

VIRGIN ISLANDS

TELECOMMUNICATIONS ACT, 2006

(No. 10 of 2006)

TELECOMMUNICATIONS CODE - 1/2009:

GUIDELINES FOR PUBLIC CONSULTATIONS AND PUBLIC HEARINGS

[Gazetted _____, 2009]

The Telecommunications Regulatory Commission, in the exercise of the powers conferred on it by section 91 (3) of the Telecommunications Act, 2006 (No. 10 of 2006), following public consultation and with the approval of its Board, issues the following Guidelines as part 1/2009 of the Telecommunications Code. These Guidelines shall come into effect on their date of publication in the *Gazette*.

GUIDELINES FOR PUBLIC CONSULTATIONS AND PUBLIC HEARINGS

Part I - General Provisions

Purpose. 1. The purpose of these Guidelines is to provide guidance on the cases when the Telecommunications Regulatory Commission will conduct public consultations and/or public hearings as well as the processes and requirements for these.

Interpretation. 2. For the purposes of these Guidelines,
“Public consultation” means a process, organized in accordance with these Guidelines, whereby, 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, organized 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.

3. (1) The Commission will hold a public consultation on any matter as to which the Telecommunications Act, 2006 requires such a consultation. It will also normally 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. This will normally include any matter that could have a significant effect on the rights and/or obligations of users of telecommunications services.

Instances, when a public consultation will be held.

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

4. (1) Public hearings will normally be held on matters on 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.

Instances, when a public hearing will be held.

(2) The Commission may also decide to 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 and/or appropriate way to obtain public input.

Part II – Process for Public Consultations

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

Starting a public consultation.

- (a) The title of a 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 to be consulted upon will also normally be published on the website of the Commission, alongside the notice of public consultation and normally will include:

- (a) The title of a matter (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 public consultation (document);
- (f) A full text of the decision proposed or the full document explaining 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 public consultation and/or any document published therewith information which it considers to be confidential (including personal or proprietary information).

(4) The Commission will normally also issue a press release notifying the public about a public consultation.

(5) Where required by the Telecommunications Act, 2006 (sections 26(6) and 73(1)(f) and (3)) the Commission will, at least fourteen days before the commencement of a public consultation, publish a notice of public consultation (in accordance with section 5(1) of these Guidelines), 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 case of a public consultation to be held under section 26(6) of the Telecommunications Act, 2006, in the *Gazette*.

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

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

Consultation period.

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

(3) If any interested party requests an extension of a response deadline, demonstrating good cause, and such an extension is granted by the Commission, in its sole discretion, the Commission will publish the details of such extension on its website as a supplement to the relevant notice of public consultation. Such extension will then be applicable to all the responding parties.

(4) The Commission may, in its sole discretion, consider responses received after the published deadline (or extended deadline) for a public consultation, but generally will not do so unless the respondent concerned can show good cause for not submitting its response within the published deadline.

7. (1) Responses to a public consultation should be submitted in writing.

Submitting a response.

(2) The Commission prefers receiving responses via an electronic mail to the address indicated in a relevant notice (usually – consultations@trc.vg), but will also accept responses submitted by fax, by post or by hand at the number or address indicated in the relevant notice.

(3) The Commission will usually acknowledge receipt of a response by the same means used to submit that response.

Information to be included in a response.

8. (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 (legal persons) should include:

- (a) The name of the company/institution/association/other organization;
- (b) The name of a principal contact person;
- (c) Full contact details (physical address, postal address, telephone number, fax number and electronic mail address).

(3) Responses from individual (natural) persons should include their name and contact details (including electronic mail address).

Confidentiality of responses.

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

(2) Responses to public consultations will be assumed to be non-confidential unless the person submitting a response explicitly asks the Commission to consider that response to be confidential. Any person claiming confidentiality is required to clearly mark any information included in a response that is claimed to be confidential (including personal or proprietary information), and to provide reasons why that information should be considered confidential. Whenever confidential information is included in a response, the respondent is required to provide both a confidential and a non-confidential version of the response.

(3) The Commission will evaluate requests to treat information as confidential in accordance with relevant legal principles and determine whether such information should be considered confidential. If the Commission determines that information claimed to be confidential should not be considered as such, it will inform the person who submitted that information of its decision. Any information that is claimed to be confidential but is not determined by the Commission to be 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.

10. (1) After considering the responses to a public consultation, the Commission will normally publish a report on the public consultation on its website (next to the public consultation document). Such report will normally summarise the comments received and

explain the position of the Commission in relation to each of those comments. However, 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 will normally use its best endeavours to provide a summary of such responses, and the position of the Commission in relation thereto, but to do so without disclosing the identity of the respondent. Where the Commission, in its sole discretion, determines that it is not feasible to summarise a confidential response without prejudicing its confidentiality, it will not refer to that response at all in its report on the relevant public consultation.

(3) Even where responses to a public consultation are non-confidential, the Commission may still decide to cover them in its report on the public consultation in an aggregated manner, without necessarily referring to individual respondents directly.

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

11. The Commission will normally only engage in a single round of public consultation. However, in exceptional circumstances (in particular 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 (but shall in no case be obliged to) hold a further public consultation. Any further public consultation will be organised in accordance with the procedures preceding procedures, except that the Commission will normally set a shorter consultation period for any further public consultation.

Further public consultation.

Part III – Organisation of Public Hearings

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

Information on public hearings.

- (a) The topic of a 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 will be allowed to do so;
- (c) The date and time of the public hearing;
- (d) The venue for the public hearing;

(e) If 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 a public hearing may be accompanied by other documents relevant to the topic of such public hearing.

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

(4) The Commission will normally also 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.

13. The Commission will normally permit all interested persons to attend any public hearing. However, if space at the venue for a public hearing is limited, the Chairman of such hearing may, in his sole discretion, limit attendance at that hearing to pre-registered participants.

14. A public hearing will normally be chaired by a representative of the Commission.

15. 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 will be allowed to express her/his views at that hearing. Where notice of a public hearing has indicated that only a specific category (or categories) of participants will be allowed to make submissions during that hearing, the Chairman of such hearing may nonetheless allow other participants to make submissions, on good cause shown.

16. (1) All submissions made at a public hearing will 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 will evaluate the confidentiality of such submissions in accordance with relevant legal principles and, if it determines that submissions claimed to be confidential should not be treated as such, will inform the person who made those submissions of its decision. Any submission that is

Participation at a public hearing.

Chairing of a public hearing.

Submissions in a public hearing.

Confidentiality of submissions.

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 will 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 otherwise acting on the topic of the public hearing.

Part IV – Final Provisions

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

Other methods for obtaining public input.

Issued by the Telecommunications Regulatory Commission this ___th day of ____, 2009.

COLLIN SCATLIFFE
Chairman of the Board