



**Public Consultation into the Provision and
Licensing of Television Services (including Internet
Protocol Television (IPTV) Services) in the Turks
and Caicos Islands**

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Note: Confidential information has been redacted from this document. Redactions are shown by a ✕ sign.

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1. Introduction

In January 2017, Andrew's Communications Ltd, Island TV and Island Cable Network, providers of television services in the TCI (collectively referred to as 'the Complainants'), applied to the Supreme Court for judicial review of a decision of the Telecommunications Commission concerning a complaint they had made to the Commission that Cable & Wireless (TCI) Limited, trading as Flow, was providing internet protocol television ('IPTV') services to the public without proper authorization under the TCI regulatory framework. The application asked the Court to quash the decision of the Commission and to direct the Commission to rehear the matter in the complaint.

In February 2017, while the application for judicial review was pending, the Commission decided to hold a public inquiry into the provision of television services, including IPTV services, its licensing and regulation under TCI law, and the manner in which the provision of such services might be regulated in the future. When the decision of the Commission to hold a public inquiry into the provision of television services was communicated to the Complainants and the Court on April 6, 2017, the Court made an order with the consent of the Complainants to discontinue the application for judicial review.

This Consultation is intended to serve two purposes:

1. It constitutes the public inquiry mentioned in the consent order made by the Supreme Court on April 6, 2017. Thus, the Commission will rehear and determine the complaint concerning Flow providing IPTV services to the public. The Commission is now inviting submissions from the Complainants, Flow and other interested persons as to whether, under the existing regulatory regime in the TCI, Flow is authorized to provide those services. **This issue is dealt with in Part 1 of this consultation.**
2. Because the advent of IPTV services is new in the TCI, and the Commission does not currently regulate the provision of television services, another purpose of this Consultation is to examine whether the existing regulatory regime in the TCI is satisfactory for the regulation of television services, including, but not limited to IPTV services, and whether, for the future, the Commission should be recommending to Government that a different regulatory regime be adopted. Thus, whether or not the Commission determines that IPTV is authorized under the existing regime, one possible outcome of this Consultation is that IPTV would be authorized under a future regulatory regime for television services. **This issue is dealt with in Part 2 of this consultation.**

To assist the Commission in examining what best regulatory regime might be adopted for the provision of television services in the TCI, the Commission has retained Laurasia Associates as consultants to provide an analysis of the context for television services, including IPTV, in the TCI, international approaches to regulating television, and IPTV specifically, and possible approaches to television regulation (including IPTV) in TCI. The Commission has considered Laurasia's advice in preparing this consultation. However, decisions about the existing licensing regime, and its applicability or otherwise to the provision of IPTV services, and about the future direction of regulation in this area, rest with the Commission.

The Turks and Caicos Telecommunications Commission invites submissions from stakeholders on Part 1 and Part 2. The questions which the Commission requests the participants to the Consultation to address are set out in section 9 and the process of the Consultation is described in section 10.

PART 1: Is Flow currently authorised to provide IPTV services in the TCI?

2. The complaint

In a letter dated June 8, 2016, (Annex 1) the Complainants complained to the Commission that Flow was providing IPTV services to the public without proper authorization under the TCI regulatory framework.

The Complainants maintained that:

- In order to provide IPTV services, Flow needed to be licensed to carry on the business activity of “television broadcasting” under the TCI Business Licensing Ordinance¹, for which Flow is not licensed.
- Flow was not authorized to provide IPTV services under the Telecommunications Services and Network Licence granted to Cable & Wireless in 2006 (‘the 2006 licence’) under the Telecommunications Ordinance².
- IPTV services are essentially television broadcasting services, which are not regulated under the Telecommunications Ordinance or authorized under the 2006 licence³.

In April 2016, the Complainants had made a prior complaint to the TCI Government against the issuance to Flow, then trading as LIME, of a licence to carry on the business activity of “television broadcasting” under the Business Licensing Regulations. Flow intended to provide IPTV subscription services to consumers in the TCI under this licence. The complaint to Government, the regulator of the Business Licensing Regulations⁴, was that the business activity of television broadcasting is reserved under the Regulations for Turks and Caicos Islanders only, which Flow is not.

The Government’s response to this complaint was communicated to the Complainants in a letter from the Attorney General’s Chambers dated April 28, 2016 (Annex 2). That letter essentially stated Flow’s answer to the complaint, with which Government agreed. The letter stated that:

- The provision of IPTV subscription services does not constitute engaging in the business activity of “television broadcasting” as specified under the Business Licensing Regulations, because providing IPTV subscription

¹ <http://online.fliphtml5.com/fizd/qefp/>

² <http://www.telecommission.tc/content/root/files/20130702160620-14.02-Telecommunications-Ordinance.pdf>

³ <http://www.telecommission.tc/content/root/files/20090121130939-CW.pdf>

⁴ <http://online.fliphtml5.com/fizd/sneo/#p=1>

services is not broadcasting. Thus, Flow is not required to hold a licence under the Business Licensing Regulations to provide IPTV services.

- Under its 2006 licence, Flow may provide any telecommunications service, known or unknown at the time of issuance of the licence, that would require a licence under the Telecommunications Ordinance.
- IPTV subscription services are “telecommunications services” as defined in the Telecommunications Ordinance. Thus, Flow may provide subscriber television services using IPTV (which is an internet service) under the 2006 licence.

In July 2016, the Commission answered the complaint made in the June 8, 2016 letter from the Complainants (Annex 1), by adopting, without qualification, the position stated in the letter to the Complainants from the Attorney General’s Chambers dated April 28, 2016 [Annex 2].

In January 2017, following the adoption by the Commission of the Attorney General’s Chambers letter dated April 28, 2016 (Annex 2) as the answer to the complaint, the Complainants applied to the Supreme Court for judicial review of the Commission’s decision to adopt that position. The application asked, in particular, that the Commission’s decision be quashed and that the Commission rehear the matter in the complaint.

In February 2017, the Commission decided to hold a public inquiry into the provision of television services, including IPTV services, its licensing and regulation under TCI law, and the manner in which the provision of such services should be regulated in the future.

On April 6, 2017, after the decision of the Commission to hold a public inquiry was communicated to the Complainants and the Court, an order was made by the Court with the consent of the Complainants, to discontinue the application for judicial review (Annex 3).

This Consultation constitutes the public inquiry mentioned in the consent order made on April 6, 2017 (Annex 3).

3. Regulatory regime for the provision of television services in the TCI

3.1 The Business Licensing Ordinance and Regulations

The *Business Licensing Ordinance*, of which the TCI Government (Permanent Secretary, Finance) is the regulator, was first enacted in the early 1990's. This Ordinance provides that individuals or corporations wishing to engage in business activities in the Turks and Caicos are required to carry a business licence issued by the Permanent Secretary, Finance. Types of business activities and fees for licences for those activities are set out in the *Business Licensing Regulations*. In Schedule 2 of these regulations, under the heading Communication, the following types of business activities are listed:

- Internet Service Provider
- Radio Broadcasting
- Television Broadcasting
- Telecommunication Service

Radio and television broadcasting have been listed as types of business activities in these regulations since the 1990's. Telecommunication and internet services were added to the list as types of business activities covered by these regulations after the enactment of the *Telecommunications Ordinance* in 2004. The types of business activities listed are not further defined in the regulations.

The *Business Licensing Regulations* also provide for 'reserved' business activities, that is activities that are reserved for 'Turks and Caicos Islander' businesses. Schedule 4 of the regulations lists the following activities among the reserved business activities:

- Radio broadcasting
- Television broadcasting

Businesses engaged in more than one distinct activity (not reasonably incidental to the main activity) must acquire a licence for each appropriate activity.

Businesses engaged in some activities may also have to be licensed under other regulatory requirements before commencing operations. Thus, businesses providing telecommunication and internet services are also required to be licensed under the *Telecommunications Ordinance*.

There are no licensing requirements for radio and television broadcasting businesses other than the requirements in the *Business Licensing Ordinance*.

3.2 The Telecommunications Ordinance

The *Telecommunications Ordinance*, of which the Telecommunications Commission is the regulator, was enacted in 2004. Under this Ordinance a person may not provide public telecommunications services to the public in the TCI without a service provider licence issued for that purpose by the Commission. The following definitions are pertinent to the requirement for this service provider licence:

- *“telecommunications” means any form of transmission, emission, or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic means;*
- *“telecommunications service” means a service consisting of ... conveying, emitting, receiving, switching or transmitting messages ... by means of a telecommunications system;*

The *Telecommunications Ordinance* also contains the following definition of broadcasting:

- *“broadcasting”, for the purposes of Part VI of this Ordinance, means the transmission of programmes whether or not encrypted, by means of telecommunications, for reception by the public, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis;*

Though this definition of broadcasting has remained in the Ordinance to this day, the Part VI referred to was never enacted. That Part was intended for the regulation of broadcasting services by the Telecommunications Commission, hence the definition of broadcasting, but it was deleted during the passage of the Ordinance by the Legislature of the day.

3.3 Legislation proposed to regulate broadcasting services in 2013

In April 2013, the Government announced a policy to update the laws relating to telecommunications to include broadcasting services so as to facilitate competition and encourage the development of the broadcasting and telecommunication industry. The goal was to expand the mandate of the Telecommunications Commission to include the regulation of broadcasting services.

A Broadcasting Bill was introduced in the House of Assembly in June 2013, proposing a new broadcasting ordinance under which the provision of broadcasting services would be authorized by a licence issued for that purpose to providers by the

Telecommunications Commission. This proposed ordinance contained the following definitions:

- *“broadcasting” means the transmission of programmes whether or not encrypted, by means of telecommunications, for reception by the public on free, pay or subscription or other basis, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis*
- *“broadcasting service”, means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telecommunications, a cable or satellite device, directly or indirectly for reception by the general public, whether that material is actually received or not*

The proposed new ordinance contained transitory provisions for persons who had carried on a broadcasting service prior to its commencement and special provisions for existing Government broadcasting services.

New broadcasting regulations were to be made under the ordinance to establish types of broadcasting services licences and the fees payable for those licences. Draft regulations were published introducing “subscriber television” services which were described this way:

- *“subscriber television” means a business or organisation that uses a telecommunication system for broadcasting and receiving moving pictures and sound over a distance.*

The Broadcasting Bill introduced in the House of Assembly in June 2013 was not passed.

3.4 The Telecommunications (Fee Structure) Regulations

The *Telecommunications (Fee Structure) Regulations*, provide for various types of telecommunications services licences and for the fees payable for those licences. When these regulations were first made in 2007, they set out the following types of licences described in a glossary of terms at the end of the regulations:

- *“Full Telecommunication Service and Network” means a business or organization that provide users the ability to use a full complementary of telecommunication services voice, data, etc. both domestic and international (i.e. Cable and Wireless) (sic);*
- *“Internet Networks/Service” means a business or organization that offers users access to the internet and related services (sic);*

- “Subscriber Television” means a business or organization that uses a telecommunication system for broadcasting and receiving moving pictures and sound over a distance;

Subscriber television services were included as types of licences to be issued by the Commission in the original *Telecommunications (Fee Structure) Regulations* in conjunction with Part VI of the *Telecommunications Ordinance* which had been intended for the regulation of broadcasting services by the Telecommunications Commission, but was not enacted. Like the definition of “broadcasting” that has remained in the Ordinance despite the deletion of Part VI, the provision for subscriber television services to be licensed by the Commission has also remained in the fee structure regulations without the backup of Part VI, which would have authorized the Commission to issue such television services licences.

3.5 Subscriber Television Services

The Broadcasting Bill introduced in the House of Assembly in June 2013 would have mandated the Telecommunications Commission to regulate broadcasting services, as had been intended in 2004 in the Part VI of the Telecommunications Ordinance that was not passed. In particular, it would have authorized the Commission to issue subscriber television services licences to providers of television services. But like Part VI, the Broadcasting Bill did not come to pass.

Since its inception in 2004 the Commission has not considered itself mandated to issue subscriber television services licences and, indeed, has never issued such a licence to any provider. When complaints were made to the Commission concerning the provision of television services, the Commission invariably stated its lack of jurisdiction to resolve such complaints and referred the complaint to Government.

That is the position that the Commission took in April of 2016 after the Complainants first brought their complaint that Flow had begun to introduce broadband television boxes to provide IPTV services and were not licensed to do so. The Commission at that time stated its lack of jurisdiction and referred the matter to Government.

4. The context for television services and IPTV

4.1 Introduction

In the last section, we set out definitions that relate to “*telecommunications*”, “*broadcasting*”, provision of “*television services*” and “*subscriber television*”, as used in The Business Licensing Ordinance and Regulations, the Telecommunications Ordinance, the proposed 2013 broadcasting legislation, and The Telecommunications (Fee Structure) Regulations.

We think it is important to consider these terms further, for both the legal question at stake in this consultation, and also to help us consider options for the future regulation of the television market in Turks and Caicos Islands (‘TCI’),

To help inform this discussion, we begin in this section by considering:

- technologies commonly used to distribute *video signals*
- the characteristics of *television services* and *channels*; and
- what constitutes a *broadcast service* (and how this is distinguished from a *multicast* or *unicast* service).

We then focus on a definition of *IPTV*, and describe what distinguishes it from other video distribution technologies. We do this for two reasons:

1. Firstly, because use of *IPTV* is increasingly widespread, both in TCI and internationally. It forms an integral and growing part of the television landscape, and should therefore be considered alongside other video distribution mechanisms when describing the TCI television market, and considering its future. However, as the newest form of distribution, it is also the least understood. It is therefore important that we develop a common understanding of what *IPTV* is.
2. Secondly, because this inquiry is also considering whether/how *IPTV* is currently regulated/licensed within TCI. This requires that we have a clear view on what *IPTV* is, and is not, and how it relates to concepts such as *television services*, and *broadcasting*.

4.2 Distributing video signals

Video signals can be distributed by a number of means, including over the airwaves, over coaxial cable, and over the internet using a broadband connection. Each technology offers advantages and disadvantages to either the distributor or to consumers who wish to view them.

IPTV is one way to distribute video signals. In seeking to describe and define IPTV, it is useful to compare and contrast it with other distribution technologies. We summarise these here, before going on to consider each form of distribution in greater depth in section 4.4.

Table 1: Summary of video distribution technologies

Distribution technology	Advantages	Disadvantages	Examples in Turks & Caicos
<p>Terrestrial (Also 'DTT' digital terrestrial television).</p> <p>Delivered over radio waves (i.e airwaves) from land-based transmitters.</p>	<ul style="list-style-type: none"> •No need to build distribution network to every home •Digital terrestrial offers improved picture quality and more channels than analogue 	<ul style="list-style-type: none"> •Uses valuable spectrum 	
<p>Cable (also 'CATV' - cable access TV).</p> <p>Delivered over coaxial cable.</p>	<ul style="list-style-type: none"> •Extensive choice and high quality •Easily bundled with broadband and telephony •Facilitates time-shifted and on-demand viewing 	<ul style="list-style-type: none"> •Expensive to deploy; therefore restricted availability 	Digicel Play; digital in Providenciales, analogue in Grand Turk
<p>MMDS (Multichannel Multipoint Distribution Service)</p> <p>Delivered over short-range radio waves.</p>	<ul style="list-style-type: none"> •Cheaper than laying fixed cable networks •Therefore easier to connect remote or rural areas 	<ul style="list-style-type: none"> •Uses valuable spectrum. •Prone to interference. 	PTV
<p>Satellite (also 'DTH' - Direct To Home).</p> <p>Delivered via radio waves from a satellite transponder.</p>	<ul style="list-style-type: none"> •Lower distribution costs than laying cable, which means ... •... ubiquity (provided line of sight is available to the satellite) 	<ul style="list-style-type: none"> •More difficult than cable or IPTV to bundle with other communications services •Occasionally affected by weather / atmospheric conditions 	No satellite services sold with rights-holder consent in TCI, but islands lie within the footprint of e.g. US service DirecTV
<p>IPTV</p> <p>Delivered over a broadband network managed by an ISP, typically using a copper or fibre broadband connection.</p>	<ul style="list-style-type: none"> •Uses existing broadband infrastructure •Managed network facilitates better picture quality •Offers extensive data on viewing habits and behaviours 	<ul style="list-style-type: none"> •Can also suffer from buffering, although less than with internet TV 	Flow
<p>Internet TV</p> <p>Delivered over the open internet, typically reaching the consumer via a copper or fibre broadband connection.</p>	<ul style="list-style-type: none"> •Uses existing broadband infrastructure and no STB required so distribution costs are low •Access to a huge range of content from across the world 	<ul style="list-style-type: none"> •Buffering and data transfer rates can lead to variable picture quality 	E.g Youtube, Netflix

4.3 Television services, channels and broadcasts

Before we consider each distribution mechanism further, it is important to note that all of them can be used to deliver video and audio, and some are suited to deliver other forms of content, such as text or email. We are concerned in this document with the delivery of *television programmes*, and in particular with *television channels*. We now briefly consider these concepts.

Television can be considered as the transmission (or delivery) of moving images and sound. A *programme* is a collection of these images and sounds to form '*content*', such as news, sport or a film. In theory, the word '*television*' could mean just a single programme or multiple unconnected programmes. However, in practice, when people say '*television*' or '*television service*', they generally refer to a *television channel*. A *channel* is a series of programmes, shown one after another in a linear fashion, curated, assembled and scheduled by an operator. In this document we use the terms '*television*' and '*television channel*' interchangeably.

The scheduling aspect of television is important. The operator selects a time to show each programme; this cannot be determined by the viewer. With the arrival of greater channel capacity, some operators started offering the same channel an hour after the first transmission. These '+ 1' channels offered '*time-shifted viewing*' - an opportunity to watch content later than the first transmission. All of the distribution mechanisms described here can be used to offer time-shifting.

The advent of digital technologies not only allowed for many more channels to be made available due to compression techniques, but it also gave viewers even greater flexibility on viewing time. Programmes could be stored on a central server, and accessed *on demand* at any time. This requires a two-way path, whereby the viewer interactively requests the programme they wish to view. Not all of the distribution mechanisms described here offer the interactivity required to deliver on-demand programming.

From a technical perspective, where a signal is transmitted to the entire area covered by the transmitter, this is known as *broadcasting* (sometimes described as '*one-to-all*' distribution). The signal is intended for direct reception by anyone with suitable receiving equipment (including a viewing card or other decryption device if required), and the viewer tunes in to the programme they wish to view. Terrestrial, cable, MMDS and satellite are all technologies which enable the broadcasting of content.

An alternative is to transmit programmes only to users who request them. This could be an *on-demand* request from an individual (where the transmission is known as a *unicast* or '*one-to-one*'), or a request from multiple users for the simultaneous

transmission of the same programme (which is known as a *multicast* or ‘one-to-many’ (or occasionally ‘many-to-many’).

However, in practice, the term “*broadcasting*” is defined and applied differently in different contexts, and often not in the technical sense. For example, the International Telecommunication Union defines a “*broadcast service*” as “A *radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission*”⁵. This broad definition could be interpreted as including “*multicasting*” and “*unicasting*”.

We agree with the ITU approach to defining “broadcasting”. We interpret the term “*general public*” here as meaning ‘everyone with suitable receiving equipment, such as TV set, or a cable connection, or a viewing card’. Under this interpretation, transmissions intended for direct reception by “*the general public*” contrasts with transmissions intended for private networks, such as Closed Circuit TV networks.

4.4 Distributing television services and channels

We now describe each of the six most common methods of delivering video content generally, and television in particular, to viewers.

i) Terrestrial television broadcasts (‘over the air’)

In the early days of television, channels were delivered over the airwaves using land-based transmitter masts (hence ‘*terrestrial*’ television). These send signals to rooftop or set-top antennas, which are connected to a television set by coaxial cable. The antenna converts the waves back into electrical signals, and these can be decoded by a TV set to offer sound and pictures.

Services were first broadcast on VHF band 1 (52-88 MHz) and band 3 (174-216 MHz), with transmissions in the UHF band (470-894MHz) coming later. Not all of these frequencies were used for television in each country, due to other demands on the spectrum.

Originally, all terrestrial television broadcasts used analogue technology, in which each broadcast frequency used was only capable of carrying a single channel. Analogue signals are prone to variable picture quality, with effects such as fading, snow, and ghosts.

In the 1990s, digital terrestrial television broadcasts began. This technology provides crystal-clear picture and sound with minimal fading or interference. It enables the

⁵ (<http://search.itu.int/history/HistoryDigitalCollectionDocLibrary/5.21.61.en.100.pdf>).

broadcast of multiple channels on a single broadcast frequency, by combining (or 'multiplexing') the channels into a single data stream before broadcast. The signal is then decoded by the receiver in the viewer's home. This receiver can be either built in to the television set, or included in a set-top box attached by a cable to the set.

ii) **Cable access television**

In some areas, the poor reception available from terrestrial television led to the development of cable television. This is delivered by the cable operator from a 'head-end' distribution point, taking either a direct feed of the channels or taking the signal from 'over-the-air' (from satellite or terrestrial transmission).

The signal is usually distributed from the head-end around the network using fibre, and then delivered to the customer's home using coaxial cable. Usually this cable is plugged into a small 'set-top box', provided by the cable operator, which is then fed by another cable to the TV set, although the cable can feed the TV set directly. The set-top box decrypts and decodes the signal to enable programme viewing.

The use of different frequencies allows many channels to be distributed through the same cable, without separate wires for each, and the tuner of the TV or radio set selects the desired channel from among all transmitted. Like terrestrial TV, these channels are 'broadcast' - i.e. they are distributed to all users on the network with appropriate receiving equipment.

Because the cable operator controls not only the broadcast but also who can receive its services, it is possible to charge customers directly for the services they receive. This provides a revenue stream which can be split between the cable operator and the channel operator. As a result, new subscription-only channels, such as HBO (Home Box Office) were launched, providing programmes that would not otherwise be available, such as newly-released movies or premium sports events.

Because it is delivered over a telecoms network, the cable operator can also use the network to offer telephony and internet access as part of a bundled service. The ability to buy multiple services from a single provider is attractive to many consumers. In addition, where the cable operator also offers broadband, consumers can use the return path to select programming stored on the operator's servers on demand. This creates a range of viewing options; including live or time-shifted programmes, or a movies on demand from the operator's library.

Like terrestrial broadcasts, cable television originally used analogue signals. But digital cable television arrived in the 1990s, allowing even more channels and better quality pictures, including, high-definition ('HD') pictures.

With so many channels available it could be difficult for viewers to find the one they wanted. With the advent of digital transmission, many operators began to provide an

Electronic Programme Guide (EPG), which displays a list of available channels, and their programme schedule, on the TV set. Where the set-top box also offers storage, the EPG can be used to record programmes for later viewing.

In TCI Digicel Play is provided by cable access television, using digital cable in Providenciales, and analogue cable in Grand Turk.

iii) **MMDS (Multichannel Multipoint Distribution Service)**

Cable TV has a number of advantages over terrestrial broadcasting, but it also has its challenges. In sparsely populated areas it may not be economic to lay cables to every home.

An alternative is to use MMDS technology, also known as wireless cable, which is a broadcasting service that usually operates on UHF spectrum between 2.1 and 2.7 GHz. In MMDS, the operator has a head-end, like a cable system, which puts the channels together. But instead of then feeding the signal down a cable system to customers' homes, the head-end instead sends it to a medium-power transmitter, located with an omnidirectional broadcast antenna, usually close to the highest topographical point in the intended coverage area. The workable radius can reach up to 70 miles in flat terrain (but significantly less in hilly or mountainous areas).

Each customer is equipped with a small receiving antenna, along with a set-top box to convert the signal to feed the TV set. Customers are usually charged a monthly fee, similar to that for cable TV. The MMDS frequency band has room for several dozen analogue or digital video channels.

A key downside of MMDS is that it uses valuable spectrum and may suffer from interference.

In TCI PTV is provided by MMDS.

iv) **Satellite television**

Satellite services involve the broadcast of content over radio waves, transmitted from satellites in geo-stationary orbit.

Satellite TV began in the 1980s. Initially satellites were low-powered and a very large dish was required to receive their services. Gradually, higher-powered satellites reduced the size of the dish required and 'direct-to-home' services became available. In the United States, operators such as DirecTV and Dish Network were launched, while in the UK Sky arrived.

The service provider may own their own satellite or use a third-party provider, such as Europe's Astra or Eutelsat. In this case, the operator leases satellite capacity but

has a direct relationship with the viewer by providing the equipment to receive the service (a dish and set-top-box). Like a cable operator, the satellite operator decides which channels to include in their service and generally charges viewers a subscription fee, some of which may be passed on to individual channels.

TCI lies within the footprint of several satellite services, including DirecTV from the US. However, we are not aware of channels being distributed with rights-holder consent.

v) **Internet TV ‘Over The Top’**

As technology improved, it became possible to carry television channels over standard telephone and broadband networks. Video content which originates on the open internet can now be viewed on any computer or mobile device which has online access. This is often known as internet TV, web TV, or over-the-top ‘OTT’ TV.

To deliver video using the internet, content must first be readied for digital distribution. This entails:

- converting video into a digital format;
- compressing it to reduce the file size (which makes it easier to distribute);
- encoding it into using a recognised standard (eg MPEG2 or 4) which facilitates efficient content delivery for a given bandwidth; and
- encrypting it to ensure that it can be viewed only by authorised users.

The video is broken down into small chunks (‘data packets’) which are distributed over the open internet using the internet protocol (or ‘TCP/IP’) suite. This is a set of rules which specifies how data is sent (‘switched’) to a destination (identified by an ‘IP address’) which has requested the data.

One important characteristic of the internet protocol suite is that data packets are treated equally, regardless of their purpose or content, while they travel over the open internet. This means that data for high bandwidth services, like video, is not prioritised over other forms of traffic. Although OTT content providers employ various techniques to optimise picture quality, this can therefore be subject to disruption by unpredictable network quality.

Content delivered over IP networks can either be ‘*downloaded*’ or ‘*streamed*’:

- Where the user wants to access a single video file, for example a film, they make a request for the data to a remote server from their TV set or computer, *download* it and store it. The consumer does not always have to wait for the download to complete in order to start viewing the content, but they will not be able to finish viewing until the entire file has been stored. This approach to

distribution is known as '*unicasting*'; it involves a '*one-to-one*' relationship between client (i.e the viewer) and server.

- Alternatively, where many viewers seek access to the same video file, for example a TV channel, it is usually '*streamed*'. Data is sent via multiple nodes on the network to multiple users. The user can start viewing streamed programmes as soon as the first data packet arrives, while simultaneously downloading the rest of the content. Their device may store a buffer of data, to help minimise the impact of network interruptions, but does not store the streamed content permanently. Streamed content can either be *unicast* ('*one-to-one*'), or *multicast* ('*one-to-many*').

A great number of OTT internet TV services are available in most countries, including TCI. These include providers such as Youtube and Netflix.

vi) IPTV

Video signals using internet protocols can also be distributed over a managed telecommunications network, rather than over the open internet. This has the advantage that the network owner can elect to store content locally (rather than on a distant server), and can prioritise video traffic over other forms of data. These factors contribute to better picture quality and an improved viewer experience, when compared to distribution over the open internet.

Like cable, IPTV operators who control their own network can also offer telephony and internet access as part of a bundled service, and can deliver television channels live or catch-up ('time-shifted'), or individual programmes on-demand if these are stored on their servers.

In theory, IPTV services could be received directly by any smart TV (i.e one with built-in internet capability). However, in practice, operators tend to require use of a set-top box (or dongle) to receive and decrypt packets of streamed video, and convert them back into video. This device enables operators to control viewer access (and thereby charge them), and to provide an EPG to help navigate the service.

The interactive nature of IPTV enables operators to determine exactly which programmes a viewer has requested. This creates a rich dataset about viewing behaviours and habits, which is valuable to advertisers. In theory at least, IPTV providers can deliver adverts tailored to the precise interests of individual subscribers. This enables them to command higher prices from advertisers, and provide a better experience for viewers.

We consider that this is the type of service that Flow TV provides in TCI.

4.5 IPTV definition

IPTV is a rapidly evolving technology. As such, it can be difficult to define it precisely, and the definition may evolve with technology. Given this background, we believe it is sensible to adopt the International Telecommunication Union (ITU) definition:

“IPTV is defined as multimedia services such as television/ video/ audio/text/ graphics/ data delivered over IP-based networks managed to support the required level of quality of service and experience, security, interactivity and reliability”.⁶

This definition operates independently of any licensing regime; it seeks only to explain what IPTV does, and how it does it.

In considering options for the future regulatory landscape for TV services in TCI, it is important that we consider all means of delivering these services. This requires, among other things, that we have a clear definition of IPTV, which incorporates the key elements from the broad description above.

We note that the definition is very broad. It encompasses, for example, the delivery of online radio services and on-demand movies. It can refer either to the delivery of *scheduled television channels* or to *video on demand*. It does not specify whether the service is broadcast or multicast/unicast. And it allows for any form of IP-based distribution, provided this is over a managed network.

We think it is useful to clarify some of the terms in the ITU definition of IPTV and to set out our interpretation of the concepts which underpin them:

What it is: IPTV is primarily a delivery (or ‘transmission’) mechanism for television, video and other multimedia services. It competes with other delivery mechanisms, such as terrestrial, cable, MMDS, satellite, and OTT internet TV.

Underpinning technology: Delivery takes place using the Internet Protocol suite. This determines how the content is delivered to a destination which has requested it. Note: use of these protocols does not mean the content has to travel across the open internet.

Types of content carried: IPTV can be used to deliver both linear television or video on demand (and sometimes other content types, such as email). Television is a series of video programmes curated, assembled and scheduled in a linear manner by a channel operator. The viewer cannot determine the time they wish to receive a scheduled television programme; they must either watch it when the operator delivers it, or store it for viewing later. This contrasts with the delivery of single

⁶ <http://www.itu.int/en/ITU-T/jca/iptv/Pages/tor.aspx>

programmes (for example movies or TV shows) on demand. These are not scheduled, but delivered when requested by the viewer. Linear television and video on demand are sometimes treated differently by regulators.

Method of delivering content: Typically, when television channels are delivered using IP, they are streamed. This means that content is temporarily stored on a set-top box or smart TV set or a computer, and can be watched as soon as the first data packets arrive, provided there is sufficient bandwidth available to maintain the viewing stream. However, content may also be downloaded ('unicast') direct to an individual viewer, and stored for later viewing.

Interactivity: IPTV content is delivered only when requested by a viewer. This relates to IPTV as an interactive transmission mechanism. It is either a form of 'multicast' (i.e. 'one-to-many') delivery from a single source to a defined group of users on a network, or it can be 'unicast' (i.e. delivered 'one-to-one'). This contrasts from a technical perspective with 'broadcast' delivery mechanisms, which deliver the same content to all users (i.e. one-to-all distribution), whether or not they request it. However, in practice, many jurisdictions include IPTV within their definition of 'broadcast' (see section 6 below on International Approaches to Regulating Television). We prefer this more practical approach to defining IPTV.

Managed network: The IPTV operator uses servers to store and deliver the television content over a specific broadband network, which they usually own. This enables them to optimise delivery in order to ensure high picture and sound quality. This contrasts with OTT delivery, which also takes place over the ISP's network, but which comes via the open internet. ISPs typically treat OTT video data packets like any other form of traffic; they cannot manage them for quality as effectively as they can when they distribute the content from within their own network.

5. Television services market in TCI

5.1 Introduction

TCI viewers can watch television services provided by three providers - Digicel, Flow, and PTV (which is operated by Andrews Communications).

In this section we briefly describe:

- The services that each provider offers;
- The content they provide;
- The way they distribute their content; and
- The take-up of their services.

The following table summarises the services offered by the three providers.

Table 2: Summary of television services offered in TCI

Provider	Number of channels – basic package	Number of channels – premium package	Price of basic package	Price of premium package	HD channels	Additional content on demand	Distribution and delivery
Digicel	112	170	\$59.99	\$99.99	Yes	No	Cable
Flow	“over 29”	“over 88”	\$25.00	\$60.00	Yes	Yes	IP over broadband
PTV	Menu of 80 channels		\$49.99		Yes	No	MMDS

5.2 Digicel

Services

Digicel offers a variety of packages from the ‘*Digicel Play*’ brand.

- ‘*Play now*’, ‘*Play More*’ and ‘*Play Large*’ are available in Providenciales.
- “*Play Now*” provides 112 channels, 6 of which are available in high definition (HD) for \$59.99/month.
- ‘*Play More*’ provides 143 channels, 12 of which are available in HD for \$79.99/month.
- ‘*Play Large*’ provides 170 channels with 17 available in HD for \$99.99/month.
- Additional channels can be added to these packages through the “*Play Plus*” service, for an additional monthly subscription fee.
- *Digicel Play* provides a bespoke service in Grand Turk with 60 channels for \$45.99. HD is not available in Grand Turk.

All the Digicel packages provide programming around the clock 24/7. All offer linear channels (i.e. programmes are scheduled and cannot be viewed on demand). Digicel Play is not available in the TCI outside Providenciales and Grand Turk.

Customers access *Digicel Play* channels via an Electronic Programme Guide (EPG) supplied by the by the Group's regional Caribbean team.

Content

The *Digicel Play* packages comprise a mix of news, entertainment (including movies) and sports. This is sourced internationally, regionally, and locally, and ∞. With the exception of 'Sports Max' (the premium sports channels), owned by Digicel Group, all content available on *Digicel Play* comes from third parties.

Both regional and local channels are available on all the *Digicel Play* packages. These include *TCI Channel 4 News*, the *TCI Tourist Channel*, *Weather Nation* (available throughout the Caribbean region), *ZNS* (Bahamas) and *New TV* (Haiti).

Distribution

- **Providenciales:** Content is delivered to the head end in Providenciales via satellite or undersea fibre cable. It is distributed around the island using Digicel's fibre network, with the final drop to the customer made using digital cable connections (using high bandwidth DOCSIS 3.0 technology). Digicel offers 10Mbps/s, 25Mbps/s and 50Mbps/s speed options in their cable broadband packages, all of which can support the Digicel Play services. Customers need a proprietary set-top box to receive the service.
- **Grand Turk:** The service in Grand Turk is distributed through an analogue cable system. No set-top box is required, and the signal feeds directly to the customer's TV set.

Penetration

Digicel has around ∞ Digicel Play customers from an estimated addressable market of ∞homes passed.⁷ Customers typically enter into a 12-month contract for their service. ∞.

Digicel has retail outlets, in Providenciales, North Caicos, South Caicos and in Grand Turk, and sales and service are handled in store from these outlets.

5.3 Flow

Services

⁷ Digicel's own figures.

Flow offers three packages - 'TV Essential' 'TV Plus' and 'TV Max'.

- *TV Essential* provides “over 29 channels” for \$25/month.
- *TV Plus* provides “over 67 channels” for \$45/month.
- *TV Max* provides “over 88 channels” for \$60/month.

Flow also offers on-demand movies which can be rented for a fee per movie of \$3.99, and Flow sports channels for an additional monthly subscription charge.

Content

Flow's service comprises a mix of news, entertainment (including movies) and sports. This includes content sourced internationally, regionally, and locally. Local channels include TCI Channel 4 News. Regional channels include Tropik TV and Caribvision.

Distribution

Flow's service is distributed to its customers as a managed service through its fibre and copper hybrid network.

Penetration

We do not currently hold information on Flow's subscriber numbers. We understand their service is available to approximately 80% homes in Providenciales.

5.4 People's TV (PTV)

Services

PTV offers a choice of packages, constructed from over 80 available channels. The basic package costs \$49.99/month to the customer. Programmes are provided through linear scheduled broadcasts (and so cannot be viewed on demand). Customers access channels on PTV via an EPG supplied to PTV by a third party.

Content

The PTV service comprises a mix of international, regional and local programming. Regional programming includes the *Tropik* and *ZNS* channels. TCI news and other local content is provided by the PTV-owned *PTV8* channel. All other PTV content is procured from third parties.

Distribution

International and regional content is delivered to the PTV office by 3K. PTV provides services by broadcasting channels through an MMDS network. It also streams some content via its website across the internet. Signals can be received by anyone across the islands with a suitable antenna. Customers access the service through a proprietary set-top box.

Penetration

PTV signals are available at various levels of strength throughout TCI. We do not have data on PTV's subscriber base. PTV has retail outlets on Providenciales and North Turk, and sales and service are handled in store from these outlets.

Consultation questions for PART 1

- **Do you agree with the definition of IPTV in section 4.5?**
- **Do providers of IPTV services in the TCI need to be licensed for the business activity of television broadcasting under the Business Licensing Ordinance and Regulations?**
- **Does a 2006 licence under the Telecommunications Ordinance authorise a holder to provide IPTV services in TCI?**

PART 2: Is the existing regulatory regime in the TCI satisfactory for the regulation of television services?

6. International approaches to regulating television, including IPTV

6.1 Why is broadcasting regulated?

Broadcasting is recognised by many governments as an important element in the lives of their citizens. It provides news and information, culture and entertainment which helps citizens to be informed, to foster debate and to create and reflect a sense of national identity. It can also influence public opinion.

As a result, most countries seek to regulate television to ensure that their citizens have access to it, that it provides things which will benefit their society (such as national and local news), but that it does not abuse its position by broadcasting material which may cause harm or offence, which may be unsuitable for minors, or, in the case of news, may be inaccurate and partial. Regulation may also be used to ensure media plurality.

Television channels and delivery networks may be regulated in a number of ways to ensure these outcomes. In this section, we discuss broad categories of regulatory activity used around the world to achieve specific goals for television. We then look at how regulation is used in Caribbean countries, the USA and Europe, and discuss pros and cons of different approaches.

6.2 Types of regulation

We think that types of regulatory activity can be usefully grouped into seven broad categories, applicable either to operators of networks which carry television services or to channel operators. In many instances, national regulators rely on back-stop powers and enforcement is not required. It is often sufficient to have the threat of an imposed regulatory solution to make the parties negotiate a mutually acceptable settlement themselves without recourse to the regulator.

a. Channel content - programming obligations

Channels may be required by the regulator to provide certain types of programmes, such as local and national news, or documentaries. In return for these obligations the channel usually receives some form of benefit; this may be direct funding,

guaranteed access to limited broadcasting spectrum, or guaranteed carriage on available distribution networks. Detailed obligations normally only apply to a limited number of channels. However, broader obligations sometimes apply to all channels; for example, in the EU all channels (with a couple of exemptions) must devote a proportion of their schedule to works made in the European Union.

b. Channel content - protection

Channels may be required to comply with a set of standards to protect viewers. These may, for example, cover requirements to avoid causing harm or offence, to protect minors by showing programmes with adult content only after a certain time in the evening (often known as “the watershed”), to require advertising to be separated from editorial content, or to require news broadcasts to be accurate and impartial. Most countries also regulate any advertising that is carried on channels. Such regulation is normally achieved by legally requiring each channel to hold a broadcasting licence which sets out its obligations and the need to comply with a published broadcasting code detailing the required standards.

It can be difficult to impose the requirement for each channel to have a licence if the channel does not fall within the country’s jurisdiction. For example, there is no way to stop signals from a free-to-air channel broadcast terrestrially in a neighbouring country from spilling over the border and being receivable by viewers. Similarly, channels delivered over the open internet may originate from anywhere in the world, and it would be impossible for a receiving country to licence them. However, there may be other elements in the route by which the channel is received by viewers which allow for that country to require the channel to hold a broadcasting licence.

Some countries place stricter content obligations on linear channels than on on-demand or catch-up services.

c. The transmission / delivery network

In getting the TV channel from the broadcaster to the viewer, there are a number of elements which may be regulated:

- **Spectrum.** Channels delivered over-the-air need access to spectrum. This may be gifted by the Government where the broadcaster is publicly owned (such as the BBC in the UK), or it could be given to the winner of a competitive process based on the service they promise to provide, or it could result from an auction process. The holder must normally have a licence for that spectrum, which may impose conditions or requirements, such as minimum levels of coverage. Other spectrum, such as that used for MMDS or for satellite, may also be licensed in a similar way.

- **Fixed Networks.** A licence may be required in order to provide services via cable or other fixed telecoms networks. One of the differences between a cable network and an IPTV service is that a cable operator normally owns the network and delivers an end-to-end service, whereas an IPTV operator need not own the network over which the service is delivered (although they need access to it and normally are able to manage capacity). If a network is licensed it is easier to impose regulatory conditions on that operator.

d. Carriage requirements and retransmission terms

- **Carriage:** If the TV channel does not own its own distribution network it must gain access to another network (e.g. cable, satellite, telecoms). The terms under which the channels are provided are known as '*retransmission terms*'. Often network operators are required to carry certain channels (known as 'must carry'), while the channels must also make their services available to the network (known as 'must offer'). It is easier to impose 'must carry' conditions on operators which control all elements of their network (such as a cable operators), than on those who don't (e.g. satellite service operators, or, in some cases, IPTV providers). Even without a 'must carry' requirement, a condition to allow fair and reasonable access for all channels may be imposed.
- **Carriage charges / share of subscription revenues.** It is possible to regulate payments between channels and network operators to ensure these are fair and reasonable. If the parties cannot agree, a regulatory solution can be imposed. Platform operators may pay copyright fees to broadcasters, producers and authors, or they may meet any incremental transmission costs associated with carrying the channel. Alternatively, they may provide privileged terms for platform/set-top box access (at worst accepting a 'must carry' obligation for no fee, and, in some cases - for example in the United States - making a payment to the channels for re-distribution).

e. Customer interface (EPG)

While the operator may not control the content of the TV channels they are carrying or the distribution network they are carried over, they do control which channels are carried (subject to regulation) and the interface with the viewer, which is normally an Electronic Programme Guide ('EPG'). The EPG may be regulated to require that designated channels (normally those with positive content obligations such as the provision of local programming) are given prominence in the channel listing.

f. Ownership rules

Because broadcasting can have such a huge influence on citizens, many countries have rules about who may own the broadcasting channels in that country, or how

many of the services they may own. Or they may limit ownership to people or companies resident in that country, so as to protect national character.

g. Customer pricing

It is possible to regulate the price that the viewer is charged for the service, although in practice this is unusual.

6.3 How regulation is applied in practice in different territories

6.3.1 The Caribbean

Caribbean television services are provided principally using terrestrial broadcasting (both VHF and UHF), cable (fibre, coaxial and hybrid fibre and coaxial (HFC)) and satellite (in particular DirecTV, which is available in most countries, but not licensed in all). In most islands, there is a combination of both free-to-air and subscription services available. IPTV services are available in several countries.

- **Digicel** offers IPTV services (Digicel Play) in Jamaica, Barbados and Trinidad & Tobago, and has non-IP pay-TV and broadband operations in Anguilla, Dominica, Grenada, Montserrat, Nevis and Turks and Caicos.
- **Flow** offers IPTV services (Flow TV) in Anguilla, Barbados, Jamaica, St. Vincent and the Grenadines, Trinidad & Tobago and the Turks & Caicos Islands. It offers non-IP pay-TV services in, The Cayman Islands, St. Kitts, Grenada, Antigua & Barbuda, St. Lucia, Anguilla, Curaçao, the British Virgin Islands and Puerto Rico.
- **Other IPTV Operators** include Telecommunications Services of Trinidad and Tobago (TSTT), since 2009; Massy Communications (also in Trinidad and Tobago) from March 2016, and Bahamas Telecommunications Company (BTC), since December 2015.

With such a broad set of islands, it is difficult to generalise on the levers used across the region to regulate television. However, there are some commonalities:

- Legislation can consist of a Telecommunications Act which includes Broadcasting (e.g. Trinidad and Tobago, Bahamas), or separate Telecommunications and Broadcasting Acts (e.g. Jamaica, Guyana, Barbados).
- As IPTV and OTT TV have grown, Cayman, Jamaica, and the Eastern Caribbean states have all introduced converged legislation with the aim of accommodating the converged telecommunications and broadcasting landscape. In Cayman, this new legislation has now passed into law.

- The same legislation and regulation is typically applied to both free-to-air television and subscription television services (whether linear or IPTV).
- Legislation tends to be technology-neutral, with no distinction made for different distribution technologies.
- Regulatory obligations for television service providers, such as ‘must carry’, ‘must offer’, and EPG channel positioning, vary between the islands.

The regulatory approaches used *in general* across the Caribbean for different distribution platforms are summarised in the following table.

Table 3: Levers used to regulate television broadcasting in the Caribbean

Platform	Channel: programme obligations	Channel: standards /protection	Transmission network	Must carry/ must offer	Carriage terms	EPG	Consumer pricing
Terrestrial	X	✓	✓	X	X	X	X
Cable	X	✓	✓	✓	✓	✓	X
Satellite	X	X	X	X	X	X	X
IPTV - Linear	X	X	X	X	X	X	X
IPTV On-demand	X	X	X	X	X	X	X

The regulatory levers used in specific Caribbean countries are summarised in the following table, which also specifies where these differ by distribution platform.

Table 4: Summary of Caribbean television regulation by country

Country	Channel: programme obligations	Channel: standards/ protection	Transmission network	Must carry/ must offer	Carriage terms	EPG	Consumer pricing
Bahamas	✓	Code of Practice	Fibre	Must Carry	X	X	X
Barbados	X	Prohibits Pornography	Terrestrial Satellite	X	X	X	X
British Virgin Islands	X	X	Fibre	X	X	X	X
Cayman Islands	X	X	Fibre	Must Carry	X	X	X
ECTEL countries ⁸	X	X	Fibre Satellite (in Grenada)	X	X	X	X
Jamaica	X	Broadcasting Code	Fibre	X	X	X	X
Trinidad and Tobago	✓	Broadcasting Code (not yet in law)	Fibre Wireless Satellite	Must Carry	X	X	X
Guyana	X	X	Fibre	X	X	X	X

⁸ Grenada, Dominica, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines

We now set out some more detail on key aspects of the legal and regulatory frameworks under which television services are offered in comparator Caribbean countries.

Table 5: Detail of Caribbean regulation by country

Country	Relevant Policy and Legislation	Comments
Bahamas	<p>Electronic Communications Sector Policy 2014 -2017.</p> <p>Communications Act 2009.⁹</p> <p>Code of Practice for Content in place since 2012.</p> <p>Regulated by the Utilities Regulation and Competition Authority (URCA).</p>	<p>Both telecommunications and broadcasting regulated under the same legislation.</p> <p>Under the Communications Act of 2009 “Broadcasting” means a service which consists in the provision of (a) television programmes; (b) radio programmes; or (c) teletext services, so as to be available for reception by members of the public.</p> <p>Under the previous Telecommunications Act of 2000 “broadcasting” meant “transmissions by radiocommunications of messages or information, or educational or entertainment material, for general reception by the public or any section of the public”.</p> <p>Traditional cable television provided by Cable Bahamas.</p> <p>IPTV services are provided by Bahamas Telecommunications Company (BTC).</p> <p>Both traditional cable TV and IPTV are regulated under the same policy framework and legislation.</p>
Barbados	<p>Telecommunications Act of 2001.¹⁰</p> <p>Broadcasting Act Chap 274B 1980 (consolidated as of 2002).¹¹</p> <p>The Broadcasting Commission is responsible for the regulation of Broadcasting (content).</p> <p>The Telecommunications Unit within the Ministry responsible for</p>	<p>Separate legislation for telecommunications and broadcasting.</p> <p>Under the Telecommunications Act "broadcasting" means the one-way transmission of sound images or other programming to the general public on any basis, and whether delivered by radio waves, cable, terrestrial or satellite means, or by other electronic delivery.</p> <p>Under the Broadcasting Act: "Broadcast" means transmission by means of a radio</p>

⁹ http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2000/2000-0003/TelecommunicationsAct_1.pdf

¹⁰ http://www.sice.oas.org/compol/natleg/Barbados/telecommunications_act_cap282b.pdf

¹¹ http://www.wipo.int/wipolex/en/text.jsp?file_id=209379

	Telecommunications is responsible for spectrum assignments to broadcasters.	<p>station; "licence" means a licence issued to a person, whether under an agreement or otherwise, permitting that person to operate a radio station or television station.</p> <p>"television station" means</p> <ul style="list-style-type: none"> (a) a station for the transmission by means of radio waves of fixed or moving images and associated sound designed for reception by the general public; or (b) a station for the transmission by means of a wired or other guided network connecting a transmitting instrument to a number of receiving instruments of matter designed for visual reception by the general public <p>and includes the studio, transmitting station and technical equipment used for the purposes of such transmission.</p> <p>IPTV services are provided by Flow and Digicel.</p> <p>All broadcasting services are regulated under the same legislation.</p>
British Virgin Islands (BVI)	<p>"Telecommunication Rules (Amendments) 1994 which includes Broadcasting Licences and Fees) – 24 February 1994."</p> <p>Telecommunications Act – 27 October 2006.¹²</p> <p>The Telecommunications Regulatory Commission is responsible for regulation of Telecommunications (and Broadcasting, to some extent).</p>	<p>The Telecommunications Act 2006 does not include broadcasting. However, the Licence Fees Schedule does.</p> <p>There is one cable television provider – BVI Cable¹³, which provides a cable TV service with foreign programming.</p>
Cayman Islands	Information and Communications Technology Authority Law 2002 -	<p>The Legislation caters for both telecommunications and broadcasting under an overall ICT umbrella.</p> <p>With the enactment of the ICTA Law, the Cayman Islands became one of the first</p>

¹²

[http://www.trc.vg/images/attachments/Telecommunications Act/Telecommunications%20Act%2C%202006.pdf](http://www.trc.vg/images/attachments/Telecommunications_Act/Telecommunications%20Act%2C%202006.pdf)

¹³ <https://www.facebook.com/BVICable/app/589047927795559/>

	<p>as revised and consolidated in 2011¹⁴.</p> <p>The Information & Communications Technology Authority (ICTA) is responsible for the regulation and licensing of Telecommunications, Broadcasting, and other ICT services.</p>	<p>countries in the world to officially recognise the convergence of telephony, radio and broadcasting, the internet and e-business.</p> <p>Under the ICT Authority Law, Broadcasting is not specifically defined but is contained as a sub-set of an ICT Service:</p> <p>“ICT service” means any information technology service, telecommunications service, electronic media and broadcast service, Internet service, digital library and commercial information service, network-based information service and related specialised professional service provided by electronic means and any other similar service and includes a service that consists of or includes the provision of ICT infrastructure; “</p> <p>Flow provides an IPTV service.</p> <p>There are several other fixed cable TV providers, each on its own infrastructure: WestStar TV Ltd; Infinity Broadband; WestTel Ltd.</p> <p>All Subscription TV Service providers¹⁵ are required to provide a channel free to the public, also known as Public TV Service.</p>
<p>Eastern Caribbean countries - Grenada, Dominica, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines, regulated by Eastern Caribbean Telecommunications Authority (ECTEL).</p>	<p>Telecommunications Act 2000¹⁶.</p> <p>New Electronic Communications Bill¹⁷ drafted and under active consideration by respective Governments.</p> <p>ECTEL is the regulatory body for telecommunications in its Member States.</p>	<p>Current legislation covers broadcasting (does not include programming).</p> <p>Under the Telecommunications Act 2000: “broadcasting” means the transmission of radio or video programming to the public on a free, pay, subscription, or other basis, whether by cable television, terrestrial, or satellite means, or by other electronic delivery of such programming.</p> <p>The new Bill is designed to deal with a converged ICT environment including all aspects of telecommunications and</p>

¹⁴ <http://cnslibrary.com/wp-content/uploads/Information-and-Communications-Technology-Authority-Law-2011-Revision.pdf>

¹⁵ <http://www.icta.ofreg.ky/tv-broadcasting-stations>

¹⁶ <http://unpan1.un.org/intradoc/groups/public/documents/CARICAD/UNPAN008508.pdf>

¹⁷ <https://www.ectel.int/revised-draft-electronic-communications-bill-071216/>

		<p>broadcasting. The definition of Broadcasting has nonetheless been retained in the new Bill.</p> <p>Flow and Digicel provide cable television services in most ECTEL countries.</p> <p>IPTV services are provided in St Vincent and the Grenadines by Flow.</p>
Jamaica	<p>Telecommunications Act¹⁸ - March 2000 with amendments in 2006 and 2012.</p> <p>Broadcasting and Radio Re-Diffusion Act¹⁹ October 1949 with amendments over the period 1962 to 2008.</p> <p>The Telecommunications Act, 2000 will be repealed and is due to be replaced with an Information and Communication Technology Act.</p> <p>There are three regulatory entities in Jamaica:</p> <ul style="list-style-type: none"> • Office of Utilities Regulation (OUR) - responsible for the regulation of Telecommunications • Broadcasting Commission of Jamaica - responsible for the regulation of Broadcasting (primarily content) • Spectrum Management Authority - responsible for spectrum. 	<p>Broadcasting is covered by both pieces of legislation - Telecommunications Act (technical aspects) and Broadcasting Act (content aspects).</p> <p>Under the Telecommunications Act 2000 "broadcasting" means either sound broadcasting or television broadcasting or both.</p> <p>Under the Broadcasting and Radio Re-Diffusion Act, broadcasting is defined in the same way as under the Telecommunications Act.</p> <p>Under the new Converged Information and Communications Technologies Act – not yet passed into law - <i>Broadcasting service</i> means a service that is comprised of radio or video programming over which the provider has editorial control, and is offered to the public using an electronic communications network with or without remuneration from consumers or customers.</p> <p>Both Flow and Digicel offer IPTV services.</p> <p>A Broadcasting Code is in place.</p>
Trinidad and Tobago	<p>Telecommunications Act 2001²⁰ and as amended in 2004. Amendments to the Telecommunications Act have been drafted and are under consideration by Government. Key amendments include granting to TATT full competition powers</p>	<p>Current legislation covers both telecommunications and broadcasting. Under the Telecommunications Act, "broadcasting service" means the offering of the transmission of programmes whether or not encrypted, by any means of telecommunications, for reception by the general public, including sound, radio,</p>

¹⁸ [http://mset.gov.jm/sites/default/files/Telecommunications%20Act%20\(2000\).pdf](http://mset.gov.jm/sites/default/files/Telecommunications%20Act%20(2000).pdf)

¹⁹ <http://moj.gov.jm/sites/default/files/laws/Broadcasting%20and%20Radio%20Re-Diffusion%20Act.pdf>

²⁰ <https://tatt.org.tt/Portals/0/documents/Telecommunications%20Act.pdf>

	<p>and the ability to levy administrative penalties.</p> <p>Draft Broadcasting Code in place since 2010 – not yet passed into law.</p> <p>'Must Carry' provision in place so that all subscription TV providers are mandated to 'carry' local Free to Air broadcasters. Currently this is done on a cost neutral basis (i.e. no charges to either party) - although free-to-air broadcasters are challenging this.</p> <p>The Regulator for Telecommunications and Broadcasting (and Spectrum) is the Telecommunications Authority of Trinidad and Tobago (TATT).</p>	<p>television and other types of transmissions, such as those on a point to multipoint basis.</p> <p>The definition of broadcasting has remained unchanged under the draft Amendments to the Act.</p> <p>There are several subscription television broadcasters and there are several categories of Concessions for Broadcasting services:</p> <p>National: Carries a requirement to serve both Trinidad and Tobago Major Territorial: Carries a responsibility to serve Trinidad only. Minor Territorial: Carries a responsibility to serve Tobago only. Niche: Carries a responsibility to serve an area that is generally unserved (not significantly penetrated by the larger providers) as designated by TATT.</p> <p>There are several IPTV providers including: Flow, Digicel, TSTT and Massy Communications.</p> <p>There is one terrestrial 'wireless cable' provider (Green Dot).</p> <p>TSTT and Massy Communications recently signed a share purchase Agreement for TSTT's acquisition of all shares of Massy, subject to approval by TATT.</p> <p>Both traditional subscription TV and IPTV services are regulated under the same legislation.</p>
Guyana	<p>Telecommunications Act 1990.</p> <p>Broadcasting Act 2011²¹</p> <p>A Broadcasting Authority, established under the Broadcasting Act, is responsible for the regulation of the Broadcasting sector.</p> <p>New Telecommunications Act 2016.</p> <p>The new Act, which was passed in 2016, provides for the establishment of the Telecommunications Agency</p>	<p>This Act does not cover broadcasting services.</p> <p>"broadcasting" means the transmission of any programme, whether or not encrypted and whether or not actually received, by wired or wireless medium or technology for reception by all or part of the general public, but does not include telecommunications.</p> <p>Defines broadcasting same as above.</p> <p>The new Act provides for the further opening of the telecommunications sector.</p> <p>There are several cable television stations.</p>

²¹ http://parliament.gov.gy/documents/acts/3642-act_no_17.pdf

	(into which the National Frequency Management Unit will be incorporated) and which will function as the technical regulator of the sector.	
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6.3.2 United States of America

In the US, television channels and programmes are provided using a number of different platforms, including terrestrial broadcasting, cable, satellite and, increasingly, IP-based technologies.

Provision of these services is subject to a complex framework of regulation, overseen by the Federal Communications Commission (FCC). As in other jurisdictions, the regulatory framework was originally established to cover terrestrial broadcasting, but has been adapted to reflect the growth of cable and satellite as mass market methods of provision.

During the past decade, the emergence and growth of IP-based delivery - on managed service platforms and OTT - has caused policy makers to consider whether the rules require further adaptation to ensure fair competition, protection of local content, and audience protection. The FCC has acted in this area. For example, in 2013, the FCC introduced a requirement for IPTV providers to pay regulatory assessment fees for the first time.²²

However, the important question of how content should be regulated on IPTV platforms remains unresolved. In 2014, the FCC launched a Notice of Proposed Rulemaking (NPRM) proposing that the definition of the term “*multichannel video programming distributor*” (‘MVPD’) under the U.S. Communications Act be changed to include IP-based services. This proceeding has not reached a conclusion and so, at present, the majority of rules pertaining to programme content, programme quality, and must-carry obligations which apply to cable and satellite channels in the USA do not apply to IPTV services.

It is worth noting that, while the FCC has not fully addressed the issue of whether and, if so, how the broadcasting framework should apply to IPTV, it has made decisions addressing some perceived barriers to IPTV deployment, including:

- Declined to require incumbent local exchange carriers to provide unbundled access to their hybrid or FTTH loops for the provision of broadband services.

²² See <http://www.tminc.com/blog/bid/396349/IPTV-Providers-to-pay-regulatory-fees-for-the-first-time>.

- Relaxed the process for issuing cable franchises (a licensing process) to facilitate entry into the video market.
- Found that clauses granting cable providers exclusive access for the provision of video services to multiple dwelling units and other real estate developments harm competition and broadband deployment and were therefore illegal.

Table 6 and the section which follows describe at high level the regulatory framework which applies in the USA. The framework focuses strongly on the cable and satellite distribution platforms, and this dates back to the Cable Television Consumer Protection and Competition Act 1992. This Act was a response to concern in Congress about vertical integration between content and distribution providers, and the degree of influence over content this could give to cable companies.²³

Table 6: Levers used in the USA to regulate television

Platform	Channel: programme obligations	Channel: standards /protection	Transmission network	Must carry/must offer	Carriage terms	EPG	Consumer pricing
Terrestrial	X	✓	✓	✓	✓	X	X
Cable	X	✓	✓	✓	✓	X	X
Satellite	X	✓	✓	✓	✓	X	X
IPTV - Linear	X	X	X	X	X	X	X
IPTV On-demand	X	X	X	X	X	X	X

Note: The inclusion of a ✓ in any of the cells in Table 6 should not be taken to denote that the same regulatory rules apply across platforms. Provision of television channels and programmes is regulated differently on different platforms as a result of the 1992 Act. For example, terrestrial, cable and satellite providers are all affected by must carry obligations, but in different ways.

- a. Channel content - programming obligations.** There is no public service requirement in US broadcasting regulation in the same sense as there is in European jurisdictions. Whilst public funding is available for the development and provision of TV content from a number of sources, including the Corporation for Public Broadcasting²⁴ and National Endowment for the Arts²⁵, this is usually decided per-project rather than subject to a prescribed code of criteria or principles for public broadcasting.

²³ See Congressional Research Paper <https://www.hsdl.org/?view&did=722546>.

²⁴ <http://www.cpb.org>.

²⁵ <https://www.arts.gov>.

b. Channel content - protection. Content obligations and prohibitions are regulated by the FCC. Broadcast of obscene material is prohibited at any time. The FCC applies a three-pronged test defined by the US Supreme Court to identify obscene material:

- An average person, applying contemporary community standards, would find that the material, as a whole, appeals to the prurient interest.
- The material depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable law.
- The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.

In addition to the obscenity ban, the FCC prohibits broadcast of indecent and profane material between 0600 and 2200 on any day. The FCC has defined indecent content as involving offensive material that does not rise to the level of obscenity, and profanity as “including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance”.²⁶

Political broadcasting is subject to the “equal opportunities rule” which requires broadcasters to give equal opportunities to appear to all legally qualified candidates in an election.²⁷

c. The transmission / delivery network. Radio spectrum for commercial use, including TV, is allocated, licensed and regulated by the FCC. The responsibility for overall regulation of spectrum is shared between the FCC and the National Telecommunications and Information Administration (NTIA), with the NTIA having responsibility for regulation of federal use of spectrum.

d. Carriage requirements and retransmission terms. There is a complex system of rules governing carriage arrangements between MVPDs and other broadcasters. These include a requirement for the MVPD to obtain consent of local broadcast stations before re-transmitting them, which both parties must negotiate in good faith. In effect this means local broadcasters can withhold their content unless they are paid a fee. In addition, MVPDs which have an interest in a programming network cannot deny a competing MVPD access to content provided by that programming network.

It is important to note that these requirements do not amount to a “must carry” obligation. However, they run alongside local must carry rules, which provide that local channels can demand that local cable operators carry their signal without

²⁶ See <https://telecommunications.uslegal.com/television/federal-regulation-of-licenses-content-and-advertising/content-regulation-obscene-profane-and-indecent-broadcasts/>

²⁷ See <https://www.fcc.gov/media/program-content-regulations>.

compensation. Satellite carriers are not similarly required to carry the signals of local broadcast stations in their market, but if they carry the signal of one local station, they must carry the signals of all local broadcast stations in the market.

- e. **EPG.** There is no regulation governing the position of programmes or channels on EPGs in the USA. The USA does not have public service content in the European sense, and hence there is also no corresponding requirement for priority on EPGs. This is in contrast to European markets described above, where public service content is often given prominence in EPGs.
- f. **Ownership rules.** The FCC enforces a number of ownership rules.
- The “dual TV network rule” prevents any person owning more than one of the four main national networks (ABC, CBS, Fox, and NBC). Also, no one person can own TV stations which together reach more than 39% of the audience in a designated market area (DMA) - there are 2 DMAs across the USA.
 - The Communications Act provides that the FCC cannot grant a licence to a foreign person, any company organized under the laws of a foreign nation, or any company with foreign ownership greater than 20%.
 - The FCC has the right to veto ownership of broadcasters by any company with foreign ownership greater than 25%, or which is organized under the laws of a foreign nation.²⁸
 - In 2016, the FCC streamlined and standardized its processes for reviewing applications for foreign ownership between 25% and 100%.²⁹
- g. **Customer pricing.** There is no regulation covering the prices charged to consumers by operators.

6.3.3 Canada

TV services in Canada are provided across a range of transmission platforms including terrestrial, cable, satellite and IPTV, as well as OTT services which can be accessed on the open internet.

²⁸ See http://www.mediareform.org.uk/wp-content/uploads/2015/11/The_Elephant_Next_Door-A_Survey_of_International_Media_Ownership_Regulations.pdf.

²⁹ http://www.mediareform.org.uk/wp-content/uploads/2015/11/The_Elephant_Next_Door-A_Survey_of_International_Media_Ownership_Regulations.pdf.

Programme content in Canada is regulated by the Canadian Radio-Television and Telecommunications Commission (CRTC). The CRTC oversees a framework which covers the full range of transmission platforms - regulation of Broadcasting Distribution Units ('BDU's) in Canada covers distributors operating terrestrial, cable, satellite and IPTV systems.

The CRTC does not regulate spectrum for TV or other applications. This is the responsibility of The Spectrum Management and Telecommunications Department (SPMT) in the Innovation, Science and Economic Development Ministry of the Canadian government.

Table 7 and the section which follows summarises the regulatory framework which applies in Canada.

Table 7: Levers used in Canada to regulate TV

Platform	Channel: programme obligations	Channel: standards /protection	Transmission network	Must carry/must offer	Carriage terms	EPG	Consumer pricing
Terrestrial	✓	✓	✓	✓	✓	X	X
Cable	✓	✓	X	✓	✓	X	✓
Satellite	✓	✓	✓	✓	✓	X	✓
IPTV - Linear	✓	✓	X	✓	✓	X	X
IPTV On-demand	X	X	X	X	X	X	X

- a. **Channel content - programming obligations.** Canada has a well-established public broadcasting framework, overseen by the CRTC. The public service broadcasting is provided by the Canadian Broadcasting Corporation (CBC). CBC, which is financed by a mix of public funding, advertising and subscription revenue, has a mandate through the Broadcasting Act of 1991 to provide programming which “informs, enlightens and entertains”. Content must be predominantly and distinctly Canadian, reflecting national and regional audiences and culture, in the French and English languages. In addition, all commercial stations are required to offer a set quota of local news programming each week.
- b. **Channel content - protection.** TV services in Canada are subject to regulation of violence and sexual content. There is a ‘watershed’ which requires that programming intended exclusively for an adult audience can only be aired between 2100 and 0600. There are also codes regulating the content of

programmed intended for children. These requirements apply to all broadcasters licensed by the CRTC.³⁰

- c. **The transmission/delivery network.** Spectrum for transmission is regulated by the SPMT.
- d. **Carriage requirements and retransmission terms.** Must-carry obligations apply in relation to some content, including local news quotas. Wholesale arrangements between providers for retransmission and carriage are governed by the CRTC through a wholesale code.³¹
- e. **Ownership rules.** The Broadcasting Act requires that any broadcaster with more than 10% market share must be Canadian owned and controlled.
- f. **Consumer pricing.** In 2016, the CRTC mandated that cable and satellite providers must make available a basic TV package including mandatory channels and local and regional TV stations for no more than \$25/month.

6.3.4 European Union

In the European Union, television is regulated via Directives of the European Commission, which sets the general framework requirements and coordinates national legislation on all audiovisual media; both traditional TV broadcasts and on-demand services. Individual member states are bound by this framework but may implement it according to their specific circumstances. They may impose regulation beyond that required by the framework, provided it is still compatible with it.

Table 8: Levers used in Europe to regulate television

Platform	Channel: programme obligations	Channel: standards /protection	Transmission network	Must carry/must offer	Carriage terms	EPG	Consumer pricing
Terrestrial	✓	✓	✓	✓	✓	✓	X
Cable	✓	✓	✓	✓	✓	✓	X
Satellite	✓	✓	✓	✓	✓	✓	X
IPTV - Linear	✓	✓	(✓)	✓	X	✓	X
IPTV - On demand	X	✓	(✓)	X	X	X	X

³⁰ See website of the Canadian Broadcasting Standards Council <http://www.cbsc.ca>.

³¹ The Wholesale Code <http://www.crtc.gc.ca/eng/archive/2015/2015-438.htm>.

(✓) = regulated by 'general conditions'.

a. Channel content – programming obligations

The requirement to provide certain types of programming varies considerably by territory within the EU. Examples of these are given under the general rules.

Pan-European. The European AudioVisual Media Services Directive (AVMS) requires broadcasters to reserve a majority of their transmission time for European works³² (this excludes time used for news, sports events, games, advertising, teletext services and teleshopping). It also provides that on-demand audiovisual media services will promote the production of and access to European works, for example through financial contributions to production and rights acquisitions, or by ensuring a share and/or prominence of European works in the catalogue of programmes. Channels must provide access services for those with sight or hearing problems. In addition, most Member States have licensed commercial or publicly-owned public service broadcasters with detailed programming obligations. These are often given public funding, usually through an annual television licence fee.

UK. The BBC operates under a Royal Charter. It is publicly-owned and non-commercial. Its programming, across its seven television channels, must fulfil a number of public purposes and it is regulated to ensure it meets these. Channel 4 is also publicly owned but is funded by advertising. It has detailed programming obligations in its licence, which are regulated. ITV and Channel 5 are commercial channels which won their licences in a competitive process. They also have programming obligations in return for being given spectrum on which to broadcast.

France. The French public service broadcaster, France Télévisions, operates nine national television channels and has detailed programming obligations. It is funded by a mix of advertising and licence fee.

Germany. Each of the federal states has its own public service broadcaster, which provides local programming. Some of the licences of the commercial channels also require them to provide local news.

b. Channel content – protection

Pan-European. General rules are set-out in the AVMS Directive. These cover “*incitement to hatred based on race, sex, religion or nationality*” (Article 6), extensive rules around advertising (Article 9), and rules on protecting minors from harmful

³² "European works" are audiovisual productions which originate in Member States (or certain other specified countries), or are co-produced within the framework of agreements concluded between the EU and third countries and fulfilling the conditions defined in those agreements.

programming (Article 27). The requirement for channels to comply with programming standards also varies by country.

UK. All broadcast channels must be licensed, either by Ofcom or another Member State. The legislation requires Ofcom to produce a Broadcasting Code which details requirements regarding harm, offence, fairness, privacy, accuracy and impartiality among other things. These cover all channels licensed by Ofcom, whether commercial or provided by the BBC. Failure to comply with the Code may result in sanctions, including the requirement to broadcast a correction or apology, fines, the shortening or even revocation of the broadcasting licence.

France. All channels must be authorised by the CSA which imposes rules regarding plurality, the protection of minors, the rights of women, the protection of diversity and respect for the French language.

Germany. Programme guidelines in the Interstate Treaty on Broadcasting (art. 3, 41 RStV), and in the state media laws, require general channels to ensure at least a minimum of diversity; all German and foreign programmes must be orientated at specific commonly-shared values, like the dignity of mankind or global peaceful co-existence. These programme requirements are formally regarded as strict legal obligations. However, in practice, they serve mainly as orientation points for debates on media quality. There are specific rules regarding the protection of minors.

c. The transmission / delivery network

Pan-European. Regulation of the networks over which television channels are carried depends upon whether or not spectrum is involved. The allocation of spectrum, whether terrestrial or satellite, to each country is governed by the ITU. Each country then issues licences to the operators for the use of that spectrum and those licences include conditions, such as coverage requirements and which channels may/must be carried. For cable and IPTV networks, licences are not normally issued, but the networks may be authorised and are still regulated as Electronic Communications Networks.

UK. DTT spectrum was either gifted to the public service broadcasters or licensed following a “beauty contest” process, where applicants were judged against a number of statutory criteria. Cable operators and providers of IPTV are regulated under General Conditions, to ensure fair and effective competition. There are no UK satellite operators; Sky and Freesat use the satellites of Astra and Eutelsat which are based in Luxembourg and France respectively, and so are outside of UK jurisdiction. However, Sky and Freesat’s operations are regulated by virtue of them operating an EPG (see below).

France. As in the UK, DTT spectrum is licensed and the channels which it may carry are determined by the regulator, the CSA. Cable and satellite operators are also regulated, as French channels use Eutelsat which falls under French jurisdiction.

Germany. Most viewers access television services via cable or satellite, rather than over-the-air. For DTT, whether a frequency can be used by public or private broadcasters is decided according to state-specific media regulations. State Media Authorities are responsible for allocating spectrum to private broadcasters. As in the UK, while cable and telecoms operators are regulated, there are no German-owned satellites. Most of the satellite channels broadcast in Germany are free-to-air and so can be received by anyone with a receiving dish and decoder. There is therefore no commercial relationship between the viewer and the satellite provider.

d. Carriage requirements and retransmission terms

Most of the developed world imposes a ‘must carry’ obligation on leading delivery platforms to carry PSB channels and all leading free to air network services. These obligations are often accompanied by ‘must offer’ obligations on the leading channels, with no fee payment either from platform to channel or channel to platform for access. These arrangements tend to apply to cable and satellite retransmission.

Pan-European. In the EU, must-carry obligations are set-out in Article 31 of the Universal Services Directive, and apply to networks where a significant number of their end users use them as their principal means to receive radio and television channels. These obligations may only be imposed where they are necessary to meet clearly defined general interest objectives, and are proportionate and transparent. Member states may provide for remuneration between network and channel.

These rules apply to all ‘electronic communications networks’ (‘ECN’s) which are defined in the European Framework Directive, and include transmission systems, switching or routing equipment; and/or other resources, including network elements that are not active. ECNs permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet), mobile terrestrial networks, electricity cable systems (where used to transmit signals), radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed. It can be seen from this that IPTV services are included in such regulation.

UK. The UK’s ‘must-carry’ channels are all of the BBC’s channels, ITV, Channel 4 and Channel 5. ‘Must carry’ rules are supplemented by ‘must offer’ rules, whereby the public service channels must offer their services for carriage by operators. This has led to issues with Sky, which is based in the UK but does not control the satellites it uses, which are based abroad. This means that the ‘must carry’ rules cannot be applied to Sky, as it is not itself operating an ECN, but the broadcasters

must still offer their services to Sky under the 'must offer' rules. This has led to complaints by broadcasters who must negotiate terms with Sky, and often end up paying Sky to carry their channels. 'Must offer' and 'must carry' obligations are imposed on cable and IPTV operators, although this has not yet been tested as the existing IPTV providers such as BT Vision, YouView from TalkTalk and EETV, use a set-top box which is a hybrid solution combining reception of over-the-air television channels with a broadband-delivered IPTV service for pay channels.

France. Distributors of television services in France have a must-carry obligation for France's public service broadcasting channels, including those offered by France Télévisions. These distributors include cable operators, providers of satellite bouquets, IPTV providers and certain OTT platforms. This obligation is coupled with an implicit must-offer obligation on the part of public service broadcasters. In a recent test case, the French broadcasting authority, the CSA, found that the must-carry provisions apply only to distributors that have 'subscribers'. This means that the rules apply to OTT streaming services only if they have subscribers. If not, they cannot require PSB channels to make their signals available free of charge.

Germany. The Interstate Broadcasting Treaty and the broadcasting laws of the Bundesländer (federal states) cover the must-carry rules, which apply to "platforms for all technical transmission capacities", with specific rules for digitally transmitted programmes (e.g. digital cable networks) and provisions on fees and tariffs. The must-carry rules are intended to safeguard the plurality of opinion and variety of channels, and apply to platform providers that operate technical infrastructure, and offer linear audio-visual media services via closed networks (e.g. cable and IPTV).

The provisions oblige platform operators to allocate up to one third of their capacity for licence-fee funded television as well as the regional television channels, state-related windows, commercial television channels with local windows, regional and local television services and open access channels licensed in the respective state. There is no regulation of retransmission fees, although legally these must not unduly impede providers of broadcasting services, and they must enable transmission of regional and local channels at adequate and non-discriminatory conditions.

Because most satellite channels are broadcast unencrypted and free-to-air, there is generally no commercial relationship between the viewer and the satellite provider. The satellites are not owned in Germany and so are outside of German jurisdiction. Only Sky Deutschland is pay, and that has limited take-up. As a result, there is no specific regulation of must carry/must offer on satellite in Germany.

e. Customer interface (EPG)

UK. In the UK, the regulator, Ofcom, can require the operator of an EPG to hold a licence. This allows Ofcom to impose conditions on EPG providers if they consider these are necessary to enable people to access certain digital programme services and to require that EPGs are offered on fair and reasonable terms, without undue discrimination. Before setting conditions, Ofcom must consider whether they are objectively justifiable, are not unduly discriminatory, and are proportionate and transparent in relation to what they are intended to achieve. In practice these rules are applied to those channels listed in the legislation, which includes all PSB channels and licensed local television services.

France. The French regulator can set the numbering of television services on EPGs on Digital Terrestrial Television and other networks (cable, satellite and IPTV). For DTT networks, the rules give priority to national free DTT channels (numbers 1-29), local DTT channels (numbers 20-39), pay TV channels (numbers 40-49), HD versions of services broadcast simultaneously in SD (numbers 51-79).

Germany. There are no specific rules about the placement of channels on EPGs. However, platform providers must grant open, equal, and non-discriminatory access for services such as EPGs, with the aim of ensuring non-discriminatory access for content providers.

f. Ownership rules. Media ownership is often a contentious issue as countries try to protect national culture and a plurality of views.

UK. There has always been a broad political consensus in the UK that ownership of the media has a distinctive character compared to other assets, because of its special place in a healthy democracy. Media ownership rules have been reduced over the years and foreign companies are now allowed to own UK broadcasting licences, even Public Service Broadcasters (US company Viacom now owns Channel 5, for example). However, there are still *cross-media* ownership rules to protect plurality. For example, a major newspaper owner in the UK cannot also own ITV, the largest commercial public service broadcaster.

There is also a requirement that anyone holding a broadcasting licence must be a “fit and proper person”. What this means is not spelled out, but in practice anyone with a criminal conviction or who has been made bankrupt in the past could be deemed to be not fit and proper. A review is currently underway in the UK by Ofcom to determine whether Rupert Murdoch’s Fox company should be allowed to take full control of Sky, the UK satellite service provider. Ofcom is considering questions of plurality, fit and proper qualifications and whether Fox would maintain broadcast standards, for example of accuracy and impartiality in news.

France. France has a strong history of media regulation. Newspapers are supported by government subsidies and their ownership is limited by the law. In broadcasting, ownership limits are based on three criteria: capital share, number of licences and audience share. Nobody can hold, either directly or indirectly, more than 49% of a national broadcast licensee, if its annual audience share exceeds 2.5%. A national broadcaster is one which has a potential reach of more than 10m people. In addition, no entity can hold more than seven national licences for digital terrestrial television or two for satellite television. Also, the maximum level of permitted foreign (i.e. non-EU) ownership in TV and radio stations broadcast terrestrially in France stands at 20%. There is not an equivalent rule for cable and satellite channels.

Germany. The Commission on the Concentration in the Media Industry (KEK) can intervene to protect plurality if a company's combined media holdings (including newspapers) comprise more than 30% of annual audience share (or 25% of the television market).

g. Customer pricing. In the EU there are no specific regulations regarding the prices charged to consumers by operators. These would generally be dealt with under competition law.

7. Objectives for television services and content in the TCI

7.1 Introduction

In the previous section, we set out some of the reasons why many countries choose to regulate the provision of television services and television content.

In this section, we consider what is an appropriate set of goals for the provision of television services and content in the TCI, and assess how well the market delivers these goals. We then consider what scope there is for regulation to improve on the status quo.

In the next section, we propose and assess four specific options for regulatory intervention designed to help deliver the goals we set out here.

7.2 Summary of proposed television objectives

In April 2013, when the TCI Government announced its policy to update the telecommunications laws to include broadcasting services, its goal was to facilitate competition and encourage the development of the broadcasting and telecommunications industries.

Now that we are again considering the regulation of television, it is appropriate that we begin by re-examining what is an appropriate set of goals for the provision of television services and for television content in the TCI. We can then consider how well the market currently delivers against these goals, and establish what scope there is for regulation to improve on the status quo.

In summary, we now propose a more detailed and ambitious set of goals and aspirations for television services and content than was set out in the 2013 policy. These are as follows:

- 1. Consumers should have access to a broad range of high-quality content**
- 2. Content should be available at reasonable prices**
- 3. Consumers should have a good choice of providers and delivery platforms**
- 4. Local programming should be widely available**
- 5. Consumers should be protected from harmful or offensive content**

In addition, we propose as an underlying objective to help deliver these goals that:

- 6. There should be a level playing field between television network operators and content providers**

7.3 Assessment of proposed television objectives

We now explain in more detail our rationale for proposing each of these goals, and list other possible goal candidates which we considered but have provisionally rejected. We assess how well the market currently delivers against each proposed goal, and consider what role (if any) regulation could play *in principle* in delivering them.

1. Consumers should have access to a broad range of high-quality content

There is currently a total of over 200 television channels available in the TCI. These cover a broad range of genres, from news and factual, to arts and entertainment. The number of channels that any individual can receive depends on which distribution platform they use (cable, IPTV or DTT). Flow subscribers can also access some premium content on demand. The large majority of programming comes from abroad, particularly from the US. Given the small population in the TCI, and given the high cost of television production, this position is not likely to change.

Although programme quality varies considerably, many of the channels on offer have high production costs and values. As such, TCI arguably already has access to a broad range of high-quality content. Nevertheless, we are aware of limitations to this. Some foreign content providers are unwilling to sell to TCI. This may arise simply because the market is too small to be commercially attractive. However, it can also occur where rights are cleared for the Caribbean but not for the TCI (by virtue of its geography), or because content owners are concerned that their copyright will not be respected.

One area where regulation might help improve the availability of high-quality content relates to copyright. If copyright infringement were enforced more stringently in TCI, this would limit the provision of content provided without rights holder permission. This might result in the withdrawal of some content which is valued by TCI consumers. However, if the content were of genuine value, the eventual outcome might also be that the rights holder would seek a way to enter the TCI market, in the knowledge that they would not be competing with unlicensed providers. We return to this issue below.

2. Content should be available at reasonable prices

Making a full assessment of whether the pricing of television services in TCI is appropriate and offers value is beyond the scope of this document. We note that, unlike some other Caribbean islands (eg Trinidad) there are no free-to-air services available; TCI consumers must pay to receive television. We also note that consumers are often forced to buy all channels within a bundle in order to access the those they really value, rather than being able to buy them

'a la carte'. (This practice is commonplace internationally). However, the availability of three platforms, with none of them obviously dominant, should, in theory at least, mean that prices for subscription services remain competitive.

Regulation could play a role in ensuring that content is offered at reasonable prices, for example by setting a cap on retail prices, or by making free-to-air services available. However, in our view, neither of these options is currently appropriate for the TCI. Firstly, we have no reason to believe that the market is not currently competitive. Secondly, the provision of free-to-air services would entail considerable investment by either industry or Government. We do not think this would be proportionate given the size of the TCI population. We do not propose to pursue this objective further in this consultation.

3. Consumers should have a good choice of providers and delivery platforms

We believe that competition is good for the provision of television services in TCI. It drives innovation, improves content range, and helps ensure that prices remain competitive. This applies to both the choice of provider, and the choice of delivery platform (e.g cable, satellite, terrestrial or IPTV). For example, delivery of television by satellite can help improve availability in areas which are uneconomic to cover with a cable or high-speed broadband network.

Currently there are three providers in TCI, each offering their own distribution platform and their own package of channels. In our view, this means that islanders already have a good choice of provider. In addition, most can access at least one delivery platform, and many can access two or three. We note, however, that although TCI is within the footprint of satellite services such as DirecTV, these are not available for purchase with the permission of rights holders. This contrasts with, say, Barbados, where DirecTV services can be lawfully purchased.

We think that regulation could in theory play a part in making TCI more attractive to satellite providers. If a satellite provider entered the market, this would give consumers an additional choice of both provider and platform. It is possible that this outcome could be achieved through enforcing copyright protection, which would give potential new providers comfort that they would not be undercut by a 'pirated' version of their own service. However, we would need to be mindful of the impact of any intervention on copyright on the *existing* provision of television services; regulation which had the unintended consequence of *reducing* choice would not be successful.

4. Local programming should be widely available

All countries value local television content. It provides news and information, fosters debate and influences public opinion, and helps generate and reflect a sense of national identity. However, television production is an expensive business. In a small market like TCI, it can be challenging to produce local programming on a sustainable basis, particularly when competing with hundreds of well-financed foreign channels.

At present, Andrews makes programming which focuses on TCI (People's TV ('PTV')), and makes this available to its DTT subscription customers. In addition, Digicel carries TCI-focused channels (e.g. Channel 4 and the Tourist Channel, which are provided by third parties), and also regional Caribbean channels (e.g. Weather Nation). Flow does not currently carry any content focused specifically on TCI, but it does carry 14 regional channels, including its own Flow1 and Flow sports channels, the Digicel sports channels, and other third-party channels such as TropikTV and CaribVision.

We think there is potentially a strong role for regulation in helping to preserve and promote the creation of local television, and to facilitate its distribution across multiple platforms. We are not sure how sustainable the existing local provision is, as the network operators and channel providers have not shared financial information with the Commission. However, we suspect that the local channels offered by Andrews are, in effect, subsidised by the foreign channels they provide. By contrast, we assume that the local channel carried by Digicel must be provided on a commercial basis. We set out some options for regulatory intervention to make local content more widely available in the next section.

5. Consumers should be protected from harmful or offensive content

Currently no television programmes, foreign or local, are subject to content regulation in the TCI. (In 2013 the Commission consulted on introducing a Broadcasting Code but did not pursue this). It is, however, likely that most foreign content available in TCI is also broadcast and regulated in its country of origin.

Neither the Commission nor Government receives many complaints about television content, and most they do receive relate to local, rather than foreign content. However, we do not conclude from this that viewers are not exposed to content which they think is inappropriate. The current absence of a regulator with responsibility for broadcasting matters means that there is no obvious body to which a consumer could complain. Furthermore, it is possible that they do not complain about foreign content because they believe that nothing could be done about their concerns.

We do not believe that, just because a consumer subscribes to a TV service, this means that they 'consent' to all of the content carried in their package, or that they are somehow aware in advance of the programmes included. For both free-to-air and subscription television, consumers do have the option to avoid a channel altogether if they know they don't like it. But this misses the point that viewers generally do not know what will be included in a programme before it is broadcast. It is perfectly reasonable for a subscriber to think that one particular programme on a channel they otherwise like, is, for example, indecent or incites discrimination. It is also reasonable for them to expect measures which protect their children from viewing unsuitable content.

We think that TCI consumers have a right to expect some minimum level of protection in relation to television content. Although TCI could continue to rely on the foreign regulation of foreign channels, this does not guarantee that the expectations of islanders will be met. For example, it could be that religious sensibilities in TCI differ from those in North America.

We think that regulation could improve on the status quo by helping to protect consumers from inappropriate, harmful and offensive content. Finding a proportionate approach requires weighing up the benefits of intervention against the costs of compliance. It is particularly important to consider whether:

- responsibility for compliance should lie with the network operator or with the channel
- regulation should apply to all content or be limited to local programming only
- regulation should apply to both linear and on-demand content.

6. There should be a level playing field between television network operators and content providers.

We think that the underlying technology used by network operators to deliver television services should not affect how they are treated by regulation; all networks should be subject to the same regulatory and licensing burdens, unless there are specific reasons for treating one network differently in order to achieve a wider regulatory goal. This principle is not an end in itself; rather, by taking a technology-neutral approach, we believe we can help promote an environment which ensures that all players are treated consistently, and which thereby encourages investment in TCI.

Currently, from a regulatory perspective, we do not consider that there is a level playing field between the three network operators which supply television services. They are authorised under different types of telecoms licence, or may have no licence. Some pay regulatory fees while others don't.

The principle of technology neutrality suggests that, in any amended future regime, any network operator wishing to supply television services would need the same form of regulatory authorisation, regardless of their transmission technology.

We also think that television *content* should be treated equally by regulators, regardless of the type of network by which it distributed. From the viewer's perspective, CNN is CNN, whether it is provided via cable or using UHF terrestrial signals. Viewer expectations of the content they see is identical in both cases. As set out above, we do not consider that it matters whether the content is offered on a channel which forms part of a subscription package³³, or is available free-to-air.

Currently, there is no regulatory regime for television content in TCI. This principle is therefore forward-looking; it says that if any future content obligations are imposed by a regulator, these should apply equally whatever network type is used to deliver the content.

7.4 Other candidate objectives for television *content* in TCI

We have considered a number of other possible goals or objectives for television services and content in TCI, but do not propose to prioritise them. These include:

- We discussed above the goal of protecting consumers from harm and offence. If we decide to pursue regulation to help protect consumers from this sort of content, we will consult further on the meaning of *inappropriate*, *harmful* and *offensive* content, and on suitable protection measures. We envisage that this could include content which is violent, has adult themes, which incites religious or racial hatred or violence, or which discriminates against minorities.
- However, some countries go further than this, by placing positive requirements on providers of news content to be accurate, impartial and free from political interference. We can see clear merit in this as a goal, but consider that it is likely to be difficult to assess, and are concerned that the complexities of such a framework may make provision of local content less attractive.
- Some countries also seek to promote certain sorts of television coverage, such as legislative debates or events of national importance. They sometimes also require that key events, such as major sporting finals, must be made available on free-to-air television, and not just via a

³³ Where a consumer subscribes directly to an individual channel, rather than to a package of channels offered by a network provider, there may be a stronger case that they consent to what they see. Nevertheless, we believe they still have a right to protection from harmful content. We are also not aware of individual channel subscriptions in TCI.

subscription. However, while these aims may also be desirable in TCI, we do not think that it is economically viable to try to impose them in such a small market, given that there is no free-to-air provision.

- We can see a case for promoting intellectual property ('IP') protection as a goal in itself. As a country which promotes the rule of law, innovators and investors in TCI have a right to see their creations respected. However, we think that enforcement of copyright is better viewed as a means to stimulate creativity for the benefit of the public. It is therefore potentially an *enabler* of the goals proposed above of have a good choice of provider, content and technology, rather than a goal in itself.

7.5 Summary of scope for regulation

To summarise, we do not believe it is appropriate currently to use regulation to seek to reduce prices. However, we consider that carefully targeted and proportionate could help:

- extend the availability a broad range of high-quality content
- increase choice of service providers and delivery platforms
- promote the wide availability of local television content in TCI
- protect consumers from harmful or offensive content

Of these, we think that **promoting local content**, and **protecting consumers from harmful and offensive content** are particularly important, and that regulation could, and should, help deliver these goals. **We therefore propose setting these as regulatory priorities.**

We think that TCI is currently reasonably well served for **high-quality content, service providers and distribution platforms**. Nevertheless, we think regulation could help deliver further on these aims, although the case for this is less clear. **We therefore propose these as secondary aims for regulation.**

We believe that creation of a level playing field between networks and channels is likely to help secure the above goals. We do not believe that we should currently make it a priority to ensure that news content is accurate and impartial, to protect coverage of events of national importance, or to promote copyright protection *per se*.

Consultation question in PART 2

- **Do you agree with the objectives we have set out for television in TCI? If not, what is an appropriate set of objectives?**
- **Do you agree with our assessment of how well the market currently delivers against these objectives?**
- **Do you agree with our assessment of the potential for regulation, appropriately and proportionately designed, to play a role in helping to deliver these objectives?**
- **Do you agree with our two priority areas for regulation: promoting the wide availability of local television content, and seeking to protect consumers from harmful and offensive content?**

8. Proposals for regulation of television services and content in the TCI

8.1 Introduction

If we accept the two priority objectives and the secondary objective for television regulation in TCI that we set out in the last section, then we can set about identifying and assessing options for regulation.

In doing this, we must be mindful of our approach to regulation. We consider that interventions we make should be:

- robust and futureproof;
- as simple and light-touch as possible;
- proportionate to the harm they seek to address;
- introduced as a last resort, i.e only where the market cannot provide; and
- should seek to minimise the burden on the industry.

8.2 Summary of options for regulating television in TCI

We have identified four possible broad approaches to the licensing of television in TCI, with the aim of helping deliver the objectives we have proposed. There are three entities to consider in our proposals:

- **Public telecommunications networks:** these are networks which carry public television services.
- **Television services:** these are television services provided to the public. Television service providers negotiate rights to carry channels, package them and provide them either free-to-air, or through a subscription. In general, television service providers distribute channels over their own public telecommunications network (in which case the public telecommunications network is also a television services provider). However, this isn't always the case: a television service provider can make an agreement with a third-party public telecoms network to carry its services. This is how Vodafone offers TV services in the UK for example.
- **Television channels:** these can be foreign channels such as CNN, or TCI-based channels such as TCI Channel 4 News or PTV8. These channels are distributed by public television service providers. Sometimes a public television service provider will have its own television channels. We call television channels which provide a minimum level of local news or current affairs output "public service channels".

In summary, the options we propose are:

1. Do nothing
2. Require all public telecommunications networks which carry television services to hold a licence permitting this **AND** require all television services to hold a licence which includes conditions that they must have consent from any channel they carry, **AND EITHER:**
 - A. Licensed television services must offer open access for any channel on fair, reasonable and non-discriminatory ('FRND') carriage terms; **OR**
 - B. Licensed television services must provide a minimum level of local TCI programming; **OR**
 - C. All operators of TCI-based television channels must have a licence, either a standard channel licence or a public service channel licence (granted to channels which offer a minimum level of news or current affairs output) **AND**

All licensed channels are subject to content regulation **AND**

Licensed public service channels benefit from reduced licence fees, guaranteed carriage by television service providers, and possibly access to public funding / preferential EPG positioning **AND**

Licensed television services must carry all channels with a public service licence.

The table below summarises the obligations that proposals 2A, 2B and 2C place on each of the three entities identified above, i.e: public telecoms networks, television service providers, and television channel operators:

Table 9: Summary of regulatory obligations under options 2A, 2B, and 2C

	Television channel			Television service	Public telecoms network
OPTION 2A	No licence required and no regulatory obligations			Licence to provide television services to the public Consent from any channel they carry FRND carriage for any channel	Licence to carry television services
OPTION 2B	No licence required and no regulatory obligations			Licence to provide television services to the public Consent from any channel they carry Min level of local programming	Licence to carry television services
OPTION 2C	Foreign channel No licence required Not subject to content regulation No programming obligations	TCI Standard channel Standard channel licence required Subject to content regulation No programming obligations	TCI Public service channel Public service channel licence required Subject to content regulation Programming obligations for min level of local news / current affairs Reduced licence fees / guaranteed carriage / public funding / EPG benefits	Licence to provide public television services to the public Consent from any channel they carry Must carry all TCI public service channels	Licence to carry television services

8.3 Television regulation options

We now discuss each of these options, and consider how well they meet each of the objectives above, in the light of the regulatory principles set out above.

1. Do nothing

In terms of securing the proposed objectives, it may be that any new regulation could do more harm than good. The extra regulatory burdens, say, in requiring television services to respect copyright and secure carriage agreements with the channels they carry, may make the provision of local programming uneconomic. Similarly, creating conditions which make it attractive for a satellite provider to enter the market, may in turn drive an existing player out of business. In that case, it may be better simply to leave things as they are.

Nevertheless, in our view, this approach does not address the priority goals of promoting the wide availability of local television content, or protecting consumers from harmful and offensive content.

2. **All public telecommunications networks which carry licensed television services must hold a licence permitting this, and all television services must have a licence including conditions that they must have consent from any channel they carry**

Our proposals are underpinned by two licence requirements; any network which carries television services in the TCI must be licensed, and any television service must also be licensed. We propose that this licence would be required for provision of either linear channels or on-demand content.

Television services would be required to have rights holder consent for any content or channel they carry, whether this content or channel is based in the TCI or overseas. This could entail payment by the television service to the channel, or vice versa (if the channel believes it is in its commercial interests to be carried by the service). The television service would need to be able to evidence consent to the regulator.

We consider this consent requirement to be fundamental to any proposal to regulate the television market in TCI. The knowledge that creative works will be respected should help stimulate creative output for the benefit of the public, and is befitting of an island which wishes to promote the rule of law. We do not believe that a credible regulatory regime for television services could exist without this basic requirement. This may entail the introduction in the TCI of a copyright protection law.

In addition to this basic requirement for public telecoms networks and television services to be licensed, and for the latter to show rights holder consent for all content carried, the television service would be required to do **EITHER A, B or C** below.

A. Licensed television services must offer open access for any channel on fair, reasonable and non-discriminatory carriage terms

Under this option, the service must provide carriage for any channel that wants it, subject to capacity being available and carriage terms being agreed. It could not, for example, refuse to carry a channel owned by a rival television service, just because it was a rival. The service must have a published policy of how it will offer carriage terms. This does not necessarily mean that the carriage charge for all channels must be identical, but any differences must be justifiable. In the case of a dispute, the TCI regulator would have the power to impose a settlement and to set the carriage fees.

We now set out the benefits and risks of option A.

Risk that local channels cannot agree carriage with licensed television services

This approach would create a level playing field for television services and public telecoms networks, and would ensure that local channels are not carried without their consent. This may be enough to result in a negotiated settlement, ensuring that all channels, including those based in TCI, are carried legally on all available television services if they wish. However, there remains a risk that agreement for carriage is not reached, and television services that also own local channels decide to withhold them from other services on competitive grounds.

Might extend choice of provider and delivery platforms if a new satellite entrant is tempted in to the TCI market

This option might encourage new satellite television entrants in TCI, as they would no longer be under threat from under-cutting by non-licensed local operators. This could help improve choice of provider and delivery platform, and might also contribute to a broader range of high-quality content at reasonable prices. However, negotiation might be required to persuade satellite operators to carry local channels; it could be difficult to enforce regulation around this, as satellite operators are not based in, and currently have no infrastructure in TCI³⁴. If this negotiation was not successful, there would not be a level playing field between television service providers.

We would seek to ensure an easy transition with minimal costs for holders of existing television broadcasting licences under the Business Licensing Ordinance who want to apply for a new telecommunications network and / or television services licence under the Telecommunications Ordinance. We believe this should minimise risks that existing players decide to exit the

³⁴ There may also be a risk that television service providers whose decisions on which channels to carry are made outside TCI, claim that they cannot carry a local channel. However, based on experience from elsewhere in the Caribbean, we are not convinced that this is a major risk, and see this as a relatively small price for a TCI television service licence.

market. Licence holders would, however, be required to pay fees to meet the costs of regulation.

Minimal consumer protection from harmful content

In this option, telecoms networks which carry television services, and the television services themselves, are licensed. But channels are not. In theory, consumers could be protected from inappropriate or harmful content under this arrangement by requiring television services to ensure that the content they carry complies with any future television content code.

However, we consider that this approach could face difficulties in TCI:

1. **Editorial control.** Television services do not have editorial control of the content or channels they carry. Therefore, if this content was found to be in breach of a content code, the only remedial action available to the service provider would be to remove it altogether. This is a very blunt instrument, and could potentially damage the market by removing quality content from it.
2. **Foreign channels.** While in theory a provider could be held in breach for foreign content or channels it carried, the regulator may find it difficult to enforce this.
3. **Duplication.** Where all service providers carry the same content or channel, and it includes breaching content, all would be in breach. This is duplicative, and creates regulatory inefficiency, as the regulator would need to enforce separately against each provider.

In practice, we think that placing content obligations on television services is unlikely to be effective. This means there is a risk that consumers are not adequately protected from harmful content.

B. Licensed television services must provide a minimum level of local TCI programming

Under this option, all television service licences would include a condition that no channel may be carried without consent, but there would be no requirement to provide fair and open access or for carriage terms to be reasonable, as under option A. Instead, the service would be required to provide a minimum amount of local programming including news or current affairs, say 2 ½ hours a week. The service could produce its own channel to meet this requirement or it could carry third-party content.

We now set out the benefits and risks of option B.

Guarantees that local programming is available, although it may have limited distribution

The advantage of this approach is that it provides a regulatory level playing field and ensures the provision of local programming. It does not require television services to strike deals with each other or with particular channels.

The disadvantage is that consumers may not have access to all local content from their service provider; the consumer's choice of service could determine which local channel they are able to watch. This limited distribution might hamper the economic viability of some existing local channels.

Might extend choice of service provider and delivery platforms if a new satellite entrant is tempted in to the market

Under this option, television services must have rights to the channels they carry. As with the previous option, this could improve choice and value for money if it led to a new satellite entrant, but this would require negotiation to ensure a level playing field.

Minimal consumer protection from harmful content

As with the previous option, there is no regulation of television channels under this option. Although it might be possible to place the burden of content compliance on service providers, this would be subject to the limitations of editorial control, foreign channels and duplication set out above.

C. All operators of TCI-based television channels must have either a standard channel licence or a public service channel licence (granted to channel operators that offer a minimum level of news or current affairs output). All licensed channels are subject to content regulation. Licensed television services must carry all channels which hold a public service licence.

Under this option, television channels in the TCI would have the choice of holding either a standard licence, or a public service licence under which the channel operator would guarantee to provide a minimum level of local news or current affairs programming. Public service licence holders would benefit from:

- a) reduced (or zero) licence fees payable compared to holders of standard channel licences;
- b) guaranteed carriage on all licensed television services, under terms which are fair and reasonable to both sides. Where agreement cannot be reached, the regulator may set the terms;
- c) possibly access to direct public funding³⁵ for local programming;

³⁵ This fund could operate in several ways. For example, it could be supported by the TCI Government. Alternatively, licence fees payable by public telecoms networks, television services, and channels with a standard licence, could be set at a level whereby some of the revenue raised could be put into a television fund. Public service licensees could apply to this fund in order to fund local programming. The regulator could hold the fund and allocate it on the basis of applications setting out programming proposals, with funding decisions made on an annual basis or for a fixed period, say five years. The channel would be required to account to the regulator for how it had spent the money. Note: a similar fund already exists in TCI to promote the universal provision of telecommunications services.

d) possibly preferential positioning on the EPG.

It would be possible to set rules requiring licensed channels, both standard and public service, to be owned and operated by Turks and Caicos Islanders, if this was deemed to be desirable.

We now set out the benefits and risks of option C.

Likely to be the option which does most to ensure the widest availability of local programming

This option involves more regulation than the others, as it requires the licensing of both channels, in addition to services and networks. And, unlike option B, it does not guarantee the availability of local programming, because it is possible that no provider of local channels decides to apply for a licence. However, we think that by giving public service channels the benefits of lower licence fees, guaranteed carriage, possible funding and possible preferential EPG treatment, this risk is low. Moreover, as all television services must offer the same public service channels, this option ensures maximum exposure for public service content. It does require that television services whose channel line-ups are decided outside TCI agree to the obligation to carry public service channels in return for their licence, but we do not consider this a major risk. Television services could still retain exclusivity for any local channels with a standard licence (this might include sports or religious channels for example).

Consumers should have a good choice of providers and delivery platforms

Under this option, television services must have rights to the channels they carry. As with the previous option, this could improve choice and value for money if it led to a new satellite entrant, but this would require negotiation to ensure a level playing field.

The best option for protecting consumers from harmful content

This approach differs from options 2A and 2B, in that licensed local channels would be made subject to a content code. As we set out under option A, this has the benefits that: it is the channel (not the network) which has editorial control over its content; that potential regulatory duplication is removed; and that content regulation only applies to local channels (these are more easily regulated than foreign channels; we are not aware of other Caribbean islands which have broadcast codes enforcing these for foreign content).

Consultation question IN PART 2 SECTION 8

- **Which of the options suggested for regulating television in TCI is most appropriate and why?**
- **Are there any other options that should be considered?**

9. Questions which the Commission invites participants to address

We invite stakeholders to answer the following questions.

Consultation questions for PART 1

- **Do you agree with the definition of IPTV in section 4.5?**
- **Do providers of IPTV services in the TCI need to be licensed for the business activity of television broadcasting under the Business Licensing Ordinance and Regulations?**
- **Does the 2006 licence under the Telecommunications Ordinance authorise a holder to provide IPTV services in TCI?**

Consultation questions for PART 2

- **Do you agree with the objectives we have set out for television in TCI? If not, what is an appropriate set of objectives?**
- **Do you agree with our assessment of how well the market currently delivers against these objectives?**
- **Do you agree with our assessment of the potential for regulation, appropriately and proportionately designed, to play a role in helping to deliver these objectives?**
- **Do you agree with our two priority areas for regulation: promoting the wide availability of local television content, and seeking to protect consumers from harmful and offensive content?**
- **Which of the options suggested for regulating television in TCI is most appropriate and why?**
- **Are there any other options that should be considered?**

10. Consultation Process

[This consultation is conducted in accordance with the Telecommunications (Administrative Procedure) Regulations]

The Commission invites interested parties (“Respondents”) to provide their input and comments (the “Responses”) with respect to the questions raised in this Consultation Document.

10.1 Process for Responses

This Consultation Document, is available on the Commission’s website at <http://www.telecommission.tc>. Respondents who wish to provide their views with, as may be required, supporting rationale and information in response to this Consultation Document are invited to submit their Responses in writing to the Commission. Responses should also be submitted in electronic form to facilitate further distribution and posting on the Commission’s website.

The Consultation Process is structured in two phases. In the first phase, Respondents may submit Initial Responses to comment on this Consultation Document. In the second phase, Respondents may submit Reply Responses to comment on the Initial Responses of other Respondents in whole or part.

The filing deadlines for Initial Responses and Reply Responses are as follows:

- Initial Responses must be received by the Commission no later than 3:30 p.m. local time on September 29, 2017.
- Reply Responses must be received by the Commission no later than 3:30 p.m. local time on October 20, 2017.

Responses filed in relation to this Consultation Document may be submitted to one or more of the following addresses:

a) E-mail to: consultations@tcitelecommission.tc

b) Delivery (paper and electronic copy) by hand or by courier to:

Mr. John Williams,
Director General
Turks and Caicos Islands Telecommunications Commission Business Solutions
Complex, Leeward Highway Providenciales,
Turks and Caicos Islands

The Commission encourages Respondents to support all Responses with relevant information and analyses based on the national situation or on the experience of other countries to support their comments. The Commission may give greater weight to Responses supported by appropriate evidence. In providing their comments, Respondents are requested to indicate the number of the Consultation Question(s) to which each comment relates. Respondents are not required to comment on all Consultation Questions.

The Commission is under no obligation to adopt the comments or proposals of any Respondent.

Copies of all Responses submitted by Respondents in relation to this Consultation Document will be published on the Commission's website at <http://www.telecommission.tc>. With a view to having as open a public consultation process as practical, the Commission encourages Respondents to structure their Responses not to include any confidential information.

If necessary, Respondents may submit Responses that include claimed confidential information in the form of two Responses:

- **Redacted Response** – In this document any claimed confidential information would be excluded. The other comments and information, not claimed as confidential, would be included in this version. This is the public version document that would be posted on the Commission website.
- **Confidential Response** – This document would be identical to the Redacted Response except that this version would also include the claimed confidential information for the use of the Commission. This document would not be posted on the Commission website and, subject to section 19 of the Administrative Regulations, all confidential information in the document would be held in strict confidence by the Commission and its Consultants.

Claims of confidentiality will be determined by the Commission on a case-by-case basis, and in compliance with the requirements set out in section 19 of the Administrative Regulations.

10.2 Process Timeline

As noted, the Commission has allowed for Initial and Reply Responses to this Consultation Document. Once the Commission has received all interested parties Responses, it plans to issue a decision. Table 1 provides the expected timeline for this consultation process.

Event*	Date
1. Consultation Document issued	August 14, 2017
2. Initial Responses submitted	September 29, 2017
3. Reply Responses submitted	October 20, 2017
4. Decision and Recommendation to Government	November /December 2017

ANNEX 1

(Fchambers letter to the Commission, June 8, 2016)



F CHAMBERS
Attorneys at Law

8 June 2016

VIA EMAIL & BY HAND DELIVERY

TCI Telecommunications Commission
Business Solutions Complex
Leeward Highway
Providenciales

Attention: Mr. Terrence Robinson

Dear Sirs

Re: LIME/FLOW – Internet Protocol Television Service (IPTV SERVICE)

We on behalf of People's Television Network (Andrew's Communications Ltd), Island TV, and Island Cable Network. Our clients are the television broadcasters respectively for Providenciales, South Caicos and Middle/North Caicos forming part of the Turks and Caicos Islands. They are the only providers of local television programming and rely on subscriptions from users and advertising in order to continue to provide that local programming to the people of the Turks and Caicos.

Our clients each operate under a television broadcasting business license (issued pursuant to the Business Licensing Ordinance), and under a telecommunications license (pursuant to the Telecommunications Ordinance (Cap 14.02), and by way of a cabinet decision to approve all three companies to have the rights to broadcast television.

We understand that Flow (formerly trading as Lime) has launched a television service in the Turks and Caicos Islands, offering a variety of TV viewing packages. We have had sight of a Sales Form setting out the basic packages Flow offers together with optional viewing packages. We have also seen marketing material produced by Flow in respect of their television offering, which is similar in many respects to that broadcast by our clients. Indeed, we note that PTV8 itself is to be broadcast as part of Flow's television offering, without the authority or approval of PTV8 we might add.

TCI Telecommunication Commission

Attention: Mr. Terrence Robinson

Re: LIME/FLOW – Internet Protocol Television Service (IPTV SERVICE)

The broadcasting service Flow has launched will have a significant impact on our clients' respective businesses and will likely cause significant financial loss to them in terms of subscribers, advertising revenue, and their consequent ability to produce local programming.

We have received confirmation from the Office of the Premier that no licence under the Telecommunications Ordinance has been granted to Flow to operate a television broadcasting service – the mere possession of a business licence also giving no such authority under the Telecommunications Ordinance.

Cable and Wireless (West Indies) Ltd was granted a telecommunications license on 25 January 2006. The Commission will be familiar with its terms. We understand that on 7 August 2007, the Commission granted approval for the said license to be assigned to Cable and Wireless (TCI) Ltd, although we have had no sight of the said grant of approval.

Cable and Wireless (TCI) Ltd now purport to trade as Flow (formerly Lime) under the afore-mentioned license. Cable and Wireless/Lime had historically provided mobile telecommunications services to the islands. Attorney General's Chambers are of the view that the license under which Flow operates is in fact a full telecommunications license and that in any event, Flow does not need a broadcasting licence because the IPTV service is incapable of regulation. Respectfully, we are of the view that the Attorney General is wrong on her interpretation of the 2006 license that was granted to Cable and Wireless (West Indies) Ltd; that such license does not contemplate television services being provided to the public by Cable and Wireless; that the position of the Attorney General is not in keeping with legislation and case law in other jurisdictions; that FLOW needs a licence to be able to launch its IPTV service; and that in so broadcasting, Flow is in breach of the terms of the Telecommunications Ordinance, and the Company and its officers have committed an offence under section 56 of the Ordinance.

Our clients seek to bring an end to the unlawful television broadcasting, or, in the alternative, have conditions imposed upon the 2006 Cable and Wireless license which protects their interests.

TCI Telecommunication Commission

Attention: Mr. Terrence Robinson

Re: LIME/FLOW – Internet Protocol Television Service (IPTV SERVICE)

Our clients' position can be stated as follows:

A. The Requirement for Belonger Control

In the absence of any evidence to the contrary, we take the view that Section 9 of the Ordinance should also apply to Flow. That section specifically states that:

'Belonger control

9. (1) A person shall not obtain a licence under this Part unless the person satisfies the Commission that the person is owned or controlled by Belongers.

(2) For the purposes of subsection (1), a person is owned or controlled by Belongers if in the case of a company—

(a) not less than fifty-one per cent of the members of its board of directors are individual Belongers;

(b) otherwise than by way of security only, not less than fifty-one per cent of the company's voting shares issued and outstanding are owned by Belongers; and

(c) the company is not otherwise controlled by persons that are not Belongers.

(3) The Minister may exempt any person from the provisions of subsection (1).

(4) Subsection (1) shall not apply to a person listed in Schedule 3 who was legally authorised to provide a public telecommunications service or operate a public telecommunications network, on or before the coming into force of this Ordinance.

(5) After the expiration of a licence granted under this Ordinance to a person listed in Schedule 4, the provisions of subsection (1) shall apply.'

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Subsection 4 of that section refers to the Belonger requirement not being applied to a person listed in Schedule 3 who was legally authorized to provide a public telecommunications service on or before the coming into force of the Ordinance. Flow cannot rely upon this sub-section to escape the Belonger qualifying criteria – Schedule 3 refers specifically and quite deliberately to Cable and Wireless (West Indies) Ltd, and makes no provision for any successors, transferees, or assignees to benefit from that waiver of the qualifying criteria. If legislators or the Government had intended otherwise, then one would have expected a professional draftsman of legislation to make provision for its successors, transferees and assignees. The legislation did not, and this is consistent with the position of the Government as set out in Paragraph B below of this letter.

Further, we have been provided with no evidence to show that Cable and Wireless was authorised to provide television programming services prior to the Ordinance coming into force on 20 August 2004, and so subsection (4) of section 9 cannot be relied upon in any event.

Flow does not meet the Belonger control requirement of section 9 of the Ordinance, and to our knowledge has not been exempted by the Minister pursuant to sub-section 3 of that section.

B. No grant of a full telecommunications service and network license

Cable & Wireless was not granted a full telecommunication service and network licence in 2006. Section 10 of the Ordinance requires a licence to ‘specify...the type of telecommunications service which may be provided by the licensee.’ It was licensed to provide ‘[A]ll telecommunications services that the Licensee provides in the TCI on the commencement date (of the licence)...’. If it had been granted a ‘full’ telecommunication service and network licence, then there would have been no need for such detail within the Annex, or to confine it to those services it provided at the commencement date of the licence. Instead, Annex A sets out very specifically what services it was licensed to provide, and those services did not extend to the provision of television services. Further, if indeed it had been granted a ‘full’ telecommunications license in 2006, it would have been required to pay a license fee consummate with such a broad licence. So, for example, Schedule 1 of the Telecommunications

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(Fee Structure) Regulations would require an annual license fee of a minimum of \$2,500,000 to be paid by Cable and Wireless.

Please set out what license fees have been paid by Cable and Wireless since 2006 to date, and provide documentary proof of the same.

If, Cable and Wireless had indeed been granted a ‘full’ telecommunication service license for a period of 15 years from 2006, that would mean that they could not ever be required to apply for a license to provide a new telecommunications service even if such a service did not exist at the time the license was granted, either in Turks and Caicos, or at all. That clearly can never have been intended by the legislators, and our clients suggest nor should it be the position of the Commission.

Cable and Wireless should have taken the requisite steps to ensure that its licence was amended to provide for this.

C. No prior authorisation to broadcast television or to provide IPTV services

As intimate above, the 2006 Cable and Wireless license does not provide the legal authority to Flow to broadcast television, (and within which we also include reference to the provision of subscriber television services). Such a situation would undeniably jeopardize the continued provision of valued local television programming within the Turks and Caicos. At the time of granting the 2006 licence to Cable & Wireless, it was always the intention of the Government to ensure that there were only local providers of television, and consequently, such services were to be placed under Belonger control. It cannot therefore ever have been the intention either of legislators, nor of the Government at the time, that Cable & Wireless (West Indies) Limited would be provided a ‘back door’ in to the provision of television services. The recent acquisition of Cable and Wireless by Liberty Global plc, further increases Cable and Wireless’ dominant position in the market, and the risk of the loss of local television programming unless steps are taken to protect it, and the companies which provide it (as was initially guaranteed by the Government).

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D. The Requirement for a Television Broadcasting License, and the need for regulation in the sector

Broadcast methods have changed. Broadcast includes the distribution of programme material over any network platform.

Countries are taking various approaches in classifying IPTV. These positions range from simply abstaining from issuing an upfront official position, instead focusing on issues deemed relevant to promote competitive entry into the video market; to considering IPTV, and all its related functionalities as a broadcasting service and regulating them accordingly. Some countries are also developing a broad middle ground, where some services offered over IPTV platforms are considered to be broadcasting services as defined under a country's existing regulatory framework while others, such as VOD, are not considered to fall within such category.

Some countries have adopted a technology neutral approach towards classifying IPTV. For example, in Canada, the regulatory authority, CRTC, considers IPTV as one of the broadcast distribution technologies available for television programming. Services offered over this platform, including VOD, are deemed to be broadcasting services and providers offering IPTV fall within the category of broadcasting distribution undertakings, and are licensed accordingly.

Another approach is that taken by jurisdictions such as Korea, Singapore and Pakistan where IPTV has not only been specifically classified as a broadcasting service, but new categories of broadcasting licences have been established. In Singapore, for example, broadcasting includes the transmission of any television programming taking the form of either full scheduled channels and/or VOD content to households via a broadband connection using Internet protocol. Korea has enacted a new law that classifies IPTV as an "Internet multimedia broadcasting" service -- defined as a "type of broadcasting whereby various types of content, including real-time broadcasting programmes, are provided to users through television sets by way of Internet protocol that allows interactivity using fixed-line telecommunications facilities."

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Some jurisdictions are basing their regulatory classification of IPTV services on the degree of interactivity they allow. On this basis, many countries are regulating the television broadcast component of IPTV and its VOD capabilities differently. For instance, in the EU countries and New Zealand, regulation is differentiated based on whether the content being offered to the user is linear (programming transmitted at a scheduled time) or non-linear (content that is selected by the user and viewed when the viewer wishes). Linear programming is generally subject to broadcasting and content regulation. Non-linear content is not subject to broadcast regulation, such as in New Zealand, but is subject to certain content regulation, as in the EU countries.

Development of IPTV is closely interwoven with the development of residential broadband. While previously there existed a gap between the requirements of IPTV and the capabilities of access networks and services, today, this gap has been bridged through advancements in coding and transmission. Penetration and development of broadband access is a major policy and business issue in many parts of the world, including Europe. TV and Video services will be major services in the broadband networks. The concept of broadcasting is, in effect, being separated from its foundational roots in the transmission of technology of the 1920s and is increasingly being used to denote that any service delivered to audiences over electronic networks, irrespective of the transmission technology.

The IPTV service provided by Flow should be regulated; Flow should be required to apply for and to obtain a broadcasting licence to provide its television service, in keeping with the other television providers on Island. Not to do so would discriminate unfairly against the Belonger-controlled television companies.

In the European Court of Justice case of *Mediakabel BV v. Commissariaat voor de Media* (the Dutch Media Regulatory Authority), the Court rendered a decision with implications as to the scope of the Television without Frontiers Directive 89/552/EEC (as amended by Directive 97/36/EC).

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Aside from a regular subscription service called ‘Mr. Zap’, which allows reception of television broadcasts by means of a decoder and a smartcard, Mediakabel also offered a pay- per-view service by the name of ‘Filmtime’. This service offered a catalogue of films, from which subscribers could choose by telephone or by remote control, which was then decrypted only after the provider had received identification and payment from the subscriber. This is a service that is similar to that of the IPTV service that is provided by FLOW noted in the ‘TCI Sales Form’. As it stands, customers will pay a subscription fee for each channel exclusive of monthly fees for cloud video recording.

The Court noted such a service is not commanded individually by an isolated recipient who has free choice of programmes in an interactive setting; rather it is the service provider who establishes the list of films available, for example, and broadcasts it at the same time and on the same terms to an indeterminate number of viewers. The individual key is merely a tool to “unencode the images” simultaneously broadcast to all subscribers.

Terrestrial and satellite TV, cable, and so-called “near-video-on-demand” (which is just very frequent repeats), are all capable of being regulated as television broadcast services. IP-multicast services ought also to be classified as television broadcast services.

In the Mediakabel case, the Advocate General dismissed the following factors as irrelevant in determining whether or not something is classed as a broadcast service:

- i. the encoded or unencoded form of the transmission
- ii. the remuneration scheme
- iii. whether competitive services are substitutable (for instance, substitutability of near-video-on-demand by video-on-demand)
- iv. whether existing broadcast regulation can be applied effectively to it

One of the critical issues in that case, which is similar to the matter facing our clients, was whether the near video on demand (NVOD) service provided by Mediakabel in Holland was a television broadcasting service within the meaning of the Television without Frontiers Directive.

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Television broadcasting is defined in the Directive in terms of the transmission of programmes intended for reception by the public and excluding services providing information or messages on individual demand. The service was a pay per view film service accessible by subscribers using a PIN to select and view films which were transmitted at scheduled times.

The Court did not accept that the NVOD service was an on demand service. On the contrary, it determined that the PIN access was not relevant because it was intended for reception by the public, being an indeterminate number of potential viewers to whom the same images were transmitted simultaneously. It was this feature, the simultaneous transmission to an audience, that characterized television broadcasting- and it did not matter how the transmission was effected and therefore covered cable transmission as well as those made over the air.

It is our clients' case that the channels provided by Flow are broadcasted simultaneously once the customer pays and thereby gains access to same. The IPTV service offered by FLOW cannot be distinguished from broadcast services that are to subject to the Television Broadcasting licence.

E. The right of Cable and Wireless to seek authorisation to provide television services

Cable and Wireless is entitled to seek authorisation to provide television services. Clause 2 of Annex A to their licence provides for that:

'2. Any telecommunications service that requires a licence under the Telecommunications Ordinance and that is not included in Clause 1.1, provided that the Licensee is expressly subject, on a non-discriminatory basis, to any regulations, policies, terms and conditions of the Commission that apply to such service when provided by any other person licensed under the Telecommunications Ordinance....'. [emphasis supplied]

Cable and Wireless must still be subject to the same regulations, policies, terms and conditions of the Commission that apply to such telecommunications service as would apply to any other person licensed under the Telecommunications Ordinance. In other words, if Cable and Wireless

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does not satisfy the ‘regulations, policies, terms and conditions’ as they apply, then they would not be entitled to a licence for that telecommunications service.

F. The requirement for conditions to be applied to the Cable and Wireless 2006 License

Section 14 of the Telecommunications Ordinance authorises the Commission to impose conditions on a Licence as it deems appropriate; and to prevent anti-competitive behaviour in telecommunications markets including engaging in anti-competitive cross-subsidisation. The imposition of conditions by the Commission is expressly referred to in clause 2 of Annex A. We have seen no evidence that the Commission has given consideration to this matter.

The Commission has the jurisdiction to make a determination on matters regarding anti-competitive behaviour of a licensee. Section 4 (c) of the Telecommunications Ordinance records the Commissions functions, and notes that it is:

‘to regulate telecommunications in the Islands in accordance with the policy guidelines published in the Gazette from time to time and in accordance with the principle of technological neutrality’;

Section 4 (h) and (i) provide for the power of investigation and making determinations as to anti-competitive behaviour:

(h) to carry out investigations and hold enquiries with respect to any matter in relation to its functions or duties under this Ordinance.

(i) to give advice and directions to a licensee with respect to anti-competitive practice or behaviour;

The Commission must be required to address the following issues:

1. The existing strong (if not dominant) position of Cable and Wireless within the Turks and Caicos telecommunications market;

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2. The fact that Cable and Wireless controls the wholesale broadband capacity of the Turks and Caicos market, and that therefore that dominant position is open to abuse;
3. The financial support that Flow has from Cable and Wireless/Liberty with which existing television service providers within the Turks and Caicos would not be able to compete;
4. The fact that in light of the small market for television subscribers that exists within the Turks and Caicos, it is more likely than not that in order for Flow to provide such a service there will be a cross-subsidisation between the services which Flow provides and which therefore is anti-competitive behaviour which the legislation identifies specifically is to be the subject of Commission-imposed conditions;
5. The acquisition of Cable and Wireless by Liberty Global plc is likely only to exacerbate each of the issues identified above.

As it relates to the subscription television services, the Fair Trading Commission (FTC) of Barbados took a position that is in keeping with international precedence. The FTC assumed the position that Pay/ Subscription Television is supplied by variety of local distributors in that jurisdiction, using one of three transmission methods: MCTV's channel offerings are provided by MMDS infrastructure, while DirecTV transmits via satellite, and both CWC/LIME and FLOW/Columbus distribute content using internet protocol (i.e. over the internet). CWC and Columbus contended that the market ought to be defined as the provision of pay TV services, and should include the supply of TV content, a position similar to that of FLOW being taken in Turks and Caicos.

From the perspective of supply, the FTC in Barbados took the view that it was not necessary to divide Pay TV into separate markets according to the transmission platform used (that being, MMDS, satellite, and internet) since each distributor/provider in operation, with the exception of CWC/LIME and FLOW/Columbus uses a separate delivery platform.

We have seen no evidence that the Commission has undertaken any review or assessment of Cable and Wireless'/Flow's position either pursuant to section 14, or sections 16 and 17 of the Ordinance, the latter two sections of which specifically address what steps are to be taken

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where a licensee is dominant in relation to the provision of a telecommunications service. Section 28 of the Ordinance authorises the Commission to undertake a review and to set or review rates where there is a dominant licensee operating a telecommunications system, network or providing a telecommunications service cross-subsidising another telecommunications service provided by that licensee, or where the Commission is satisfied that there is evidence of anti-competitive pricing or acts of unfair competition.

- G. Section 56 of the Telecommunications Ordinance makes provision for criminal offences in respect of telecommunications, and we draw your attention to the offences and sanctions that are to be applied upon summary conviction.

Accordingly, our clients say that:

- (i) Flow does not hold a full telecommunication service licence;
- (ii) The Commission should require Flow to apply for a licence to provide a television service – howsoever that it is provided;
- (iii) The Commission has failed to consider whether or not Cable and Wireless, Lime or Flow holds a dominant position in the telecommunications market, and to regulate that position accordingly;
- (iv) The Commission has failed to considered the imposition of conditions on any licence granted to Cable and Wireless, Lime or Flow, or the modification of conditions of any licence granted to the same;

The television service of Flow is already being marketed to the public, and we understand that their television service has been launched. We submit that this matter needs careful and urgent reconsideration; and that a moratorium needs to be placed on the provision of television services by Flow until a formal application for a licence is made by them (with conditions imposed by the

TCI Telecommunication Commission

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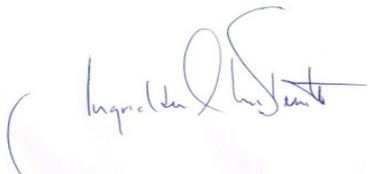
Re: LIME/FLOW – Internet Protocol Television Service (IPTV SERVICE)

Commission if deemed appropriate). We are otherwise instructed to proceed with an application for judicial review.

Sincerely

F CHAMBERS ATTORNEYS AT LAW

PER:

A handwritten signature in blue ink, appearing to read "Ingrid Lee Clarke Bennett". The signature is written in a cursive style with a large initial "I".

INGRID LEE CLARKE BENNETT (Mrs.)
Attorney-at-Law
Head of Civil Practice

ANNEX 2

(Attorney General's Chambers letter to Fchambers, dated April 28, 2016)



ATTORNEY GENERAL'S CHAMBERS

April 28, 2016

Mr. Mark Fulford
F Chambers
Providenciales
Turks and Caicos Islands

Dear Mr. Fulford:

Re: LIME – IPTV SERVICE

The Government has requested that I write to you as the legal representative for certain television broadcasting operators who met with the Government on 13th April 2016 regarding complaints from those broadcasters about LIME's (now trading as FLOW) IPTV subscription service.

The Government has met with LIME, as promised, and has now had an opportunity to review this matter against the information obtained. The contents of this letter reflect our understanding of the highly technical IPTV service and the application of the law and legal arrangements in place since 2006.

On 25 January 2006 a full telecommunication service and network licence was issued to Cable and Wireless (LIME) under the Telecommunications Ordinance. The licence is for a period of 15 years.

Annex A of the licence sets out the telecommunication services which LIME is licensed to provide as follows:

“1.1 All telecommunications services that the Licensee provides in the TCI on the commencement date (of the licence) and without regard to whether such services are dedicated or switched (whether packet or circuit-switched), and without regard to the telecommunications networks by which such services are provided, including, but not limited to:

- 1.1.1 Domestic and international public telephone services, including analogue and digital fixed and mobile telephone service (regardless of payment mechanism, including pay phones, credit cards and calling

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cards) and regardless of the type of customer premises equipment that may be attached thereto.

- 1.1.2 Domestic and international data services (including leased lines, paging, frame relay and virtual private network services).
 - 1.1.3 Domestic and international text (including telex and telegram) transmission services.
 - 1.1.4 Any present or future modifications, upgrades or enhancements to telecommunications services included in this Clause 1.1.
2. Any telecommunications service that requires a licence under the Telecommunications Ordinance and that is not included in Clause 1.1, provided that the Licensee is expressly subject, on a non-discriminatory basis, to any regulations, policies, terms and conditions of the Commission that apply to such service when provided by any other person licensed under the Telecommunications Ordinance....”.

Clause 1.1.4 allows for any present or future modifications, upgrades or enhancements to the telecommunications services included in Clause 1.1 and Clause 2 appears to be very wide and all encompassing.

Pursuant to clause 2 of the licence, LIME can provide all telecommunications services that would require a licence under the Telecommunications Ordinance.

In section 2 of the Telecommunications Ordinance “telecommunication service” and “telecommunications network” are defined as follows:

““telecommunications network” means any wire, radio, optical, or other electromagnetic system used to route, switch, or transmit telecommunications; and

“telecommunications service” means a service consisting of—

- (a) conveying, emitting, receiving, switching or transmitting messages or having messages conveyed, emitted, received, switched or transmitted, by means of a telecommunications system; and
- (b) installing, maintaining, adjusting, repairing, altering, moving, removing or replacing telecommunications equipment which may be connected to a telecommunications system.”.

The Telecommunications Ordinance is silent on the types of licence required under the Ordinance. However, Schedule 1 to the Telecommunications (Fee Structure) Regulations sets out the individual telecommunications licences that may be issued under the Telecommunications Ordinance.

In Schedule 1, 'subscriber television' and 'internet networks/service' are listed as telecommunication services for which a licence may be issued. Full telecommunication service and network (which is the licence issued to LIME) is also listed in Schedule 1. A full telecommunication service and network licence covers all the licences listed in Schedule I, which includes subscriber television and internet network/services.

It is our view that LIME, as the holder of a full telecommunication service and network licence under the Telecommunication Ordinance, can pursuant to that licence, provide subscriber television service using IPTV (which is an internet service).

However because of a dual licensing system, a licence is also required under the Business Licensing Ordinance.

LIME is also the holder of a telecommunication service licence under the Business Licensing Ordinance and the question is whether LIME also requires a television broadcasting licence under that Business Licensing Ordinance to provide IPTV service.

The term "broadcasting" or "television broadcasting" is not defined in the Business Licensing Ordinance. In section 2 of the Telecommunications Ordinance the term "broadcasting", although it is defined for the purposes of Part VI of that Ordinance, means "the transmission of programmes whether or not encrypted, by any means of telecommunications, for reception by the public, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis."

In the European Union (EU): Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member states concerning the pursuit of television broadcasting activities:

"Television broadcasting" is described as "the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services."

In both definitions above it appears that the programmes are transmitted to the public simultaneously.

Our understanding is that Internet Protocol Television (IPTV) is the process of delivering video signals over a data network, as data. It is a system through which television services are delivered using the architecture and networking methods of the internet protocol suite over a packet-switched network infrastructure such as the internet, instead of being delivered through traditional terrestrial, satellite signal, and cable television formats. Unlike downloaded media, IPTV offers the ability to stream the media in smaller batches, directly from the source.

IPTV is a relatively new and still evolving. In traditional television broadcasting, all programming is broadcast simultaneously. The available program signals flow downstream and the viewer selects which program he wants to watch by changing the channel. IPTV, by contrast, sends only one program at a time. Content remains on the service provider's network and only the program the customer selects is sent to the home. When a viewer changes the channel, a new stream is transmitted from the provider's server directly to the viewer. Like Cable TV, IPTV requires a set-top box.

It is our view from the definitions of "broadcasting" and "television broadcasting" above that IPTV differs from the traditional television broadcasting where all programming is broadcast simultaneously to the general public. IPTV, by contrast, sends only one program at a time.

It is our understanding that television programmes distributed via the internet or similar electronic network (IP streaming) is not considered broadcasting services unless those programmes are broadcast simultaneously. It is our understanding that television programmes distributed via the internet or similar electronic network for viewing programmes at the moment chosen by the user and at the user's individual request is not considered broadcasting services.

In an article on IPTV and whether it is regulated as traditional cable service, the author states that "Cable television service and IPTV are confusing concepts. This confusion causes a misunderstanding as to each. Moreover, legislation has not kept up with the technology of delivering video programming to consumers. When that happens, confusion carries through the courts and administrative regulatory systems, which attempt to make policy work but only in one case at a time. The Federal Communications Commission ("FCC") defines traditional cable television system as a facility, consisting of a set of closed transmission paths and associated signaling generation, reception and control equipment that is designed to provide "cable service". "Cable service" means a one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. The key characteristic of cable service is *one-way* transmission."

In describing the difference between IPTV and cable service the author states that—

"First and foremost, an IPTV system employs a *two-way interactive network*, as opposed to a *one-way transmission* system. IPTV is an internet service, even when it looks exactly the same as other TV programming. A subscriber to an IPTV service uses a set-top box to request specific individual video signals from the IPTV service provider. Thus, the subscriber *controls* the video signals he or she wishes to access. The *two-way* interactive network differs significantly in functionality from the *one-way* transmission network of a cable television system. A *one-way* network transmits a complete set of video channels to a subscriber's set-top box all at the same time. In a *one-way* system, a subscriber receives video signals on a fixed schedule, except for Video on Demand ("VOD"). In contrast, in an IPTV system, a subscriber can obtain video programming whenever he or she decides to view it."

At this point, and based on the above understandings, it is our view that LIME does not need a separate television broadcasting licence under the Business Licensing Ordinance to provide IPTV subscription service and can provide such service under the telecommunication service licence issued under that Ordinance.

It is our view that LIME is within its rights to provide IPTV subscription service under the full telecommunication service licence it holds under the Telecommunications Ordinance and the telecommunication licence it holds under the Business Licensing Ordinance.

Yours sincerely,



Desiree Downes
Principal Legislative Drafter

ANNEX 3

(Consent Court order made on April 6, 2017)



NEW, FILED 10/2/17 S.S.I. 02
GBC

**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

Action No. CL9/2017

IN THE MATTER of An application for Judicial Review

AND

IN THE MATTER of a decision by the Telecommunications
Commission of the Turks and Caicos Islands

AND

IN THE MATTER of the Telecommunications Ordinance and the
Business Licensing Ordinance.

BETWEEN ANDREW'S 1st PLAINTIFF
COMMUNICATIONS LTD

BETWEEN ISLAND CABLE 2nd
NETWORK LTD PLAINTIFF

BETWEEN ISLAND TV, LTD 3rd
PLAINTIFF

AND THE RESPONDENT
TELECOMMUNICATIONS
COMMISSION OF THE
TURKS AND CAICOS
ISLANDS

AND CABLE & WIRELESS INTERESTED
(TCI) LIMITED PARTY

THE HONOURABLE CHIEF JUSTICE,
MARGARET RAMSAY-HALE
The 29th day March 2017

CONSENT ORDER

UPON the within matter coming on for directions before the Honourable Chief Justice on the 29th day of March 2017 **AND UPON** hearing Mrs Ingrid Clarke-Bennett and Mr Craig Oliver of FChambers, Counsel for the Applicants, Mr. Guy Chapman, Counsel

for the Respondent and Mr. Carlos Simons QC and Mr. Mark Harvey, Counsel for the Interested Party ;

AND UPON reading the papers;

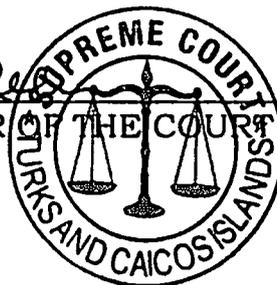
AND UPON The Respondent agreeing to hold a public inquiry into Internet Protocol TV (IPTV), its licensing and regulation under TCI law, and to proceed with same, with reasonable dispatch, under s54(1) of the Telecommunications Ordinance, and under the *Telecommunications (Administrative Procedure) Regulations 2008*;

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The Application by the Plaintiffs for Judicial Review is discontinued.
2. The Respondent will meet the Plaintiffs' reasonable costs of the proceedings, such costs to be taxed if not agreed.
3. No further Order as to costs.

DATED this 6th April day of ~~March~~, 2017

F Chambers
BY ORDER OF THE COURT



This Consent Order was issued by F CHAMBERS, Attorneys-at-Law for the Plaintiffs, The Plaintiffs' address for service is that of their Attorneys, 007 Emily House, 1105 Leeward Highway, P.O. Box 666, Providenciales, Turks & Caicos, Telephone: 1 649 339 6275 Fax: 649 339 7777



**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

Action No. CL9/2017

IN THE MATTER of An application for Judicial Review

AND;

IN THE MATTER of a decision by the Telecommunications Commission of the Turks and Caicos Islands.

AND;

IN THE MATTER of the Telecommunications Ordinance and the Business Licensing Ordinance.

CONSENT ORDER

F Chambers Attorneys at law
007, Emily House,
1105 Leeward Highway,
Providenciales
Turks and Caicos Islands