



# STRICTLY PRIVATE & CONFIDENTIAL

MINUTES OF GENERAL BOARD MEETING  
HELD 10 APRIL 2025

BOARD SECRETARY  
OFREG



# Utility Regulation and Competition Office

## Board Meeting Minutes – General Board Meeting #04 of 2025

### Minutes

#### Meeting Details

<b>Meeting Date:</b>	10 April 2025
<b>Time:</b>	10:19 hrs – 19:12 hrs
<b>Minute Taker:</b>	Joanne Conolly, Board Secretary
<b>Venue:</b>	OfReg Conference Room
<b>Attendees:</b>	<u>OfReg Voting Board Members</u> Samuel Jackson, Chair Natasha Bodden, Deputy Chair Mike Gibbs, Member Frank Balderamos, Member Osbert Francis, Member Wrendon Timothy, Member  <u>OfReg Non-Voting Staff</u> Sonji Myles, ICEO/EDI Alison Maxwell, AGC McCleary Frederick, EDE, for item 3 only
<b>Apologies:</b>	Frank Balderamos, Member

#### Agenda Details

AGENDA OVERVIEW	
1. General	Welcome & Declarations
2. Minutes of Previous Meetings	2.1 General BoD Mtg_#03-20Mar25
3. Sector Matters	3.1 Fuels 3.1.1 Dashboard 3.2 Energy 3.2.1 Dashbaord 3.2.2 CUC Z Factor Rate 3.2.3 CUC 2024 CON 3.3 Water 3.3.1 Committee Meeting 3.4 ICT 3.4.1 Broadcast Content Code 3.4.2 Satellite Services Provider DD 3.4.3 Truth in Advertising Rules DD 3.4.4 RFI's
4. ICEO Report	
5. Legal Advice	5.1 Legal Dashboard 5.2 Anderson and Berry Judgment
6. AOB	6.1 Member Reappointments
7. Adjournment & Date of Next Meeting	4.30pm scheduled finish 08May25

## Meeting Minutes

<b>1</b>	<b>General</b>		<b>1</b>
1.1	Welcome	The meeting, being quorate, was called to Order at 10:19hrs. The agenda was approved as amended.	2
<b>2</b>	<b>Minutes of Previous Meeting</b>		<b>3</b>
2.1	Gen BoD Mtg#3 20Mar25	<i>Approved as amended. All in favour, no objections.</i>	<b>D1</b>
<b>3</b>	<b>Sector Matters</b>		<b>4</b>
3.1	<b>Fuels</b>		<b>5</b>
3.1.1	Dashboard	• Included in the Board folder for viewing.	<b>6</b>
3.2	<b>Energy</b>		<b>7</b>
3.2.1	Dashboard	• Included in the BoD folder for viewing.	<b>8</b>
3.2.2	CUC Z Factor Rate	<ul style="list-style-type: none"> <li>• Board Paper was viewed.</li> <li>• BoD were informed the L2 Resilience Substation has a projected cost of \$10.5M to the consumer.</li> <li>• The BESS project remains unfinished. Some aspects are 'done but mid-work'.</li> <li>• It was pointed out that CUC expended millions of dollars relocating their infrastructure and questioned whether this cost was part of the L2 Resilience Substation project. The need for further clarification was noted.</li> <li>• Appendix #3 of the Board Paper was referred to, where the total project cost of \$10.5M was outlined, with \$971,522 being the specific cost for 2024.</li> <li>• BoD raised concerns about how CUC may be categorising costs, particularly whether they have separated smaller costs for line items that, when combined, exceed the 3% cap for Z factor recovery. BoD emphasised the importance of an audit to ensure these are legitimate expenditures. It was suggested the Z factor approval may only apply to certain elements, or other specific components.</li> </ul> <p><u>BESS and Resilience Substation Decision</u></p> <ul style="list-style-type: none"> <li>• BoD asked for clarification regarding the BESS decision, recalling that it had been approved in 2019 and the connection for the substation was approved in 2022.</li> <li>• It was clarified the BESS project had not yet recovered its costs, due to the Government's failure to approve the duty waiver which amounts to \$9M.</li> <li>• BoD discussed whether CUC should be allowed to charge these costs from consumers based on a lack of duty waiver approval from Cabinet.</li> <li>• A public consultation was suggested on the matter, proposing the draft determination clearly state the costs should not be passed on to consumers.</li> <li>• It was questioned why 2024 costs were recommended for approval while 2025 costs were deferred. It was</li> </ul>	<b>9</b> <b>10</b> <b>11</b> <b>12</b> <b>13</b> <b>14</b> <b>15</b> <b>16</b> <b>17</b> <b>18</b> <b>19</b> <b>20</b>

		<p>confirmed that the 2025 costs related to a different portion of the project and the approval of the resilience substation had been granted in 2022, but some of the costs related to the duty waiver were still unresolved.</p> <ul style="list-style-type: none"> <li>The BoD were of the view the Office should move forward with issuing an RFI to obtain clarity on CUC's legal costs to ensure those were not billed to consumers through the Z factor.</li> </ul>	21
		<p><u>CUC's Request for Costs Recovery</u></p> <ul style="list-style-type: none"> <li>BoD discussed CUC encountering exigent liability with the Government regarding the duty waiver and their request to recover these costs from consumers is under consideration. It was noted the issue of the duty waiver is between CUC and the Cabinet - the Office are not directly tied to this matter in its decision making. It was suggested that even if CUC were allowed to recover their costs, they plan to return the funds to consumers in the event that they obtain the waiver.</li> </ul>	22 23
		<p><u>Language and Communication with CUC</u></p> <ul style="list-style-type: none"> <li>BoD raised concerns about CUC's language in their documentation which seemed to disregard the Board's previous direction. In particular, it was pointed out that CUC's latest communication related to the Temp Gen did not acknowledge the response that the Board had already communicated. This appeared to indicate a stance of disregard for the current BoD decision, stating that they had been relying on prior confirmations from senior management. This would be clarified in future communications.</li> <li>It was further pointed out that reviewing past emails and correspondence from March 2025 regarding the L2 Resilience Substation, confirming that no final decision had been made as of January 2022, indicating no official approval could have been given until after this point.</li> </ul>	24 25 26
		<p><b><u>Actions</u></b></p> <ol style="list-style-type: none"> <li>A draft consultation document regarding the duty waiver issue will be prepared and issued for public feedback, with the goal of ensuring no undue costs are passed onto consumers. BoD would like to see this out by next Wednesday 16 April 2025.</li> <li>The Board Paper in its current form was unable to be considered by the BoD and a revised Board Paper is to be submitted from EDE.</li> </ol>	<b>A1</b>
3.2.3	CUC 2024 CON	<p><u>Evaluation Process and Legal Framework</u></p> <ul style="list-style-type: none"> <li>BoD acknowledged the urgency required on the decision around CON and Temp Gen, as the general public are concerned about possible blackouts.</li> <li>It was decided the matters would not be dealt with as a separate meeting, but rather during the current session, with confirmation from Members they had read CUC's</li> </ul>	27 28 29

		response, and several confirmed their positions remained unchanged.	
		<ul style="list-style-type: none"> <li>As CON and Temp Gen are related – although requiring separate decisions – they can be considered with together.</li> </ul>	30
		<ul style="list-style-type: none"> <li>Concerns included procedural fairness, transparency, release of the ICF report, and its technical advice.</li> </ul>	31
		<ul style="list-style-type: none"> <li>It was noted CUC declined to amend their licence to permit a hybrid CON, limiting available solutions, in spite of their CON suggestions including hybrid proposals.</li> </ul>	32
		<ul style="list-style-type: none"> <li>The Board recognised past confusion from mixed messages around ‘semi-firm’, ‘firm-ish’ capacity and stressed the need for a more structured approach to future energy planning.</li> </ul>	33
		<ul style="list-style-type: none"> <li>Final decision must align with the Electricity Sector Regulation Law and the terms of the relevant Licence.</li> </ul>	34
		<ul style="list-style-type: none"> <li>Staff to advise the BoD whether any content in the ICF report poses regulatory or legal risk if released. BoD to consider publication of the ICF report thereafter in the interests of transparency, provided it aligns with the regulatory framework. To be issued with a formal letter explaining the Office’s legal constraints.</li> </ul>	35
		<u>Clarification on CON and ICF Report</u>	36
		<ul style="list-style-type: none"> <li>BoD reiterated CUC submitted four scenarios under the CON application and the first was selected (Scenario 1), being the only legally compliant option under the current Law and Licence constraints.</li> </ul>	37
		<ul style="list-style-type: none"> <li>BoD were advised any Determination should outline not only the rationale in the draft, but also the additional justification based on CUC’s response and the ICF report – ie with a clear justification, both in terms of technical reasoning and legal obligations.</li> </ul>	38
		<u>Licence Implications</u>	39
		<ul style="list-style-type: none"> <li>BoD cited s26 of the Electricity Sector Regulation Law, which provides that when a generator is awarded additional rights, the existing Licence must be cancelled and replaced with a new one (term not exceeding 25 years). This can be seen as a form of negotiation as any new award would result in a new generation Licence, not a T&amp;D Licence.</li> </ul>	40
		<ul style="list-style-type: none"> <li>The need for amortisation of large capital investments (eg \$25M over 20-25 years) was acknowledged as a driving factor behind Licence terms.</li> </ul>	41
		<u>ICF Report Review</u>	42
		<ul style="list-style-type: none"> <li>BoD referenced page 21 of the ICF report summarising recommendations: <ul style="list-style-type: none"> <li>ICF supported CUC’s proposed capacity needs;</li> <li>They proposed an alternate hybrid CON scenario; and</li> <li>The report emphasised ensuring that PPA</li> </ul> </li> </ul>	43

		<p>passthrough pricing complies with Licence condition 31.</p> <ul style="list-style-type: none"> <li>• There was no objection from the BoD to the ICF report being released, with the caveat that the Office should clearly state: <ul style="list-style-type: none"> <li>- It consulted the report as part of due diligence;</li> <li>- Did not base the final decision solely on its findings; and</li> <li>- The ICF analysis did not address certain Licence constraints, making it an advisory, not determinative, input.</li> </ul> </li> </ul>	44
		<p><u>Licence Constraints &amp; Hybrid CON Discussion</u></p> <ul style="list-style-type: none"> <li>• It was emphasised decisions must be made within the Law and the constraints of the existing Licences.</li> <li>• While a hybrid CON may seem ideal, it is not permitted under current Licence conditions.</li> </ul>	45 46
		<p><u>Public Perception and Communication</u></p> <ul style="list-style-type: none"> <li>• Concern was raised about possible misinterpretation around OfReg appearing to ignore ICF's hybrid recommendation.</li> <li>• Discussion around the information provided to ICF, in light of its report.</li> <li>• It was suggested the ICF report be released with a letter of explanation that the Office is legally restricted and cannot implement certain scenarios.</li> <li>• It was also noted CUC is currently not prepared to amend its Licence to accommodate a hybrid CON.</li> </ul>	47 48 49 50 51
		<p><u>Consultation Transparency</u></p> <ul style="list-style-type: none"> <li>• It was noted CUC cited industry standards that classify renewables as firm power and CUC had expressed concern the consultation was too narrow.</li> <li>• The lack of comprehensive consultation was highlighted as a key criticism in the past, referencing a 2017 case.</li> <li>• There was a discussion over whether enough consultation occurred beyond CUC.</li> <li>• Additional guidance was sought on whether any further consultation may be necessary or if sufficient efforts were enough.</li> </ul>	52 53 54 55 56
		<p><u>Determination Discussion</u></p> <ul style="list-style-type: none"> <li>• Discussion around any determination to ensure reliability of the grid.</li> <li>• Confirmation from Energy Sector that the 90.1MW amount required could not be reduced, as it would constitute the creation of a new, fifth scenario which CUC did not submit.</li> <li>• It was noted if CUC presents multiple options during future bids and legal compliance only allows one, the Office may choose to present only that compliant option in future responses, reducing the risk of confusion or</li> </ul>	57 58 59 60

		procedural challenge.	61
		<ul style="list-style-type: none"> <li>The BoD considered input from ICF and emphasised the Office's legal and procedural obligations are clear.</li> </ul>	
		<ul style="list-style-type: none"> <li>Discussion concluded that: <ul style="list-style-type: none"> <li>If issuing a determination now, it would be one of the 4 scenarios CUC provided, staying within their framework;</li> <li>If further consultation is required, the approval of the CON must be delayed; and</li> <li>Any delay risks criticism from both CUC and the public for indecision.</li> </ul> </li> </ul>	62
			63
		<u>Government Directives and NEP conflicts</u>	
		<ul style="list-style-type: none"> <li>Noted that if a directive is issued by Cabinet, duly Gazetted, the BoD would need to reconcile this with statutory duties under the Electricity Sector Regulation Law and the Licence – particularly the obligation to ensure firm power supply.</li> </ul>	64
		<ul style="list-style-type: none"> <li>There was a consensus that compliance with the NEP – which has never been issued to the BoD under s12(1) of the URCA - cannot override legislative or licensing requirements.</li> </ul>	65
		<ul style="list-style-type: none"> <li>It was noted that any directive under s12(1) of the URCA from Cabinet would be a high-level policy only and cannot influence matters already under BoD consideration.</li> </ul>	66
		<u>Issuing the Determination</u>	67
		<ul style="list-style-type: none"> <li>Despite all discussions and external commentary, it was decided the BoD's legal option is limited to choosing the only scenario proposed by CUC under the URCA and CUC's Licence.</li> </ul>	68
		<ul style="list-style-type: none"> <li>BoD must issue the Determination to proceed with the only firm power option.</li> </ul>	69
		<ul style="list-style-type: none"> <li>Final decision on Temp Gen and CON to proceed.</li> </ul>	70
		<u>Temporary Generation Proposal</u>	71
		<ul style="list-style-type: none"> <li>BoD proposed issuing a Determination for Temp Gen which would confirm CUC's responsibility to cover the costs of Temp Gen and the public would be assured of continued power supply and transparency in cost responsibility.</li> </ul>	72
		<u>CUC Proposal to Extend Life of Ageing Generation Units</u>	73
		<ul style="list-style-type: none"> <li>Energy Sector reported recent receipt of a CUC email on 7<sup>th</sup> April 2025 and business case, proposing the life extension of several ageing units (units 1, 2, 3, 4, 19, 25, 41 and 42). The units in question contain several from the 1980's.</li> </ul>	74
		<ul style="list-style-type: none"> <li>Discussions opened around the request by CUC to extend the life of older generation units as an alternative to new capacity installation.</li> </ul>	75
		<ul style="list-style-type: none"> <li>The potential consumer benefits were noted if costs are amortised over an extended life (eg 10 more years), but</li> </ul>	76



		<p>also highlighted significant risks to reliability and foregoing modern fuel-efficient units, citing past failures when similar life extensions were attempted – two prior engine catastrophic failures – one of which caused serious injury.</p> <p><u>Conditions for Approving Unit Life Extensions</u></p> <ul style="list-style-type: none"> <li>• It was agreed that CUC must provide: <ul style="list-style-type: none"> <li>- Written assurance of efficiency and operational reliability over the proposed extension period; and</li> <li>- A clear risk allocation, so that if units fail early, CUC must absorb all consequential costs, not pass it through to consumers.</li> </ul> </li> <li>• BoD raised concern about enforcement capacity, stating prior Board mandates on equipment testing were not followed due to lack of oversight resources.</li> <li>• Discussions over whether to formalise a requirement for CUC to justify life extension proposals and face financial consequences if engines fail prematurely.</li> </ul> <p><u>Procedural Concerns</u></p> <ul style="list-style-type: none"> <li>• CUC's concerns on fairness, referencing Appleby's letter which claims the Office rejected a proposed 98MW scenario unfairly and failed to hold proper public consultations.</li> <li>• BoD acknowledged the criticism, but reaffirmed that the BoD is operating within the options CUC provided; the T&amp;D Licence does not define 'firm power' only the NEP provides a definition which is "<i>generated electricity that is meant to be available at any time of day</i>"; and there was agreement further legal clarity around definitions may be warranted but would not change the current obligation.</li> <li>• Scenarios 2-4 failed this firm power test, under both the T&amp;D Licence and the NEP definition, reinforcing the validity of Scenario 1.</li> <li>• Discussion around the previous EDE's miscommunication in respect to matters surrounding CUC and whether further legal action would be considered in light of this. BoD confirmed it noted the need to issue an RFI to obtain CUC's legal cost details and revisit how legal fees impact consumer rates, to demonstrate that it is committed to ensuring consumers are not unfairly burdened by unnecessary Licensee costs.</li> </ul>	<p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p>
		<p><u>Final Discussion</u></p> <ol style="list-style-type: none"> <li>1. Confirmed that a summary of both Temp Gen and CON response had been circulated to all Board Members.</li> <li>2. Proceed with a final Determination, consistent with the draft.</li> <li>3. BoD reaffirmed consensus that, after evaluating all input including the ICF report, the BoD's decision to choose CUC's Scenario 1 is aligned with Licence and legal constraints and is the only scenario compliant with the</li> </ol>	<p>86</p> <p>87</p> <p>88</p> <p>89</p>



		<p>T&amp;D Licence condition 29, as acknowledged by CUC themselves in their submission.</p> <p>4. Noting the ICF report's support for a different scenario, but its failure to account for legal limitations.</p> <p>5. Publicly releasing the ICF report to maintain transparency, with an accompanying explanation.</p> <p>6. In agreement with the BoD's proposal, the Determination will clearly state that:</p> <ul style="list-style-type: none"> <li>i. Scenario 1 was one of the four submitted by CUC;</li> <li>ii. It is the only scenario consistent with current legislation and Licence obligations; and</li> <li>iii. It would therefore be procedurally unfair for CUC to now contest the process, having already offered these choices.</li> </ul> <p>7. The legal and technical rationale for Scenario 1 selection:</p> <ul style="list-style-type: none"> <li>i. There was a review of the Draft Determination language, confirming that the Office considered ICF's findings, but did not rely on them conclusively;</li> <li>ii. The rationale was rooted in: <ul style="list-style-type: none"> <li>a. compliance with CUC's Licence;</li> <li>b. the need for firm power as required under Condition 29;</li> <li>c. CUC's own forecasted capacity shortfall; and</li> <li>d. the incompatibility of Scenarios 2-4, which relied upon intermittent generation which is not recognised as firm capacity.</li> </ul> </li> </ul> <p>8. Confirmation from the BoD that the Determination does not breach procedural fairness, as CUC was fully engaged via correspondence including multiple meetings, had opportunities to respond, and was aware of the legal and regulatory limits on what the Office could approve.</p> <p>9. CON triggers a competitive solicitation process and does not guarantee a procurement award to CUC or any other entity. Smaller procurement sizes (eg 2 x 18.5MW) would be unattractive to competitive entrants but a single 90.1MW solicitation may invite broader competition and better long-term value, balancing legal compliance with the desire for market dynamism.</p> <p>10. Circulate final draft via Round Robin for review and final approval.</p> <p>11. Closing remark from BoD: <i>"We are making a decision that reflects the law, the facts and our duty to consumers. CUC knew their Licence constraints, they offered us four options, and we chose the only one legally available. If the Licence is to consider other options, it must be modernised – and we have been clear on that since September 2023."</i></p>	<p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p>
	<b>Decision</b>	<b>Proposal: As per CUC's submission under cover of letter dated 07 June 2024, The Board unanimously approved Scenario 1 being 90.1MW of firm capacity</b>	<b>D2</b>

		<b>only.</b>	
		<b>All in favour, no objections.</b>	
		<b><u>Actions</u></b> 1. Final Determination to be drafted, reflecting BoD rationale: a. Legal compliance with Condition 29; b. NEP alignment on firm capacity; c. Competitive fairness and clarity; d. Reasons why only Scenario 1 could be lawfully selected. 2. Timeline Agreed: a. Draft Determination on the CON to BoD by 15 April 2025, mid-day; b. Board input deadline is Tuesday evening, 15 April 2025; and c. Final determination to CUC on Wednesday 16 April 2025. 3. To publish CON and Temp Gen determinations simultaneously.	<b>A2</b>
<b>3.4</b>	<b>ICT</b>		<b>98</b>
3.4.2	Broadcast Content Code	<ul style="list-style-type: none"> <li>This draft Determination was presented to the BoD. This is to be sent for public consultation, touching on sensitive issues such as hate speech and broadcast content regulation.</li> <li>Discussion around what is considered hate speech and what is and is not acceptable language to be broadcast. A presentation was viewed.</li> <li>BoD would like to see the document watermarked as a 'DRAFT' or 'CONSULTATION' to avoid confusion. It was confirmed there will be two separate documents: one being the consultation document with the Office's thinking, the other the draft Determination with watermarks, unsigned and without dates.</li> <li>It was questioned whether more definitions, especially related to cultural contexts, should be added to the draft. This was agreed as a valid point to consider, emphasising that context matters, particularly in the diverse radio landscape in the Cayman Islands. It was pointed out that different radio stations cater to different genres and audiences and what may be considered offensive to Radio Cayman listeners may not be considered such, to Star or Kiss listeners.</li> <li>BoD asked whether offensive lyrics would be regulated under such new standard. It was acknowledged the complexity of this issue, noting the code is attempting to strike the balance between freedom of expression and protecting audiences from harmful content. The Office is attempting to implement what is required by law not police morality.</li> <li>BoD questioned such regulation and whether it is a priority, and whether the Office has sufficient resources</li> </ul>	99  100  101  102  103  104

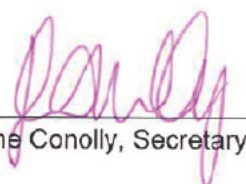
		<p>to effectively monitor broadcasting content and take action. BoD were assured that resources are available, and complaints would likely be the bases for any action taken, arising from the existing complaint procedure.</p> <ul style="list-style-type: none"> <li>• BoD suggested having the framework in place would put broadcasters on notice, allowing the Office to take action if necessary, however they recommended the framework be evaluated in 2-3 years to assess its effectiveness.</li> <li>• It was clarified that the broadcast content to be evaluated would be English language content only, and the issue of other languages could be addressed at a later date.</li> </ul>	104
			106
		<p><b><u>Actions</u></b></p> <ol style="list-style-type: none"> <li>1. The Office will consider additional definitions, particularly related to cultural contexts.</li> <li>2. Sanctions section: Complaint procedures will be revised to ensure that the draft includes appropriate measures for enforcing the broadcast code. However the application of sanctions will depend on compliance with the existing law, as opposed to establishing new penalties.</li> <li>3. Refinement: the draft will be further refined and fleshed out based on feedback during the consultation process, with special attention to cultural sensitivities and freedom of expression. The Office's role is to establish a baseline of acceptable content standards, without infringing on freedom of speech.</li> </ol>	<b>A3</b>
3.4.3	Satellite Services Provider	<ul style="list-style-type: none"> <li>• Discussion on this draft Determination centred around the regulation of satellite internet services under Government direction and how it relates to the jurisdiction of the Office. Specifically, the conversation examined whether satellite communication services such as Starlink, fall under the same jurisdiction as local internet service providers and the technical and legal challenges around enforcing these regulations.</li> <li>• A 2020 Government direction was referenced, which led to some confusion about whether it was a 'direction' or 'directive' issued under s12(1). BoD clarified the term used should be directive as per the statutory language, noting that directions and directives are distinct in law. Data sovereignty and the implications of this 2020 directive was further discussed, with several practical and technical issues raised, particularly with regard to emerging services which may be difficult to regulate as they do not have a presence in the Cayman Islands but provide a service to local consumers.</li> <li>• It was suggested the direction might not necessarily apply to satellite services because, at the time it was issued, satellite technology was not yet present or considered in Cayman's regulatory framework.</li> <li>• It was explained satellite services do not typically have a physical infrastructure on the ground and should therefore not be subjected to the same regulations as terrestrial networks.</li> </ul>	107
			108
			109
			110

		<ul style="list-style-type: none"> <li>• BoD brought up the subject of whether this would be considered offshore traffic, since the data travels off the Island to reach its destination. This raised concerns around data protection and whether local customers are aware their data may leave the Island in order to be sent.</li> <li>• Concern was raised around consumers switching to satellite services, bypassing local providers which could in turn impact local competition. In answer, it was noted there should be no restriction on consumer choice, particularly if satellite services are available; but with a caveat that customers would have to accept their data leaves the Island. It was acknowledged that banks and other companies may be in violation of data protection laws if they do not disclose that data is transmitted offshore, however it was pointed out the majority of internet data is already traversed off-island, particularly for international communications like bank transfers.</li> </ul>	111
			112
		<p><u>Regulatory Concerns and Enforcement</u></p> <ul style="list-style-type: none"> <li>• BoD questioned how the Office would be able to regulate the usage of satellite services if terrestrial licensees offered similar internet alongside traditional services. Specifically, how would the Office ensure that local traffic remained on the Island, whilst satellite traffic was sent off. It was noted satellite internet service providers would require local providers to engage, to offer those services in the Cayman Islands, however it was questioned whether the Office had the necessary resources or mechanisms to monitor and enforce this distinction between local and satellite data traffic.</li> <li>• BoD questioned whether an Island presence was required to offer services and it was confirmed they would not require a presence as only terminals would be sold to local consumers, enabling them to engage with the service – much like satellite telephones.</li> <li>• It was also clarified that, if for example, a company like Liberty decided to switch from being a terrestrial provider, to offering satellite services, they can surrender their terrestrial licence and operate solely under a satellite model – this raises concerns about licensing categories for traditional providers and how the shift to satellite services could affect the Office's regulation of that space. The regulatory burden of monitoring and enforcing such rules is unclear and there are concerns about how this can be done in a way that is technologically feasible.</li> </ul>	113
			114
			115
			116
3.4.4	Truth in Advertising Rules	<ul style="list-style-type: none"> <li>• It was confirmed that the Truth in Advertising Rules would be applying to all sectors. It was confirmed they were initially created under the ICTA but would apply to all regulated entities. For example, when FLOW promotes unlimited data, or CUC advertise price reductions, the advertisements must be truthful and transparent, especially regarding fair use policies or limitations.</li> <li>• Public consultation on these guidelines will be conducted</li> </ul>	117
			118

		to ensure transparency and fairness. BoD were in agreement, which means the public and stakeholders will have a chance to review and provide feedback on the proposed rules.	119
		<b>Actions</b> 1. The draft Determination on the proposed Truth in Advertising rules will go out for full public consultation to ensure transparency and fairness in how regulated entities advertise their services, particularly regarding pricing and data policies.	A4
3.4.5	RFI's	<ul style="list-style-type: none"> <li>• ICEO provided an update on the RFI process.</li> <li>• First RFI was to be sent to Digicel and Flow to get an update on the 5G roll-out. RFI will ask for:               <ul style="list-style-type: none"> <li>- Quality of service and coverage, including compliance with international safety standards.</li> <li>- Infrastructure protections in place, including security measures and technical standards like splicing and latency benchmarks.</li> <li>- Availability of 5G commercially and to what extent it is available to consumers in the Cayman Islands.</li> </ul> </li> <li>• Second RFI is a follow-up to Rubis to clarify the Office's reasons for requesting certain information. Rubis had previously expressed concerns about the Office requesting data without issuing reports or consultations. It was explained to the BoD that the information request is a continuation of the exercise and will help address concerns about competition in the sector.</li> <li>• BoD suggested, as RFI's are submitted regularly, that these could be dealt with by RR if necessary, instead of waiting until Board Meetings are called, so that they can be sent out in a timely fashion.</li> <li>• It was suggested a standard paragraph in RFI's can be included, stating that if unredacted versions of documents are not submitted to the Office, we shall assume the information can be published in its entirety.</li> </ul>	120 121 122 123 124
	Decision	<b><i>The two RFI's presented to the Board, are approved as amended, for sending out by the BoD.</i></b>  <b>All in favour, no objections.</b>	D3
4	ICEO Report		125
		<u>General Discussion on fees and regulatory costs (all sectors)</u> <ul style="list-style-type: none"> <li>• BoD raised the question of whether the fees for regulatory services could be increased, particularly with the arrival of larger providers.</li> <li>• It was clarified current fees are based on a regulatory fee and 6% royalty fee of gross revenue, which is intended to cover regulatory costs and 6% to Government. This is not an arbitrary fee, but a method to ensure the cost of regulation is appropriately covered.</li> <li>• Discussions were shared, which are underway with the Office's Economic Advisor, to perform a COSS. The</li> </ul>	126 127 128 129

		<p>goal of this study is to determine if the current fees being charged are in line with the actual regulatory work required and will include benchmarking to compare fees against industry standards, adjusting if necessary to ensure they reflect the actual regulatory workload.</p> <p><u>Recruitment</u></p> <ul style="list-style-type: none"> <li>• Head of Finance: <ul style="list-style-type: none"> <li>- The BoD were provided an update on the recruitment process:</li> </ul> </li> <li>• CFI: <ul style="list-style-type: none"> <li>- It was confirmed that the work permit for CFI has been approved and he is expected to arrive on Island by the end of April or early May, starting his role the first or second week of May.</li> </ul> </li> </ul>	<p>130</p> <p>131</p> <p>132</p>
<b>5</b>	<b>Legal Advice</b>		<b>133</b>
5.1	Legal Dashboard	<ul style="list-style-type: none"> <li>• Included in the Board folder for viewing.</li> </ul>	134
5.2	Anderson & Berry Judgment	<ul style="list-style-type: none"> <li>• BoD discussed the update provided by the Legal Sector.</li> </ul>	135
<b>6</b>	<b>AOB</b>		<b>136</b>
<b>6.1</b>	<b>Member Reappointments</b>	<ul style="list-style-type: none"> <li>• Confirmed that BS had sent renewal application letters for those Members whose tenure was coming to an end</li> </ul>	137
<b>7</b>	<b>Adjournment</b>	<p>Meeting was brought to a close at 19:12hrs. Next meeting is Thursday 08 May 2025.</p>	<b>138</b>

Signed:  \_\_\_\_\_  
Samuel Jackson, Chairman

Signed:  \_\_\_\_\_  
Joanne Conolly, Secretary



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PAPER BY THE (EXEC DIRECTOR for ENERGY)

**SUBJECT HEADING: 2025 Z-Factor Rate Implementation**

**SECTOR: Energy & Utilities**

**RELEVANT LAW: The Electricity Sector Regulation Act (2019 Revision)**

**DATE: 2025/Feb/17**

1. Proposal
2. Executive Summary
3. Background
4. Discussion
5. Financial Implications
6. Legal Implications
7. Strategy Implications
8. Other Consultation/Implications
9. Assigned Person(s)
10. Assigned Sector(s)
11. Target Response/Completion Date
12. Recommendation to Board
13. Signature of Executive
14. Date
15. Appendices (Attached on Separate Paper)



## 1. Proposal

The Board is asked to:

Endorse the Office's decision to approve CUC's request to implement a Z-Factor rate to recover funds as previously approved for the "BESS" System and Resilience L2-NSP-SS Substation for only the 2024 costs, while deferring the Z-Factor implementation for the Resilience L2-NSP-SS Substation 2025 future costs. The Office also requests the approval to refuse the implementation of the Z-Factor rate for Temporary Generation – Block 2.

## 2. Executive Summary

The Z-Factor mechanism is designed to address costs that are significant, unforeseen, and beyond the control of CUC. CUC identified several projects that qualify for Z-Factor cost recovery due to their significant, unique and unforeseen nature. CUC has stated these projects are critical to maintaining and improving the reliability and safety of CUC's services.

1. Battery Energy Storage System ("BESS")
2. Resilience L2-NSP-SS Substation
3. Temporary Generation – Block 2

## 3. Background

Whereas the CUC T&D Licence in part states:

Condition 2.3:

*[...] In addition, the Licensee may also bill temporary Z Factor charges as described in this Licence.*

Condition 19.5:

*The Z Factor, as defined in Condition 25.5, represents a charge to Consumers to recover unusual expenses outside of the control of the Licensee that are permitted to be recovered through a rate surcharge pursuant to this Licence and approved by the Authority.*

Condition 25.5:

*A Z Factor may be added to the Base Rate in effect from time to time. The Z Factor is the amount, expressed in cents per kWh, approved by the Authority and estimated to recover the sum of those cost items deemed to be outside the constraints of the RCAM. The Z Factor shall include, but not be limited to, those items that are described in Conditions 26.3 and 31.1.11.*

Condition 26.3:

*Z Factor rate changes will be required for "business interruption" insurance deductibles and other extraordinary operating expenses. The Authority will determine a reasonable period over which the Z factor costs will be recovered based on the nature of the costs.*

Whereas, in 2019, OfReg approved the BESS project, “C42N-07 20MW Utility Scale Battery for Spinning Reserve Project” business case including provisions for the recovery costs under the Z-Factor mechanism. This project has reached completion and has been fully implemented since October 2024.

Originally the project proposal submitted to OfReg anticipated that CUC would benefit from a duty waiver in the import of capital materials. However, to date the duty waiver has not been granted by Cabinet, therefore CUC submitted a Z-Factor rate proposal including the import duty costs. CUC has committed to the Office that if the duty waiver is granted in the future that OfReg will be informed immediately, and the Z-Factor rate will be adjusted accordingly.

Whereas, in 2022 L2 Resilience Project was approved by the Office with a Z-Factor rate to be implemented over a 40-year period. This project has begun and is amid work, some segments of the project have reached completion, and CUC is requesting to launch the Z-factor rate for the portion of the project that has been completed. However, the Office believes that the reasonable approach is to only approve a Z Factor implementation for Costs already accrued and not projected Costs for upcoming years. This will change the proposed CI\$ per kWh Z factor rate from \$ 0.001140 per kWh to \$0.000105 per kWh as CUC’s calculations included costs for both 2024 and 2025, and the office feels only costs already accrued is reasonable to recover.

In August 2023, OfReg approved the Temporary Generation – Block 2 project, with the caveat that:

*“[...] in light of the provisions of Condition 21 of the CUC T&D Licence, any rental fees and costs incurred by or associated with such temporary generation, save for fuel and lubrication, cannot be passed through to consumers;”*

It appears that CUC may not have been fully communicated or misunderstood the impact of this condition of approval for the Temporary Generation – Block 2 project. The Office is currently drafting a thorough determination with regards to the Temporary Generation Project to update CUC on all decisions and conditions regarding this project.

CUC has also requested that the Z-Factor be presented as a single line item on customer bills.

CUC submission can be found in **Appendix I, II, III and IV.**

#### **4. Discussion**

The Office review of CUCs Z-Factor Rate submission, the document provides further details which can be found in **Appendix V.**

CUC Proposes to implement the following rates for the Z-Factor:

Project	CUC Proposed Z Factor Rate CI\$ per kWh	OfReg Proposed Z Factor Rate CI\$ per kWh
BESS	\$ 0.007619	\$ 0.007619
Resilience L2	\$ 0.001140	\$ 0.000105
Temporary Generation Block 2	\$ 0.005259	N/A

The Office agrees with the implementation of the Z-Factor for the Bess project as it was previously approved in the C42N-07 20MW Utility Scale Battery for Spinning Reserve Project” business case and is now fully executed.

The L2 – Resiliency project C44L-60 L2 was also previously approved as an investment that would be recovered through a Z-Factor. The Office agrees with the implementation of the Z-

Factor at this time only for the 2024 costs recovery, which would change the proposed Z factor rate to C\$0.000105 per kWh.

The Temporary Generation Block 2 was given approval with the condition that no costs other than fuel and lubrication would be passed through to consumers, the Office cannot approve a Z-Factor rate for Temporary Generation Block 2.

## **5. Financial Implications**

No financial implications were identified for the Office.

## **6. Legal Implications**

No legal implications were identified for the Office.

## **7. Strategy Implications**

No Strategic implications were identified for the Office

## **8. Other Consultation/Implications**

No other implications were identified for the Office.

## **9. Assigned Person(s)**

Executive Director, Energy and/or his designate, Mr. Dwayne Tucker, Acting Deputy Director, Energy

## **10. Assigned Sector(s)**

Mr. McCleary Frederick, Executive Director, Energy and/or his designate, Mr. Dwayne Tucker, Acting Deputy Director, Energy will manage this matter on a day-to-day basis.

## **11. Target Response/Completion Date**

The decision would be communicated to CUC for full implementation once the Board acknowledges its support.

## **12. Recommendations to the Board**

***Accordingly, the Board is requested to endorse the Office's decision to approve the Z-Factor Rate for the "BESS" of \$0.007619 per kWh and Resiliency L2 projects 2024 costs of \$0.000105 per kWh which will be recorded as an annotated single Line Item on customer bills effective February 1, 2025.***

## **13. Appendices (Attached on Separate Paper)**

**Appendix I – CUC Proposed 2024 Z-Factor Rate Email Submission**

**Appendix II – CUC Proposed 2024 Z-Factor Rate Supporting Calculations for BESS**

**Appendix III – CUC Proposed 2024 Z-Factor Rate Supporting Calculations  
Resilience L2**

**Appendix IV - CUC Proposed 2024 Z-Factor Rate Supporting Calculations  
Temporary Generation - Block 2**

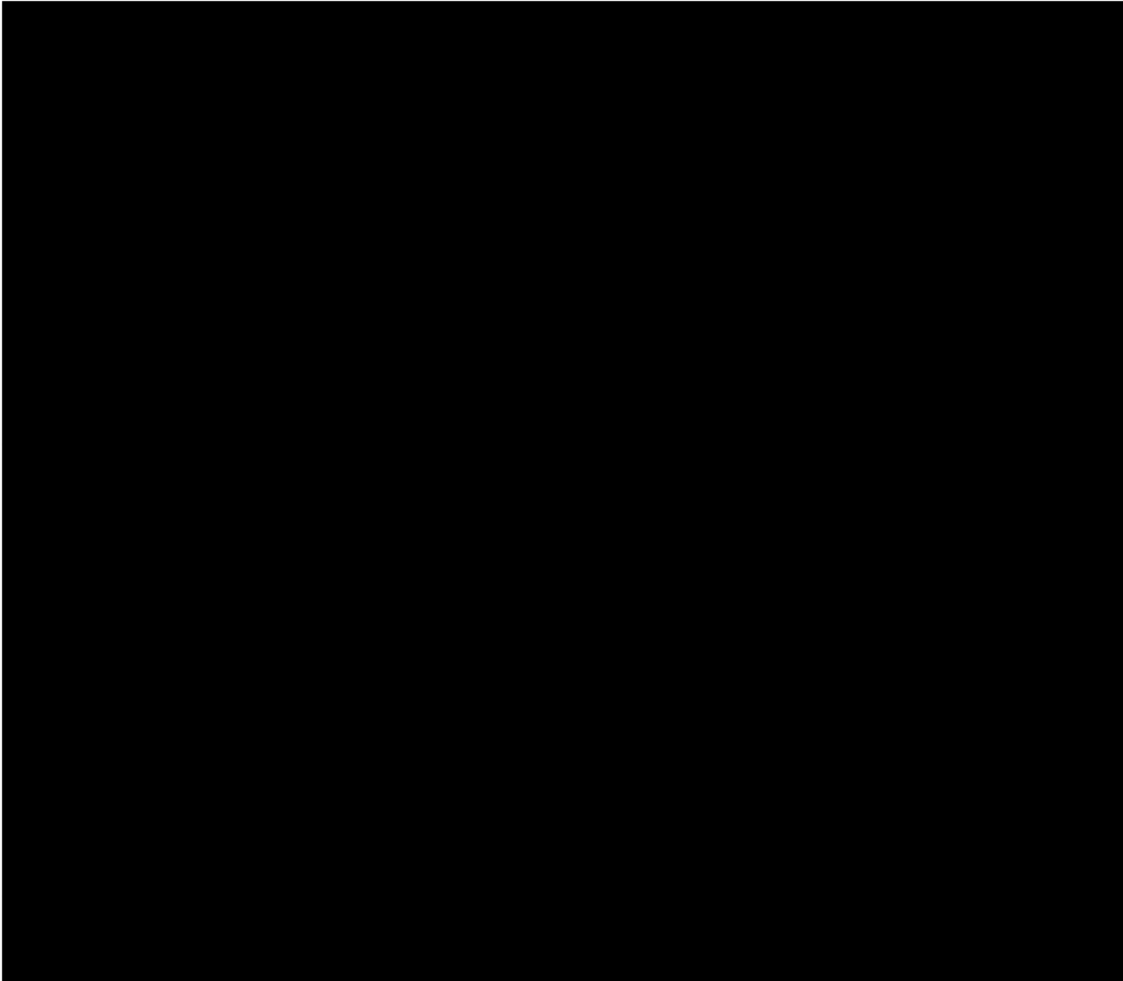
**Appendix V - The Office Review of CUCs Licence and Regulatory Fees**

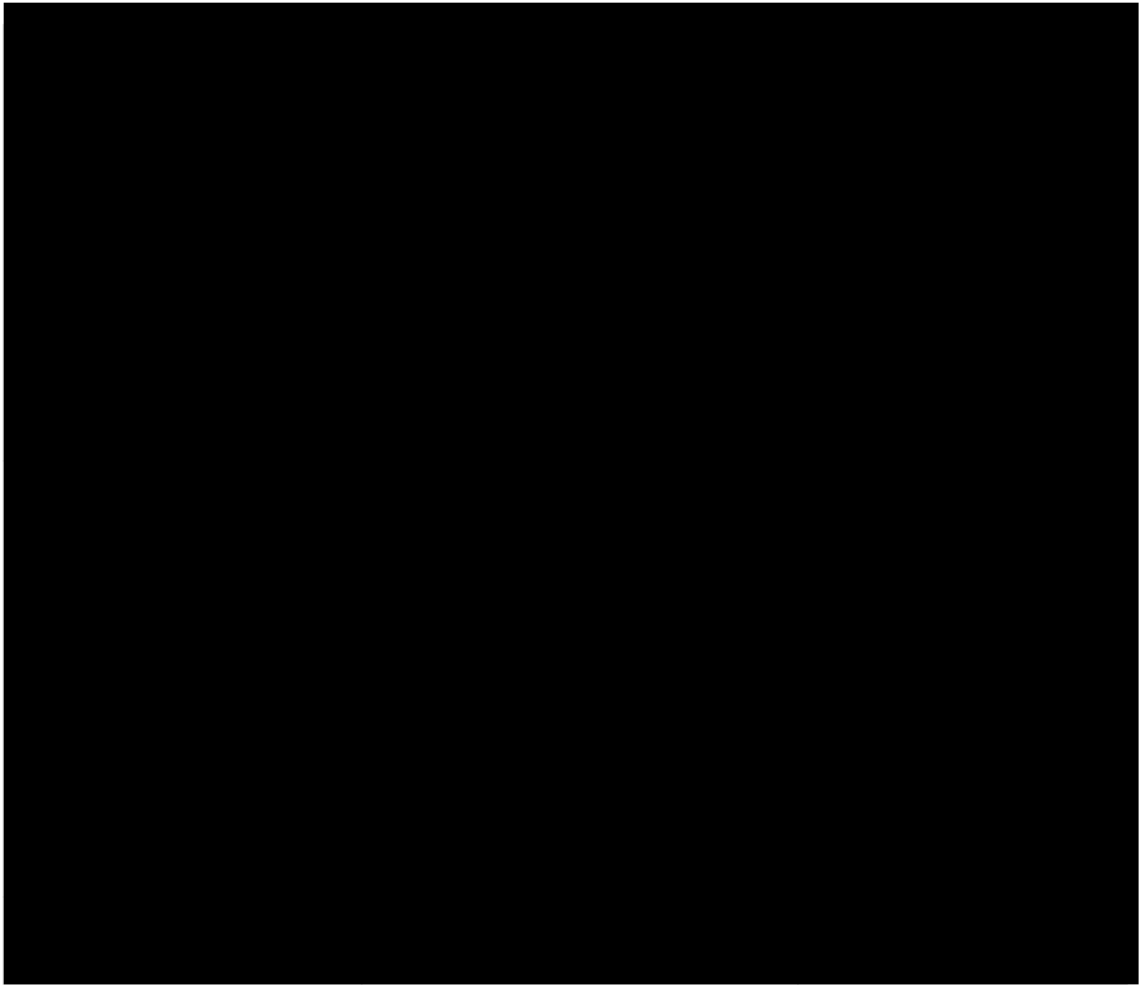
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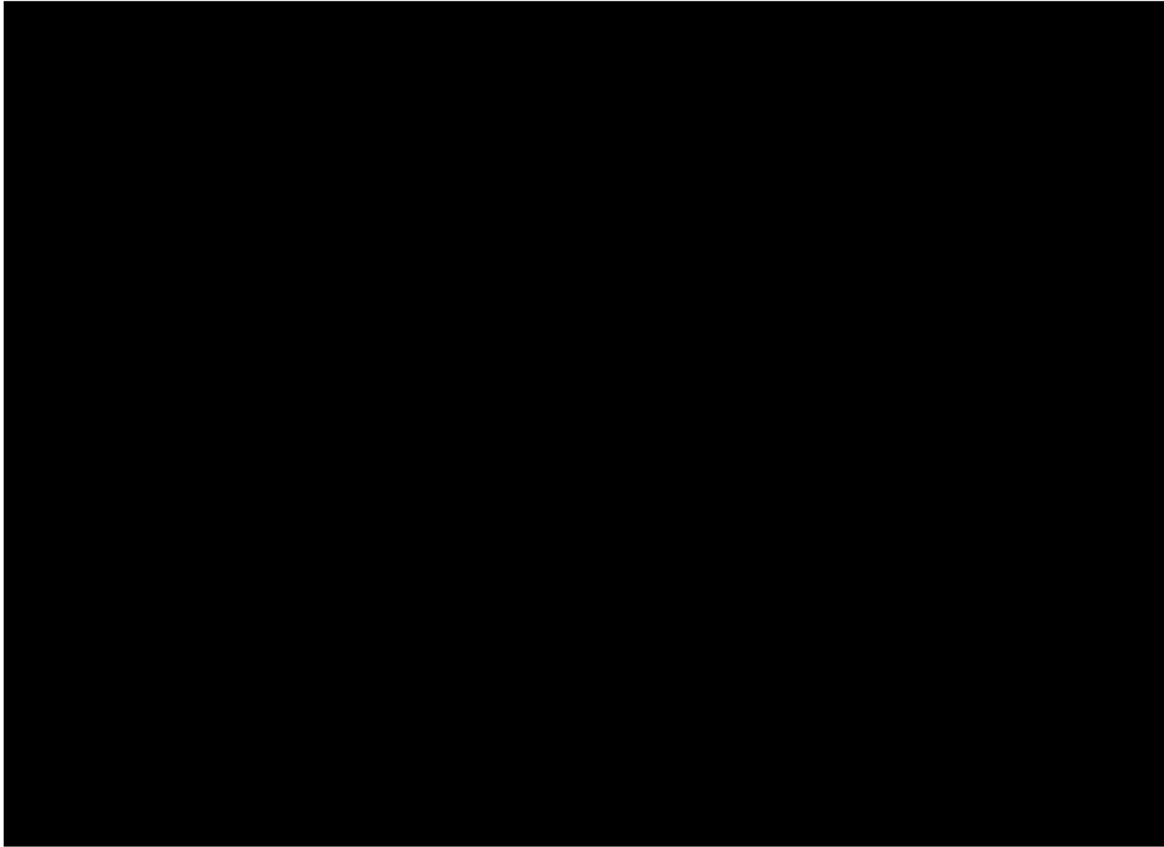
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projects are critical to maintaining and improving the reliability and safety of CCC's services.

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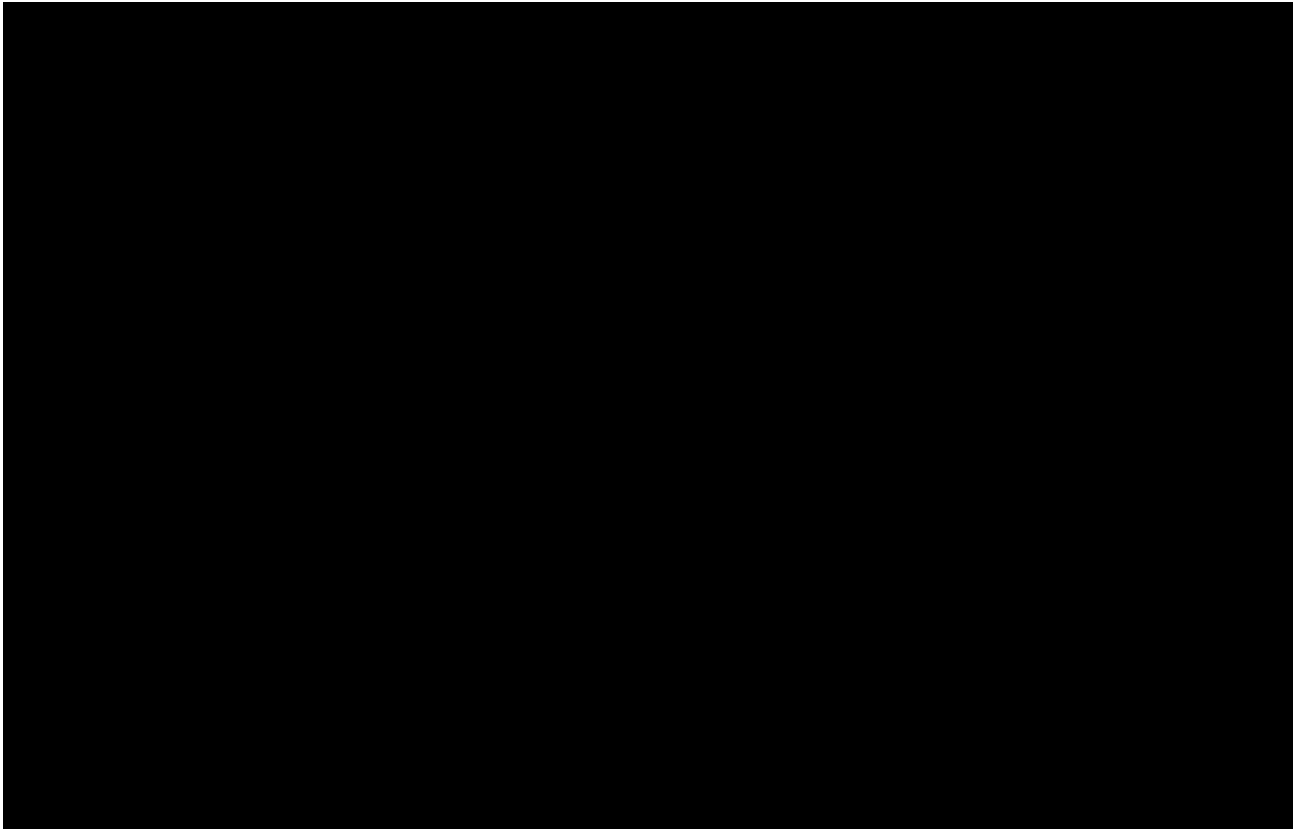


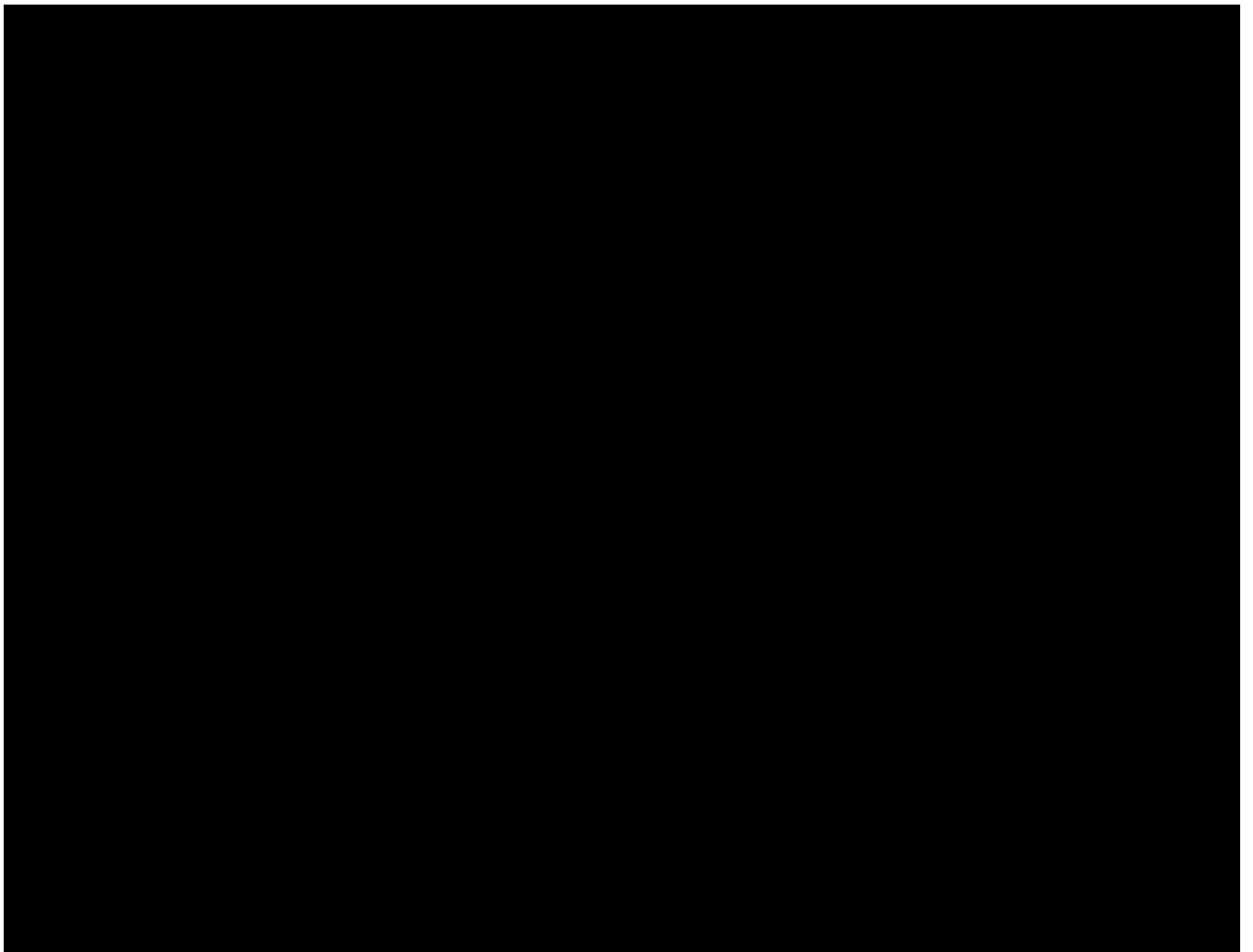






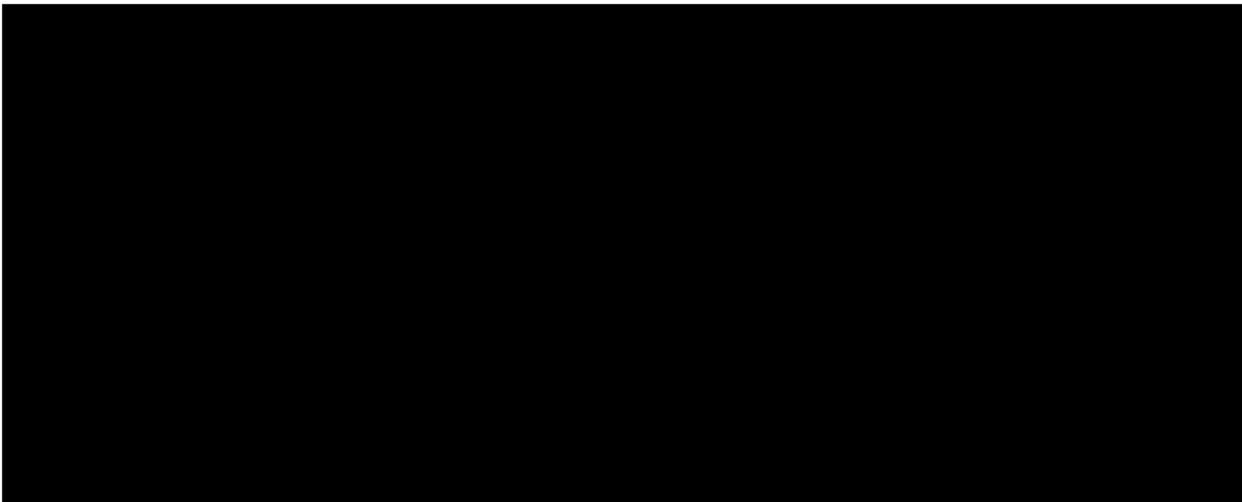






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**PAPER BY THE EXECUTIVE DIRECTOR - INFORMATION**

**SECTOR: ICT**

**Proposal re: Draft Determination on Broadcast Content Code**

**DATE: 10 April 2025**

- **Proposal**
- **Background / Timeline**
- **Relevant Legislation and Discussion**
- **General Observations**
- **Financial Implications**
- **Legal Implications**
- **Strategy Implications**
- **Other Consultation/Implications**
- **Assigned Person(s)**
- **Assigned Sector(s)**
- **Target Response/Completion Date**
- **Recommendation to Board**
- **Attachments**

## **Board Paper Submissions - Explanatory Notes**

### **Proposal**

The Board is hereby requested to consider and if in agreement to approve the draft Broadcast Content Code to be issued for consultation.

The ICT Team supports this the proposal on the grounds that:

- No such guidance currently exists in the Cayman Islands.
- There have been incidences of profane language being broadcast at times when Children could be expected to be listening or which may be offensive to good taste and common decency, or likely to be offensive to public feelings, or an offensive representation of, or reference to, a person all contrary to section 55 of the ICT Act, and it is difficult to tackle this without a more detailed set of 'dos and don'ts' for broadcasters.
- Part V of The Information and Communications Technology Act (2019 revision) (the 'ICT Act') requires the Office to produce such a code.

### **Background / Timeline**

The Broadcast Content Code is intended to be published under the auspices of sections 55, 56 and 57 of the ICT Act. The Code is designed to flesh-out and address the requirements under those sections of the Act over which the Office has jurisdiction (such as the protection of Children and the use of profane language).

If approved by the Board, the draft Code will be issued for consultation. So far it has been shared amongst ICT staff members, as well as Dr Russell Richardson (Legal and Regulatory Consultant who was in post as the ICTA's General Counsel and Deputy Director of Industry Affairs when the relevant sections of the ICT Act were discussed and drafted).

### **Relevant Legislation and Discussion**

The proposed Code is prepared pursuant to the ICT Act:

#### **Who does it apply to:**

- **Definition of Licensee:** "licensee" means a person to whom a licence is granted by the Office under this Law;

**Section 23(2) Notice** sets out who should be licensed and includes those providing Public Service (Table 6, Type 6) and Subscription (Table 6, Type 7) Television Broadcasting and Sound Broadcasting (Table 6, Type 8).

#### **Television services –**

- i. All forms of terrestrial television programming broadcast from a station in the Cayman Islands;



- ii. All forms of television programming distributed by cable, satellite, or other ICT Network (including the Internet) by any person within the Cayman Islands to any person within the Cayman Islands;
- iii. Video on demand services - The provision or facilitation by way of subscription of streaming video material in the Cayman Islands in response to a request from a subscriber, or for subsequent resale to a subscriber, except where the video stream is delivered over the public Internet, or the video material is television programming.

**Sound broadcasting services –**

All forms of sound broadcasting transmitted from a station in the Cayman Islands. This includes occasional limited range broadcasts according to the policies and procedures as set out by the Office, and may be set out in any open or class licences issued by the Office.

**What is required**

- **Powers and Functions of Office:**

9. (3) (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;

- **Licensee's duties in respect of local broadcasts**

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.

- **Standards for local broadcasts**

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.
- **Supervision of local broadcasting**
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.

## **General Observations**

Section 55 of the ICT Act sets out the standards on licensees about which the code is “best calculated” to secure. Therefore, any Code set by the Office must address those standards and Licensees are obliged to comply with them.

In the definitions section, reference is made to an Ofcom/Ipsos MORI report<sup>1</sup> which sets out the results of a study in the United Kingdom into which words are considered the most offensive, and

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<sup>1</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/tv-radio-and-on-demand-research/tv-research/offensive-language-quick-reference-guide.pdf>

which are moderately and less so. In the USA, the FCC has a list of 7 words which are not allowed to be broadcast<sup>2</sup>, it also has guidelines on the use of other profanities which take into account the explicitness or graphic nature, whether material dwells/repeats descriptions of sexual or excretory organs or activities and whether the material is intended to titillate or shock.

Whilst reviewing the draft Code, several individuals commented on the extent to which a definition of offensive language was necessary, i.e. whether specific words should be identified or whether this should be left to interpretation bearing in mind Caymanian cultural acceptability. The general view was that more specific guidance would be beneficial.

Given that the Ofcom/Ipsos MORI report considers a range of different races, nationalities and ethnicities the words it deems the most offensive include a wider and more applicable range than the FCC's 7-word list. As such, it was felt that an appropriate approach was to reference the Ofcom document.

Section 6 of the proposed Code speaks to how political broadcasts should be handled during election and referendum periods. Some of this is already covered by the Elections Act, and in principle the topic is somewhat outside the scope of sections 55, 56 and 57 of the ICT Act. Therefore, it could be argued that the Office does not have a legal mandate to restrict election/referendum broadcasts in the way proposed. Alternatively, there may be some degree of application so far as the matters relate to the s55 ICT Act obligation regarding news being presented with due accuracy and impartiality. The views of the Board on whether this section should be included are keenly sought.

No mention is made in the Code of any rules associated with commercial advertising neither in scope nor content. Again, this is not one of the topics addressed in the ICT Act and is thus outside the statutory remit. Additionally, there are many other Acts (e.g. Tobacco, Gambling) that cover some of the more contentious areas.

The draft Code is aimed at balancing the Rights set out in the Cayman Islands Bill of Rights and Freedoms particularly the rights to a private and family life and freedom of expression.

The draft Code is based upon a similar code applied by Ofcom in the UK, modified to take account of the legislative framework in, and applicability to, the Cayman Islands. The benefit of this approach is that it is a tried Code which has interpretative caselaw attached to it.

## **Financial Implications**

There are no financial implications related to this request.

## **Legal Implications**

There are no foreseen legal implications in relation to this request.

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<sup>2</sup> Shit, piss, fuck, cunt, cocksucker, motherfucker, and tits.

**Strategy Implications**

There are no foreseen negative strategic implications to the Office.

**Other Consultation/Implications**

There are no foreseen consultation implications to the Office.

**Assigned Person(s)**

Executive Director ICT.

**Assigned Sector(s)**

ICT.

**Target Response/Completion Date**

10 April 2025

**Recommendations to Board**

Accordingly, the Board is hereby requested to consider the above and in particular to:

- Approve the publication of the proposed draft Broadcasting Content Code for public consultation.

**Attachments**

Draft Broadcast Content Code.

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PAPER BY THE EXECUTIVE DIRECTOR - INFORMATION**

**SECTOR: ICT**

**Proposal re: Draft Determination on Satellite Service Providers**

**DATE: 10 April 2025**

- 1. Proposal**
- 2. Background / Timeline**
- 3. Relevant Legislation and Discussion**
- 4. General Observations**
- 5. Financial Implications**
- 6. Legal Implications**
- 7. Strategy Implications**
- 8. Other Consultation/Implications**
- 9. Assigned Person(s)**
- 10. Assigned Sector(s)**
- 11. Target Response/Completion Date**
- 12. Recommendation to Board**
- 13. Attachments**

## **Board Paper Submissions - Explanatory Notes**

### **1. Proposal**

The Board is hereby requested to consider and if in agreement to approve for consultation, the draft determination concerning the introduction of Satellite-Based Service Providers (SSP).

### **2. Background / Timeline**

On 21 November 2024, the Office issued “ICT 2024 – 2 – Consultation on the Framework for the Licensing of Satellite-Based Telecommunications Providers”<sup>1</sup> (the ‘initial consultation’).

The initial consultation established some of the issues associated with introducing a framework for licensing satellite services and asked a number of questions, seeking feedback from stakeholders as to their views on the associated challenges.

Submissions to the initial consultation<sup>2</sup> were received from the following respondents:

- Dart-IT
- Digicel Cayman Limited (T/A ‘Digicel’)
- Eutelsat Group (‘Eutelsat’)
- Cable and Wireless (Cayman Islands) Limited (T/A ‘Flow’)
- Global Satellite Operators Association (‘GSOA’)
- Kuiper Systems LLC (‘Kuiper’) – A subsidiary of Amazon
- Rivada Space Networks (‘Rivada’)
- Satelio IoT Services, S.L. (‘SatelloT’)
- Starlink Cayman Islands Ltd. (‘Starlink’)
- Viasat
- WestTel Limited (T/A ‘Logic’)

The Office’s proposed Draft Determination takes into account those responses and proposes a framework for the licensing of SSP.

Whilst the existing licensing framework could, in theory, be used to licence SSP, there are a number of areas where changes would simplify, clarify and regularize the situation. The primary issues which would benefit from clarity are:

- Licence types and definitions.
- The licensing of VSAT equipment

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<sup>1</sup> <https://www.ofreg.ky/viewPDF/documents/2024-11-29-19-35-02-Consultation-Paper-on-Licensing-of-Satellite-Services-2.pdf>

<sup>2</sup> <https://www.ofreg.ky/viewPDF/documents/2025-01-10-15-04-26-Responses-to-ICT-2024---2---10-January-2025-1-.pdf>

- The Government directions<sup>3</sup> requiring the Office to “*take measures to ensure that local internet communication remains onshore*”

## **Licence Types and Definitions**

The section 23(2) notice published by the Office in the Gazette<sup>4</sup> defines the various types of service which can be licensed in the Cayman Islands. At the time when these definitions were introduced, the type of service which can now be provided by satellite was not envisaged. Whilst in theory satellite services could be shoe-horned into some of the existing definitions, this would be sub-optimal and would not allow licences to correctly reflect the different characteristics of a satellite service compared to that of terrestrial service providers.

There are four areas where the current definitions could be enhanced:

- There is currently no specific licence type for satellite-based services. Introducing one would allow a more tailored approach to licensing, taking into account the unique characteristics of a satellite service compared to terrestrial ones.
- The present definition of mobile telephony (a) does not provide for having such services delivered via satellite and (b) does not currently include the provision of internet services. Point (b) is not connected with changes associated with satellite solutions but would bring the definition into line with current service patterns.
- In the section 23(2) notice, service Type 3 “Mobile Telephony” is not currently defined. It would be prudent to provide a definition for this which is also inclusive of a service provided by satellite.
- Similarly service Type 9 “Internet Service Provider” does not currently have a definition, and as this is the service type that most SSPs would be associated with, it would be prudent to define its intention.
- There is no service Type for the provision of data connections which do not use the Internet (such as private circuits between two locations).

## **Licensing of VSAT equipment**

Currently Very Small Aperture Terminals (VSAT) are only permitted to be licensed to Major ICT providers or for emergencies. In addition, the application fees associated with these (CI\$2500) are unsuited to domestic deployment.

For other service providers, the equipment that subscribers use to make their connection, whether mobile phones for mobile operators, or WiFi hubs for fixed internet providers, are permitted to be

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<sup>3</sup> <https://www.ofreg.ky/viewPDF/documents/legislation-regulations/2024-11-20-07-16-50-URC-ICT-Directions-on-Local-Internet-Traffic-Onshore-2020.pdf>

<sup>4</sup> <https://www.ofreg.ky/viewPDF/documents/2024-11-21-09-14-47-The-Utility-Regulation-And-Competition-Office.-G22-S117.pdf>

used under the license of the operator and do not require individual licensing. It is therefore proposed that for SSP, the use of VSAT terminals is included in their licence.

### **The 2020 Government Direction**

The Office was issued by a direction by the Government in 2020 which requires the Office to take measures to keep local internet traffic onshore. Whilst it is relatively straightforward for terrestrial providers to meet this requirement, it is technically impossible for any current SSP as the satellites themselves are not within the jurisdiction of the Cayman Islands.

Given that SSPs were not active participants in the market when the directive was issued, and because considerations in trying to shoehorn the obligation into SSP licenses would have made the impracticalities obvious, it is unlikely that the policy intent contemplated their inclusion. The 2020 direction was clearly intended for existing terrestrial licensees and was developed in a regulatory landscape that did not account for the emergence of SSPs. Applying it retroactively to an industry that did not exist at the time of issuance raises significant policy, legal, and technical inconsistencies.

### **Proposals**

The Office's proposed remedies, as set out in the draft determination, and which the Board are requested to consider are summarised as:

- The introduction of a new class of major ICT licence: (Type H) Satellite Service Provider (SSP). All rules and requirements associated with terrestrial licensees (including the payment of fees, legal intercept and outage reporting) will apply with the exception of:
  - the requirement to peer with other terrestrial operators to keep all locally generated and terminated telecommunications traffic onshore. This will only be required for SSP licensees who have the necessary infrastructure to effect it.
- Spectrum fees for Type H licences will be levied on a 'per channel' basis, where a channel is defined as follows:

<b>Frequency Range</b>	<b>Channel Size</b>
Below 500 MHz	12.5 kHz
500 MHz - 5 GHz	5 MHz
5 – 32 GHz	28 MHz
Above 32 GHz	100 MHz

- The application fee for a Type H licence shall be CI\$3500.00 and the renewal fee shall be 50% of this value, as it is currently for other ICT service provider licences.



- The licensing of VSAT equipment associated with the provision of a service by an SSP will be included within the SSP licence. Any VSAT used for connectivity other than through a licensed SSP will still require a Type E1 or Type E2 VSAT licence as per the current regulations.
- Introduction of a definition for the (Type 3) Mobile Telephony licence to also include the provision of satellite-to-handset connectivity, as follows:
  - “The provision of voice or internet connectivity to mobile handsets or similar portable devices through wireline, wireless terrestrial or satellite means”
- Introduction of a definition for the (Type 9) Internet Service Provider licence to provide clarity and distinction between licence types, as follows:
  - “The provision of internet (or other data) services to fixed locations (e.g. homes or businesses) through wireline, or wireless terrestrial or satellite means”
- The introduction of a new class of ICT service: (Type 17) Connectivity Service Provider. This would cover the provision of private end-to-end connectivity (voice or data), i.e. which is not connected to the PSTN or Internet.
- The application fee for a Type 17 licence shall be CI\$1500.00 and the renewal fee shall be 50% of this value. Licensees already providing this service shall have their licenses modified to include this service type without a fee.

### **3. Relevant Legislation and Discussion**

Section 6 of the Utility Regulation and Competition Act (the 'URC Act') requires OfReg, amongst other things:

- (b) to promote appropriate effective and fair competition;*
- (c) to protect the short and long term interests of consumers in relation to utility services;*
- (d) to promote innovation and facilitate economic and national development;*

Section 62 specifically provides the Office with:

*a duty to promote innovation within the sectors for which it has responsibility with a view to contributing to national economic competitiveness and development*

Further, Section 9 of the Information and Communication Technology Act (the 'ICT Act') states that among the purposes and principal functions of the Office include:

- (2)(a) allocate the electromagnetic spectrum for facilities and specified services within the Islands, or between the Islands and elsewhere;*
- (2)(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;*

*(3)(a) to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;*

*(3)(d) to determine the categories of licences to be issued under this Law [...]*

#### **4. General Observations**

There are no specific observations related to this request.

#### **5. Financial Implications**

The extent to which there are financial implications will be determined by the number of organisations which apply for a licence. In addition to the application fees, each successful applicant would also increase royalty, regulatory and spectrum fee income.

#### **6. Legal Implications**

There are no foreseen legal implications in relation to this request.

#### **7. Strategy Implications**

There are no foreseen negative strategic implications to the Office.

#### **8. Other Consultation/Implications**

There are no foreseen consultation implications to the Office.

#### **9. Assigned Person(s)**

Executive Director ICT.

#### **10. Assigned Sector(s)**

ICT.

#### **11. Target Response/Completion Date**

10 April 2025

#### **12. Recommendations to Board**

Accordingly, the Board is hereby requested to consider the above and if in agreement to:

- Approve the publication of the proposed Draft Determination addressing the matter of the licensing of SSP.

#### **13. Attachments**

Draft Determination.

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**PAPER BY THE ICEO**

**TRUTH IN ADVERTISING RULES**

**SECTOR: ALL**

**10 April 2025**

**Proposal**

1. This paper is presented to the Board to consider and if in agreement, to approve the publication of the Draft Determination on the proposed Truth in Advertising Rules for consultation.

**Background**

1. The ICT Authority made Truth in Advertising Guidelines in 2016. These do not apply to all sectors in the remit of the Office.
2. The Office is directed under the Utility Regulation and Competition Act (2024 Rev) ("URC Act") to promote consumer's interests.
3. The truthfulness of some advertising messages is open to question. Therefore, it was considered that the establishment of rules that require truthfulness in advertising and ultimately protection of consumers, was required.
4. In 2019, the Office completed a public consultation on the then draft Rules. The Office received five responses to the consultation, from WestStar TV Limited ("Logic"), Cable & Wireless (Cayman Islands) Ltd. ("Flow"), Cayman Water Authority ("WAC"), Digicel Cayman Ltd. ("Digicel"), as well as a Private Citizen.
5. The Board approved the final determination of the proposed Truth in Advertising Rules in the July 2019- Board General Meeting 5 of 2019.
6. Although the Board approved the determination, it was never published. At the time, although not necessary, the previous CEO acting on guidance from the former General Counsel, considered that it would be useful to have the Rules established by way of enacting regulations. Accordingly, the draft rules were presented to and discussed with successive ministries between 2019 to date. However, no material response or approval has been forthcoming.

**Discussion**

7. Section 6(1)(c) of the URC Act outlines that one of the principal functions of the Office, in the markets and sectors for which it has responsibility, is “*to protect the short-and long-term interests of consumers in relation to utility services...*”. The Office, in carrying out its principal functions, may make administrative determinations, decisions, orders and regulations under the URC Act.
8. Further, under section 6(3) of the URC Act, the Office has the power to carry on any activity which appears to it to be requisite, advantageous or convenient for or in connection with the performance of its functions and exercising its powers under this or any other law.
9. The ICEO and staff hold the view that it is in the interest of the public that all marketing communications made available to consumers by all service providers be truthful, and not deceptive or unfair. The proposed Rules will protect consumers by compelling service providers to be truthful in advertising and commenting on service offerings.
10. The total number of false claims or potentially misleading messages has not been catalogued but anecdotal evidence leads to the conclusion that some claims made in advertisements may be misleading. Therefore, it is prudent for the regulator to act proactively in attempting to protect consumers.
11. Between approval of the first draft in 2019 and now, there has been cause to materially update the previous draft to take into account an appropriate definition of ‘consumer’ along with other expectations and edits.
12. Considering the updates and the elapse of time, it is therefore appropriate to consult on the current proposed version of the rules.
13. The draft Rules include the Office’s Expectations with respect to truthful advertising and the specific rules, which are divided into six (6) main parts:
  - a. Substantiation, Qualification and Exaggeration
  - b. Pricing
  - c. Imitation and Denigration
  - d. Endorsements and Testimonials; and
  - e. Guarantees and After-Sales Services.
14. Following consideration of consultation responses, it is intended that the Office will issue an Administrative Determination title: “Truth in Advertising Rules” which shall be binding on all authorisation holders.

## **Financial Implications**

15. There are no anticipated negative financial implications.

**Legal Implications**

16. There are no anticipated negative legal implications.

**Strategy Implications**

17. There are no anticipated negative strategic implications.

18. The proposed Rules will assist in achieving the Government's Broad Outcome No. 1 "Improving Quality of Life for Caymanians" as outlined in the Government's 2024 – 2026 Strategic Policy Statement.

19. Additionally, the Rules will advance the Office's consumer protection efforts.

**Other Consultation/Implications**

20. There are no anticipated negative consultation implications.

21. ICEO considers that it is necessary to conduct a further public consultation on the updated proposed Rules.

**Assigned Person(s)**

22. ICEO.

**Assigned Sector(s)**

23. Relevant to all sectors

**Target Response/Completion Date**

24. April 2025.

**Recommendations to Board**

25. The Board is hereby requested to consider and if in agreement, to approve the publication of the Draft Determination on the update, proposed Truth in Advertising Rules for consultation.

**Attachments**

26. 2025 Draft Truth in Advertising Rules.