

From: "Hew, Joey" <Joey.Hew@gov.ky>
Date: Monday, 25 September 2017 at 10:03 PM
To: JP Morgan <jp.morgan@ofreg.ky>,

Cc: Linford Pierson <linford.pierson@ofreg.ky>,

, Alee Fa'amoe
<alee.faamoe@ofreg.ky>

Subject: RE: OfReg - Strategic Plan 2018 - 2022 & Annual Plan 2018 and Budget 2018 - 19

Thank you Mr. Morgan,

Just a couple of comments some directly pertaining to the plan and the others perhaps a bit more general.

I have two matters of interest under the water sector:

- The need for Golf Courses and large developments to have access to affordable greywater or the ability to produce their water for the purposes of irrigation. The development of golf courses /communities are essential to the long term development of our tourism product, and the inability to access greywater or produce their own makes such developments cost prohibitive.
- The inability or the refusal of the water companies to provide water for fire hydrants and fire sprinkler systems are driving the cost of development upwards. The net result is increased cost in real estate both residential and commercial. This results in Caymanian entrepreneurs not being able to afford the square footage in prime real estate for retail or as an investment. The cost of building a cistern (strictly for fire purposes) often represents the same value as the foundation of a commercial building...

Under heading *"Introduce customer service standards and/or guidelines as appropriate for each sector (2021)"*

• *"complete and operationalise its internal procedures for handling consumer complaints, appeals and referrals (2018)"* Please note that the Ministry of Commerce will commence the development of a framework for the promotion of fair trade and consumer protection, perhaps there should be some collaboration between the offices?

Cayman kind Regards,

Joey

Minister Joseph (Joey) Hew
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Good morning,

Please be advised that we have reviewed the Draft 2018 Annual Plan and Draft 2018-2022 Strategic Plan Consultation documents provided by OfReg and wish to make the following observations and comments:

Draft 2018 Annual Plan

Section 44 – Office Revenue Requirements

Identifies that the Office's revenue requirement in 2018 is expected to be \$5.68 million. We were able to match this to the total operating expenses for each sector in table 5 (ICT), table 6 (Electricity), table 7 (fuels) and table 8 (water). However when the details of the individual sector tables were added, a slightly different total for each table was obtained. When these totals were consolidated, the office revenue requirement for 2018 is \$5.78 million. We would be grateful if you would confirm our understanding and whether we missed something.

Section 47 - Strategies for meeting medium-term revenue requirements

Bullet Point # 3 – we suggest that the regulatory fee of 1.5% follows the same principles as proposed in bullet Point # 2 i.e., the fee is not applied to overall sales which reflect the variability in fuel prices but rather to the water base rates only, so that fluctuations in energy prices do not affect the regulatory fee which will ensure a more stable and predictable revenue stream.

Section 59 – table 10

According to the organisation chart in the Draft 2018-2022 Strategic Plan (section 56 & 58, pgs 14-15), there is one Executive Director for Energy and Utilities, however the draft 2018 Annual Plan (Table 10) shows \$163,644 executive remuneration both for the Electricity and the Water Sector, which makes the total for both sectors \$327,288. Is the total executive remuneration for the water and energy sector \$327,288 or should it be \$163,644, split evenly between the Electricity and Water Sectors?

Section 63 – 2019-2020 Priorities for the water sector

We suggest that completion of the inventory of licensees be identified as a priority in 2018, rather than for 2019 so that there is an earlier hand over from the Authority to the Office of all relevant information for operations that require a concession and licence under the Water Production and Supply Law. The Authority is committed to provide the Office with any relevant information in a timely manner.

Regards,

Gelia Frederick-van Genderen
Director, WA

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Notice: As of 16 January 2017, the functions of the ICTA, ERA, and Petroleum Inspectorate have been merged into a new regulatory agency, the Utility Regulation and Competition Office ("OfReg"). See our new website at www.ofreg.ky for more information.

October 19, 2017

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 Draft 2018 Annual Plan and Draft 2018 – 2022 Strategic Plan

Digicel thanks the Utility Regulation and Competition Office ("the Office") for the opportunity to submit its comments on the Consultations 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 have set out our response to address a few key issues which are common to both the 2018 Draft Annual Plan ("the Annual Plan") and the 2018 – 2022 Strategic Plan ("the Strategic Plan"). These are addressed in detail below.

1. Need to Increase Competitiveness in the Sector and the Promotion of Innovation

We believe that this should be the Office's most important objective at this time. It is only through robust and effective competition that the sector can most readily attain the desired levels of access to electronic communications services that are required to meet social and economic goals.

Section 9(3)(a) of the ICT Law identifies the promotion of competition in the provision of ICT services/networks as one of the principal functions of the Office.

In paragraph 31 of the Annual Plan, the Office identifies 17 objectives which it proposes to achieve for the regulation of the ICT sector for 2018. However, notably absent from this list of objectives is even a single objective which seeks to boost the competitiveness of the ICT sector.

Digicel considers that one way of increasing competition is by putting measures in place to foster innovation in the sector. We note that the Office has made an attempt to recognize this in both the Strategic Plan and the Annual Plan. The Office has identified as one of its Mission objectives to *explore innovation that will encourage the efficient and cost effective delivery of utility services*. This is even considered to be an *unambiguous mandate* imposed by S.62 of the URC Law.

In paragraph 26 of the Strategic Plan, the Office identifies the following as a Strategic Focus:

To identify opportunities, develop and implement strategies designed to enable the people of the Cayman Islands to have access to and utilise new technologies to improve their lives through increased economic activity while ensuring that traditional utility services are delivered efficiently and at least economic cost.

This statement appears to make tacit reference to the burgeoning use of unregulated and unlicensed use of On-Line service platforms in the Cayman Islands alongside traditional telecommunications services. However, not only does the statement make reference to these emerging technologies but it also appears to favour the continued proliferation of these unregulated services while tightening the regulatory noose on traditional operators and service providers.

The Office should note that the objectives associated with this Strategic Focus can only be realized upon the express recognition by the Office that traditional operators are the backbone for the delivery of On-Line service platforms in the Cayman Islands. Consumers will not be able to access On-Line service platforms without reliable broadband access. However, at present, the business models of unregulated On-Line service platforms are based on the gratuitous usage of the networks of traditional operators with no requirement to pay taxes and other regulatory levies (as traditional operators are obliged to do).

Increasing consumer demand for the services is also an important consideration in enhancing the competitiveness of the ICT sector. Although the affordability of services is critical, of equal importance is the extent to which consumers are assured that the services are safe and reliable. In this regard, it would be important for the scope of regulation which the Office intends to implement in relation to cybersecurity, data protection and quality of service to also apply to services provided on online platforms. In the counterfactual is that there is empirical market evidence that end-users are willing to make use of ICT services which do not offer such protections, then the Office must act expeditiously to remove any such obligations from licensed operators in the Cayman Islands. Clearly, such an approach would have the benefit of “levelling the playing field” and allow domestic service providers to compete more effectively with the on-line platforms.

Therefore, Digicel submits that a critical part of increasing competitiveness in the ICT sector in the Cayman Islands would be for the Office to develop a policy position in relation to the treatment of On-line service platforms. The Office must take effective steps to ensure that unlicensed on-line platforms and traditional operators can compete effectively in the same space. This involves both ensuring that end-users have access to overseas based online service platforms but also that domestic providers are enabled to innovate and develop equivalent or competing services to those offered by the overseas online service platforms.

Further the Office should have a specific goal to ensure that there is an adequate balance between enabling access to these on-line platforms and allowing flexibility for local infrastructure providers to adapt and develop their commercial models to allow for a rebalancing of revenue generation away from traditional voice and text based services. In this regard, we believe that the Office has clearly articulated that it will adopt an evidenced - based case by case approach to assessing the market impact of innovative pricing and tariffing and intends to only intervene where such innovations are anti-competitive or result in a reduction of consumer welfare benefit. Digicel believes that it is important that this approach is unambiguously set out by the Office in order to give market certainty.

2. Need to Reduce Regulatory Costs

The Office identifies as a Strategic Focus in its Strategic Plan, the provision of utility services at the least economic cost. In order to achieve this, Digicel submits that one of the Office's objectives should be to reduce the level of regulatory costs borne by licensees. The objective here should be to ensure that the regulatory costs borne by licensees are no more than that which is reasonably incurred by the Office to regulate the ICT sector. This would entail the following:

i. Review of the Office's own operating costs

Table 4 of the Draft 2018 Annual Plan compares combined operating and capital expenditures for the Office budgeted for 2017 and 2018. The Table clearly shows significant increases in staff payroll costs, directors' fees, property leases and general expenses. Although there were decreases in consultancy and professional fees, travel and subsistence and training, the total combined operating expenses are proposed to be increased by 1.1M.

For the ICT sector, budgeted operating expense are proposed to be increased by 9% from 1,892,061 in 2017 to 2,067,602 in 2018. Staff payroll costs are proposed to be increased by over 170K. The Office attributes this to the establishment of an innovation group in 2018 and increased regulatory responsibilities. However, we do not recognise a marked increase in the volume of work or in the expertise required to attain the objectives identified for 2018 when compared to those activities identified in the annual plan as having been completed for the past period.

In paragraph 40 of the Draft 2018 Annual Plan, the Office anticipates that each sector shall, as far as possible and reasonable, bear the Office's costs for regulating that sector and all overheads and other common costs should be allocated transparently across the sectors. The Office further notes that it is anticipated the Office's revenue requirements for 2018 will be CI\$5.68 million, which is approximately CI\$210,000 greater than the CI\$5.47 million in revenue projected from Licences in 2018.

As it relates to the ICT Sector, the Office proposes to address this shortfall by removing the CI\$600,000 cap in regulatory fees which is in effect at present.

The Office would be aware that within recent times, all operators are taking significant measures to reduce costs in the face of declining revenues. Digicel, in particular, has had to undergo serious restructuring and to undertake cost cutting measures to continue to compete effectively in the Cayman Islands. Even so, the Office still proposes to increase its own costs and to remove the cap on regulatory levies in order for its increased costs to be funded by ICT providers. We wish to put the Office on early notice that any increase in regulatory costs would necessarily have to be passed on to consumers. This would not be consistent with the Office's objectives to ensure that traditional services are provided at minimum cost to consumers.

We note that the Office has publicly indicated that, as part of its review of the licences due for renewal in 2019, it will actively consider a reduction in the scope and extent of licence conditions. This is to reflect the fact that tying such regulation and obligations to license conditions will be increasingly inappropriate in a converged digital economy. We therefore expect that the direct cost of regulatory supervision of licensees should decline as the volume of licence - specific conditions also declines. Where there are increased supervisory costs due to increased general regulatory supervision, then, as set out below, these costs should be recovered from a widened ICT collection base. Requiring licensed entities to pay for the regulatory supervision or their unlicensed competitors is both iniquitous and distortive in the market.

ii. Implementation of measures to ensure that the ICT sector in the Cayman Islands is not subsidising the activities of other sectors within the purview of the Office

In Table 10 of the Annual Plan, we note the proposal for an increase in executive remuneration for the sector ICT but a decrease in this expense the electricity sector. This is so even though the objectives and priorities identified for the electricity sector for the upcoming period are quite onerous, the regulation of electricity being a newly acquired responsibility of the Office. We do have the concern, therefore, that these proposals entail the subsidisation of the cost of management of the electricity sector by the ICT sector.

Digicel is of the view that any increases in expenses incurred or to be incurred between the period when ICTA dealt with ICTs alone to when it assumed additional responsibilities as OFReg should be borne by the additional sectors i.e. water, electricity, fuel and not by the ICT sector.

It is noteworthy that in paragraph 23, the Office notes that, other than the National Energy Policy, there are no other formal sector policies from Government to guide the activities of the Office. For this reason, the Office considered it appropriate to identify a number of imperatives in each of the sectors which it believes would support Government's general priorities for the period 2018 – 2021.

In the absence of clear Government policy for the direction of the ICT Sector, we are concerned that, if the Office is not careful, these activities proposed to be undertaken by the

Office, purportedly in the furtherance of Government priorities, can easily include the performance of functions which extend beyond the remit of the Office as the utility regulator. This would necessarily incur costs which ought not to be properly borne by any of the sectors within the remit of the Office.

For example, in its list of ICT sector priorities for 2019 – 2020, the Office also proposes to *examine and move on initiatives to increase the academic and practical development of small and medium-sized enterprises within the local community (youth) (2020)*. We find it difficult to appreciate how this can properly be a priority for the ICT sector or for the Office for that matter.

iii. Contributions for On-line Service Platforms

This decline in operator and service provider revenues is, to a great extent, as a result of the proliferation of unregulated Over The Top or online platform services in the Cayman Islands. Traditional voice services are facing competition from these online platform services which are offered by entities who are not resident in the Cayman Islands and who pay no taxes or levies and do not otherwise contribute to the economy of the Cayman Islands.

Digicel submits that rather than removing the cap on regulatory levies, the Office should implement measures to obtain funding for regulatory supervision from the full range of industry participants in the ICT market in the Cayman Islands. This would include developing mechanisms to obtain contributions from those On-Line platforms which are active in the local market. Broadening the contribution base in this manner would effectively send the correct signals to potential infrastructure investors that they will not be treated as a “cash cow” simply because they are physically present in the market. Similarly, these measures would send signals that if firms extract an economic benefit from the ICT sector in the Cayman Islands, they should proportionately contribute to the regulatory framework that enables them to reap this benefit. Digicel is available to engage with the Office as to potential mechanisms that may be implemented in this regard.

iv. Undertaking only those objectives that are reasonably necessary in a given period

We believe that it is necessary for the Office to approach its regulatory agenda conservatively and to set targets only for those objectives that are reasonably necessary for the forthcoming period. This would allow the Office to budget for and to generate only such revenues that are reasonably required for the furtherance of these immediate objectives.

As it relates to ICT sector priorities for 2019 – 2020, the Office proposes to identify and make recommendations where necessary for new and/or improvement to existing legislation, regulation and/or regulatory policy. However, there is no indication as to what extent the current legislation is deficient and amendment is required to attain the objectives for the forthcoming year. This is particularly remarkable since a new suite of ICT sectoral legislation was passed just last year. Unless the Office can provide the particulars in this regard at this stage, this should be removed as a priority for this year.

3. Need for Transparency and Accountability

Section 41(1) of the URC Law requires the Office to publish a plan of its proposed objectives for the forthcoming year, a report of the delivery of its functions for the past year and its approved budget for the forthcoming year.

Section 42 of the URC Law requires the Auditor General to report to the Board on the Office's (i) performance against its annual plan; (ii) the extent to which its deployment of its financial resources has delivered value for money; and (iii) the impact of its sectoral regulatory decisions when compared to the projected impacts.


In addition to consumers, the licensed operators are perhaps the Office's most important stakeholders. If the objective of the Auditor General's report is to measure the Office's effectiveness, it stands to reason that the Office's stakeholders – in particular those whose revenues are being levied to fund the operations of the Office, are also given access to the information provided to Cabinet. Therefore, in the interests of transparency, we believe that the Auditors Report, together with annual report to be submitted to Cabinet under s. 43, should also be published.

4. Need to Build Relationships with the Industry

In paragraph 31 of the Annual Plan, the Office identifies as one of its objectives for 2016 the proactive building of relationships with the industry. The Office also notes that this is already ongoing. Digicel has always encouraged the Office to increase its level of engagement with the industry – not only by means of formal consultation but also by genuine engagement. However, Digicel has not noted any significant improvement in this regard within recent time. Therefore, it would be useful for the Office to identify in its Annual Plan the specific measures that it has taken over the last period to proactively build relationships with the industry and to identify those which it proposes to implement within the forthcoming period.

Given the seriousness of the concerns that Digicel has with the Office's proposals, we would like to request a meeting with the Office, even as this consultation process is ongoing, to discuss the Office's proposals in detail.

Yours sincerely,


Raul Nicholson-Coe
Chief Executive Officer