

**Docket No. PUC:2023/01-01**



## **Public Utilities Commission**

### **Price Cap Regime for Telecommunications Services in the Co-operative Republic of Guyana**

**6<sup>th</sup> February 2023**

# Table of Contents

<b>INTERPRETATION SECTION</b> .....	<b>4</b>
<b>BACKGROUND AND PURPOSE OF THE CONSULTATION</b> .....	<b>8</b>
<b>REVIEW CYCLE</b> .....	<b>9</b>
<b>THE CONSULTATION PROCESS</b> .....	<b>10</b>
SUBMISSION OF RESPONSES.....	10
TREATMENT OF RESPONSES AND CONFIDENTIALITY.....	11
PROPOSED CONSULTATION SCHEDULE.....	11
<b>1 OVERVIEW OF PRICE CAP REGULATION</b> .....	<b>12</b>
1.1 PRICE CAPS AND INCENTIVE REGULATION.....	12
1.2 OBJECTIVES OF THE PRICE CAP REGIME.....	13
<b>2 THE LEGISLATIVE AND REGULATORY FRAMEWORK</b> .....	<b>14</b>
2.1 THE TELECOMMUNICATIONS ACT 2016.....	14
2.2 THE TELECOMMUNICATIONS (PRICING) REGULATIONS 2020.....	15
2.3 THE GTT LICENCE.....	16
2.4 THE U-MOBILE LICENCE.....	16
<b>3 GENERAL PRINCIPLES OF THE PRICE CAP REGIME</b> .....	<b>17</b>
3.1 SCOPE OF PRICE CONTROL.....	17
3.2 DURATION OF THE PRICE CAP REGIME PERIOD.....	17
3.3 REVIEW, RENEWAL AND EXPIRY OF THE PRICE CAP REGIME PERIOD.....	19
3.4 DEFINING THE PRICE CAP YEAR.....	19
3.5 THE PRICE CAP BRIDGE PERIOD.....	21
3.6 THE NATURE OF THE PRICE CAP MODEL.....	22
<b>4 INITIAL OR GOING-IN PRICES</b> .....	<b>22</b>
4.1 INITIAL OR GOING-IN PRICES.....	22
4.2 REBALANCING.....	23
<b>5 PRICE CAP SERVICES AND BASKETS</b> .....	<b>24</b>
5.1 PRICE CAP SERVICES AND SERVICE PROVIDERS.....	24
5.2 PRICE CAP BASKETS.....	25

<b>6</b>	<b>THE PRICE CAP FORMULA .....</b>	<b>28</b>
6.1	THE PCI .....	29
6.2	THE API AND PRICE CAP COMPLIANCE .....	29
6.3	COMPONENTS OF THE PRICE CAP FORMULA .....	30
6.3.1	<i>Inflation Factor: I Factor</i> .....	30
6.3.2	<i>Efficiency Factor: X Factor</i> .....	33
6.3.3	<i>Exogenous Factor: Z Factor</i> .....	34
6.3.4	<i>Quality-of-Service Factor: Q Factor</i> .....	35
6.4	TREATMENT OF THE “UNUSED” CAP OR HEADROOM .....	37
<b>7</b>	<b>PRICE CAP RULES AND PROCEDURES .....</b>	<b>38</b>
7.1	RECLASSIFICATION OF EXISTING PRODUCTS AND SERVICES .....	38
7.2	NEW PRODUCTS/SERVICES AND BUNDLES .....	39
7.3	TREATMENT OF DISCOUNTS, PROMOTIONS AND MARKET TRIALS .....	41
<b>8</b>	<b>PRICE CAP ADMINISTRATION .....</b>	<b>42</b>
8.1	NOTIFICATION OF PRICE CHANGES .....	43
8.2	COMPLIANCE FILINGS .....	44
8.2.1	<i>Rate Change Compliance Filings</i> .....	45
8.2.2	<i>Annual Compliance Filings</i> .....	46
8.3	EXOGENOUS FACTOR FILINGS .....	47
8.4	REGULATORY REPORTING REQUIREMENTS .....	48
	<b>APPENDIX A – MARKETS FOR TELECOMMUNICATIONS SERVICES .....</b>	<b>50</b>
	<b>APPENDIX B – QUESTIONS .....</b>	<b>52</b>

## INTERPRETATION SECTION

“**Actual Price Index (API)**” means the actual average prices charged or to be charged by the operator or service provider subject to the price cap regime for an identified basket, after the proposed price change.

“**Bridge Period**” means any period less than 12 months between the start of the price cap regime and the start of the first full price cap year (January 1, 2024 to December 31, 2024).

“**Bundled/Bundle**” means the offering of more than one telecommunications service; more than one broadcasting service; two or more of telecommunications services and broadcasting services; or two or more of telecommunications services; broadcasting services and terminal equipment to a user as a package, where the price covers all services and any terminal equipment within the package.

“**Cost-oriented**” means those charges equal to the long-run incremental cost of an efficient operator or service provider, as the case may be, plus, if applicable, an appropriate portion of shared and common costs, and such term may be amplified or modified in the Regulations<sup>1</sup>.

“**Cost-oriented Pricing**” means pricing based on charges equal to the long-run incremental cost of an efficient operator or service provider, as the case may be, plus, if applicable, an appropriate portion of shared and common costs, for the relevant telecommunications services.

“**Dominance**” and “**Dominant**” is the status given to an operator, service provider or any other telecommunications undertaking with respect to a telecommunications network, a telecommunications service or a type of facility, or any market for them, where individually or jointly with others, it occupies such a position of economic strength as will enable it to operate

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<sup>1</sup> The Telecommunications (Pricing) Regulations 2020,  
<https://www.puc.org.gy/pucdocs/Miscellaneous/2020%20Pricing%20Regulations%208.pdf>

with regard to such network, service, facility or market without effective constraints from its competitors, potential competitors, consumers or other users<sup>2</sup>.

“**Exogenous Factor (Z Factor)**” means a component of the price cap formula which represents exogenous positive or negative changes in costs to the service provider which are not captured by changes in conventional inputs (such as labour, capital, and raw materials) and which are beyond the service provider’s control for the price cap period, including changes in tax rates, regulatory fees and other government surcharges but only to the extent that any such taxes, fees and surcharges is actually imposed upon the relevant service provider.

“**Inflation Factor (I Factor)**” means the index that the Commission<sup>3</sup> may consider appropriate for measuring the change in the input cost to the service provider in the circumstances.

“**Price Cap**” means the upper boundary set on a telecommunications service using the price cap formula.

“**Price Cap Basket**” means a basket or grouping of telecommunications services which the Commission determines are to be regulated according to the price cap formula.

“**Price Cap Formula**” means the formula provided for in paragraph IV of Schedule B of the Telecommunications (Pricing) Regulations 2020, and to be utilised in implementing a price cap regime.

“**Price Cap Period**” means the period during which a price cap regime is in force for any telecommunications service subject to such price cap regime, as provided for in paragraph VIII of Schedule B, of the Telecommunications (Pricing) Regulations 2020.

“**Price Cap Regime Compliance Rules and Procedures**” means the official set of rules and procedures which the service provider must follow in relation to the price cap regime set by the Commission.

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<sup>2</sup> The Telecommunications Act 2016,  
[https://www.puc.org.gy/pucdocs/Miscellaneous/2018/020\\_Telecommunications%20Act%202016.pdf](https://www.puc.org.gy/pucdocs/Miscellaneous/2018/020_Telecommunications%20Act%202016.pdf)

<sup>3</sup> The Public Utilities Commission (“the Commission”)

“**Price Cap Regime**” means a price regulation regime using price caps and the price cap formula, in accordance with regulations 10(a) and 11 and Schedule B of the Telecommunications (Pricing) Regulations 2020.

“**Price Cap Services**” means telecommunications services on Schedule A, of the Telecommunications (Pricing) Regulations 2020 which are subject to a price cap regime and the price cap formula and that are included in price cap baskets from time to time.

“**Price Regulation Regime**” means any regime for price regulation instituted by the Commission under the Telecommunications Act 2016 and the Telecommunications (Pricing) Regulations 2020.

“**Productivity Offset (X Factor)**” means the expected productivity or efficiency for the price cap period, to be determined by the Commission using financial models, productivity models and/or benchmarks as provided for in the Telecommunications (Pricing) Regulations 2020.

“**Public Utilities Commission**” hereinafter referred to as the Commission, is a statutory body established under the Public Utilities Commission Act 1990 and it is governed by the Public Utilities Commission Act 2016.

“**Quality of Service Factor (Q Factor)**” means the quality of service factor which shall apply to the price cap basket, and which shall be consistent with any quality of service obligations to which the service provider is subject for the price cap period.

“**Rate Decrease Compliance Filing (RDCF)**” means the formal document(s) which the Company must submit to the Commission in the event it wishes to decrease the prices of relevant price cap services.

“**Rate Increase Compliance Filing (RICF)**” means the formal document(s) which the Company must submit to the Commission in the event it is desirous of decreasing the prices of relevant price cap services.

“**Rate Rebalancing**” means transitioning the prices for different telecommunications services more closely in line with the costs of providing each service.

“**Relevant Markets**” means those telecommunications services, or any grouping of those telecommunications services, set forth on Schedule A of the Telecommunications (Pricing) Regulations 2020.

Terms and words relating to the Telecommunications Sector and price cap regimes used in this document but not defined in this section, will bear the meaning assigned to them in the Public Utilities Commission Act No. 19 of 2016; the Telecommunications Act No. 18 of 2016; the Telecommunications (Pricing) Regulations 2020; the Telecommunications (Consumer Protection) Regulations 2020 and the Interpretation and General Clauses Act No. 8 of 1970.

## BACKGROUND AND PURPOSE OF THE CONSULTATION

The Guyana Telecommunications Sector was formally liberalised on the 5<sup>th</sup> day of October, 2020 with the Government of Guyana issuing the Commencement Orders which brought the Telecommunications Act 2016 (“the Act”) and the Public Utilities Commission Act (“the PUC Act”) into force.

On the 23<sup>rd</sup> day of October, 2020, the regulations which touch and concern the telecommunications environment were made effective including the Telecommunications (Pricing) Regulations 2020 (“the Pricing Regulations”), which makes provision, inter alia, for a price regulatory regime.

On the 5<sup>th</sup> day of October, 2020, non-exclusive licences were granted to the Guyana Telephone & Telegraph Company Limited (“GTT”) for the installation and operation of fixed and mobile public telecommunications networks and the provision of public telecommunications services. Another non-exclusive licence for the installation and operation of a domestic mobile public telecommunications network and the provision of mobile public telecommunications services was issued to U-Mobile (Cellular)Inc. (“U-Mobile”) on the same date.

In keeping with the provisions of the Pricing Regulations, declarations of dominance and joint dominance are enshrined in the licences for both GTT and U-Mobile with respect to the public telecommunications networks, public telecommunications services and the markets. Both GTT and U-Mobile have been declared jointly dominant with respect to specific Mobile Public Telecommunications Networks and Services. Whilst GTT is dominant in specific Fixed Public Telecommunications Networks and Services.

Regulation 4(3) of the Pricing Regulations provides that the Public Utilities Commission (“the Commission”) may, in accordance with the Act and the Pricing Regulation, institute price regulation regimes in any case where, *“there is only one operator operating a public telecommunications network or service provider providing a public telecommunications service”* or, *“an operator or a service provider is dominant as to a relevant public telecommunications network or public telecommunications service”*.



In light of the foregoing the Commission has determined that it is prudent to embark upon this consultation process in order to determine a suitable price regulation regime, under a system of incentive regulation for the incumbent dominant fixed-line provider, GTT, the sole service provider of specific fixed-line services.

It is intended that the Commission will conclude the first stage of this process by issuing for consultation its draft Price Regulation Regime Document.

Throughout this consultation document, the Commission has poised a series of questions (see as highlighted in boxes) which may aid and provide context for the determination process towards suitable price regulation regime. The questions can also be found in Appendix B to this document.

## **REVIEW CYCLE**

As the Telecommunications Sector in Guyana evolves and competition influences the markets it may be necessary to further review and amend the type of price regulation or the details of the price regulation regime created under this consultation. In that event, the Commission will review the established price regulation regime in consultation with service providers, other stakeholders and the public at large.

## THE CONSULTATION PROCESS

Prior to the establishment of a price regulation regime, the Commission is required to engage stakeholders, which include but not limited to (i) telecommunications undertakings; (ii) private and public sectors in Guyana; (iii) Consumers' representative bodies and (iv) the general public, providing all entities with the opportunity to comment. This obligation is outlined in section 38 (5) of the Telecommunications Act 2016, which provides as follows:

*“Prior to establishing prices from time to time pursuant to subsection (3) or (4)(a), the Commission shall –*

*(a) ...*

*(c) contemporaneous with giving notice to the operator or service provider under paragraph (a), publish a notice of the proposed price regulations regimes in a newspaper of general circulation in Guyana, for the purpose of providing interested persons the opportunity to comment for a period not less than twenty-eight days and not more than forty-five days from the date of such publication, and shall consider any representations or objections which are duly made and not withdrawn;”*

### Submission of Responses

Responses to this Consultative Document should be addressed to the Chairman and submitted to the Commission electronically at [pucommission@gmail.com](mailto:pucommission@gmail.com) (in Microsoft Word format) or via post to P.O. Box. 1081 no later than **23:59 hrs. or 11:59 pm on the 23<sup>rd</sup> day of March 2023.**

The Commission requests that stakeholders indicate the number of the consultation questions and the sections of the Consultation Document to which any comments relate. However, stakeholders are under no obligation to comment on all of the consultation questions. The Commission welcomes additional comments on any other issues which may be deemed relevant to the establishment of a sound price regulation regime.

All supporting evidence which includes documents, relevant data, benchmarking studies and qualitative and quantitative analysis critical to the submissions must be included with comments.

## Treatment of Responses and Confidentiality

To encourage dialogue and allow all stakeholders to scrutinise the data, the Commission intends to publish all submissions made in response to this Consultation. No confidential information nor any commercially sensitive and/or proprietary information will be disseminated by the Commission.

In the event that the stakeholders are inclined to include confidential, commercially sensitive or proprietary information to bolster their comments and submissions, this information may be submitted and identified and marked “Confidential” and such sensitive information should be included as a separate annex to comments.

## Proposed Consultation Schedule

The Consultation period will commence on **Monday, the 6<sup>th</sup> day of February 2023**, and conclude on **Thursday the 23<sup>rd</sup> day of March 2023**. The Commission is under no obligation to consider submissions received **after 23:59 hrs. or 11.59 p.m. on the 23<sup>rd</sup> day of March 2023**. The following represents the intended schedule for this Consultation:

Activity	Owner	Date
Publication of Initial Consultation Document ( <a href="http://www.puc.org.gy">www.puc.org.gy</a> )	The Commission	6 <sup>th</sup> February, 2023
Submission of Comments <a href="mailto:pucommission@gmail.com">pucommission@gmail.com</a>	Interested Parties	6 <sup>th</sup> February 2023 to 23 <sup>rd</sup> March, 2023
Publication of Comments ( <a href="http://www.puc.org.gy">www.puc.org.gy</a> )	The Commission	6 <sup>th</sup> February 2023 to 24 <sup>th</sup> March, 2023

## **1 OVERVIEW OF PRICE CAP REGULATION**

In Guyana, the newly liberalised telecommunications sector is characterised by the existence of two (2) principal players for fixed and mobile public telecommunications services, GTT and U-Mobile. GTT shares the provision of mobile services with its competitor U-Mobile. By licence dated the 19<sup>th</sup> day of December 1990, GTT was granted the exclusive rights to operate and provide fixed-line services. On the 5<sup>th</sup> day of October 2020, the advent of liberalisation in effect dismantled GTT's monopoly in the telecommunications sector as it relates to the fixed line market.

A consequence of any newly liberalized telecommunications sector and with its limited competition is the risk that existing companies will not deliver the services to customers at an acceptable standard and a reasonable rate. Therefore, in the absence of a fully competitive environment, Regulators such as the Commission are required to create conditions of balance between the interests of consumers and service licensees. The intent of such balance is to ensure that service licensees earn returns which encourage the delivery of services at an established minimum standard and a reasonable rate whilst facilitating innovation and investment. One of the ways in which Regulators attempt to achieve this balance is through a system of economic regulation which enforces competition and focuses on establishing time-limited prices/price guides and service standards which promote efficiency in operations by service licensees with reasonable input returns which may foster network development.

### **1.1 Price Caps and Incentive Regulation**

Price cap regulation is an alternative to traditional cost-based price regulation, it allows for prices which are intended to recover a regulated company's costs in addition to an allowed rate of return on its rate base. This conventional system is usually costly to administer which provides no consistent incentives for cost-efficiency and innovation and often encourages impetus for strategic misrepresentation of reported costs and the potential uneconomic expansion of service providers' rates.

Price cap regulation is a form of incentive regulation by which Regulators identify a group of core services and apply price regulation in the form of a list of constraints whilst deregulating the prices of other nonessential or competitive services.

The flexibility to freely price any of its services, subject to the stipulated conditions while retaining all extra profit earned from efficiency gains is expected to incentivise the service provider. Therefore, price cap regulation essentially constrains service providers from adjusting the prices for a specified basket of services by the condition that the weighted average of the price increases within the basket does not exceed an inflationary factor less the productivity factor. It provides the pricing flexibility needed to respond effectively to competition and safeguards consumers against rapid and excessive price increases while facilitating technological innovation; reduced administrative costs and long-term investment in the industry.

## **1.2 Objectives of the Price Cap Regime**

A regulatory authority may implement price cap regimes with reference to a set of policy objectives. Identifying these objectives facilitates the design of the regime and which may prove useful in the assessment of the regime's success. The policy objectives of the proposed price regime established as an alternative to market forces, include but are not limited to the following:

- Reduction of the prices for services through efficiency gains.
- Creation of reliable and affordable services of high quality to all customers.
- Foster competition in the Guyana telecommunications market.
- Support the regulated entity with incentives to increase efficiencies and innovation and investment in infrastructure.
- Create an environment where the regulated entity is provided with a reasonable opportunity to earn a fair return.
- Implementation of a simplified price cap regime which leads to reduction of regulatory burden.

## 2 THE LEGISLATIVE AND REGULATORY FRAMEWORK

The telecommunications sector in Guyana is regulated by the Commission in accordance with the powers conferred on it under the PUC Act 2016. The PUC Act 2016, which makes provision for the establishment, functions and operating procedure of the Public Utilities Commission. The PUC Act identifies the key functions of the Commission, which include giving effect to the Telecommunications Act 2016, and other laws governing a telecommunications undertaking including the terms and conditions of any Government issued licences and Agreements<sup>4</sup>.

### 2.1 The Telecommunications Act 2016

#### Functions of the Commission

Section 21 (1)

*“In addition to the functions provided for in the Public Utilities Commission Act with regard to telecommunications undertakings and subject to the provisions of this Act, the Commission shall*

—

(a) ...

(c) *be responsible for the economic regulation of operators and service providers, including with respect to fair competition and to pricing for telecommunications services and for interconnection and access;*

(d) ...

(e) *establish and monitor the implementation of quality of service performance indicators and reporting requirements by operators and service providers with respect thereto;*

(j) *with regard to its functions under this Act –*

*...(vii) do anything which in the reasonable opinion of the Commission is required in the public interest to facilitate the proper discharge of its functions or is incidental thereto.”*

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<sup>4</sup> PUC Act 2016 PART V FUNCTIONS OF THE COMMISSION

On matters related to prices and dominance, Part V, section 38 (1) of the Act requires that unless regulated by the Commission, prices for wholesale and retail telecommunications services shall be determined by operators and service providers in accordance with the principles of supply and demand in a freely competitive market. Section 38 (3) of the Act and regulation 4(3)(a) of the Pricing Regulations identifies the general conditions under which the Commission may establish price regulation regimes in cases where:

- There is only one operator of a public telecommunications network or one provider of a public telecommunications service.
- An operator or service provider is dominant as to a relevant public telecommunications network or service.
- Anti-competitive cross-subsidisation, anti-competitive pricing or unfair competition is detected by the Commission.
- In any other circumstances as provided for in the Pricing Regulations.

## 2.2 The Telecommunications (Pricing) Regulations 2020

In addition to the foregoing, Part I, regulation 4 of the Pricing Regulations, reinforces key aspects of section 38 of the Act as it relates to the general principles governing wholesale and retail pricing of public telecommunications networks and public telecommunications services.

In relation to the Markets for Telecommunications Services, Part II, regulation 8 of the Pricing Regulations provides that pending a determination of market definitions by the Commission, the markets which shall be used for the purpose of price regulation regimes shall be the telecommunications services or any grouping, as set forth in Schedule A of the Pricing Regulations.

As it relates to the implementation of price cap regimes for telecommunications services Part III, regulation 10 require that the Commission implements a price cap regime where, inter alia, pursuant to section 38 (3) (a) or (b) of the Act and regulation 4 (3) (a) or (b) of the Pricing Regulations, “ *there is only one operator operating a public telecommunications network or service provider providing a public telecommunications service*” or “*an operator or a service*

*provider is dominant as to a relevant public telecommunications network or public telecommunications service”.*

Other areas of the Pricing Regulations provide the established framework for the design, implementation, review and administration of relevant price regulation regimes and the associated enforcement action and penalties for offences.

### **2.3 The GTT Licence**

Pursuant to section 40 (2) of the Act, the GTT Licence as granted by the Government of Guyana designates a position of dominance and a position of joint dominance to GTT with respect to specific public telecommunications networks and public telecommunications services and the markets.

### **2.4 The U-Mobile Licence**

Pursuant to section 40 (2) of the Act, the U-Mobile Licence as granted by the Government of Guyana designates a position of joint dominance to U-Mobile with respect to specific public telecommunications networks and public telecommunications services and the markets.



### 3 GENERAL PRINCIPLES OF THE PRICE CAP REGIME

The proposed general principles and scope of price control for the proposed price cap regime are outlined in detail in this section of the document.

#### 3.1 Scope of Price Control

Regulation 8 of the Pricing Regulations provides that unless and until the Commission has determined the markets to be used for price regulation regimes, the markets which used shall be formed from the telecommunications services, or any grouping of those telecommunications services provided at Schedule A of the Pricing Regulations.

The Commission therefore proposes to utilise those telecommunications services and groupings of those services, as defined in the Pricing Regulations and identified in Appendix A of this document, as the markets for this Initial Price Cap Regime.

*Question 1: Please comment on the Commission's proposal to utilise the individual telecommunications services or groupings of same, identified in Appendix A, as the markets for this Initial Price Cap Regime.*

#### 3.2 Duration of the Price Cap Regime Period

In determining the duration of this Initial Price Cap Regime, the Commission must weigh the risks associated with the incorrect specification of any aspect of the price regulation regime versus the benefits of maximising the incentives for efficiency and facilitating an adequate assessment of the regime over a reasonable period.

The Pricing Regulations require that the duration of the price cap regime established by the Commission as a consequence of any of the following condition be for a period of three (3) years:

- Where there is only one operator of a public telecommunications network or one provider of a public telecommunications service.
- Where an operator or service provider is dominant as to a relevant public telecommunications network or service.

However, the Pricing Regulations also allow the Commission to determine and implement a different price cap period if the Commission considers it is necessary to “*ensure stability and to accommodate changing conditions in the market for the relevant price cap services*”.

In designing the price cap regime, the Commission considered the length of time the regime is allowed to operate as a price cap period of a long duration may have far reaching dire consequences as a regime with a short price cap period. It may be posited that a short price cap period has an advantage as prices which do not depart from costs and that actual earnings do not depart significantly from any targeted earnings for an extended period. However, a shorter period may not be attractive as it tends to reduce the operator’s incentive to innovate and reduce operating costs while increasing the regulatory burden on the Regulator and the regulated entity. Conversely, extended price cap periods offer greater incentives to the regulated entity to pursue efficiencies as it is expected to achieve higher cost savings and efficiency over the period, whilst reducing the administrative burden on relevant stakeholders.

However, the risk of a more extended price cap period may require significant volumes of input data over the longer period, and in turn may increase inaccuracies due to errors and miscalculations. Relatively unpredictable periods, such as during periods of market development as a result of the newly liberalised sector; widespread convergence and the increasing use of over-the-top services and the economy-wide effects brought on by the uncertainty associated with the COVID-19 Pandemic tend to exacerbate these effects.

After considering the foregoing, the Commission is of the view that a prudent approach to price regulation, which avoids the risk of over-regulation, is preferred.

Additionally, the Commission is of the view that the three (3)-year price control period identified in the Pricing Regulations strikes an acceptable balance regarding the aforementioned period. This period would allow for adequate time in order for the regulated entity to achieve efficiency, and stability for incentives. Additionally, this proposed period should allow the Commission to properly monitor and assess the regime whilst minimising the risk of any parameter misspecification.

At the discretion of the Commission and subject to consultation, the Commission proposes to include an option to extend the price cap period for an additional year. Should the Commission determine that an extension of the price cap regime is necessary the Commission will issue its decision by notice in writing, at least 60 days before the expiry of the price cap regime in force at the time.

***Question 2:** Please comment on the Commission’s proposal to adopt the three (3)-year price cap regime period identified in the Pricing Regulations with the option to utilise its flexibility and to extend this for an additional year, if deemed necessary and subject to consultation with the regulated entity. If applicable, suggest any proposed alternatives with appropriate reasons.*

### **3.3 Review, Renewal and Expiry of the Price Cap Regime Period**

The Commission proposes to commence a review of the price cap regime six (6) months prior to the end of the Initial Price Cap Regime. This review would allow the Commission to determine if the regime should continue on the same terms, be modified or eliminated. In the absence of an announced review of the price cap regime and subject to the opposition or comment by the regulated entity, the price cap regime will automatically be renewed for an additional period not exceeding three (3) years. Provided however, and as an alternative to the automatic renewal of the price cap regime, it may be extended for a year. Should the regulated entity oppose the renewal of the price cap regime it shall give notice to the Commission at least 90 days before the expiry of the price cap regime.

Where the price cap regime is not renewed or extended and it is allowed to expire, the Commission may implement a new incentive-based regime for the regulated entity, subject to the provisions of the Act and the Pricing Regulations.

***Question 3:** Please comment on the Commission’s proposal regarding the automatic renewal and expiry of the price cap regime.*

### **3.4 Defining the Price Cap Year**

Price cap regimes are multi-year regulatory controls commonly set for a minimum of three (3) years. Considering this, one crucial decision the Commission must make is determining the start

and end date for the price cap year. The Commission has therefore considered the following options as it relates to this matter:

i. Align the Price Cap Year with the Calendar Year

Aligning the price cap year (“PCY”) with the calendar year (“CY”) intuitively aligns with stakeholders’ general interpretation of time and it is therefore relatable and easily understood. However, where the regulated entity’s fiscal year (“FY”) does not align with the CY, relevant FY data will have to be converted to the CY. Under this approach, where the start of the price cap regime is not January 1 of any year, this will create a gap from the Commission’s final determination date to January 1 of the upcoming year. In this case, there will be a “Bridge Period” from the determination date to the start of the first full year of the Initial Price Cap Regime and associated parameters for this period may have to be determined.

ii. Align the PCY with the FY of the Regulated Entity

An alternative would be to align the PCY with the FY of the regulated entity. This allows for the relatively simple design and monitoring, as the relevant data and information provided by the regulated entity required for compliance with the price cap regime would be readily available in FY form and will not require conversion. Similar to the alignment of the PCY with CY option, should a gap or Bridge Period exist before the start of the first full year of the price cap regime the rules of this period may also have to be determined.

iii. Utilise an Implied PCY

Another option would be to utilise any start date, even if this date does not align with the FY of the regulated entity or the CY. This is advantageous as the that parameters for a Bridge Period will not have to be defined. However, the disadvantage is that conversion of the FY or CY data to the period of the implied year will be required.

As it relates to the foregoing options the Commission, therefore proposes that the PCY should align with the FY of the regulated entity (GTT) which is the period January 1 to December 31, and which also aligns with a CY. To align the price cap period with an implied PCY would only

increase the administrative and accounting costs and burden on the regulated entity as they seek to remove a timing disconnect.

**Question 4:** *Please comment on the Commission's proposal to establish a price cap year that aligns with the Regulated entity's FY.*

### **3.5 The Price Cap Bridge Period**

As per under para. 3.4 “Defining the Price Cap Year”, based on the price cap period determined, a gap or Bridge Period does not constitute a full PCY year as defined above may exist at the start of a price cap regime. The regulatory authority must then determine whether price cap rules will apply to this Bridge Period. Additionally, the regulatory authority must decide if the Bridge Period should be allowed to stand on its own before the first full PCY or if the first year of the Initial Price Cap Regime should incorporate the Bridge Period.

To incorporate the Bridge Period into the first full year of the Initial Price Cap Regime, the Commission is of the view that the additional complexity brought about by the relatively complex calculations of this combined period may be disproportionate to any benefit derived if the Bridge Period is relatively short. Additionally, the Commission considers that the simplicity associated with utilising all the provisions of the price cap regime for the Bridge Period whilst maintaining calculations for the Bridge Period independent of the first full year of the Initial Price Cap Regime benefits both the regulated entity and the Commission in terms of the time and resources utilised.

The Commission after taking into consideration the above, now proposes that any Bridge Period at the start of the Initial Price Cap Regime is treated as follows:

- Where the Bridge Period is less than three (3) months, the rules of the price cap regime will begin immediately at the start of the next FY.
- Where the Bridge Period is more than three (3) months, the rules of the price cap regime will apply to the Bridge Period, and the calculations for the Bridge Period will remain independent of the calculations for the first full year of the price cap regime.

*Question 5: Please comment on the Commission’s proposal to establish a Bridge Period, if required, at the start of the Initial Price Cap Regime and the treatment of calculations associated with this Bridge Period.*

### **3.6 The Nature of the Price Cap Model**

The Commission proposes utilising the pure price cap model which in the Commission’s view provides significantly efficient incentives for service providers.

The Commission further proposes that the price cap regime will be technologically neutral. In this regard, the services provided by the regulated entity will be regulated in the same manner regardless of the technology used to provide the service.

*Question 6: Please comment on the Commission’s proposal regarding the nature of the price cap model.*

## **4 INITIAL OR GOING-IN PRICES**

The effectiveness of a price cap regime largely depends on initial or “going-in” prices which are at a suitable level as those which directly impact the future financial performance and viability of the regulated entity, and the level of future prices offered to customers.

### **4.1 Initial or Going-in Prices**

The initial or going-in prices for the price cap regime are to be determined by the Commission. Ideally, the initial or going-in prices to be utilised under the price cap regime should be at a level where the regulated entity earns a reasonable rate of return, which the Commission considers will at least be equal to the Weighted Average Cost of Capital (“WACC”). Thus, where the regulated entity is making supernormal profits or if their revenues are insufficient, the Commission will determine the extent to which prices should be adjusted immediately or within the term of the price cap. The existing information asymmetries and confirmation of the adequacies of the regulated entity’s rate of return will largely depend on the regulated entity providing, amongst other financial and non-financial information, the necessary cost associated with the service, revenue, and cost modelling information to the Commission.

In the circumstances, the Commission proposes that for this Initial Price Cap Regime, the current prices of the price cap services shall be utilised as the initial prices for the price cap regime.

*Question 7: Please comment on the Commission's proposal to utilise the current prices as the initial prices of the price cap regime.*

## 4.2 Rebalancing

Rebalancing refers to the adjustment of prices for telecommunications services in an effort to align these prices with the cost of providing such services.

In newly liberalised markets, the price structures for basic telecommunications services are often unbalanced with some services priced at below the cost of provision and others priced way above the cost of providing the service. This is often the case with some, or all domestic fixed-line services traditionally being priced below their service delivery cost and subsidised by higher-than-cost international call services.

Should current rates require rebalancing, subject of course to the satisfaction of the Commission, the Pricing Regulations require the Commission take into account a predetermined transition period for this to be accomplished.

Therefore, the Commission proposes that GTT presents its proposal for rate rebalancing and all supporting information, models and documents, which will allow the Commission to review and assess this submission.

Notwithstanding the foregoing, it is the Commission's preliminary proposal that the period for rebalancing rates should not exceed the duration of the Initial Price Cap Regime.

*Question 8: Please comment on the Commission's proposal that the transition period required to rebalance rates should align with the duration of the first price cap period.*

## 5 PRICE CAP SERVICES AND BASKETS

### 5.1 Price Cap Services and Service Providers

According to the Act and the Pricing Regulations, the Commission may institute price regulation regimes where, inter alia, an operator or service provider has been declared dominant as to a relevant public telecommunications network or public telecommunications service. According to the licence granted to GTT, the service provider has been declared dominant with respect to specific fixed retail and wholesale public telecommunications networks/services and the markets therefor. These are summarised as follows:

- Fixed Public Telecommunications Networks.
- Retail Fixed Public Telecommunications Services.
- Wholesale Fixed Public Telecommunications Services .

In keeping with section 40 of the Act, Pricing Regulations, and international best practices and in the absence of any application made by GTT to be classified as non-dominant and any re-classification made by the Commission, the Commission is of the view that, in the circumstances, this determination of dominance as enshrined in the licence is appropriate for the price cap regime. Therefore, the Commission proposes that the price cap services should be based on the retail public telecommunications services for which the service provider is designated as dominant.

The determination of dominance in the GTT Licence includes Wholesale Fixed Public Telecommunications Services. However, it is the Commission's position that wholesale services including those for which GTT is declared dominant, are subject to the Commission's oversight under the Act and the Telecommunications (Interconnection and Access) Regulations 2020. As a result, the proposed price cap regime does not apply to these services.

**Question 9:** *Please comment on the Commission's proposal that the price cap services should be based on the retail public telecommunication services identified in the Determination of Dominance, per the GTT Licence.*



Extracting from GTT's Licence, the following retail services are proposed to be included in the price cap regime:

1. Residential narrowband (voice) access
2. Business narrowband (voice) access
3. Public payphones
4. Local and national long-distance calls for residential customers
5. Local and national long-distance calls for business customers
6. Local and long-distance calls to mobile subscribers
7. International long-distance calls for residential customers
8. International long-distance calls for business customers
9. Domestic leased lines
10. International leased lines
11. Telefax, telex, and telegraph service

*Question 10: Please comment on the Commission's proposal regarding the proposed price cap services.*

## 5.2 Price Cap Baskets

The definition of price cap baskets is another critical consideration in developing a price cap regime. Post the identification of the price cap services, the Commission may then determine the number and composition of the price cap baskets. The composition of the price cap baskets will be limited to those public telecommunications services provided by the dominant provider in the relevant markets, as identified in the list of price cap services above.

Price cap baskets allow the service provider to adjust the prices of individual services within each price cap basket, subject to the overall price control. Thus, within a price cap basket subject to overall cap, changes in the price of one service may be offset by changes in the price of one or more other services. Alternatively, the Commission may seek to limit pricing flexibility within the price cap regime, such as where a regulated entity provides both wholesale and retail services, and there is the risk of them engaging in cross-subsidisation, which distorts competition. To allow the

regulated entity a certain degree of pricing flexibility is crucial when rate rebalancing is required since it fosters rapid response in the face of competitive challenges.

Where the Commission considers it necessary that varying degrees of pricing flexibility be provided to different categories of services, several price cap baskets may be implemented. Where this is the case, one efficiency factor (X Factor) may be applied across all baskets, or various X Factors may be applied across different baskets in such a way as to allow the regulated entity to meet an overall targeted rate of return.

Where multiple price cap baskets are created, there is the opportunity to establish an ‘uncapped’ basket of services. This basket of services tends to be either competitive or tends towards being competitive and therefore receives a “light” regulatory touch where it may be exempt from the application of an X Factor but subject to the notification requirements of the price cap regime.

The following factors are to be considered by the Commission when establishing price cap baskets<sup>5</sup>:

- The degree of flexibility which the service provider will have to change prices in the price cap basket.
- Homogeneity and the degree of substitutability of the price cap services in the price cap basket.
- The need to define sub-baskets where appropriate.
- The need to prevent anti-competitive pricing behaviour within the price cap regime by setting sub-caps, and appropriate price floors, for certain price cap services within a price cap basket or any other type of restriction where appropriate.
- The level of competition which exists in the provision of the price cap services to be regulated under the price cap regime.
- Design simplicity and practicability.

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<sup>5</sup> The Telecommunications (Pricing) Regulations 2020: Schedule B II

In addition to the above, the Commission may also consider the imminent effective competition to the relevant services and the importance of the services to customers and the promotion of liberalisation.

The Commission considers that a multiple basket regime is appropriate in this Initial Price Cap Period and is of the view that the following price cap baskets should be included in this Initial Price Cap Regime<sup>6</sup>:

1. Price Cap Basket 1: Basic Residential Telecommunications Services

- Residential Narrowband (voice) access
- Local and national long-distance calls for residential customers
- Residential local and long-distance calls to mobile subscribers
- Public payphones

2. Price Cap Basket 2: Basic Business Telecommunications Services

- Business narrowband (voice) access
- Local and national long-distance calls for business customers
- Business local and long-distance calls to mobile subscribers
- Domestic leased lines

3. Uncapped Services Basket 3: International and Other Retail Services

- International long-distance calls for residential customers
- International long-distance calls for business customers
- International leased lines
- Other retail services such as telefax, telex, and telegraph service

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<sup>6</sup> Once the Commission receives relevant detailed current information from GTT regarding the price/cost relationships of its price cap services, the Commission's proposal may be impacted, and this will be reflected in the price cap regime decision.

The Commission proposes that Basket 3 will be an “uncapped” basket in that it is not constrained by the Principal Pricing Constraint but is subject to the notification requirements of the price cap regime.

**Question 11:** Please comment on the appropriateness of the price cap baskets described above. If an alternative approach is proposed, provide all relevant details on the approach and supporting rationale.

## 6 THE PRICE CAP FORMULA

Price cap regulation places an upward constraint which the prices regulated entities can charge their customers. Services subject to price cap regulation may be grouped into service baskets or put in their own baskets. Then each service basket may be subject to a Principal Pricing Constraint. Two elements comprise this Principal Pricing Constraint:

- i. A Price Cap Index (“PCI”) which specifies the maximum level of aggregate price change for a regulated service or service basket each year<sup>7</sup>.
- ii. An Actual Price Index (“API”), a weighted index that measures the actual price levels of the service provider’s prices. Regulatory authorities use the API to assess a service provider’s compliance with the price cap regime<sup>8</sup>.

The Principal Pricing Constraint requires that at all times, the API must be equal to or less than the PCI. The Commission proposes that the standard formulae for the PCI and the API, subject to the Principal Pricing Constraint, should be the basis for the Initial Price Cap Regime.

$$API \leq PCI$$

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<sup>7</sup> Telecommunications (Pricing) Regulations 2020 Schedule B Part IV:

“ $PCI_t$  = the maximum allowable average price level for all price cap baskets relevant to the service provider whose prices are to be regulated, at the beginning of price cap period  $t$ ”.

<sup>8</sup> Telecommunications (Pricing) Regulations 2020 Schedule B Part VI:

“ $API_t^k$  = the actual price index or actual average prices charged or to be charged by the operator or service provider subject to the price cap regime, for basket  $k$  after the proposed price change”.

## 6.1 The PCI

Schedule B, Part IV of the Pricing Regulations provides the price cap formula for use in the price cap regime.

**Formula #1:** 
$$PCI_t = PCI_{t-1} (1 + IF - X \pm Z \pm Q)$$

Formula #1 is expanded in keeping with the terms defined in the Pricing Regulations as follows:

**Formula #2:** 
$$PCI_t^k = PCI_{t-1}^k (1 + IF_t - X_t^k \pm Z_t^k \pm Q_t^k)$$

Where:

- $t$  = the price cap year
- $k$  = the price cap basket
- $PCI_t^k$  = the price cap index in year  $t$  for basket  $k$
- $PCI_{t-1}^k$  = the price cap index in year  $t-1$  for basket  $k$
- $IF_t$  = the inflation factor for year  $t$
- $X_t^k$  = the X factor or expected productivity/efficiency factor for basket  $k$  in year  $t$
- $Z_t^k$  = the Z factor or exogenous factor for basket  $k$  in year  $t$
- $Q_t^k$  = the Q factor or quality-of-service factor for basket  $k$  in year  $t$

*Question 12: Please comment on the appropriateness of the formulae for the calculation of the PCI, as proposed above.*

## 6.2 The API and Price Cap Compliance

The Commission must determine whether the dominant service provider complies with the requirements of each price cap basket. The Commission proposes the following formula identified in Schedule B Part VI of the Pricing Regulations for monitoring this compliance.

**Formula #3:**

$$API_t^k = API_{t-1}^k \times \left[ 1 + \sum_{i=1}^n \left[ \frac{p_{i,t}^k - p_{i,t-1}^k}{p_{i,t-1}^k} \times \frac{r_{i,t-1}^k}{R_{t-1}^k} \right] \right]$$

Where:

- $API_t^k$  = the actual price index or actual average prices charged or to be charged by the operator or service provider subject to the price cap regime, for basket  $k$  after the proposed price change for the current year.
- $API_{t-1}^k$  = the actual price index for each basket  $k$  based on existing prices.
- $p_{i,t}^k$  = the proposed price of price cap service  $i$  in price cap basket  $k$ , in price cap period  $t$ .
- $p_{i,t-1}^k$  = the existing price of price cap service  $i$  in price cap basket  $k$ , during price cap period  $t-1$ .
- $r_{i,t-1}^k$  = the revenue generated by price cap service  $i$  in price cap basket  $k$ , based on existing prices during period  $t-1$ .
- $R_{t-1}^k$  = the total revenue from all price cap services in price cap basket  $k$ , based on existing prices during period  $t-1$ .
- $n$  = the number of price cap services in basket  $k$ .

**Question 13:** Please comment on the appropriateness of the formula for the calculation of the API, as proposed in formula #3.

## 6.3 Components of the Price Cap Formula

### 6.3.1 Inflation Factor: I Factor

The Pricing Regulations defines the Inflation Factor (“I Factor”) as the index which the Commission may consider appropriate for measuring the change in the input cost to the service provider in the circumstances. The purpose of the I Factor in this price regulation regime is to account for changes in the input cost of the service provider over the price cap period and to ensure that price changes for price cap services move in line with other consumer goods and services in Guyana.

The Commission notes that inflation may be measured using several different indices. According to the Pricing Regulations, the Commission may pursuant to its discretion, measure inflation by reference to the Retail Price Index (“RPI”), the Consumer Price Index (“CPI”), the Producer Price Index (“PPI”) or any other index that the Commission may consider appropriate. In determining

whether the I Factor is best suited for use in the price cap regime, the Commission has considered several criteria<sup>9</sup>, which require that the I Factor be:

- Reflective of changes in the service provider’s costs.
  - An appropriate I Factor should reasonably reflect changes in the service provider’s input cost.
- Available from a credible, published, and independent source.
  - This provides a measure of confidence so that interested parties can trust the data provided.
- Published on a timely basis.
  - For the price cap formula to respond quickly to changes in input costs, the I Factor utilised should be made available on a timely basis. An acceptable lag is between two (2) to four (4) months.
- Understandable
  - An I Factor that service providers and industry stakeholders easily understand is more acceptable than a complex I Factor.
- Stable
  - I Factors may be subject to revisions after their initial updates. Where possible, regulatory authorities should utilise these more stable I Factors that are not subject to significant or frequent revisions.
- Consistent with the total factor productivity of the economy.
  - Efficiency gains in the rest of the economy affect the regulated entity through this factor. Thus, one can expect that the I Factor selection will directly affect the X Factor’s determination.

The CPI, prepared by the Guyana Bureau of Statistics (“the Bureau”), is utilised by the Bank of Guyana (“the BoG”) to measure inflation in Guyana. The BoG regularly publishes relevant economic data for the country at defined intervals in its Quarterly Report and Statistical Bulletin, Half Year Report, and Annual Report.

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<sup>9</sup> Telecommunications Regulation Handbook – Module 4

The Commission recognises that there is no single perfect measure of inflation, and several regulators accept the CPI as an acceptable measure of inflation for price caps, as it fulfils several of the criteria identified earlier in this section. Additionally, where the dominant provider's operating expenses are susceptible to local inflationary pressures, such pressures will be identified by the BoG via the CPI.

In arriving at its proposal, the Commission, when it considered the capital cost of the provider for equipment, contemplated a measure of inflation external to Guyana and weighted by the proportionate non-local costs. The Commission noted the challenges associated with this, considering that providers source capital inputs from other countries requiring that a decision be made on the most reliable foreign index. Additionally, the Commission could not guarantee a transparent and dependable index publication at the appropriate time.

The Commission considers that the familiarity of the CPI, and its transparent availability made possible by various publications by the Bureau and the BoG resulting in its freedom from manipulation by all stakeholders enhanced its attractiveness as an appropriate measure of inflation for price cap purposes.

Thus, the Commission proposes utilising the annualised CPI based on the BoG and the Bureau's publications, to derive the measure of the I Factor, as it readily meets the criteria for a suitable measure of inflation. Specifically, the Guyana CPI is:

- Reasonably reflective of changes in the service provider's input cost.
- Published by the most reliable source for such data in Guyana.
- Published at regular and suitable intervals with no significant time lag.
- Easily understood.
- Generally stable and not subject to large or frequent revisions.
- An economy-wide index reflecting efficiency gains in the economy.

**Question 14:** *Please comment on the proposal to use the Guyana CPI as the I Factor. If you disagree with this proposal, please provide alternative proposals, including rationale.*



### 6.3.2 Efficiency Factor: X Factor

The Efficiency Factor or X Factor measures a regulated entity's ability to reduce its inflation-adjusted output prices in response to its service-specific productivity growth. The choice of the X Factor is critical to:

- Incentivise the regulated entity to seek cost efficiencies.
- Maintain the financial viability of the regulated entity.
- Ensure that consumers benefit from productivity improvements via reduced prices for regulated services.
- Allow the regulated entity, the flexibility to rebalance its prices in pursuit of increased efficiency.
- Limit excessive monopoly-type profits.

The X Factor is to be determined by the Commission using one or a combination of the following approaches:

#### i. Productivity Models

Pure productivity models utilise historical information to calculate the productivity improvements of the service provider over recent years (e.g., total factor productivity or TFP) and establishes this as the baseline for setting the X Factor(s) to be applied over the period of the price control. This baseline estimate may be adjusted to account for changes in operating conditions anticipated to impact the service provider during the price cap regime, as compared to the period when the historical productivity was calculated.

#### ii. Financial Models

When utilising the financial model approach, X Factor values are calculated so that the efficiency-related (real) price changes are developed to provide the service provider with a specified, reasonable rate of return, for the regulated services over the control period. The focus on the rate of return for the service provider is similar to rate-of-return ("RoR") regulation. However, in this forward-looking approach, X Factors under the price cap regime are based on forecasts. In contrast,

in the traditional RoR regulation, compensations for any impact on profit are based on actual results.

iii. International Benchmarks

In the case of X Factors developed based on benchmarks comparable countries are used as a basis for determining the productivity factor for the service provider subject to the price cap regime, taking into consideration the differences in company-specific, economy and other relevant variables.

The use of benchmarks here may be relied upon where past productivity is regarded as an unreliable predictor of future productivity, such as in jurisdictions subject to discretionary price setting or having undergone significant structural changes such as market liberalisation. The development of X Factors by benchmarks may also be considered where access to reliable historical productivity data to determine the historical productivity factor is a challenge and where the scenario is such that the cost of one of the other approaches far outweighs the benefit.

*Question 15: Please comment on the proposal to use a financial modelling approach to calculate the X Factor(s), subject to the availability of the required information. If you disagree with this proposal, please provide an alternative proposal, with relevant details and the supporting rationale.*

### 6.3.3 Exogenous Factor: Z Factor

The Z Factor is a specified variable intended to account for severe changes in cost inputs experienced by and beyond the regulated entity's control outside the scope of the I Factor and the X Factor.

The Commission recognises the industry and the global economy's changing and sometimes unpredictable nature, which was highlighted during the COVID-19 pandemic. As a result, the Commission considers including a Z Factor in the price cap formula critical in allowing the regulated entity to account for any relevant future economic shocks.

It is the proposal of the Commission that where an event meets all the following criteria, the PCI should include a Z Factor adjustment:

- i. The event has a greater than proportionate effect on the telecommunications industry than other firms in the economy.
- ii. The event has a material financial impact on services within the capped baskets of the regulated entity.
- iii. The event and its financial implications are beyond the control of the regulated entity.
- iv. The event and its financial implications must not result from transactions with an affiliate, parent company, agent, subsidiary or related party of the regulated entity. The event and its effects must be independent of the regulated entity and its above-identified associates.

After considering the current uncertainty of the industry and the broader local and global economy, the regulated entity will be allowed the flexibility to propose the Z Factor deemed appropriate for the exogenous event. The regulated entity shall submit the Z Factor proposed to mitigate the effect of the exogenous event when filing the Z Factor request.

In the instance where the regulated entity considers itself exposed to the effects of an exogenous event, which meets the criteria above, it may apply to the Commission for a Z Factor adjustment to the PCI in keeping with the requirements developed for Exogenous Factor Filing at section 8.3.

*Question 16: Please comment on the Commission's proposal regarding including a Z Factor in the price cap formula.*

#### **6.3.4 Quality-of-Service Factor: Q Factor**

The Commission is responsible for ensuring that operators and service providers deliver and maintain a minimum acceptable standard of service to their customers.

The relevance of Quality-of-Service (“QoS”) standards to the price control regime is that the price control establishes allowable prices based on a minimum QoS standard. The intention of associating price control with a minimum QoS standard is to discourage regulated entities from reducing costs and increasing profits by providing a lower quality-of-service. As a result, as a part

of the price cap regime, the Commission must concomitantly address the dimensions of price and service.

The Commission explored including a Q Factor in the price control formula. The Q Factor would be consistent with any QoS obligations to which the service provider is subject for the price cap period, and it would be applied if the regulated entity fails to achieve its QoS standards. The Commission, however, identified several difficulties with including a Q Factor in this Initial Price Cap Regime. These are as follows:

- QoS tends to be measured by a variety of QoS indicators. For example, in the case of Guyana, residential narrowband voice access currently has 15 QoS indicators, and local and national calls for residential customers have four (4) indicators utilising varying units of measurement<sup>10</sup>. Reducing these to a singular QoS measure has apparent challenges. The Commission noted the difficulties in selecting the appropriate indicators and their relative weights to be utilised in order to derive an overall QoS performance measure.
- If the Commission were to develop an adequate Q Factor value, the absence of any quantifiable correlation between QoS and operator cost savings makes it inadequate as a tool to be used for price (revenue) adjustments.
- The optimum level of the QoS is difficult to determine. As a result, the Q Factor threshold triggering a Q Factor adjustment is similarly difficult to determine.

The Commission is of the opinion that the general complexity in developing and reporting on an accurate QoS measure for the price control regime is administratively challenging and overly burdensome at this stage. As a result, the Commission proposes that all service providers meet and maintain the QoS standards as per the Telecommunications (Consumer Protection) Regulations 2020 and any other relevant regulatory mandate. The Commission further submits that these QoS standards be monitored and regulated separately from this Initial Price Cap Regime.

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<sup>10</sup> These reflect the standards in the Telecommunications (Consumer Protections) Regulations 2020 and not the Commission's new proposed QoS parameters and standards published by notice dated August 12, 2022.

The Commission considers it prudent to monitor the QoS standards independent of this Initial Price Cap Regime. Thus, the Commission proposes that it will not include a Q Factor value in this Initial Price Cap Regime.

**Question 17:** Please comment on the proposal to exclude a Q Factor adjustment from this Initial Price Cap Regime and the proposed treatment of QoS standards.

#### 6.4 Treatment of the “Unused” Cap or Headroom

Where the regulated service provider reduces prices more or increases prices less than the maximum allowed in any year, the API will be less than the corresponding PCI for a particular price cap basket or an individual service subject to a price cap. This variance creates an unused cap or headroom. Regulatory authorities can therefore allow providers to retain this unused cap or headroom and implement future price increases by an amount that exceeds the permitted increase for that given year, i.e., an amount that exceeds the difference between the I Factor and the X Factor. The permitted excess above the difference between the I and X Factor is known as the “carry-over headroom.” Allowing the service provider to carry unused headroom from one period to another provides increased flexibility as the service provider may delay rate increases to a more suitable time over the price cap period.

Schedule B paragraph VII of the Pricing Regulations allows the Commission, at its sole discretion, to allow an operator or service provider to benefit from the carry-over headroom where the Commission considers appropriate. Additionally, the Pricing Regulations require that where an operator or service provider requests consideration of carry-over headroom, this must be made in writing to the Commission<sup>11</sup>.

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<sup>11</sup> Telecommunications (Pricing) Regulations 2020 Schedule B

#### VII. Carryover headroom

*“(a) The Commission may, where it, in its sole discretion, considers it appropriate, allow an operator or service provider subject to a price cap regime to implement a price change that exceeds the permitted increase for a given year, where such increase is warranted because the operator or service provider opted not to implement an increase in a previous year.*

*(b) An operator or service provider must request consideration under subparagraph (a) in writing, and the Commission may make its approval (if any) subject to such reasonable conditions as it considers appropriate.”*

For this Initial Price Cap Regime, the Commission proposes to allow carry-over headroom on a basket-by-basket basis only within each price cap period, and not across separate price cap periods.

Additionally, the Commission proposes that there will be no carry-over headroom on residential access services and any other services for which rebalancing is requested. Then, price increases in these services below the agreed amount will not allow the regulated entity the opportunity to increase prices above the level permitted in the remaining years of the price cap period.

**Question 18:** *Please comment on the proposal regarding the treatment of carry-over headroom.*

## **7 PRICE CAP RULES AND PROCEDURES**

The efficient implementation, administration and ultimate success of a price cap regime largely depend on an infrastructure of rules which will guide the overall process during the price cap period. This section provides the Commission's proposals concerning these rules.

### **7.1 Reclassification of Existing Products and Services**

The Commission notes that as the market evolves and specifically, as the level of competition increases, a need for specific products and services to be reclassified and removed from price cap regulation may develop. In these circumstances, the reclassification of existing products and services will be limited to those subjected to effective competition.

The Commission proposes the following criteria to determine if a product or service is subject to effective competition with market forces promoting economic efficiency:

- Buyers have access to alternative sellers for the products they desire (or for reasonable substitutes) at prices they are willing to pay.
- Sellers have access to buyers for their products without undue hindrance or restraint from other firms, interest groups, government agencies, or existing laws or regulations.
- The interaction between consumers and firms determines the market price of a product. No single consumer or firm (or group of consumers or firms) can determine or exert undue influence, regarding the level of the price.

- Differences in prices charged by different firms (and paid by different consumers) reflect only differences in cost or product quality/attributes.<sup>12</sup>

The Commission proposes to consider a product/service for reclassification and removal from price cap regulation at the request of a service provider in the relevant market or at the discretion of the Commission.

Where a service provider considers that a service no longer meets the criteria for price regulation, said service provider must apply for reclassification and removal from price cap regulation for the relevant service in writing, supported by the relevant data and information. Given the natural information asymmetries between the Commission and service providers, the onus will be on the service provider to ensure that they provide all relevant data and information supporting their application to the Commission.

The Commission also notes that as the market evolves, services deemed to be effectively competitive, which did not initially qualify for price cap regulation, may become subject to less effective competition. When the Commission considers that a service is no longer subject to effective competition, the Commission may consider the relevant service for reclassification and inclusion in the price cap regime. In these circumstances, the Commission will also consider the reclassification and inclusion of services in the price cap regime at the request of any stakeholder.

*Question 19: Please comment on the Commission's proposal to reclassify existing products and services under the existing price cap regime.*

## 7.2 New Products/Services and Bundles

Price cap regulation tends to be a preferred method of price control, amongst other factors, it should provide strong incentive for innovation. Therefore, the Commission is proposing that all new services and bundles should not be subject to the Initial Price Cap Regime.

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<sup>12</sup> Telecommunications Regulation Handbook Tenth Anniversary Edition - [Telecommunications Regulation Handbook : Tenth Anniversary Edition \(worldbank.org\)](https://www.worldbank.org/publications/telecommunications-regulation-handbook-tenth-anniversary-edition)

The Commission notes the importance of determining services and bundles identified as new versus repackaging existing services and bundles. The Commission considers that new services and bundles to refer to the bundles which have not been provided or offered by the service provider within the past twelve months or at the start of the price cap period.

Additionally, the Commission proposes to include in the price cap services, new services and bundles which meet any of the following criteria in the price cap services:

- Individually, the service or bundle does not expand the range of services available.
- The service or bundle combined with other services or bundles does not expand the range of services available.
- Individually or when combined with other services or bundles the service or bundle provides the same functionality as an existing price cap service.

The Commission notes the provisions of regulation 6 of the Pricing Regulations and directs service providers when introducing any new telecommunications services and bundles to:

- Submit to the Commission a written notification of the proposed price for new telecommunications services no later than 14 days prior to the date on which such service provider proposes to implement such price for a new telecommunications service, such notice to include:
  - The date by which the price for the new telecommunications service is proposed to take effect.
  - The consumers or other users to which the price for the new telecommunications service would apply/directed.
  - The pricing related terms and conditions for such telecommunications service.
  - Whether the service provider is already subject to a price regulation regime with regard to the telecommunications service to which the price relates.
  - A description of any new product/service or service bundle.
  - The period during which the price is proposed to be in effect for promotional or temporary offerings.
  - Details on the manner in which the new product/service or service bundle should be categorised based on the functionality it provides.



- Any other information required by the Commission from time to time<sup>13</sup>.

The Commission further proposes that in addition to the above, where a service provider reconfigures an existing bundle by adding, removing or reconfiguring the elements of the bundle this would constitute a new service bundle and it would therefore be subject to the preceding requirements.

*Question 20: Please comment on the Commission's proposed treatment of new products/services and bundles under the price cap regime.*

### **7.3 Treatment of Discounts, Promotions and Market Trials**

The Commission recognises the need to promote pricing innovation and the benefit of allowing service providers to be flexible in respect of the use of discounts, market trials and promotions. The Commission is therefore proposing that discounts, promotions, and market trials may be offered by a service provider for price cap services or bundled services, without the prior approval of the Commission where:

- i. The discount, market trial, or promotion does not exceed 90 days in duration.
- ii. The discount, market trial or promotion is not the same as, or similar to a discount, market trial or promotion that concluded less than 120 days earlier.
- iii. The service provider files a description of the discount, market trial or promotion, and the applicable rates, terms and conditions with the Commission:
  - a. At least 14 days before the beginning of the discount, market trial or promotion, where such discount, market trial or promotion involves a change in prices as per Section 6 of the Pricing Regulations.
  - b. Where the proposed discount, market trial or promotion, does not involve a change in prices, the service provider shall file a description of the discount, market trial or

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<sup>13</sup>Telecommunications (Pricing) Regulations 2020 regulation 6(c) “if the service provider is subject to a price regulation regime with regard to the telecommunications service for which a price is proposed, the service provider must comply with the requirements of such price regulation regime, in addition to the notice requirements of this paragraph”.

promotion, and the applicable rates, terms and conditions, with the Commission, at least five (5) days in advance.

This will allow the service provider the flexibility to respond to market developments while maintaining the relevant statutory obligations provided in the Pricing Regulations.

The Commission is also cognizant that the flexibility provided by discounts, market trials and promotions should not be exploited for anti-competitive purposes. Therefore, the Commission may order a service provider not to conduct a market trial or promotion for a regulated service or a bundle. Additionally, the Commission may require a service provider to suspend or discontinue a discount, market trial or promotion in progress that contradicts conditions i, ii, or iii identified immediately above or where the Commission determines that the discount, market trial or promotion is anti-competitive.

Additionally, the Commission is proposing that the API calculation should not include discounts, market trials and promotions.

*Question 21: Please comment on the proposed framework and criteria described above to treat discounts, market trials and promotions.*

## 8 PRICE CAP ADMINISTRATION

The success of the price cap regime will rely partly on a system of procedural rules which will guide the process during the price control period. Paragraph IX at Schedule B of the Pricing Regulations supports the establishment of these rules and provides as follows:

*“In connection with the implementation of a price cap regime, the Commission shall establish such requirements as it deems appropriate to ensure the effective administration of the price cap regime in a fair, efficient, transparent and non-discriminatory manner, including –*

*(a) requirements, in addition to those set forth in these Regulations, for the **service provider to notify the Commission and users of changes in the prices subject to the price cap regime;***

- (b) requirements for the service provider to **make periodic submissions of information to the Commission**, for the purpose of assessing the service provider's compliance with the price cap regime;*
- (c) **any limitations on promotional offers for the price cap services** subject to the price cap regime; and*
- (d) requirements for the service provider to **submit any data required by the Commission to assess the effectiveness of the price cap regime.***

(Emphasis applied.)

These rules allow for a degree of regulatory certainty and facilitate the efficient implementation and operation of the price cap regime. This section sets out the Commission's proposals regarding these rules.

## **8.1 Notification of Price Changes**

Most regulatory authorities require that service providers provide notification of price increases and price decreases both to the authorities and to the public. For this Initial Price Cap Regime, the Commission proposes that this requirement be adhered to in keeping with the provisions in regulation 6 of the Pricing Regulations. For specific reference to price changes for price cap services, regulation 17 of the Pricing Regulations provides as follows:

### Regulation 17

*“(1) Subject to regulation 6, the terms of the applicable price cap regime, and this regulation, a service provider subject to a price cap regime may freely adjust the prices for the price cap services in the price cap basket.*

*(2) The Commission shall review any proposed price change in a price cap service notified to it by a service provider under paragraph 6 and the terms of the applicable price cap regime, and if it determines there is reasonable cause, it may notify the service provider in writing, within the thirty days following receipt of such notification, that it is suspending the effectiveness of such change pending a formal investigation of whether it is consistent with the price cap regime.*

*(3) If, within the thirty-day period provided for in subparagraph (2), the Commission does not direct a suspension of a proposed price change, the service provider shall carry out the public notification procedure required under paragraph 6, and the price change shall take effect as provided therein.”*

Having regard to the foregoing, the Commission proposes the following notification requirements during this Initial Price Cap Regime:

### **Rate Increases and Rate Decreases**

The Commission proposes that the regulated entity will not be required to seek approval from the Commission for rate increases or rates decreases associated with the regulated services subject to the price cap regime. However, the regulated entity is required to adhere to the conditions mandated in regulation 6 of the Pricing Regulations for rate increases and decreases generally and regulation 17 of the Pricing Regulations for rate increases and decreases for price cap services specifically, save and except for where otherwise instructed by the Commission.

**Question 22:** *Please comment on the suggested approach to notification of rate increase and decreases described above.*

## **8.2 Compliance Filings**

Compliance filings are a standard requirement of regulatory authorities implementing price cap regimes. These compliance filings require that the regulated entity provide proof that any price changes made is in compliance with the price cap regime rules and that it has maintained the Principal Pricing Constraint such that its API did not exceed the PCI for a specified period.

Regulation 18 of the Pricing Regulations provides for the verification of compliance by the Commission based on information provided by the service provider as follows:

Regulation 18

*“(1) A service provider subject to a price regulation regime implemented by the Commission pursuant to these Regulations shall at all times ensure that the prices it charges for the subject telecommunications services conform to such price regulation*

*regime and shall comply with all requirements of the Commission for reporting and the provision of information regarding such regime.*

*(2) If the Commission determines that a service provider has in any manner failed to comply with a price regulation regime to which it is subject, the Commission may, by written notice to such service provider, direct it to make any changes to its prices necessary to comply with the price regulation regime, and the service provider shall effect such changes within the time set forth in the Commission's notice.”*

Therefore, the Commission proposes the following as it relates to monitoring and ensuring compliance with the price cap regime during this Initial Price Cap Regime on an *ex-ante* and *ex-post* basis.

### **8.2.1 Rate Change Compliance Filings**

Subject to the rules of the price cap regime, the regulated entity may propose rate increases or decreases at any time during the price cap period. However, the regulated entity must demonstrate compliance for each price change or set of price changes proposed.

Therefore, the Commission proposes that for all price change applications during each year of the price cap regime, which includes the price change notification requirements provided in section 8.1 above, the regulated entity will simultaneously file with the Commission a Rate Change Compliance Filing (“RCCF”).

An RCCF must contain the following:

- i. A description of the proposed rate change.
- ii. A recalculation of the API for each affected basket, demonstrating adherence to the Principal Pricing Constraint ( $API_j \leq PCI_j$ ) such that each recalculated API is less than or equal to the respective PCI most recently established (i.e., at the time of the latest Annual Compliance Filing discussed below).
- iii. All data and information and a working MS EXCEL file or related spreadsheet document, showing all regulated services, rate details and rate changes to allow the Commission to verify the API and PCI calculations.

- iv. A verified statement of confirmation by an authorised signing officer of the regulated entity that the proposed rate change complies with all established price cap constraints.

While the Pricing Regulations require service providers to file a notification of price changes with the Commission for all price changes the requirement for filing the RCCF is specific to price cap services only.

*Question 23: Please comment on the proposed approach for filings regarding rate changes described above.*

### **8.2.2 Annual Compliance Filings**

In addition to the RCCF above, the Commission further proposes that the regulated entity demonstrates overall compliance annually.

The Commission is therefore proposing that for each year of the price cap regime, the regulated entity should file with the Commission an Annual Compliance Filing (“ACF”), one (1) month before the start of each price cap year. This ACF will demonstrate that the rates for the regulated entity’s price cap services will comply with the price cap constraints at the start of the upcoming price cap year and should include the following:

- i. For all regulated services and rate elements for each basket, calculated and updated API and PCI calculations, including related inflation and productivity data for each related basket.
- ii. The complete list of regulated services (capped and uncapped) and their going-in rate levels as at one (1) month prior to the start of the price cap year, and their expected rate levels, as at the start of upcoming PCY.
- iii. Notification of any proposed price changes for regulated services, as of the start of the upcoming PCY, including the calculation of the new APIs reflecting such changes, consistent with RCCF requirements.
- iv. An update of the I Factor for the 12-month period ending two (2) months before the start of the upcoming PCY.

- v. All required supporting documentation as set out in the exogenous event filing requirements, to support any exogenous-related changes proposed, at the time of the submission.
- vi. Any other information necessary for the Commission to replicate and validate the service provider's calculations.
- vii. A verified statement of confirmation by an authorised signing officer of the regulated entity that the proposed ACF complies with the established price cap regime.

Unless otherwise provided for by the Commission, for the Bridge Period, the above ACF information must be provided, and the applicable PCI Inflation factors are to be adjusted to reflect that abbreviated length of the Bridge Period.

The regulated entity is required to provide this information in a working EXCEL file format or related spreadsheet document, which allows the Commission to verify the calculations.<sup>14</sup>

If the Commission determines that the regulated entity has not complied with the requirements of the price cap regime, the Commission may as appropriate require that the regulated entity demonstrate compliance more frequently than once per year, on an *ex-post* and/or *ex-ante* basis apart from in its RCCF.

**Question 24:** Please comment on the proposed approach for the Annual Compliance Filing, as described above.

### 8.3 Exogenous Factor Filings

Where the regulated entity deems that an exogenous event has occurred consistent with the criteria identified in section 6.3.3, the company may file to include the proposed Z factor adjustment in the PCI.

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<sup>14</sup> The working EXCEL or agreed spreadsheet document must not be submitted in any protected format that impairs access and review by the Commission and must allow all inputs, outputs, calculations and formulae to be reviewed, traced and validated throughout the primary and any secondary related documents.

The burden of proof regarding the criteria above, particularly the financial impact and confirmation that the event was independent of the company's actions and its associates, lies with the regulated entity.

The regulated entity shall request a Z Factor adjustment at least two (2) months before the end of the current price cap year or within two (2) months of the start of the following price cap year, whichever is sooner.

As a result of the current uncertainty of the industry and the broader local and global economy, the regulated entity will be allowed the flexibility to propose the Z Factor deemed appropriate, given the exogenous event. The regulated entity shall submit the Z Factor proposed to mitigate the effect of the exogenous event at the time of the filing.

All requests made for Z Factor adjustments must include:

- i. The value of the financial impact of the proposed exogenous change.
- ii. A detailed explanation of how the event has occurred independently of the regulated entity and its associates identified in section 6.3.3 above.
- iii. The proposed method for recovery and the associated rationale.
- iv. A proposal where possible, of how costs will be recovered proportionally from the impacted services.
- v. All other information requested by the Commission.

The Commission will consider Z Factor filings on a case-by-case basis and reserves the right to recommend an alternative Z Factor to that proposed by the regulated entity. The Commission will not consider incomplete submissions without the appropriate supporting data/information.

**Question 25:** *Please comment on the suggested approach for filings regarding Exogenous Factors.*

## **8.4 Regulatory Reporting Requirements**

The Pricing Regulations require that the regulated entity provides periodic submissions of information and data to allow the Commission to assess the service provider's compliance with the price cap regime and to assess the effectiveness of the price cap regime. In this regard, the



Commission is proposing that during this Initial Price Cap Regime, GTT should be required to provide the following:

- i. Annual audited Statutory Financial Statements for each year of the price cap regime
- ii. Regulatory Statements, showing, inter alia, relevant rate of return and a reconciliation to the audited Statutory Financial Statements, including the associated updated Cost Allocation Model (“CAM”), used by the provider, which will be required once during the term of the price cap regime. This will be required for the year before the final year, of the price cap regime only and no later than six (6) months after the start of the final price cap year (i.e., year three (3) or four (4), depending on the duration of the price cap regime)

**Question 26:** *Please comment on the suitability of the proposed Regulatory Reporting Requirements as outlined above.*

## Appendix A – Markets for Telecommunications Services

### MARKETS FOR TELECOMMUNICATIONS SERVICES

#### 1. Retail services

##### (a) Fixed public telecommunications services

- Residential narrowband (voice) access
- Residential broadband access
- Business narrowband (voice) access
- Business broadband access
- Public payphones
- Local and national long distance calls for residential customers
- Local and national long-distance calls for business customers
- Local and long-distance calls to mobile subscribers
- International long distance calls for residential customers
- International long-distance calls for business customers
- Narrow band (dial up) Internet for residential customers
- Narrow band (dial up) Internet for business customers
- Broadband Internet for residential customers
- Broadband Internet for business customers
- Leased lines
- Data transmission

##### (b) Mobile public telecommunications services

- Voice calls
- Messaging services
- Narrowband Internet
- Broadband Internet
- Roaming

**2. Wholesale services**

**(a) Fixed public telecommunications services**

Call origination

Call termination

Call transit

Unbundled local loops (narrowband)

Unbundled local loops (broadband)

Domestic leased line capacity and termination (wireline or wireless)

International leased line capacity and termination (wireline or wireless)

IP transit

**(b) Mobile public telecommunications services**

Access and call origination

Domestic and international call termination

International roaming

Messaging

Transmission and distribution

## Appendix B – Questions

SECTION	QUESTIONS
3.1 Scope of Price Control	<p><b>Question 1:</b> Please comment on the Commission’s proposal to utilise the individual telecommunications services or groupings of same, identified in appendix A, as the markets for this Initial Price Cap Regime.</p>
3.2 Duration of the Price Cap Regime Period	<p><b>Question 2:</b> Please comment on the Commission’s proposal to adopt the three (3)-year price cap regime period identified in the Pricing Regulations with the option to utilise its flexibility and to extend this for an additional year, if deemed necessary and subject to consultation with the regulated entity. If applicable, suggest any proposed alternatives with appropriate reasons.</p>
3.3 Review, Renewal and Expiry of the Price Cap Regime Period	<p><b>Question 3:</b> Please comment on the Commission’s proposal regarding the automatic renewal and expiry of the price cap regime.</p>
3.4 Defining the Price Cap Year	<p><b>Question 4:</b> Please comment on the Commission’s proposal to establish a price cap year that aligns with the Regulated entity’s FY.</p>
3.5 The Price Cap Bridge Period	<p><b>Question 5:</b> Please comment on the Commission’s proposal to establish a Bridge Period, if required, at the start of the Initial Price Cap Regime and the treatment of calculations associated with this Bridge Period.</p>
3.6 The Nature of the Price Cap Model	<p><b>Question 6:</b> Please comment on the Commission’s proposal regarding the nature of the price cap model.</p>
4.1 Initial or Going-in Prices	<p><b>Question 7:</b> Please comment on the Commission’s proposal to utilise the current prices as the initial prices of the price cap regime.</p>
4.2 Rebalancing	<p><b>Question 8:</b> Please comment on the Commission’s proposal that the transition period required to rebalance rates should align with the duration of the first price cap period.</p>

SECTION	QUESTIONS
5.1 Price Cap Services and Service Providers'	<p><b>Question 9:</b> Please comment on the Commission's proposal that the price cap services should be based on the retail public telecommunication services identified in the Determination of Dominance, per the GTT Licence.</p> <p><b>Question 10:</b> Please comment on the Commission's proposal regarding the proposed price cap services.</p>
5.2 Price Cap Baskets	<p><b>Question 11:</b> Please comment on the appropriateness of the price cap baskets described above. If an alternative approach is proposed, provide all relevant details on the approach and supporting rationale.</p>
6.1 The PCI	<p><b>Question 12:</b> Please comment on the appropriateness of the formulae for the calculation of the PCI, as proposed above.</p>
6.2 The API and Price Cap Compliance	<p><b>Question 13:</b> Please comment on the appropriateness of the formula for the calculation of the API, as proposed in formula #3.</p>
6.3.1 Inflation Factor: I Factor	<p><b>Question 14:</b> Please comment on the proposal to use the Guyana CPI as the I Factor. If you disagree with this proposal, please provide alternative proposals, including rationale.</p>
6.3.2 Efficiency Factor: X Factor	<p><b>Question 15:</b> Please comment on the proposal to use a financial modelling approach to calculate the X Factor(s), subject to the availability of the required information. If you disagree with this proposal, please provide an alternative proposal, with relevant details and the supporting rationale.</p>
6.3.3 Exogenous Factor: Z Factor	<p><b>Question 16:</b> Please comment on the Commission's proposal regarding including a Z Factor in the price cap formula.</p>

SECTION	QUESTIONS
6.3.4 Quality-of-Service Factor: Q Factor	<b>Question 17:</b> Please comment on the proposal to exclude a Q Factor adjustment from this Initial Price Cap Regime and the proposed treatment of QoS standards.
6.4 Treatment of the “Unused” Cap or Headroom	<b>Question 18:</b> Please comment on the proposal regarding the treatment of carry-over headroom.
7.1 Reclassification of Existing Products and Services	<b>Question 19:</b> Please comment on the Commission’s proposal to reclassify existing products and services under the existing price cap regime.
7.2 New Products/Services and Bundles	<b>Question 20:</b> Please comment on the Commission’s proposed treatment of new products/services and bundles under the price cap regime.
7.3 Treatment of Discounts, Promotions and Market Trials	<b>Question 21:</b> Please comment on the proposed framework and criteria described above to treat discounts, market trials and promotions.
8.1 Notification of Price Changes	<b>Question 22:</b> Please comment on the suggested approach to notification of rate increase and decreases described above.
8.2.1 Rate Change Compliance Filings	<b>Question 23:</b> Please comment on the proposed approach for filings regarding rate changes described above.
8.2.2 Annual Compliance Filings	<b>Question 24:</b> Please comment on the proposed approach for the Annual Compliance Filing, as described above.
8.3 Exogenous Factor Filings	<b>Question 25:</b> Please comment on the suggested approach for filings regarding Exogenous Factors.
8.4 Regulatory Reporting Requirements	<b>Question 26:</b> Please comment on the suitability of the proposed Regulatory Reporting Requirements as outlined above.