



DECISION NOTICE 2014-1

Re: TCT Ltd. - Change of Control of Operations

January 9, 2014

Background

On December 16, 2013, the Commission received a letter from TCT Ltd. (TCT) for an approval to change control of its Internet operations from TCT to Fibre Investments Ltd, a subsidiary of the Digicel Group pursuant to Section 20 of the Telecommunications Ordinance 2004.

On December 18, 2013, the Commission emailed Digicel requesting additional information on the Fibre Investments Ltd. Company as this company was not on record at our office.

On December 31, 2013, the Commission received the requested information from Digicel (TCI) Ltd.

COMMISSION DECISION

At its meeting on January 8, 2014, the Commission considered the matter, and has determined the following:

Since the Digicel Group is well recognized and established within the Turks and Caicos Islands through its operations in Digicel (TCI) Ltd., and bearing in mind the Telecommunications Policy for Turks and Caicos Islands, and the mandate set out in the Ordinance to facilitate and promote competition in telecommunications, the Commission has concluded that the transfer of operations should be approved subject to the provisions in Section 9 in the Telecommunications Ordinance be satisfied.

The Commission therefore will advise the Minister, who is responsible for issuing telecommunications licences that it recommends the approval of the change of control of TCT operations, on the basis that the Belonger control requirement is met.

Belonger Control Criterion

TCT is currently 100% owned by Turks and Caicos Broadcasting, which is a USA-based firm. The company has requested an exemption from the Belonger control criterion in the Ordinance, which is within the discretion of the Minister, however we cannot confirm if this was ever granted.

The Commission notes that in the earlier application in 2006, the owners of TCT expressed a willingness to “offer shares to as wide a section of the Belonger and resident community as possible” at the time a licence would be granted. The company further stated that it would have no objection to this being a stipulation in the licence. The precise mechanism under which this would be done was not specified, but the Commission believes that there was merit to the idea, and recommended that this be explored further with the company before the issuance of a licence.

In 2009 the Commission recommended that the Minister consider this approach to a simple unbound exemption order, and issue an exemption that would require the company to meet the Belonger control criterion within one year, through the broad mechanism described by the company. If the offer of shares were made within say, 3 months of the issuance of a licence, and the uptake were to fail to achieve the goal of Belonger control, then the Minister could reconsider the matter after a reasonable time period, and either issue an exemption without conditions, or confirm the limited period for achieving the goal stated.

Today, with the recommended transfer of the licence to Fibre Investments Ltd., the Commission recommend that the Minister can either require the Belonger criterion be satisfy in a reasonable timeframe before the sale, or explore a similar arrangement proposed by Commission in 2009.