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November 27, 2023

Secretary of the Office
Office of Utilities Regulation
3rd Floor PCJ Resource Centre
36 Trafalgar Road
Kingston 10, Jamaica

Attention: Mrs. Diana Cummings

Dear Madam,

Re: Invitation to submit comments on OUR's Draft Corporate Business Plan and Budget for 2024/25 - 2027/28

Reference is made to email correspondence received from the Office of Utilities Regulation ("OUR") on November 20, 2023, inviting stakeholders to submit comments on the OUR's Draft Corporate Business Plan for the period 2024/25 - 2027/28 ("the Draft Plan"). Digicel (Jamaica) Limited ("Digicel") wishes to thank the OUR for this opportunity. We hereby submit our comments below.

1. Chapter 4 - Work Plan and Deliverables for 2024/25 - 2027/28

Fair Share Contribution by Over-the-Top Providers:

- i. Digicel notes that the critical issue of fair share contribution by Over-the-Top providers ("OTTs") has not been included in the OUR's Work Plan and Deliverables for 2024/25 - 2027/28. We find this omission to be a detrimental one given the direct correlation that it has to the very sustainability of telecommunication operators such as Digicel.
- ii. In the OUR's Corporate Business Plan and Budget for 2022/23 – 2025/26, the OUR provided an update on its project entitled "Regulatory Treatment of Over-The-Top (OTT) providers". The OUR recognised the impact of OTTs and noted the deficiency in existing regulations which were stated to have been developed with more static industries in mind and which were not designed to deal with OTT players. The OUR further noted that it had met with the Director and Staff of the ITU's Telecommunication Standardization Bureau (TSB) regarding the recent work done by the TSB on OTTs and that a decision was made to update the document to take into account Recommendations/Technical Reports/Guidance issued by the ITU. The

OUR also stated that its aim was to complete this project by the end of 2022 January.¹ We therefore think it crucial that the OUR provide an update on same and outline its plans to deal with the issue.

- iii. The need for regulatory intervention on this issue cannot be overemphasized in light of the current regulatory and market imbalances prevalent in the internet ecosystem where operators undertake significant network investment to convey OTT generated traffic at cost. These network investments are undertaken at cost by Digicel despite reduced return on investments, declining ARPU's, increased cost of capital, currency depreciation and inflationary pressures which characterize the telecommunications sector in the Caribbean. Telecommunication providers are caught between an ever-increasing demand for data-intensive OTT services on the retail side to which we are unable to respond with higher retail service prices due to the competitive and regulated nature of the market as well as declining ARPUs. On the other hand, OTTs are not subject to any regulatory oversight or constraints (i.e., concession/licence fees, spectrum fees, taxes) despite participating in the same internet ecosystem (Axon 2022²). This therefore directly impacts the OUR's telecommunication sector goal number 5 of Reliability and Resilience as stated at page 14 of the Draft Plan.

2. Chapter 5 – OUR's Budget for 2024/25 – 2027/28

Section 5.1 – Overview

- i. Digicel notes the OUR's below statement pertaining to significant increases in budgetary allocation and projected spend for 2023/2024:

For the 2024/2025 budget, notwithstanding the cuts that are made by management and the executives, the numbers reflect in many cases, significant increases over the previous year's budget and the projected spend for 2023/2024 (revised budget at mid-year), 48.8% and 14.7%, respectively.

- ii. Digicel inquires as to whether any assessments/analysis on the impact of proposed regulatory fee increments on market participants and by extension other stakeholders were undertaken by the OUR. In this regard, we note that telecommunications is a network industry in which new users generate positive externalities for existing users by broadening the network. When undertaking reviews/assessments of its budgetary/regulatory fee policies, we submit that the OUR should give consideration to the trade-offs between revenue generation and the potential negative impact on the sector's development and performance. In its article entitled "*The impact of taxation in the telecommunications industry*", authors Katz and Jung opined that there is a significant

¹ OUR's Corporate Business Plan and Budget for 2022/23 – 2025/26, pages 34 and 35.

² Impact of OTTs on Caribbean networks and implications of their fair share contribution to countries' development, Axon Partners Group, September 2022.

correlation between increments in regulatory fees, profit taxes and excise duties and negative impacts on investment.³

- iii. Telecommunication services prices are impacted directly through taxation over services and indirectly through obligations imposed on operators that can ultimately have an impact on service prices.⁴ Hence, operators may try to recover this cost increment via upwardly revised tariffs on end-users of telecommunication services. In light of the aforementioned, an increase in regulatory fees may act as a signal to operators to set higher prices.

Section 5.4 – OUR’s Funding Requirement

- i. Digicel notes the year-on-year increments in funding requirements set out by the OUR for the period 2025/2026 – 2027/2028. We are therefore concerned as to whether we should expect further annual increments in budgetary allocations by the OUR in the long term (i.e., post 2027/2028). This does not bode well for regulatory certainty as the risk of regulatory fee increments as a result of increased OUR budgetary allocations would have to be priced into investment decisions and this may reduce both foreign direct and domestic investment in the sector.

Section 5.5 – Sector Allocation Summary

- i. Digicel would be grateful for clarification on the rationale/methodologies behind the proposed allocation of 39.06% in regulatory fees for the telecommunications sector.
- ii. We note that the proposed increment in regulatory fees/sectoral allocations to telecommunications and OUR funding requirements would drive an increase in the operational expenditure of Digicel. The increments in regulatory fees for the electricity sector would also precipitate an increase in operating expenditure borne by Digicel.

We are grateful for the OUR’s consideration of the above comments and are available to discuss/clarify any aspect of same.

Yours sincerely,

DIGICEL (JAMAICA) LIMITED



Alethia Tomlinson (Mrs.)
Legal & Regulatory Director

³ The impact of taxation in the telecommunications industry, Information Economics and Policy, Volume 62, 2023, 101016, ISSN 0167-6245, Raúl Katz, Juan Jung (2023), <https://doi.org/10.1016/j.infoecopol.2023.101016>.

⁴ The impact of taxation in the telecommunications industry, Information Economics and Policy, Volume 62, 2023, 101016, ISSN 0167-6245, Raúl Katz, Juan Jung (2023), <https://doi.org/10.1016/j.infoecopol.2023.101016>.