

TELECOMMUNICATIONS REGULATORY
COMMISSION
VIRGIN ISLANDS

TELECOMMUNICATIONS CODE - _/2010:

PROCEDURES FOR INVESTIGATION OF COMPLAINTS BY
CONSUMERS, FACILITATION OF RELIEF AND RESOLUTION
OF RELATED DISPUTES

REPORT ON THE CONSULTATION

January 6, 2011

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1. Introduction

On 10th June 2010 the Telecommunications Regulatory Commission of the Virgin Islands (“TRC”) published for public consultation (the “Consultation”) its draft Procedures for Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes document (the “Document”). The purpose of this document (the “Report”) is to explain the outcomes of the Consultation. The final Document is published separately.

In the draft Document the TRC indicates that an important element and objective of implementation of measures consulted upon is to provide consumers with an effective avenue to defend their rights. The aim of the procedures proposed is to establish a clear process for investigation of complaints by consumers, facilitation of relief and resolution of related disputes for the Commission and licensees to follow in respect of such complaint.

2. Responses

During the consultation period, the TRC received two responses which were submitted by the public supplier Cable and Wireless (BVI) Limited (“LIME”) and BVI Cable TV. LIME agrees with the TRC that every licensee must have a procedure for investigating and resolving customer complaints and that where a customer is dissatisfied with the resolution of the complaint, that the customer should have the right of appeal to the TRC. BVI Cable TV largely supports the procedures suggested in the Consultation as reasonable, efficient steps that will work to ensure the satisfactory investigation of consumer complaints and resolution of related disputes. In its response LIME and BVI Cable TV made the following specific points (TRC’s views on LIME’s and BVI Cable TV input are provided next to a summary of each point):

LIME

i) Rights of a Respondent

LIME LIME suggests that if a complainant has not filed a complaint with the respondent, but goes directly to the TRC, the TRC should refer such customers to the respondent as the first point of resolution and should not itself accept such a complaint for handling. And that all such complaints should be deemed inappropriate and classified under paragraph 9 of the Procedures, since the respondent would not have been given the opportunity to resolve the matter.

Without prejudice to the above, LIME suggests that where the TRC refers to a respondent complaint, which has not been submitted to LIME before, such a complaint should be considered to be a new complaint and the relevant timeframe for its resolution should be not five (5) business days, but twenty (20) business days.

TRC The TRC agrees that since it would be the first time that the respondent

would be hearing about the complaint, it should be given not five (5) business days but rather twenty (20) business days (similarly to paragraph 6 (1) of the Document).

The TRC however disagrees that complaints, submitted to it without first approaching a respondent, should be outright rejected. Having regard to the level of consumer awareness of their rights and the level of market development, such an approach might create unnecessary barriers to the ability of consumers to protect their rights. The procedure, suggested in the Document (in particularly with the adjustment discussed above), provides an appropriate balance, by ensuring that a respondent will always have an adequate opportunity to review complaints without making the process too cumbersome for consumers.

ii) Duties of Licensees

LIME LIME's view is that records of complaints should be kept for no more than one (1) year and they consider three (3) years to be excessive.

TRC The TRC has evaluated this claim and disagrees with LIME about the length of time to keep records being excessive. As per research done into similar practices, records of similar complaints are kept even longer – e.g., the General Schedules approved by the Archives and Records Management Unit (Retention/Disposal Scheduling CON 1/05(19)) for retention of complaints established a six year period for retention of complaints.

BVI Cable TV

i. Acknowledgement of a complaint

BVI Cable TV BVI Cable TV suggests that a respondent should be required to acknowledge a complaint within five (5) business days of its receipt, rather than within three (3) business days of receipt because of the varying nature of complaints. They feel that three business days is an extremely short time period to establish for every circumstance and that five business days will provide licensees with sufficient time to process complex complaint.

TRC The TRC has decided to accept this suggestion of BVI Cable TV and has adjusted the text accordingly.

ii. Duties of a Licensee

BVI Cable TV BVI Cable TV further suggests that the proposed timelines begin only after a complaint is reported through the channels of communication for submission of complaints that is established.

TRC The TRC believes that it is only fair that the Licensee establish clear and effective channels of communication to their consumers so that complaints maybe dealt with in the appropriate timelines. If complaints are filed outside of the established channels, it is only fair that such circumstances should be taken into consideration when processing complaints. However licensees shall still be under a duty to resolve the complaints as soon as possible. Furthermore, it is important to take into account that there may be circumstances, where public may not be adequately informed about appropriate channels of communication or such channels may not be sufficiently easy to use.

iii. Entry into force

a) **BVI Cable TV** BVI Cable TV proposes that the TRC provide a transition period of at least two quarters after publication of the item in the Gazette before licensees must be in compliance with the new requirements. BVI Cable TV referred to the Consultation on Quality of Service as an example.

TRC The TRC agrees that certain elements of the framework needs some time to be implemented. Therefore paragraph 17 (2) allowed for implementation timeframe for certain obligations, which, the TRC agrees, it is reasonable to extend to some other obligations. However the TRC believes that three (3) months should be sufficient for preparation for implementation of such obligations. This is comparable to the Quality of Service Consultation, where it was proposed that the measurements should commence at the beginning of the second quarter from the rules coming into force. Paragraph 17 (2) (b) of the Document (which the TRC does not propose to change) has already established the rule analogous to the one proposed in the Quality of Service Consultation, requiring the report to be submitted at the end of the second quarter from the rules coming into force. The TRC however believes that licensees shall be able to apply the general rules applicable to the process of dispute resolution from the date the Document comes into force.

b) **BVI Cable TV** BVI Cable TV also urges the TRC to provide notice prior to

publication in the Gazette and that they would require time to comply with proposed changes.

TRC

The TRC considers that amendments of the implementation schedule (outlined above) are sufficient to address the potential issues related to implementation. Furthermore, the content of the *Gazette* is accessible to the TRC to the same extent as to any other stakeholder.

3. Final measure

After reviewing the Document and the responses from Consultation, the TRC has decided to make the following modifications to the Document:

- a) In response to LIME's comment represented at point (i), the TRC has made adjustments to reflect the time limit for submitting response to complaint referred to by the TRC from five (5) business days to twenty (20). This will also apply to an opportunity to propose amicable solution (paragraph 12 (2) of the resulting document (together with some adjustments to paragraph 12 (1) of the resulting document));
- b) In response to BVI Cable TV comment represented at point (i), the TRC has made an adjustment to allow for acknowledgment of complaints within five (5) rather than three (3) business days (paragraph 5 (1) of the resulting document);
- c) In response to BVI Cable TV comment represented at point (ii), the TRC has included additional provisions to clarify the calculation of timelines applicable for respondents when dealing with complaints (paragraph 4 (4) of the resulting document (together with some minor adjustments to paragraphs 5 and 6 of the resulting document));
- d) In response to BVI Cable TV comment represented at point (iii) (a), the TRC has set a schedule of implementation for certain obligations of licensees (paragraph 17 (2) (a) of the resulting document);
- e) Some typographical and grammatical errors were corrected.

The TRC does not consider that an additional consultation on the amendments above is needed.