



EXECUTIVE SUMMARY

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

issued by the

Turks and Caicos Islands

Telecommunications Commission

On

August 14, 2017

NOTE: This document serves as the Executive Summary

1. Introduction

This Consultation serves 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 whether Flow is authorised to provide IPTV services to the public under the existing regulatory regime in the TCI.
2. It will 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.

In summary, we present four options for regulating television services:

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:
 1. Licensed television services must offer open access for any channel on fair, reasonable and non-discriminatory ('FRND') carriage terms; OR
 2. Licensed television services must provide a minimum level of local TCI programming; OR
 3. 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.

2. Current Regulatory regime for the provision of television services in TCI

The current regulatory regime for the provision of television services in TCI is somewhat confused. There are several relevant statutory requirements:

- **The Business Licensing Ordinance and Regulations**, which require entities wishing to engage in the following business activities in the TCI to be licensed by the Permanent Secretary, Finance: Internet Service Provider; Radio Broadcasting; Television Broadcasting; Telecommunication Service. The business activities of radio broadcasting and television broadcasting are reserved for Turk and Caicos Islanders.
- **The Telecommunications Ordinance** requires providers of public telecommunications services in the TCI to be licensed by the Telecommunications Commission. It defines “*telecommunications*”, and also “*broadcasting*”. The latter, however, relates to a part of the Ordinance intended to regulate broadcasting services, which was not enacted.
- **The Telecommunications (Fee Structure) Regulations**, made under the Telecommunications Ordinance, provide for various types of telecommunications service licences and for the fees payable for those licences. These include licences for “*Full Telecommunication Service and Network*” and “*Internet Networks/Service*”. They also provide for a “*Subscriber Television*” licence, but this relates to the part of the Ordinance intended to regulate broadcasting services, which was not enacted.
- **A Broadcasting Bill** was introduced to the House of Assembly in June 2013 that would have required providers of broadcasting services to hold licences, according to the service they offered, to be issued by the Telecommunications Commission. This bill, which was intended to fill the lacuna in the Telecommunications Ordinance concerning the regulation of broadcasting services, used the same definition of “*broadcasting*” and “*subscriber television*” as used in the Telecommunications Ordinance and the Fee Structure Regulations. The Broadcasting Bill was not enacted.

To date, the Telecommunications Commission has not issued a “*Subscriber Television*” licence, as mentioned in the Telecommunications (Fee Structure) Regulations, to any provider of television services in the TCI. Providers of television services were issued licences for the business activity of “*Television Broadcasting*” by the Permanent Secretary, Finance, in accordance with the Business Licensing Ordinance and Regulations.

3. The context for television services and IPTV

Video signals can be distributed by a number of means, each offering advantages and disadvantages to either the distributor or to consumers who wish to view them. We summarise these here,

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 • Analogue terrestrial prone to interference 	
<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

We propose adopting two ITU definitions which are relevant to this consultation:

- 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*”. 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 reception by “*the general public*” contrasts with transmissions intended for private networks, such as Closed Circuit TV networks.

- The ITU definition of “**IPTV**” is “*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.*¹” This definition operates independently of any licensing regime; it seeks only to explain what IPTV does, and how it does it. It is a very broad definition, encompassing delivery of both *scheduled television channels* and *video on demand*. It does not specify whether the service is broadcast/multicast/unicast, and it allows for any form of IP-based distribution, provided this is over a managed network.

4. International approaches to regulating television, including IPTV

We think that regulatory activity can be grouped into seven broad categories, applicable to television network operators or to channel operators. These are:

1. **Channel content - programming obligations:** Channels may be required to provide certain types of programmes, such as local news, or documentaries.
2. **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, or to protect minors.
3. **The transmission / delivery network:** The holder must normally have a licence for spectrum, which may impose requirements such as minimum coverage levels. A licence may be required for provision of services via cable / fixed telecoms networks.
4. **Carriage requirements and retransmission terms:** Often network operators are required to carry certain channels (known as “must carry”), and sometimes the channels must make their services available to the network (known as “must offer”). It is possible to regulate the payments between channels and network operators to ensure that these are fair and reasonable.
5. **Customer interface (EPG):** The EPG may be regulated to require that designated channels (normally those with positive content obligations) are given appropriate prominence in the channel listing.
6. **Ownership rules:** Many countries have rules about who may own the channels in that country, or how many of the services they may own.
7. **Customer pricing:** It is possible to regulate the price that the viewer is charged for the service, although in practice this is unusual.

The following tables show how these seven categories are applied in practice in the Caribbean, the US, Canada, and Europe.

¹ <http://www.itu.int/en/ITU-T/jca/iptv/Pages/tor.aspx>

Caribbean (Note: this is a broad summary of common practice, but there are differences between islands)

Platform	Channel: programme obligations	Channel: standards /protection	Regulation of transmission network (e.g. spectrum licence)	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

USA

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

Canada

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

Europe

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

5. Objectives for television services and content in the TCI

This consultation considers what is an appropriate set of goals for the provision of television services and content in the TCI, and assesses how well the market delivers these goals. It then considers the scope there is for regulation to improve on the status quo.

We propose the following as goals for television services and content in the TCI:

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

Having considered the extent to which the market currently delivers on these objectives, and the scope for regulation to improve on the status quo:

- We propose to prioritise regulation which aims to **promote the wide availability of local television content**, and to **protect consumers from harmful and offensive content**. We think regulation can and should help deliver these goals.
- We propose as a secondary aim, regulation which seeks to **extend choice of high-quality content, service providers and distribution platforms**. We think regulation could play a part in this, although the case is less clear.

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 make it a current 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*.

6. Options for regulation television in the 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".

Option 1 is a do-nothing option. There are then three variants to Option 2, each of which involves licensing public telecoms networks which carry television services, and also the television services themselves. In addition, Option 2C involves licensing TCI-based channels. The following table summarises the obligations on public telecoms networks, television services, and television channels under each of the option 2 variants.

Table 9: Summary of regulatory obligations under options

	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 Consent from any channel they carry Min level of local programming	Licence to carry television services

OPTION 2C	Foreign channel	TCI Standard channel	TCI Public service channel	Licence to <u>provide</u> television services	Licence to <u>carry</u> television services
	No licence required Not subject to content regulation No programming obligations	Standard channel licence required Subject to content regulation No programming obligations	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	Consent from any channel they carry Must carry all TCI public service channels	

We now set out the pros and cons of each option.

1. Do nothing

Main pros: New regulations could do more harm than good; e.g they might end up making the provision of local programming uneconomic, or drive existing players out of business.

Main cons: Does not address goals of promoting wide availability of local content, or protecting consumers from harmful and offensive content.

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

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 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 to hold a licence and to show rights holder consent for all content carried, television services 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.

Main pros: Light-touch and simple. Creates a level playing field for television services and network operators, and ensures local channels are not carried without their consent. Might extend choice and reach with introduction of new satellite services.

Main cons: Probably requires introduction of a copyright law, which may be difficult and time-consuming. Risk that agreement for carriage is not reached, and television services withhold local channels on competitive grounds. This could mean these channels are no longer economically viable. It might be possible to place content regulation obligations on television services, but this is likely to be ineffective as they do not have editorial control of the channels they carry, and it would be difficult to enforce content rules against the international channels they carry.

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

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

Main pros: Provides a regulatory level playing field and guarantees local programming. Does not require television services to strike deals with each other or with particular channels. Could improve choice and value for money if it led to a new satellite entrant.

Main cons: The consumer's choice of television service could determine which local channel they are able to watch. This limited distribution might hamper the economic viability of existing local channels. As with the previous option, it means that content regulation can only apply to television services, not to channels. This has the limitations related to lack of editorial control and foreign channels set out above.

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.

Under this option, television channel operators 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 reduced licence fees, guaranteed carriage on all television services, possibly access to direct public funding for local programming; and possibly preferential positioning on the EPG.

Main pros: Helps promote local content by ensuring that all television services carry all public service channels. It maximises the chances of retaining the existing service providers and delivery networks, and could improve choice and value for money if it led to a new satellite entrant. It is the best option for protecting consumers from harmful content because, unlike options 2A and 2B, local channels could be made subject to a content code, rather than television services.

Main cons: Involves more regulation than other options, as it requires the licensing of channels, services and networks. Means any platform which currently has exclusive carriage of a local public service channel would lose this point of differentiation (although they could still retain exclusivity for standard licensed channels). The regulatory burden of applying for and holding a licence must be kept low to mitigate the risk that current local channels decide to not to apply.

7. Consultation questions

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?**