



Submitted by email to consultations@ofreg.ky

January 31st, 2018

Utility Regulation and Competition Office
3rd Floor, Alissta Towers
85 North Sound Rd.
Grand Cayman
Cayman Islands

Dear Sir/Madam,

Re: ICT 2017 – 4 – Consultation, Proposed Consumer Protection Regulations (the “Draft Regulations”)

We are writing on behalf of WestTel Limited (doing business as “Logic”) and its affiliates in response to the Consultation document seeking comment on the Draft Regulations.

The Draft Regulations are a very detailed attempt (34 pages of regulations) to manage service providers’ customer interactions with the overall stated goal being the protection of the consumer. The Draft Regulations attempt to specify almost everything related to the customer relationship including for example how complaints should be resolved, disclosure of contract terms, billing, fault repair, etc. The intention of the Draft Regulations is laudable, but, in our view, that intention is ultimately not well served by the micromanagement approach being taken in the Draft Regulations.

There is little doubt that consumers are best served by competition. Mistreatment or bad customer service is most efficiently remedied by customer choice. The ability to leave one provider for another is the best protection of consumer interests. When a service provider loses customers, it either improves its service or its business further deteriorates. If a service provider provides better customer service than others, it will prosper at the expense of its competitors. That competitive rivalry drives better customer service.

At Logic, we consider customer service to be one of our competitive advantages. We strive to provide service that is better than any other provider in the Cayman Islands. Since 2015 we have received a total of 11 complaints in total from the regulator. Almost one full year has passed since the last complaint processed through the regulator. In 2017, we are aware of only one complaint being made to OfReg about Logic.

That said, we interact with our customers frequently and aim to provide very high service standards. In 2016, we handled 57,678 calls with a 93% answer rate. In 2017, we handled 49,996 calls with a 95% answer rate. This occurred while significantly growing our net subscribers. By deploying fibre and improving our customer interactions, we are reducing issues and complaints, AND overall providing a much better experience for Caymanians.

To measure customer satisfaction, we regularly measure Net Promoter Scores (“NPS”) for our services relative to the industry. In the confidential Annex attached, we provide our most recent NPS measurements as of September/October 2017. In summary, Logic leads the industry in terms of NPS, and by extension, customer satisfaction.

We are not perfect by any means, as we still have much work to do in terms of buildout to reach customers with our fibre plant. We also continue to maintain and support legacy wireless service to the best of our abilities. Consumers would be best protected and served if we could complete our buildout and migrate all to fibre-based services. Accordingly, we continue to invest and build our network.

Turning back to the Draft Regulations, we see them as unnecessary for Logic and its business. There is no evidence of a problem with our customer service, and in fact the opposite is clear. Accordingly, for us, the Draft Regulations are a solution where there is no problem. Moreover, there is a significant risk that the Draft Regulations add a layer of bureaucracy and inefficiency to our customer interactions that will not serve to protect consumers better but will instead raise our cost to serve which can only be to the detriment of the consumer.

It may be that the Draft Regulations are aimed at remediating customer service problems at other providers in the industry. Even in that context, we consider the Draft Regulations as unnecessary. Our competitors are sophisticated and capable companies that will, through market forces, be faced with negative market outcomes if they fail to meet the needs of their customers. The Draft Regulations circumvent the competitive element of customer service and risk substituting regulatory intervention for what Logic believes is one of its strategic advantages.

We respectfully request that the Draft Regulations not be implemented. Market forces should be allowed to play out in telecoms and customer service is a key competitive advantage for Logic.

Alternatively, if OfReg insists on implementing the Draft Regulations, we ask that a threshold for application be included to ensure that only service providers with an objectively measured customer service problem be subjected to the regulations. We suggest a combination of NPS measures and numbers of complaints per year be utilized to exempt service providers who fall within the acceptable thresholds. By limiting the application of the Draft Regulations to those service providers, the regulation will target the problems and not inject inefficiency into organizations that are already meeting high standards.

We appreciate the chance to submit our views in this Consultation. If you have any questions or concerns please feel free to reach out to me directly at your earliest convenience.

Regards,



Rob McNabb
CEO
Logic Communications

January 31, 2018

Mr. J Paul Morgan
Chief Executive Officer
Utility Regulation and Competition Office
3rd Floor, Alissta Towers
85 North Sound Rd.
Grand Cayman

Dear Mr. Morgan,

Re: Consultation on Proposed Consumer Protection Regulations

Digicel thanks the Utility Regulation and Competition Office ("OfReg") for the opportunity to submit its comments on the Consultation referred to at caption.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in this consultation or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement nor does any position taken by Digicel in this document represent a waiver or concession of Digicel's rights in any way. We expressly reserve all rights in this matter generally.

We note that the proposed provisions will only apply to local, licensed service providers. Given that local providers continue to face competition from unregulated overseas, on-line platforms we would urge the Office to take account of the competitive disadvantage to local licensees arising the cost from additional regulatory obligations. These competitive distortions should be taken into account when considering the proportionality of any new proposed obligations.

Please see below are our comments on the specific consultation questions.

Question 1: What are your views on Part 2 of the Draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting ICT services and ICT service providers? If not, please explain in detail the changes required to achieve this objective.

Digicel is of the view that, subject to OfReg addressing the issues set out in our responses to Question 2 below, Part 2 of the Draft Regulations, appears to ensure that consumers have adequate information to make informed decisions when selecting ICT services/providers.

Question 2: What are your views regarding the means by which the Service Providers will be obligated to ensure the provision of information under Clause 3 of the proposed draft regulations?

The rationale or requirement to provide hardcopy version of the information, clause 3(3)(a), has not been set. This is doubly so as such information must be provided free of charge, clause 3(3)(c). across a range of sectors there is a move away for the use of hardcopy documentation both on cost and environmental grounds (for example on-line airline ticket purchasing and check-in with e-ticketing and electronic boarding passes). Digicel believes that any requirement for copies of information in durable format can be met through either the provision of on-line or emailed versions of the information.

Regulation 3(3)(b) proposes to impose the obligation on licensees to make available to consumers, on request, all information provided by the licensee for the purpose of complying with these regulations, in a format accessible to persons with disabilities, including Braille. Although Digicel is in full agreement with OfReg that information must also be accessible by persons with disabilities, we wish to point out that the cost to implement the measures that are required to provide such accessibility are generally quite high. If implemented in the manner proposed by OfReg i.e. upon the request by a single consumer, not only would the turnaround time for the fulfilment of the consumer's request necessarily be quite protracted but the cost would be astronomical.

Therefore, we propose for the consideration of OfReg an approach currently being advanced by the Telecommunications Authority of Trinidad and Tobago in which OfReg should develop mechanisms to assist service providers to defray the cost or to incentivize service providers to make the investment required to make documents available to persons with disabilities. We propose that these measures be implemented as part of a holistic approach, which should properly be developed and steered by OfReg, as to the treatment of persons with disabilities in the provision of ICT services in the Cayman Islands.

Regulation 3(4)(c) proposes to impose the obligation on licensees to prominently display at all retail outlets the rates on which all its services and products are offered. We wish to point out that the logistics required to implement these measures in the manner proposed by OfReg are such that the proposal would be impractical to implement. At present, Digicel offers numerous packages and bundles which are often susceptible to change. Since the area in all of our retail outlets are quite modest, it would be impractical (if not impossible) for all or the rates for all of our products and services to be prominently displayed at all times. However, this can easily be done on our website.

Under the circumstances, therefore, we propose the following:

- That all the rates and prices of all our products and services be displayed on our website
- That the rates and prices of all our products and services be readily available in all retail outlets to provide to consumers upon request
- That only the basic out of bundle rates and the rates of popular bundles and promotional items be displayed in the stores

In respect of the provisions of clause 5(e) Digicel believes that this clause is unduly onerous and the need for this requirement has not been justified. Digicel believes that when the current and evolving on-line access is taken into account, a free to use on-line or email channel would be more than adequate to effect any such cancellation. Digicel has read this provision as applying to cancellation period as also set out in clause 21. To the extent that there is a duplication between Clause 21 and Clause 5(e) Digicel suggests that the similar provision in Clause 21 be deleted.

Digicel notes the data retention period set out in clause 6. If there is to be specific provisions in these regulations relating to data retention periods then this should be aligned to the requirements of the

yet to be implemented Data Privacy Law and any requirement arising from statute of limitations considerations in respect of contract law.

Question 3: What are your views on Part 3 of the draft Regulations? Will the proposed regulations, in your view, enable ICT service providers to address and resolve consumer complaints efficiently and expeditiously? If not, please explain in details the changes required to achieve this objective.

Digicel believes that an effective interaction with customers who are dissatisfied with aspects of its service is an important competitive differentiator. A reputation for high levels of customer service is something to be strived for and maintained.

However Digicel believes that the proposed provisions relating to customer complaints is overly prescriptive. It does not take account of the variations of operational and commercial models of service providers, service offering portfolio or profile of the customer base.

In this regard Digicel believes that the provisions of 7(1)(a) should be modified to require that service providers be obliged to allow complaints to be made using at least two of the four mechanisms outlined. This is sufficient to ensure that Consumers have adequate access to the complaints procedure while at the same time allowing a service provider sufficiently flexibility to choose those contact channels that best suit its operational business, model, its service portfolio and the profile of its customer base.

The wording of 7(1)(b) should be amended to reflect that a telephone contact channel may not be one of the chosen options if 7(1)(a) is amended as suggested.

In respect of clause 9 Digicel believes that a number of aspects of this clause are overly prescriptive

- In particular 9(e) & (f) appear to contemplate the development of some form of interactive interface where the status of a complaint can be queried. In a market the size of Cayman the development cost for such a tracking tool would be disproportionately large.
- Clause 9(i) sets out that errors are rectified within 2 days and that the changes be reflected on the next bill. The first portion of this requirement is both redundant, operationally challenging and provides no customer benefit over and above a standalone requirement that the corrections be reflected in the next bill.
- Digicel's experience has shown that there are some customers who will not accept that their complaint was ill-founded or where their expectations for resolution are unreasonable. Some provision must be made for Service Providers to close complaints in such circumstances.

Clause 11 contains a number of provisions that Digicel considers to be unworkable in practice.

In particular:

- The requirement for written acknowledgement in 11(c) is not relevant if the complaint has already been dealt with. Further the requirement for written acknowledgement where the customer has chosen to interact with the service provider verbally appears to be overly bureaucratic and costly.
- The timelines in 11(d) and 11(e) are absolute and do not reflect the possibility that there may be circumstances beyond the service provider's control (for example reliance on third parties) which render these timelines unachievable. Digicel suggests that wording added to set these as the limits "where practical" and where they cannot be met that the Service Provider uses reasonable endeavours to conclude the matter as soon as practical.

- 11(f) - A requirement to send a written notification in all cases is not required by customers nor is it practical. Digicel believes that this should be modified to read that, where a customer requests it, within 5 Business Days of the closure of a dispute, a written confirmation should be provided.

While Digicel welcomes the thrust of the provision of clause 14 it believes that it is overly prescriptive. Digicel suggests that the wording be modified to reflect that the notice provided should be a reasonable having regard to the nature of the service in question and the circumstances of the customer. It will not be reasonable in all circumstances to write to a customer at their last known address. For example SMS or email with a read or delivery receipt may be more than adequate.

There appears to be some error in the number of the references in Clauses 14 and 15.

Clause 16 sets out in detail what amounts to a high level design for a complaints handling system. The consultation does not outline a regulatory impact assessment nor a cost benefit analysis associated with the IT and operational process development that service providers would face in meeting its requirements. Provided Services Providers are able to meet the functional and timing requirements of clauses 9 and 11 then there is no need to specify how they go about meeting these requirements and clause 16 can be deleted.

Given that the official language of Cayman is English the implied obligation under Clauses 17(2) and (3) to handle complaints in a foreign language is unduly onerous and these clauses should be deleted.

Question 4: What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?

Digicel believes that the post termination period for lodging complaints is too long. In practical terms Digicel cannot envisage a situation where a bona fide complaint would be made such a long time after termination of service. Similarly it is not clear what useful resolution could arise so long after the customer has ceased to avail of the service. Digicel suggests shortening this period considerably to the order of 3 months.

Question 5: What are your views on Part 4 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and ICT service providers will benefit from clear, simple and fair terms and conditions for the provision of service? If not, please explain in detail the changes required to achieve this objective.

Digicel believes that the proposed minimum set of terms to be included in a contract are not unreasonable.

In respect of the minimum term duration commitments Digicel notes that extended minimum contract durations, where there are significant subsidies for terminal equipment, provide an opportunity for consumers to access high end devices and services. Depending on the size of the subsidy in question, the 24 month upper limit in clause 20(1)(b) may be too short to allow these benefits to flow into the market.

In respect of the cooling off period in clause 21, in practical terms, in order to protect themselves, service providers may defer commencing expensive installation work until the expiry of this period. This is especially true in respect of fixed services. Digicel suggests that Consumers be given the facility under the Regulations to explicitly waive this period in order to avail of expedited service delivery. As set out in our observations on clause 5(e), Digicel believes that the contact provisions of this clause are unduly onerous

and the need for a free to call telephone number has not been justified and should be removed from this clause.

In respect of clause 26 Digicel believes that the provisions in respect of roaming are sufficiently material as to justify and require a separate consultation. Such an exercise has been commenced in both Trinidad and Tobago and in the Eastern Caribbean States.

Question 6: Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlined in Clause 23(2).

Digicel believes that this question should refer to clause 18(2)

Digicel believes that the proposed minimum terms to be included in a contract are not unreasonable.

Question 7: What are your views on Part 5 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and ICT providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.

Digicel believes that transparency and clarity in customer billing improves the overall customer experience and reduces the scope for dissatisfaction and complaint.

Digicel wishes to make the following specific comments on the proposed provisions:

28(k) The requirement for mandatory telephone access is unduly and unreasonably prescriptive. Similar to our comments on 7(1)(a) an approach requiring any 2 out of the 4 specified contact mechanisms would be more proportionate.

Digicel believes that the provisions of clause 36 are unduly prescriptive and unfairly interfere with Service Providers' rights under general law. Customers know that they are making use of the service whether or not it is billed promptly. A liability arises in respect payment for that service arises at the time of its use. Curtailing a supplier's right to recoup a legitimate debt to a period much shorter than would be permissible under general law would appear to be significant overreach of the Office's powers.

The process set out under clause 38 is overly prescriptive and does not allow flexibility for Service Providers to design processes that align with their internal financial standards and processes for debt recovery and credit management. It should be open to service providers to specify their own processes provided this are transparently communicated and are not unreasonable.

Question 8: What are your views on Part 6 of the draft Regulations? Will the proposed regulations, in your view, ensure ICT service providers resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.

The draft regulations do not set out proposed penalties for non-compliance. Therefore, apart from the limited exceptions set out in 41(a) the absolute nature of the obligation in clause 41 is a significant concern to Digicel.

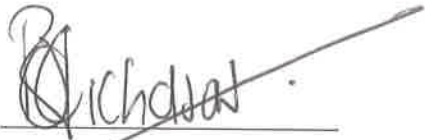
Digicel believes that the requirement to allow fault reporting 24 hours a day 7 days a week is unduly onerous and confers little or no benefit on consumers as any such afterhours fault reporting is unlikely to be dealt with until the next business day in any event.

Question 9: Please provide your views on whether these draft Regulations should apply to all consumers, only to consumers who are not businesses or to individual consumers and small businesses. Please explain in detail your position

Consumer protection regulations in other jurisdictions apply strictly to end-users who do not use the service in connection with a business. Digicel believes that this is a proportionate and reasonable approach and that these regulations should be similarly limited in applicability to “non-business” end users. Business consumers are well-positioned to negotiate the terms and conditions of service at arms’ length with service providers.

Question 10: Please provide your views on any other matters you consider relevant to this Consultation.

A number of the provision of these proposed regulations will take time to implement and will potentially involve considerable expenditure on IT and other systems. The consumer benefits arising from this regulations must be weighed against the consumer detriment should their implementation cause Service Provider resources and funds to be diverted from network and service enhancements and upgrades. In the light of this Digicel that an implementation period of at least 18 months is required after these regulations are promulgated.

A handwritten signature in black ink, appearing to read "Raul Nicholson-Coe", is written over a horizontal line. A long, thin diagonal line extends from the top right of the signature across the page.

Raul Nicholson-Coe

CEO