

No. 100 of 2010

VIRGIN ISLANDS

**TELECOMMUNICATIONS CODE (PART 1) (PUBLIC CONSULTATIONS AND
PUBLIC HEARINGS) GUIDELINES, 2010**

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2010 NO. 100
TELECOMMUNICATIONS ACT, 2006

(No. 10 of 2006)

Telecommunications Code (Part 1) (Public Consultations and Public Hearings)
Guidelines, 2010

[Gazetted 6th January, 2011]

The Telecommunications Regulatory Commission, in exercise of the power conferred by section 91(3) of the Telecommunications Act, 2006 (No. 10 of 2006), issues these Guidelines.

PART I
GENERAL PROVISIONS

Citation and commencement.

1. These Guidelines may be cited as the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010 and shall come into force on the date of publication in the Gazette.

Purpose.

2. The purpose of these Guidelines is to provide guidance on the cases when the Telecommunications Regulatory Commission will conduct public consultations or public hearings or both, as well as the processes and requirements for these.

Interpretation.

3. In these Guidelines, unless the context otherwise requires,

“public consultation” means a process organised in accordance with these Guidelines, through which, within a timeframe set by the Commission, interested parties are able to provide their views to the Commission on a proposed decision of the Commission or some other important matter affecting the exercise of the functions of the Commission;

“public hearing” means a public meeting organised in accordance with these Guidelines, at which interested parties or, as determined by the Commission, invited stakeholders are given an opportunity to

present their views to the Commission on a proposed decision or some other important matter affecting the exercise of the functions of the Commission;

“website” means the website of the Commission at www.trc.vg.

4. (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.

Public consultation.

(2) Public consultations shall be held on matters that are of general importance to the public and not on matters that specifically concern an individual person or persons only. This shall not limit the matters on which the Telecommunications Act, 2006 explicitly requires the Commission to hold a public consultation.

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5. (1) Public hearings shall be held on matters which the Commission considers that it needs input in addition to that provided by a public consultation, or in order to better formulate a matter for public consultation. Such public hearings may be held before, during or after a related public consultation.

Public hearing.

(2) The Commission may also hold a public hearing unrelated to any public consultation, in particular where the Telecommunications Act, 2006 does not require the Commission to hold a public consultation and the Commission believes that a public hearing would be an expedient or appropriate way to obtain public input.

PART II PUBLIC CONSULTATIONS

6. (1) The Commission shall start a public consultation by publishing a notice on its website, in a section dedicated to public consultations. Such notice shall include the following information (some of which may be published only once, and shall apply to all notices):

Starting a public consultation.

- (a) the title of the public consultation, including reference to the decision, other document or matter on which the Commission wishes to obtain public input;

- (b) the date of commencement of the public consultation;
- (c) the deadline for responding to the public consultation;
- (d) instructions for responding to the public consultation, including the relevant electronic mail address, fax number, postal and street addresses;
- (e) contact details of the person within the Commission who is responsible for the matter; and
- (f) such other information as considered necessary by the Commission.

(2) A full document on the matter for consultation shall be published on the website of the Commission, along with the notice of public consultation and shall include

- (a) the title of a document which the Commission wishes to obtain the public input on;
- (b) the date of the publication of the public consultation;
- (c) the deadline for responding to the public consultation;
- (d) instructions for responding to the public consultation, including the relevant electronic mail address, fax number, postal and street addresses;
- (e) the purpose of the consultation document;
- (f) a full text of the decision proposed or the full document explaining any other matter that the Commission is consulting on;
- (g) such other information as considered necessary by the Commission.

(3) Where applicable, the Commission may exclude from a notice of public consultation or any document published therewith, information which it considers to be confidential, including personal or proprietary information.

(4) The Commission may issue a press release notifying the public about a public consultation.

(5) The Commission shall, pursuant to sections 26(6), 73(1)(f) and (3) of the Telecommunications Act, 2006 and in accordance with section 6(1) of these

Guidelines, publish a notice of public consultation at least fourteen days before the commencement of a public consultation, in the following media:

- (a) on the Commission's website;
- (b) in a newspaper published and circulated in the Virgin Islands; and
- (c) in the *Gazette*, in the case of a public consultation to be held under section 26(6) of the Telecommunications Act, 2006.

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2006.

(6) The Commission may, in its discretion use additional means to inform the public or identified potentially interested parties, about public consultations.

Consultation
period.

7. (1) Responses to a public consultation should be submitted on or before the deadline specified in the relevant notice.

(2) The Commission shall allow twenty-eight days for the public to respond to a public consultation. This period may be shorten where it is necessary to meet a deadline for making a decision, resolving some other matter or where there are other reasons for urgency. The Commission shall explain any reasons for urgency in the notice of public consultation. The Commission may also allow a longer period for responses to a public consultation where it considers this to be necessary or appropriate.

(3) Where an interested party requests the extension of a deadline and demonstrates good cause, the Commission may grant such extension and shall publish details of the extension on its website as a supplement to the relevant notice of public consultation. Extensions granted by the Commission shall be applicable to all the responding parties.

(4) The Commission may, in its discretion consider responses received after the published deadline or extended deadline, as the case maybe, for a public consultation, where the respondent concerned can show good cause for not submitting a response within the published deadline.

8. (1) Responses to a public consultation shall be submitted in writing.

Submitting
a response.

(2) Responses to the Commission shall be submitted by electronic mail to the address indicated in a relevant notice. The Commission may also accept responses submitted by fax, by post or by hand at the number or address indicated in the relevant notice.

(3) The Commission shall, where possible, acknowledge receipt of a response by the same means used to submit that response.

Information to be included in a response.

9. (1) A person submitting a response to a public consultation shall clearly indicate the title of the relevant public consultation.

(2) Responses from corporate bodies should include

(a) the name of the company, institution, association or other organisation;

(b) the name of a principal contact person;

(c) full contact details including physical address, postal address, telephone number, fax number and electronic mail address.

(3) Responses from individuals shall include the individual's name and contact details including electronic mail address.

Confidentiality of responses.

10. (1) In the interests of transparency, but subject to affording appropriate protection for confidential information, the Commission shall make all responses to a public consultation available to the public and shall publish all responses on its website.

(2) Responses to public consultations shall not be treated as confidential unless the person submitting a response explicitly asks the Commission to consider that response to be confidential. A person claiming confidentiality shall clearly mark any information included in a response that is claimed to be confidential, including personal or proprietary information and shall provide reasons why that information should be considered confidential. Whenever confidential information is included in a response, the respondent shall provide both a confidential and a non-confidential version of the response.

(3) 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. Where 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. Any information determined by the Commission to be non-confidential may be made public.

(4) The Commission may publish or refrain from publishing any information that is determined to be non-confidential, at its sole discretion.

Results of a consultation.

11. (1) After considering the responses to a public consultation, the Commission shall publish a report on the public consultation on its website

summarising the comments received and explaining the position of the Commission in relation to each of those comments. The Commission may choose to include in such a report only those comments that it considers to be significant.

(2) In relation to confidential responses, or parts thereof, the Commission shall use its best endeavours to provide a summary of such responses, and the position of the Commission in relation thereto, without disclosing the identity of the respondent. Where the Commission, in its discretion, determines that it is not feasible to summarise a confidential response without prejudicing its confidentiality, it shall not refer to that response in its report on the relevant public consultation.

(3) Where a response to a public consultation is non-confidential, the Commission may decide to cover that response in its report on the public consultation in an aggregated manner, without necessarily referring to individual who submitted the response directly.

(4) Where appropriate, the Commission shall publish on its website the final text of the decision or other document, or a text setting out its final position upon the matter consulted upon.

12. The Commission shall engage in a single round of public consultation. In exceptional circumstances, where public consultation results in material changes to a draft decision or other document or matter that could have a significant effect on the telecommunications sector, the Commission may hold a further public consultation. Any further public consultation shall be organised in accordance with the preceding procedures, except that the Commission may set a shorter consultation period for any further public consultation.

Further public consultation.

**PART III
PUBLIC HEARINGS**

13. (1) The Commission shall inform the public about public hearings by publishing a notice of public hearing in a section of its website dedicated to events. Such notice shall include

Information on public hearings.

- (a) the topic of the public hearing;
- (b) information on whether all participants will be allowed to make submissions during the public hearing or only a

specific category or categories of participants shall be allowed to do so;

(c) the date and time of the public hearing;

(d) the venue for the public hearing;

(e) where space is likely to be limited, instructions for pre-registration of participants; and

(f) such other information as considered necessary by the Commission.

(2) A notice of public hearing may be accompanied by other documents relevant to the topic of such public hearing.

(3) The Commission shall publish a notice of public hearing at least seven days before such hearing. Where it is necessary to meet the deadline for making a decision, resolving some other matter or there are other reasons for urgency the Commission may decide to shorten this period. The Commission shall explain any reasons for urgency in the notice of public hearing.

(4) The Commission shall issue a press release notifying the public about a public hearing.

(5) The Commission may, in its discretion, use additional means to inform the public about public hearings.

Participation
at a public
hearing.

14. The Commission shall permit all interested persons to participate in a public hearing. However, if space at the venue for a public hearing is limited, the Chairman of such hearing may, in his discretion, limit attendance at that hearing to pre-registered participants.

Chairing of a
public
hearing.

15. A public hearing shall be chaired by a representative of the Commission.

Submissions
in a public
hearing.

16. Unless the notice for such public hearing indicates otherwise, and subject always to time constraints and the need to keep order at such hearings, every participant in a public hearing shall be allowed to express her or his views at that hearing. Where a notice of public hearing has indicated that only a specified category or categories of participants shall make submissions during that hearing, the Chairman of such hearing may nonetheless allow other participants to make submissions, on good cause shown.

Confidentiality
of
submissions.

17. (1) All submissions made at a public hearing shall be considered non-confidential.

(2) Persons wishing to make confidential submissions on the topic of a public hearing may make such submissions to the Commission in writing, giving reasons why those submissions should be considered confidential. The Commission shall evaluate the confidentiality of such submissions in accordance with relevant legal principles and, where it determines that submissions claimed to be confidential should not be treated as such, shall inform the person who made those submissions of its decision. Any submission that is claimed to be confidential but is not determined by the Commission to be confidential may be made public.

(3) Regardless of whether these are determined by the Commission to be confidential, written submissions on the topic of a public hearing shall not be considered part of the input received at the public hearing, but such submissions nonetheless may be taken into account by the Commission in reaching any decision about or relevant to the topic of the public hearing.

18. The Commission shall publish a report on a public hearing on its website which summarises the submissions received and, where appropriate, explain the position of the Commission in relation to each of those submissions. The Commission may choose to include in such a report only those submissions that it considers to be significant.

Results of a public hearing.

**PART IV
FINAL PROVISIONS**

19. The Commission may use such other methods for obtaining public input as it considers necessary or appropriate.

Other methods for obtaining public input.

Issued by the Telecommunications Regulatory Commission this 23rd day of December, 2010.

**(Sgd.) Collin Scatliffe
Chairman of the Board**