



Commission

Licensing of Telecommunications Networks and Services, Requirements, 2021

Consultation Document

Consultation

Publication date: 17 June 2021

Closing date for responses: 15 July 2021

Reference Number: 5/2021

About this document

The Telecommunications Regulatory Commission (the “**Commission**”) is a statutory body with responsibility for development and regulation of the telecommunications services industry in the British Virgin Islands.

Under section 6(e) of the Telecommunications Act, 2006 (the “**Act**”) the Commission is required to “*determine applications for licences and frequency authorisations for any of the purposes specified in this Act and monitor, enforce and ensure effective compliance therewith and to issue instructions accordingly*”. In accordance with this section and other sections of the Act, the Commission has developed a draft Telecommunications Code (Part 5A) Licensing of Telecommunications Networks & Services, Requirements, 2021 (the “**Requirements**”).

In this document, the Commission outlined:

- The legal framework, as applicable, to the development of the Requirements;
- The objectives of the Requirements;
- The consultation questions; and
- The draft Requirements, as an Annex to this consultation document.

The Requirements will provide, subject to consultation, the licensing framework in relation to the operation of telecommunications networks and provision of telecommunications services in the British Virgin Islands, to be followed by new entrants and existing licenced public suppliers in the telecommunications services industry.

We are publishing this consultation document to provide our stakeholders – operators, the public and other interested parties – with the opportunity to comment on our proposed Requirements for the regulation of licensing telecommunications networks and services.

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Instructions for submitting a Response

The Telecommunications Regulatory Commission of the British Virgin Islands (the **Commission**) invites comments on this consultation document from all interested parties. Comments should be submitted by 15 July 2021.

We strongly prefer responses to this document to be sent by email to consultations@trc.vg (indicating the subject: "Consultation on the Licensing of Telecommunications Networks & Services Requirements, 2021". Alternatively, responses may be sent to the address (or the P.O Box number) set out below:

Consultation on the Licensing of Telecommunications Networks & Services Requirements, 2021 – Telecommunications Regulatory Commission, P.O. Box 4401 or 27 Fish Lock Road, 3rd Floor Road Town, Tortola, British Virgin Islands VG 1110.

Responses from corporate bodies (legal persons) should include:

- the name of the company/institution/association/other organisation;
- the name of a principal contact person; and
- full contact details (physical address, postal address, telephone number, fax number and email address).

Responses from individual (natural) persons, should include name and contact details (including email).

We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of the responses and help to maintain confidentiality where appropriate.

In the interest of transparency, the Commission will make all submissions received available to the public, subject to the confidentiality of the information received. The Commission will evaluate requests for confidentiality according to relevant legal principles.

Respondents are required to clearly mark any information included in their submission which they consider to be confidential and provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission. The Commission will determine whether information claimed to be confidential is to be treated as such and, if so, will not publish that information. In respect of information that is determined to be non-confidential, the Commission may publish or refrain from publishing such information at its sole discretion.

Once the Commission has received and considered responses to this consultative document, it will deliver the final Telecommunications Code (Part 5A) (Licensing of Telecommunications Networks & Services) Requirements, 2021 to the Ministry with responsibility for telecommunications for approval and it will be published in the Gazette.

Cover sheet for response to a Commission consultation

BASIC DETAILS

Consultation title: To
(Commission Contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Introduction

- 1.1 The Commission is the independent regulator for telecommunications in the British Virgin Islands, established in 2007 in accordance with the Act. Our mandate is to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands.¹ Our principal statutory functions are set out in section 6 of the Act.
- 1.2 Two of our principal functions include the regulation of licensees (section 6(d) of the Act) and determination of applications for licences (section 6(e) of the Act). In accordance with these statutory obligations, *inter alia*, this document includes a draft Telecommunications Code (Part 5A) (Licensing of Telecommunications Networks & Services), Requirements, 2021.
- 1.3 In licensing, our role is to enable and facilitate the availability of telecommunications infrastructure and services in the British Virgin Islands. This is done with a view to ensuring long-term benefit for the residents, businesses and visitors in the Territory. The development of the Requirements was steered by this mission.
- 1.4 The Requirements will guide the licensing framework in relation to the operation of telecommunications networks and provision of telecommunications services in the British Virgin Islands, to be followed by new entrants and existing licenced public suppliers in the telecommunications services industry, for which the Commission has responsibility.
- 1.5 The Commission has adopted six essential principles of regulation consistent with international standards and best practice, namely, accountability, focus, predictability, adaptability, efficiency and balance. We are confident that that the introduction of the Requirements is complementary to these principles.

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http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf

The Legal Framework

The Commission is guided by its statutory remit in developing the Requirements, notably the provisions that are outlined below.

Principal Functions

- 2.1 The principal functions of the Commission are stipulated at section 6 of the Act. Specifically, Section 6(d) outlines that, in the telecommunications services industry, the Commission is to:

“be responsible for the regulation of licensees and authorisation holders and for ensuring fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services”

- 2.2 Section 6(e) further states that the Commission shall:

“determine applications for licences and frequency authorisations for any of the purposes specified in this Act and monitor, enforce and ensure effective compliance therewith and to issue instructions accordingly”

Requirements for a Licence

- 2.3 When considering licence applications, section 15 of the Act is instructive, whereby section 15(2) states in part:

“[...] a person who wishes to operate a network or provide a service described in subsection (1) shall apply to the Commission for a licence in the manner prescribed in the Telecommunications Code.”

- 2.4 Section 15(1) of the Act refers to the operation of a telecommunications network or provision of a telecommunications service and specifies that the Commission is the only body with authority to grant such a licence.

Other Legal Provisions

- 2.5 The Commission is empowered to implement the Requirements as a part of the Telecommunications Codes, pursuant to section 91(3) of the Act, which states *“the Commission may from time to time issue, supplement or update such guidelines, standards and other requirements relating to telecommunications as the Commission thinks fit, which together shall constitute the Telecommunications Code.”*

- 2.6 Additionally, it is judicious to consult on the Requirements considering section 4(1) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010, which states:

“(1) The Commission shall hold a public consultation on any matter prescribed by the Telecommunications Act, 2006 and may publicly consult on any other matter that could, in the opinion of the Commission, have a significant effect on the telecommunications sector of the Virgin Islands or a significant part thereof including any matter that could have a significant effect on the rights and obligations of users of telecommunications services.”

Licensing Requirements Objectives

The Commission considers that it is in the interest of the public and in keeping with the Commission's mandate under the Act to regulate the process for licensing the operation of telecommunications networks and provision of telecommunications services. This will ensure that the process is objective, transparent and non-discriminatory, pursuant to section 15(7) of the Act.

- 3.1 The draft Requirements are attached to this consultation document and are summarised below.
- 3.2 The Commission strongly encourages respondents to read the Requirements prior to submitting comments or answering the consultation questions in the next section, as this summary is not exhaustive.
- 3.3 The attached Requirements are divided into 11 parts and consist of 47 sections, which address:
 - The legal framework, purpose and scope of the Requirements;
 - The scope of licences covered by the Requirements and their respective classifications;
 - The framework for licence application;
 - The actions of the Commission upon receipt of an application;
 - The details of the licence application process for Unitary, Class and Special Licences;
 - Transfer, modification and renewal of licences;
 - Subsequent change of information to that which was included in an application for a licence;
 - The acceptable form of application for a licence;
 - The fees and costs applicable to the application for a licence;
 - General provisions including the establishment of a licence register at the Commission, and related duties of the licensees; and
 - Required compliance with the Requirements.
- 3.4 Part I covers the preliminary provisions of the Requirements, citing its purpose as establishing a framework for the application process for telecommunications networks and services licensing. It notes that the Procedures are applicable to new entrants, as well as existing public suppliers, in the telecommunications services industry.
- 3.5 Part II identifies the scope and classification of licences in the Requirements as Unitary Licences, Class Licences, Special Licences and Submarine Cable Licences, while establishing what each licensee is or will be authorised to do with each respective licence. It cautions that persons requiring use of the radio spectrum will, nonetheless, be required to apply to the Commission for a frequency authorisation.
- 3.6 Part III outlines the overarching framework for the licence application process by specifying the Commission's power to grant licences for the operation of a telecommunications network or provision of telecommunications services and the need for a person desirous of obtaining a licence to do so in accordance with the form as specified by the Commission. It also highlights that any application for a licence must comply with applicable laws and regulations.
- 3.7 Part IV details the actions of the Commission to be taken upon receipt of an application, including issuance of an official receipt, review of the application and determination of whether any additional information is required to process the application. It also indicates that where an application does not comply with the Act or the Requirements, the Commission may request the applicant to cure the defect, failing which the application will be refused.

- 3.8 Part V outlines the licence application process in relation to Unitary, Class, Special and Submarine Cable Licences. Factors that the Commission may take into account in determining whether to grant any licence are listed. Nonetheless, it confirms that the final determination in relation to licence applications, covered by the Requirements, rests with the Commission and stipulates the respective notification timelines for the Commission's decision.
- 3.9 Part VI specifies the applicable process for transfer, modification and renewal of licences, including the time within which an application for renewal shall be made and the circumstances which will result in the non-renewal of a licence by the Commission.
- 3.10 Part VII stipulates the obligation placed on applicants to submit accurate information and notify the Commission of changes in such information; failing which, a licence issued or renewed on the basis of inaccurate or incomplete information may be revoked or a modification to a licence on that basis may be void.
- 3.11 Part VIII outlines the various considerations for the Commission in developing the application form for each licence and the specifications of what should be included in each applicant's undertaking with their licence application.
- 3.12 Part IX identifies the applicability of fees for licence applications as well as the responsibility of the applicant to meet all costs arising from the application process, irrespective of the Commission's decision. It also gives the Commission the authority to refuse the renewal of a licence where the applicant's regulatory fee payments are not up to date or where an undertaking has not been agreed and delivered to the Commission.
- 3.13 Part X comprises general provisions such as the creation of a register of licences granted, for inspection by the public, information to be contained in the register and associated duties of the Commission and licensees. Confidentiality provisions are also included.
- 3.14 Part XI specifies the relationship of the Requirements with licences and establishes that a licensee who breaches any provision of the Requirements may be subject to a fine.
- 3.15 It is proposed that the Requirements will be implemented as a part of the Telecommunications Code, in exercise of the Commission's powers under section 6(d), 6(e), 15(2) and 91(3) of the Act.

Consultation Questions

Based on the above, the Commission invites all interested parties to submit their comments, with supporting evidence, on the following questions.

1. Do you agree with the application process proposed by the Commission in Part V of the Procedures? If not, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please include the specific section(s) that you take issue with in your explanation.
2. Do you agree with the Commission's proposed process regarding how the Commission will handle and review licence applications upon receipt? Specifically, what are your views on the considerations listed at section 16(1) of the Requirements. Would you add or subtract any factors? Please explain your reasoning in detail, along with providing supporting evidence, as may be applicable.
3. What are your views on the creation of a register of licences for inspection by the public and the related duties of the licensees to inform the Commission of changes to their address and directors, as contained in Part X of the Requirements?
4. What are your views on the proposed procedures for assessing and making determinations on claims of confidentiality outlined at section 44 of the Requirements? What alternative measure do you propose and why?
5. Are there any other concerns, interests or obligations that the Commission should consider including in these Requirements? If so, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please specify the Part and/or section under which you propose to include an additional provision.
6. Please provide your views on any other matters you consider relevant to this consultation.

Annex: The Draft Requirements

Please refer to the next document in this consultation titled ‘Telecommunications Code (Part 5A) (Licensing of Telecommunications Networks & Services) Requirements, 2021’ for the draft Requirements.