

**VIRGIN ISLANDS**

**TELECOMMUNICATIONS CODE (PART 5A) (LICENSING OF  
TELECOMMUNICATIONS NETWORKS AND SERVICES)  
REQUIREMENTS, 2021**

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**VIRGIN ISLANDS**  
**STATUTORY INSTRUMENT 2021 No.**  
**TELECOMMUNICATIONS ACT, 2006**  
**(No. 10 of 2006)**

**Telecommunications Code (Part 5A) (Licensing of Telecommunications  
Networks and Services) Requirements, 2021**

[Gazetted \_\_\_\_\_, 2021]

The Telecommunications Regulatory Commission, in exercise of the powers conferred by sections 6(d), 6(e), 15(2) and 91(3) of the Telecommunications Act, 2006 (No. 10 of 2006), issues these requirements (the **Requirements**).

**PART I**  
**PRELIMINARY PROVISIONS**

Citation and  
commencement

**1.** These Requirements may be cited as the Telecommunications Code (Part 5A) (Licensing of Telecommunications Networks and Services) Requirements, 2021 and shall come into force on the date of publication in the Gazette.

Interpretation.

**2.** (1) In these Requirements, unless the context otherwise requires,

No. 10 of 2006.

“Act” means the Telecommunications Act, 2006;

“applicant” means a person applying for the grant, renewal or modification of a licence;

“application” means a formal request to the Commission for the grant, renewal or modification of a licence.

“business day” means any day on which a licensee’s offices are open to the public for carrying out some or all of its business function, excluding gazetted public holidays;

“class licence” means a licence offered on the same terms to any person, or to a category of persons, in respect of a class of telecommunications networks, telecommunications services or radiocommunication services;

“Commission” means the Telecommunications Regulatory Commission established under the Act;

“licence” means a licence granted under the Act;

“licensee” means a person to whom a licence has been granted;

“special licence” means a licence granted under section 25 of the Act;

“special licensee” means a person granted a special licence;

“spectrum” means the complete range of electromagnetic frequencies which may be used for telecommunications;

“submarine cable licence” means the licence required by section 15(8) of the Act;

“telecommunications” means the emission, transmission or reception of signals, whether they represent speech, music, sounds, text, visual images or information of any other description, where such signals are conveyed by means of electrical, magnetic or electro-magnetic energy;

“telecommunications network” means

- (a) a system for the conveyance of telecommunications; and
- (b) apparatus used in conjunction with such a system for the emission, switching, routing or reception of signals and any software or stored data necessary for its functioning;

“telecommunications service” means a service consisting of, or having as a principal feature, the conveyance by means of a telecommunications network of signals for reward;

“unitary licence” means a licence which allows a licensee to provide, deploy and operate multiple telecommunication services (i.e. fixed line, mobile, broadband and broadcast cable television services) under a single authorisation.

(2) Except as identified in section 2(1) above, the words and expressions used herein shall have the meaning given in the Act.

Purpose.

**3.** The purpose of these Requirements is to establish a framework for the application processes in relation to the grant, transfer, modification and renewal of licences for the operation of telecommunications networks and provision of telecommunications services in the British Virgin Islands.

Scope.

**4.** These Requirements apply to all new entrants in the telecommunications services industry desirous of obtaining a licence and all existing licensed public suppliers who own and operate telecommunications networks and provide telecommunication services.

## **PART II LICENCE SCOPE AND CLASSIFICATION**

Categories of licences.

**5.** (1) There shall be four categories of licences:

- (a) unitary licence;
- (b) class licence;
- (c) special licence; and
- (d) submarine cable licence.

(2) A unitary licence granted by the Commission in accordance with the Act authorises a person to own and operate a telecommunications network to provide telecommunications services.

(3) A class licence granted by the Commission in accordance with the Act authorises a person to:

- (a) establish or operate elements of a telecommunications network or facility that is not connected to a public network for the sole and exclusive use of that person; or
- (b) lease or otherwise obtain telecommunications network elements like transmission capacity, switching services, ducts or fibre from other licensees to provide telecommunications services to the public for the purpose of providing a class licence service.

(4) A special licence granted by the Commission in accordance with the Act refers to any type of licence granted for a period not exceeding 10 calendar days when emergency or other exigent circumstances exist.

(5) A submarine cable licence granted by the Commission in accordance with the Act authorises a person to land or operate submarine cables for the purpose of connecting to a telecommunications network.

(6) The Commission shall publish a notice in the Gazette outlining the telecommunications networks and services that are subject to a unitary licence or class licence.

Scope of licences.

**6.** (1) The grant of any licence to a person does not authorise that person to own or operate any telecommunications network or provide any telecommunications service, other than that prescribed in the licence.

(2) Notwithstanding the grant of any licence by the Commission, frequency authorisations shall be required for the operation of any telecommunications network or the provision of any telecommunications service that requires the use of the spectrum in accordance with the Act and the Telecommunications Codes.

### **PART III FRAMEWORK FOR LICENCE APPLICATION**

Power of the Commission to grant licences.

**7.** The Commission may grant licences for the operation of a telecommunications network or the provision of telecommunication services, in accordance with the Act.

Manner of application.

**8.** (1) A person desirous of applying for a licence under these Requirements shall submit their application to the principal office of the Commission in the form issued by the Commission, from time to time.

(2) The Commission shall publish the form referred to in subsection (1) on its website.

Application to comply with laws and regulations

**9.** An application for any licence or the transfer, modification or renewal thereof shall:

- (a) be made in accordance with the Act and these Requirements, as may be applicable;
- (b) be in the prescribed form;
- (c) be accompanied by the prescribed fees, if any; and

(d) contain such information as required by these Requirements.

**PART IV  
COMMISSION'S ACTIONS UPON RECEIPT OF  
APPLICATIONS**

Official receipt.

**10.** (1) Upon receipt of an application under this Part, the Commission shall issue an official receipt evidencing receipt of the application by the Commission.

(2) The official receipt shall state:

- (a) a unique application number generated by the Commission;
- (b) the date of application;
- (c) the name and address of the applicant;
- (d) the name of the person submitting the application, if different from the applicant; and
- (e) the amount of the prescribed fees paid, if any, in connection with the application.

Request for further information.

**11.** (1) The information contained in an application or submitted in connection with an application must be accurate and complete.

(2) The Commission shall review every application for accuracy and completeness and determine whether any additional information is required to process the application.

(3) Where additional information is required to process an application, the Commission shall:

- (a) request, in writing, the submission of the additional information; and
- (b) specify the time frame within which the information referred to in subsection 3(a) is to be provided.

(4) The Commission shall be under no obligation to process the application if the information included in the application is not complete or if the application is not otherwise submitted in strict compliance with these Requirements.



(5) Where the Commission is satisfied with the completeness and accuracy of an application for a licence, it shall review the application and notify the applicant of its decision within the time frame prescribed in these Requirements.

Refusal of application due to non-compliance.

**12.** (1) Subject to section 11 of these Requirements, where the Commission determines that an application does not comply with the Act or these Requirements, the Commission shall inform the applicant in writing of the defect(s) and notify the applicant that the defect(s) must be corrected within 7 business days from the date of the notice.

(2) Where notice is given under subsection (1), the Commission shall also specify what the applicant is required to do to rectify the defect(s).

(3) Where the applicant fails to correct the defect(s) within the period specified in subsection (1), the application shall be rejected.

(4) The refusal of an application by reason of non-compliance shall not preclude or prejudice the submission of a new application.

Recommendation for licences.

**13.** At any time before the Commission makes a decision on an application, the Commission may, with reasonable notice and in writing, request the applicant to send a representative to the principal office of the Commission to discuss their application for a licence.

## **PART V**

### **APPLICATION FOR UNITARY, CLASS, SPECIAL AND SUBMARIN CABLE LICENCES**

Application for unitary, class or submarine cable licences.

**14.** An application for a unitary licence, class licence or submarine cable licence shall be submitted to the Commission in accordance with section 9 of these Requirements.

Application for a special licence

**15.** (1) An application for a special licence shall be submitted in writing to the Commission and shall:

- (a) comply with section 9 of these Requirements;
- (b) contain such information and particulars as may be necessary to process the application including the name and address of the applicant and the telecommunications services being applied for; and
- (c) outline any emergency or other exigent circumstances that warrant the grant of a special licence.

Commission discretion and final determination.

**16. (1)** The Commission shall, in its discretion, take into account all relevant factors in determining whether to grant any licence, including:

- (a) views expressed by the applicant or other consultees;
- (b) the economic value of the service to be provided;
- (c) the dynamic country-specific variation over time including market demand and population size;
- (d) the amount of available spectrum;
- (e) the information specified in or attached to the applicant's application form as prescribed by section 33 of these Requirements;
- (f) the representations made in accordance with section 34 of these Requirements; and
- (g) any other relevant matters having regard to national security, the public interest, and achieving the purposes of the Act.

(2) In accordance with subsection (1), the Commission may consult with members of the public, experts, industry or other persons, or adopt any other reasonable process to aid in determining whether or not to grant the licence to the applicant.

(3) For the avoidance of doubt, a final determination with respect to an application for the grant of any category of licence shall be made by the Commission in its discretion.

Notification of the Commission's decision.

**17. (1)** The applicant shall be notified of the decision of the Commission whether or not the Commission will grant the licence:

- (a) within 120 business days from the date of receipt of the application, in the case of a unitary, class or submarine cable licence; or
- (b) within the shortest possible time frame in the case of a special licence and in any event by no later than 5 business days from the time of the receipt of the application.

(2) Notwithstanding subsection (1), where the Commission requires additional time to consider an application, the Commission shall notify the applicant in writing of this:

- (a) at least 15 days before the expiry of the period set out in section 17(1)(a) of these Requirements, in the case of an application for a unitary or class licence; or

(b) at least 3 days before the expiry of the period set out in section 17(1)(b) of these Requirements in the case of a special licence.

(3) The notification under subsection (2) must also specify a reasonable estimate of the time within which the Commission can be expected to give a decision.

Issue and form of licence.

**18.** Where an application for a licence has been approved, the Commission shall issue the applicant with a licence in the form determined appropriate by the Commission, taking into account the terms and conditions specified in section 17 of the Act.

Commission to provide reasons for refusal of application.

**19.** Where an application for a licence is refused, the Commission shall in its notification to the applicant state in writing the reasons for refusal and indicate that the applicant may apply for a review of the decision to the Court.

Arrangement respecting existing licences.

**20.** For the avoidance of doubt, a person who is the holder of a licence in respect of an existing telecommunications network or service shall retain the licence until it expires or is earlier revoked.

## **PART VI**

### **TRANSFER, MODIFICATION AND RENEWAL OF LICENCES**

Transfer of licence generally.

**21.** The unitary or class licensee must apply in writing to the Commission for prior written approval from the Commission for the transfer or assignment of its licence or any rights under that licence.

Transfer of unitary licence.

**22.** (1) For the transfer or assignment of a unitary licence, the Commission shall make a determination with respect to an application under section 21 of these Requirements no later than 3 months from the date the application was filed. The factors that the Commission shall consider in determining whether to grant approval for any transfer are:

- (a) the likely effects of the transfer or assignment on competition in the relevant market;
- (b) the intended transferee's ability to fulfil the obligations of the licence; and
- (c) the extent to which the transferee meets the same qualification criteria as initially prescribed by the Commission.

(2) If the unitary licence to be transferred or assigned is associated with a frequency authorisation, then any applicable provisions for a frequency

authorisation in the Act, Telecommunications Code or licence shall also be considered.

Transfer of class or submarine cable licences.

**23.** For the transfer or assignment of a class or submarine cable licence, the Commission shall make a determination with respect to an application under section 21 of these Requirements within 30 days from the date the application was filed. Factors that the Commission shall consider are:

- (a) likely effects of the transfer or assignment on competition in the relevant market;
- (b) the intended transferee's ability to fulfil the obligations of the licence; and
- (c) the extent to which the transferee meets the same qualification criteria as initially prescribed by the Commission.

Refusal to transfer a licence.

**24.** Where the application to transfer or assign a unitary, class or submarine cable licence is refused, the Commission must notify the applicant and state in writing the reasons for such refusal.

Modification of licence.

**25.** (1) Where a licensee proposes the modification of a licence pursuant to section 23(5) of the Act, the licensee shall submit an application to the Commission in accordance with section 9 of these Requirements.

(2) An application for modification of a licence shall contain statements that:

- (a) clearly indicate the parts of the licence to be modified; and
- (b) give a comprehensive and accurate account of the reason for the requested modification and technical information supporting the request for the modification.

(3) The Commission may request additional information in respect of an application for modification in order to determine whether or not to grant the requested modification. Any additional information to be submitted to the Commission in accordance with this subsection must be submitted to the Commission within 5 business days of receipt by the applicant of the Commission's request.

(4) In considering a request by a licensee to modify a licence, the Commission shall take into account any submission received from the licensee in relation to the proposed modification.

(5) Notwithstanding these Requirements, the Commission maintains the right to modify any licence at its discretion and in accordance with section 23 of the Act.

Renewal of licences.

**26.** (1) The Commission may renew a licence granted under the Act in accordance with the terms and conditions of the licence, section 24 of the Act and these Requirements.

(2) A licensee desirous of applying to the Commission for the renewal of its licence in accordance with this section shall submit its application to the Commission in accordance with section 9 of these Requirements.

Timelines for renewal applications.

**27.** (1) Where a licensee is desirous of renewing a unitary or submarine cable licence, the licensee shall apply to the Commission no later than 1 year prior to the expiration date of the licence.

(2) Where a licensee is desirous of renewing a class licence, the licensee shall apply to the Commission no later than 6 months prior to the expiration date of the licence or such later date as the Commission may determine.

(3) Where a licensee is desirous of renewing a special licence, the licensee shall apply to the Commission as soon as it becomes aware of the need to renew its licence and in any event no later than three (3) days before the expiration of the special licence or such shorter period to be determined by the Commission.

Non-renewal of licence by the Commission.

**28.** (1) Notwithstanding a licensee's compliance with the other provisions in this Part, a licence shall not be renewed where the applicant

- (a) operated outside the terms and conditions of its licence;
- (b) materially contravened the Act, Regulations or Telecommunications Codes; or
- (c) materially contravened an instruction issued by the Commission.

(2) Before determining not to renew a licence, the Commission shall deploy the procedure specified in section 24(2) of the Act.

Variance of licence terms on renewal.

**29.** The Commission may, prior to the renewal of a licence and at its discretion, vary the terms of the licence.

Review of decision to not renew unitary or class licence.

**30.** Where the Commission has refused to renew a licence after considering the representations of the licensee in accordance with section 24(2) of the Act, the aggrieved licensee may apply for a review of the decision to the Court.

Termination by licensee.

**31.** Where the unitary, class or submarine cable licensee chooses to allow its licence to terminate at the expiration of the licence period, it shall provide written notification to the Commission of this intention at least 1 year prior to the licence expiration.

## **PART VII SUBSEQUENT CHANGE OF INFORMATION**

Accuracy and completeness of information.

**32.** (1) The applicant shall notify the Commission if there is any significant subsequent change in the information provided at the time of submitting an application for the grant renewal or modification of the licence, as may be applicable.

(2) The applicant shall submit to the Commission documentation supporting the change in information referred to in subsection (1) within 7 business days of becoming aware of such change.

(3) Notwithstanding subsection (2), the Commission may, where good cause is shown for a delay in the submission of the information required under that paragraph, accept the information within a later period deemed appropriate by the Commission.

(4) Where an applicant fails to inform the Commission of any inaccuracies or incompleteness of information or to supply the additional or corrected information as required in subsection (1):

- (a) a licence issued or renewed on the basis of inaccurate or incomplete information may be revoked; or
- (b) a modification to a licence on the basis of inaccurate or incomplete information may be void.

## **PART VIII FORM OF APPLICATION**

Form of application.

**33.** In determining the form of the application, the Commission may include:

- (a) applicant details, including the name, legal status, business address, the address of the licensee's registered office and other applicable contact information;
- (b) details regarding the type of telecommunications networks or telecommunications services for which the application is being submitted;
- (c) in the case of a submarine cable, details regarding the place of landing, capacity and other matters;
- (d) information regarding the applicant's directors, partners, management, officers, controlling persons and sources of finance;
- (e) information regarding the applicant's background, including its financial resources and evidence that it can establish, operate and maintain the telecommunications networks or services for which it is applying;
- (f) information describing the telecommunications networks or services to be supplied;
- (g) details regarding business plans, including the estimated date of commencement of the relevant activity; and
- (h) details, policies, strategies or representations regarding the applicant's intention and ability to comply with the Act, the Telecommunications Code or any conditions of the licence.

Undertaking to be given by applicant.

**34.** Any person applying to the Commission for a licence under these Requirements must include with their application an undertaking or representation, as the case may be, that:

- (a) the applicant will comply with all interconnection obligations, universal service obligations, licence limitations, network build-out requirements and any other such obligations imposed by the Act or Telecommunications Code for the type of telecommunications network or telecommunications service in respect of which the applicant seeks a licence;
- (b) all legal requirements for the holding of the licence have been complied with;
- (c) the applicant possesses the technical qualifications necessary to fully perform the obligations attached to the licence for which the applicant is applying; and
- (d) the applicant satisfies the financial requirements, as imposed by the Commission, to construct and operate the

telecommunications network or to provide the telecommunications services associated with the licence for which the applicant is applying; and

- (e) the applicant will provide such additional information as is required to enable the Commission to determine whether the applicant is compliant with the written undertaking.

## **PART IX FEES AND COSTS**

Application Fee

SI. 2021, No. ##

**35.** There shall be paid to the Commission in respect of every application, modification, renewal or transfer or assignment in respect of a licence referred to in these Requirements such fees as are set out in the **Telecommunications Code (Part 7A) (Licensing Fees for Telecommunications Networks & Services) Requirements, 2021** or as otherwise prescribed under the Act or determined by the Commission from time to time.

Costs.

**36.** (1) The applicant shall meet all costs arising from:

- (a) the preparation and submission of their application;
- (b) providing any additional information, as may be requested by the Commission; and
- (c) the processing of each application.

(2) The Commission shall not accept responsibility for such costs whether or not a licence is granted, renewed or modified.

Regulatory fees.

**37.** (1) The Commission shall refuse to renew a licence where an applicant is not current on the payment of all applicable regulatory fees or where an undertaking by the applicant, in a form as determined appropriate by the Commission, has not been agreed, executed and delivered to the Commission.

(2) The undertaking referred to in subsection (1) shall be sent directly to the applicant or published on the Commission's website, as the Commission deems appropriate.

## **PART X GENERAL PROVISIONS**



Register.

**38.** (1) The Commission shall maintain a Register of licences granted under the Act, and the Register shall be made available to the public for inspection, during normal working hours, at the principal office of the Commission.

(2) The Register may be electronic or in such other format as the Commission deems appropriate.

(3) The Commission may prescribe fees for inspection of, or obtaining copies from, the Register of licences.

(4) The Register referred to in subsection (1) shall contain:

(a) the names of the persons to whom licences have been granted;

(b) the type of licence granted to each person;

(c) a brief description of the proposed telecommunications network or telecommunications services; and

(d) the registered office and principal address of each licensee, each director of the licensee and the person responsible for day-to-day management of the licensee.

Alterations to the Register.

**39.** The Commission may correct any errors or omissions in the Register and insert therein any alterations in the details of the Register based on changes to the information in section 38(4) of these Requirements.

Publication of list of licensees.

**40.** (1) The Commission shall cause to be published in the Gazette a list of new licensees.

(2) A copy of the Gazette containing the list referred to in subsection (1) shall be evidence of the licencing of any person whose name is shown therein.

Duty to notify Commission of address changes.

**41.** The licensee shall notify the Commission of any changes to its place of business or other address at least 30 days before such change takes effect.

Duty to notify Commission of changes to directors.

**42.** (1) Notwithstanding the obligations of section 16 of the Act, the licensee shall notify the Commission of any changes in directors, no later than 30 days after such change takes effect.

(2) The Commission may request such information from the licensee, as it deems appropriate, in order to be satisfied by the proposed change of

director(s) and the licensee shall provide such information to the Commission within 7 days of such request.

Lost licences.

**43.** (1) Where the licensee has lost or misplaced its licence, it shall notify the Commission of this in writing.

(2) The Commission shall supply the licensee with a certified copy of its licence, upon payment of a prescribed administrative fee, as determined appropriate by the Commission.

Confidentiality.

**44.** (1) Information submitted to the Commission on or in connection with an application shall, in the interest of transparency, not be considered as confidential information.

(2) Notwithstanding subsection (1), the Commission shall consider representations from applicants that information is confidential and, therefore, should not be made available to the public or otherwise disclosed.

(3) A person claiming confidentiality shall clearly mark any information included in or in connection with an application that is claimed to be confidential, including personal, proprietary or commercially sensitive information, and shall provide reasons why that information should be considered confidential.

(4) Whenever confidential information is included in or in connection with an application, the applicant shall provide both a confidential and non-confidential version of the submission.

(5) The Commission shall evaluate requests to treat information as confidential in accordance with relevant legal principles and determine whether such information should be considered confidential.

(6) When the Commission determines that information claimed to be confidential should not be considered as such, the Commission shall inform the person who submitted that information of its decision giving reasons why the claim of confidentiality was not sustained.

(7) Where the Commission refuses a claim of confidentiality under subsection (6), it shall not for a period of 14 days disclose, distribute or give access to the information claimed to be confidential in order to allow the party making a claim of confidentiality to seek any administrative review of the decision of the Commission including by way of judicial review in the High Court.

(8) Where a person seeks to review the decision of the Commission under subsection (7), that person shall give notice of the application for review to the Commission and the decision of the Commission not to sustain the claim of confidentiality shall be stayed or suspended pending the outcome of the administrative review.

(9) Unless the decision of the administrative review process under sub-subsection (8) is that the Commission shall treat the information as confidential, the Commission shall treat the information in the manner specified in subsection (1) and may disclose, distribute or give access to the information for the purposes of discharging its functions under the Act or any of the Telecommunications Codes.

Periodic review of these Procedures.

**45.** (1) The Commission shall regularly review and refine these Requirements for licensing of telecommunications networks and services to ensure that the procedures are adequate, sufficient and complete, taking into consideration market trends and developments.

(2) Periodic reviews under subsection (1)

- (a) may be initiated by the Commission or on application by the licensee;
- (b) shall be subject to public consultation; and
- (c) must take place at least once every five years.

## **PART XI COMPLIANCE**

Compliance and enforcement.

**46.** A licensee who breaches any provision of these Requirements may be liable to pay to the Commission a fine not exceeding ten thousand dollars.

Relationship with licences.

**47.** The provisions of these Requirements do not replace, but rather supplement the requirements of the licence of a licensee.

Issued by the Telecommunications Regulatory Commission this \_\_\_ day of \_\_\_\_\_, 2021.

(Sgd.) Vance Lewis  
**Chairman of the Board**

DRAFT