Accordingly, wherever possible, spectrum has been **allocated on a non-exclusive basis**. This maximises spectrum efficiency by allowing, for example, **one Licensee to operate a point-to-point back-haul system***

in one part of the country, with another Licensee operating a similar system at the same frequency at another location. A second example is the deployment of a “canopy” system that is designed to detect and operate on unused frequencies”(emphasis added). The Existing Policy does not propose that efficient and effective use of spectrum is to be accomplished by increasing spectrum prices as the Office proposes in the Consultation Document.

3.5 In addition the Office states at paragraph B.12 of the Consultation Document that:

Further, the current charging principles require that the total amount collected in each Regulated Financial Year for Authorised Frequency Fees from all Licensees shall not exceed the Office’s annual estimated cost of electromagnetic spectrum management and other related activities. (emphasis added)

3.6 The Existing Policy and the current charging principles do not agree with the approach or formula proposed by the Office for setting spectrum fees.

4. SPECTRUM COSTING APPROACH

The Office’s Approach

4.1 At paragraph D.16, the Office asserts a number of ills of the current spectrum fee structure:

- *Penalises operators each time they improve coverage through adding a new base station to their network, or new sectors or frequencies to an existing cell site;*
- *Could more fairly reflect the amount of spectrum that is being used by different operators and different technologies;*
- *Could differentiate between frequency bands with different characteristics and utility;*
- *Can mean that operators could be charged different amounts for access to the same unit of spectrum;*
- *Means that spectrum prices for an operator are not transparent in that they cannot be calculated by a third party without having detailed information about an operator’s network;*
- *Could be improved by adopting approaches which are common internationally (and thus could better reflect ‘best practice’).*

4.2 This is a false narrative because no network operators would consider any of those listed to be ills as compared to the significant increase in spectrum fees that the Office is proposing. The best practices

that the Office is referring to are the practices that policymakers in other countries believe is best for their people and their economies. Is the best practice in those countries, best for the Cayman Islands? Of note is that, notwithstanding the spectrum formula used in any country, no third party will know what an operator pays for spectrum except that information be disclosed.

4.3 The Office, then, at paragraph D.17, list: *The basic principles of efficient spectrum pricing (i.e. charging fees for the use of the radio spectrum) are usually taken to include the following premises:*

a) Prices should reflect the amount of spectrum being used;

b) In the absence of excess demand or scarcity, prices should be set to recover the cost of managing the spectrum;

c) Where there is excess demand or scarcity of supply, positive pricing may be used as a tool to encourage economic efficiency;

d) Prices should be based on objective factors and all licence holders in a given frequency band should be treated on an equitable basis;

e) The basis on which prices are calculated should be open and transparent

4.4 The Office then goes about assessing whether the charging method for spectrum in the Cayman Islands agrees with the basic principles of *efficient spectrum pricing*. The Office concludes or appears to conclude that:

- i. The amount of spectrum being used is not fairly reflected;
- ii. There is *arguable no excess demand* but that that possibility could arise if there were to be a new network operator.
- iii. *The Office currently aims to recover solely the cost of managing the spectrum from licensees and as such, no positive pricing exists. Only in the case that it becomes apparent that there is scarcity or excess demand would it therefore be appropriate to consider any form of positive spectrum pricing.*
- iv. *The current pricing structure is set on objective factors and arguably the treatment of all users within a frequency band is therefore equitable.*
- v. *Whilst the charging structure could be argued to be open and transparent, the resulting fees arguably are not.*

4.5 Having done this assessment, the Office then looks at a set of benchmark countries, and proposes the following formula for increasing spectrum prices:

$$\text{Fee} = \text{SU} \times \text{BW} \times \text{BF}$$

Where:

- *SU is the Spectrum Unit, which will be CI\$75.00 for the year 2024. This value will be index-linked annually based on the Consumer Price Index (CPI) value published by the Cayman Islands Economics and Statistics Office (ESO).*
- *BW is the bandwidth of spectrum used, based on multiples of 200 kHz channels. A duplex assignment will count as two channels.*
- *BF is a band factor, to recognize the relative value and utility of different parts of the radio spectrum and is defined as in the table below.*

Frequency Range	BF
$f < 1 \text{ GHz}$	1.5
$1 \text{ GHz} \leq f < 2.3 \text{ GHz}$	1
$f \geq 2.3 \text{ GHz}$	0.5

No Impact Analysis

4.6 Flow cannot support the approach, formula or costing methodology proposed by the Office because it is not supported by the Existing Policy and current charging principles. The Office has misdirected itself to consider a costing methodology which is at odds with its own Existing Policy. Flow's further comments are without prejudice to this fundamental position.

4.7 Paragraph D.6.38 of the Consultation encapsulates the perplexity of this consultation, where the Office states '*.It is worth noting that a payment structure which includes the number of sites an operator has as a factor in their spectrum fees is generally regarded as counterproductive if a **policy objective** is to*

ensure universal coverage or to achieve wider roll-out of wireless broadband services.' (emphasis added). That is the price/ cost of spectrum is driven by policy objectives for the development of a country, and there is an Existing Policy for the Cayman Islands, which does not support the approach of the Office. The Consultation Document lacks direction because there is no policy directing it and the Existing Policy, as a whole, has been ignored. It is policy, laws and regulations that informs the approach to costing spectrum. The cost for spectrum is not driven first by a formula, but by a policy and in this case the Existing Policy. The Office's approach is untethered from the Existing Policy. As such, then, the driver for the Office's review of spectrum fees is not based on anything to do with the Existing Policy, industry, consumer or economic development but an opportunity for the Office to increase its revenues, which is not supported by the Existing Policy.

4.8 The Consultation Document makes no attempt to assess the impact of the proposed spectrum fee formula on the aggregate increase in cost to industry, despite the fact that the Office already has all the information it needs to do so. The Office's proposed formula for spectrum fees would increase Flow's payments for existing spectrum by over 400%, moving spectrum fees from tens of thousands to hundreds of thousands. And while, in passing, the Office remarks that increased cost of spectrum is likely to be passed on to customers and that the Office has a duty of care to customers, the reality of what that would mean for the cost of services to residential customers; enterprise and business customers; and Government ministries and agencies is not developed by the Office. Nor the reality of the chilling effect increased spectrum fees would have on network investment and technological advancement for the Cayman Islands. The Consultative Document then appears as an academic construct devoid of any substance of what the proposal means for the actual stakeholders who will have to pay the costs – operators, businesses, Government, and residential customer. The only stakeholder that would benefit from the Office's proposal is the Office.

4.9 Further, having presented no impact assessment of its proposed increase in spectrum prices, the Office hastens to, contrary to existing practice, to shorten the time allowed for consultation by proposing that *'The proposed changes we are consulting on are to be considered the draft determinations in this matter and the Office welcomes feedback on the proposals which the Office will consider when making a final determination'*, which Flow has addressed in Section 2 of its response. The Office reinforces its

haste to increase prices to all stakeholders by embedding in the definition of the variable 'SU' that *SU is the Spectrum Unit, which will be CI\$75.00 for the year 2024* (emphasis added).

GSMA Findings

4.10 The findings of the GSMA, which is readily accessed online, states ¹*The GSMA's spectrum team has, along with GSMA Intelligence and NERA Economic Consulting, done analysis that provides strong evidence to directly link high spectrum pricing with slow network rollouts, reduced network quality and poorer mobile coverage. Two global reports and deep dives in Africa, Latin America, Europe, and developing countries show the negative impacts. The 'Impact of Spectrum Prices on Consumers' global report confirms that poor spectrum policies lead to millions of people being left unable to access mobile broadband services or experience reduced network quality. The policies include ones that inflate spectrum or delay spectrum assignments.* (emphasis added).

4.11 The GSMA also found that:

²*When spectrum costs are not aligned with market revenues, the profitability of the sector is compromised, which has consequences on future investment decisions. For example, if a mobile operator becomes less profitable in comparison to businesses in other industries and mobile operators in other countries, the cost of capital in the long term will increase and impact future decisions regarding investment and consumer pricing. Even when spectrum costs are financed internally, mobile operators are often part of big multinational groups with centrally managed budgets. High recurring spectrum costs in a country can lead to a reduction, delay or change in investment plans.*

4.12 Flow concurs with the findings of the GSMA with regards to the chilling effect of high spectrum prices and the effect of higher prices on decisions on where to invest by large multinational groups. Flow has seen no consideration by the Office of the impact on investment decisions by operators of an over 400% proposed increase in spectrum prices.

¹ [GSMA | Spectrum Pricing Helps Boost Mobile Services - Spectrum](#)

² [Spectrum management in Latin America \(gsma.com\)](#)

5. EFFECTIVE AND EFFICIENT USE OF SPECTRUM

5.1 Consistent with the Existing Policy, the Consultation Document has maintained that effective and efficient use of spectrum is the most important principle. Yet the Office has not demonstrated how the proposed new fee structure will promote the effective and efficient use of spectrum. In fact, if the resulting cost of the spectrum exceeds the amount necessary for the management of the spectrum by the Office, it will be detrimental to the principle, as there will be less capital available to operators for real technology advancement since those funds would be diverted to the Office and unavailable for investment by operators.

6. FLOW'S LICENCE

6.1 Flow's Licence establishes the following:

Annex 2 – Licence Fees

3.1 By the first day of each Regulated Financial Year, the Licensee shall pay to the Office a fee (the “**Authorised Frequency Fee**”) as determined by the Office from time to time for each radio transmitter per channel used or to be used by the Licensee within that Regulated Financial Year.

3.2 The Authorised Frequencies Fee is to be set on the following principles:

3. AUTHORISED FREQUENCIES FEE

(a) The total amount collected each Regulated Financial Year for Authorised Frequency Fees from all Licensees (including the Licensee) shall not exceed the Office's annual estimated cost of electromagnetic spectrum management and other related activities.

(b) The Authorised Frequencies Fee shall be set to be the same for all the same types of transmitters used or to be used, irrespective of the use of the transmitter or the spectrum used by the transmitter.

(c) If, during the Regulated Financial Year, additional radio transmitters or additional channels are used by the Licensee that were not included in the Authorised Frequencies Fee payment provided for above at the start of the Regulated Financial Year, the Authorised Frequencies Fee for such new radio transmitters and channels apply for that regulated Financial Year with no proration of that fee and should be paid accordingly.

6.2 The Office has provided no information in the Consultation Document that the proposed formula *shall not exceed the Office's annual estimated cost of electromagnetic spectrum management and other related activities*. In accordance with the requirements of its Licence, Flow requests that the Office satisfies the requirement of Flow's Licence that the proposed formula '*shall not exceed the Office's annual estimated cost of electromagnetic spectrum management and other related activities*.'

6.3 Flow pays 6% of its revenues to the Office for Licence fees. In addition, Flow pays Regulatory Fees to the Office. Except for one other market in which Flow operates, the Licence fees in the Cayman Islands is twice the average of 3%, typical of the markets in which Flow operates. The Office's proposed formula for spectrum fees would increase Flow's payments for existing spectrum by over 400%, however spectrum fees do not stand alone. From the historical development of the market in Cayman, the existing spectrum pricing principles are premised on high licence fee payments so any increase in spectrum fees would require a reduction in licence fees. This is similarly the case in other Overseas Territories, which have onerously high Licence fees and relatively marginal spectrum fees.

7. CONCLUSION

7.1 Flow cannot support the approach, formula or costing methodology proposed by the Office because it is not supported by the Existing Policy and current charging principles. Further, based on the historical evolution of the telecommunications market, it is apparent that relatively marginal spectrum prices rely on high Licence fees. If spectrum fees are increase, Licence fee must be reduced. And it is required that the Office demonstrates that the proposed fees '*shall not exceed the Office's annual estimated cost of electromagnetic spectrum management and other related activities*.'

END