

VIRGIN ISLANDS

**TELECOMMUNICATIONS CODE (PART 4) (INVESTIGATION OF
COMPLAINTS BY CONSUMERS, FACILITATION OF RELIEF AND
RESOLUTION OF RELATED DISPUTES) PROCEDURES, 2010**

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2010 NO. 103
TELECOMMUNICATIONS ACT, 2006
(No. 10 of 2006)

**Telecommunications Code (Part 4) (Investigation of Complaints by Consumers,
Facilitation of Relief and Resolution of Related Disputes) Procedures, 2010**

[Gazetted 6th January, 2011]

The Telecommunications Regulatory Commission, in exercise of the power conferred by sections 6(m) and (n) and 91(3) of the Telecommunications Act, 2006 (No. 10 of 2006), issues Procedures.

PART I
PRELIMINARY PROVISIONS

Citation and
commencement

1. These Procedures may be cited as the Telecommunications Code (Part 4) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes) Procedures, 2010 and shall come into force on the date of publication in the Gazette.

Purpose.

2. (1) The purpose of these Procedures is to establish a clear process for investigation of consumer complaints and to provide for the facilitation of relief and resolution of related disputes by the Commission and licensees.

(2) These Procedures shall also, *mutatis mutandis*, apply to complaints by a person, other than operators of telecommunications networks and telecommunications services, related to business of a licensee, and related disputes.

Interpretation.

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

“consumer” means a user, who is not an operator of a telecommunications network or a provider of a telecommunications service;

“Commission” means the Telecommunications Regulatory Commission established under the Telecommunications Act, 2006;

No. 10 of
2006.

“complainant” means a consumer who submitted a complaint to a licensee or the Commission;

“complaint” means any correspondence or communication submitted to a licensee or the Commission by any means used by such a licensee or the Commission related to dissatisfaction or grievance on matters related to the licensee’s business. A complaint, which is forwarded to a licensee or the Commission by a third party with the approval of the complainant, is considered to be submitted respectively to a licensee or the Commission;

“dispute” means any dispute initiated by a complainant;

“licensee” means a person to whom a licence has been granted under the Telecommunications Act, 2006;

No.10 of
2006.

“party” means a complainant or a respondent;

“public telephone service” has the meaning set out in the Telecommunications Act, 2006;

No. 10 of
2006.

“representative” means a person, who is authorised by another person to act on his behalf;

“respondent” means a licensee, whose business a complaint is related to;

“quarter” means a period of three months starting on 1 January, 1 April, 1 July and 1 October of the Gregorian calendar each year;

“writing” means any form of representation of information, where information contained in such representation is accessible so as to be usable for subsequent reference including but not limited to, paper documents, including facsimiles, and electronic records, which satisfy requirements of section 7 of the Electronic Transactions Act, 2001.

No. 5 of
2001.

PART II
RESOLUTION OF A COMPLAINT BY A LICENSEE

Filing a
complaint.

4. (1) A consumer shall file his or her initial complaint with the respondent.
- (2) When submitting a complaint, a consumer shall provide the respondent with the following information:
 - (a) name and address of the complainant;
 - (b) where the complaint is submitted by a representative the name and address of the representative;
 - (c) account number or any other number for identification of the consumer in the records of the respondent;
 - (d) contact information of the consumer or his or her representative including, postal address, and where available, telephone number, fax number and electronic mail address;
 - (e) date of the complaint;
 - (f) complete details of the complaint, including clear and specific information on specific issues that the complainant is dissatisfied with or has a grievance in relation to.
- (3) The respondent shall not refuse or delay investigation or resolution of a complaint which does not comply fully with the requirements of subsection (2) where the respondent has reasonably sufficient information to investigate or resolve such a complaint.
- (4) A complaint is considered filed when
 - (a) the consumer submits his or her complaint through a channel of communication for submitting complaints about which consumers and the public are effectively informed by a licensee;
 - (b) the consumer submits his or her complaint through any reasonably available channel of communication, where a licensee has not effectively informed consumers and the public about channels of communication for submitting complaints or such channels are not effective or not easy to use;

- (c) the respondent includes a complaint received into an established process for investigation and resolution of complaints, where a consumer submits a complaint outside channels of communications designated by the respondent and paragraph (b) is not applicable. In such a case the respondent has an obligation to take effective steps to include such a complaint into established process for investigation and resolution of complaints within a reasonable time which shall not be more than ten business days from the receipt of such a complaint.

5. (1) A respondent shall acknowledge a complaint within five business days from its filing.

Acknowledgement of a complaint.

(2) Where possible, a respondent shall acknowledge filing of a complaint in writing.

(3) When acknowledging a complaint, a respondent shall convey to the complainant the time frame in which the complaint will be addressed, steps to be taken to investigate and resolve the complaint, information including contact details of any person responsible for the investigation of the complaint, information necessary to track the investigation of the complaint and other information relevant to the investigation and resolution process.

6. (1) A respondent shall investigate and resolve a complaint within twenty business days of the filing of a complaint, except where objective reasons make such a complaint impossible to investigate and resolve within that time frame.

Resolution of a complaint.

(2) Where it takes more than twenty business days for a respondent to investigate and resolve a complaint, such a complaint shall be resolved in the shortest possible timeframe and the respondent shall provide the complainant with regular updates as to the status of the investigation.

(3) Where a respondent requires additional information from a complainant in order to resolve a complaint, it shall promptly communicate this to the complainant. Where possible, such communication shall be done in writing.

7. Where a complainant is dissatisfied with the manner in which a licensee has resolved his or her complaint or where the licensee has failed to resolve the complaint within twenty business days, the complainant may submit a complaint to the Commission.

Dissatisfaction with a resolution.

PART III
INVESTIGATION OF A COMPLAINT BY THE COMMISSION

8. (1) A complaint shall be submitted to the Commission in writing.

Filing a
complaint
with the
Commission.

(2) When submitting a complaint to the Commission, a complainant shall provide the Commission with the following:

- (a) name and address of the complainant;
- (b) where the complaint is submitted by a representative, the name and address of the representative;
- (c) account number or any other number for identification of the complainant in the records of the respondent;
- (d) contact information of the complainant or his or her representative including, postal address, and, where available, telephone number, fax number and electronic mail address;
- (e) date of the complaint;
- (f) complete details of the complaint, including clear and specific information on specific issues that the complainant is dissatisfied with or has a grievance in relation to;
- (g) details of any communication with a respondent and any action taken by the respondent;
- (h) all written evidence related to the complaint but not limited to the agreement for provision of relevant services, other related terms and conditions, communication with the respondent, relevant invoices and other relevant documents.

(3) The Commission may investigate a complaint, which does not comply with the requirements of subsections (1) and (2), where it considers that such non-compliance is not material for such an investigation. In deciding whether to investigate a complaint, the Commission shall consider the feasibility of the person to make a complaint in compliance with subsections (1) and (2), including whether a person is disabled, elderly, illiterate or in a similar situation.

Refusal
of a
complaint.

9. (1) The Commission may refuse to investigate a complaint where the Commission considers it to be inappropriate, unfeasible or unreasonably difficult to investigate such a complaint based on but not limited to the following:

- (a) non-compliance with the requirements of section 8. Before refusing a complaint based on this ground, the Commission shall, where possible, provide the complainant with an opportunity to rectify the non-compliance within a time frame set by the Commission, which shall be not less than ten business days from the receipt of the letter of the Commission;
- (b) the complaint is not within the remit of the Commission;
- (c) the complaint is under investigation, is the subject of a dispute being resolved, or has been resolved by another body, in particular a court of law, or another body is a more appropriate forum to resolve the complaint;
- (d) the Commission has already resolved the complaint regarding the same matter between the same complainant and the same respondent;
- (e) any other reasons making investigation of the complaint inappropriate, unfeasible or unreasonably difficult.

(2) Where the Commission refuses to investigate a complaint it shall, where possible, inform the complainant of such a decision in writing, and provide reasons for the refusal and where appropriate, information on how circumstances precluding investigation of the complaint can be remedied or the appropriate body for addressing the complaint.

(3) Where another body is a more appropriate body to investigate a complaint, the Commission shall where appropriate, forward such complaint to that body.

(4) The Commission may refuse a complaint at any stage of investigation. The Commission shall endeavour to decide whether to refuse a complaint before acknowledging it.

10. (1) The Commission shall acknowledge a complaint within three business days of receipt of the complaint.

(2) Where possible, an acknowledgement of a complaint shall be done in writing.

(3) When acknowledging a complaint, the Commission shall inform the complainant of the persons responsible for investigation of the complaint, provide contact details for such persons and issue a reference number for the complaint.

Acknowledgement of a complaint.

Rights
of parties
to a
complaint.

11. (1) Parties to a complaint shall have a right to

- (a) access the file related to the complaint;
- (b) submit to the Commission in writing or any other form, acceptable to the Commission, their views, arguments, comments, responses and evidence in relation to any aspect of a complaint.

(2) Parties shall exercise their rights under these Procedures in a fair and reasonable manner.

Rights
of a
respondent.

12. (1) The Commission shall provide a respondent with the complaint and, save for exceptional circumstances or the circumstances set out in subsection (2), allow five business days for the respondent to provide to the Commission its response as well as supporting evidence.

(2) Where prior to approaching the Commission, a complainant has not filed a complaint with the respondent, the Commission shall provide the respondent with an opportunity to offer an amicable solution to resolve the complaint. A respondent shall be given twenty business days, save for exceptional circumstances, to propose such a solution. In such a case, the same time limit shall apply for the respondent to provide to the Commission its response to the complaint.

(3) Where the complainant agrees with such a solution or fail to disagree with such a solution within the timeframe set by the Commission (which shall normally be five business days), the Commission shall discontinue investigation of the complaint. When forwarding information on a solution, proposed by the respondent, to the complainant, the Commission shall inform the complainant of the consequences of not responding to such a proposal.

(4) In the instances, referred to in this section, the period for investigation of a complaint, by the Commission shall commence, from

- (a) the date set for the respondent to propose an amicable solution, where a solution is not proposed by that date; or
- (b) the date when the complainant informs the Commission about his or her disagreement with an amicable solution as proposed by the respondent.

Rights of the
Commission.

13. In investigating a complaint the Commission may

- (a) request information including documents, from any party to a complaint or any other person. Such information shall be provided

within the timeframe set by the Commission and where applicable in the form prescribed;

- (b) conduct site visits and shall have the right to request that the parties or a representative accompany the Commission on such visits;
- (c) organise a hearing regarding a complaint;
- (d) conduct public consultations or hold public hearings;
- (e) engage experts and other persons to assist with investigation;
- (f) take any provisional or interim measures as the Commission considers appropriate pending the final investigation of a complaint;
- (g) do such other things as are necessary or expedient to investigate and resolve a complaint.

14. (1) The Commission shall investigate and resolve a complaint within thirty business days of receipt of the complaint, except where objective reasons make such resolution unfeasible.

Timelines
for
investigation.

(2) Where the Commission takes more than thirty business days to investigate a complaint, the Commission shall make every effort to resolve the complaint in the shortest possible timeframe and shall regularly update the complainant as to the status of the investigation.

15. (1) The Commission shall protect information that is considered confidential in accordance with this section. The rights of parties and the provisions of these Procedures are without prejudice to a requirement to protect such information.

Confidentiality.

(2) Where confidential information is submitted by a complainant and the Commission considers that it may be inappropriate, unfeasible or unreasonably difficult to resolve such a dispute without disclosing such confidential information to the respondent, the Commission shall have a right to refuse a complaint unless a complainant agrees that such information to be disclosed to a respondent.

(3) The Commission may consider any information submitted to it as non-confidential unless the person submitting it explicitly asks the Commission to consider such information 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

document, the person submitting a document is required to provide both a confidential and a non-confidential version of it.

(4) The Commission shall evaluate requests to treat information as confidential in accordance with relevant legal principles and determine whether such information shall 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 that is claimed to be confidential but is not deemed by the Commission to be confidential may be made public and made available to other parties.

(5) The Commission may in its discretion decide to consider certain information to be confidential even without a request of a relevant party.

(6) The Commission may on its own initiative or based on the request of a relevant party decide that certain information may only be used for investigating a dispute and disclose it to the other party of the dispute for that purpose only. This section shall apply *mutatis mutandis* to such a decision and such information. A party receiving such information shall protect the confidentiality thereof.

PART IV RESOLUTION OF DISPUTES

Resolution of
disputes.

- 16.** (1) The Commission may take the following decisions in relation to a dispute:
- (a) refuse the complaint based on procedural grounds set out in section 9;
 - (b) refuse the complaint on merits;
 - (c) satisfy the complaint in full or in part and issue appropriate instructions to the respondent. When satisfying a complaint, the Commission is not limited to the requests of the complainant, but may issue such instructions as it sees fit to remedy the relevant issue;
 - (d) issue a recommendation, suggesting actions to be taken by one or both parties. The Commission may use such recommendations in lieu or in addition to any other actions it may take as it sees fit.

(2) Failure of the Commission to take into account information that was not disclosed to it by the complainant or the respondent, or revealed upon reasonable investigation of the complaint shall not affect the legality of the Commission's decision.

(3) The Commission shall provide reasons for its decision.

(4) A decision of the Commission shall be distributed to both parties, except where a complaint is refused on procedural grounds before the Commission has informed the respondent about such a complaint. In the latter case a decision of the Commission shall be submitted to a claimant only.

(5) Where the Commission adopts a decision pursuant to subsection (1) (c), the respondent shall inform the Commission of its implementation as per the requirements of such a decision.

(6) Where the Commission adopts a decision pursuant to subsection (1) (d), the parties to which such a recommendation is directed shall inform the Commission in writing of all efforts made to implement the recommendation within thirty days from adoption of such a recommendation, except where the Commission instructs otherwise.

(7) The parties to a complaint may, at any stage, agree to resolve their complaint amicably. In such a case the Commission shall cease investigation of the complaint. This is without prejudice to the powers of the Commission to take any action it sees fit based on the facts of the complaint, where such action is in the public interest.

(8) Without prejudice to the requirement to protect confidential information, the Commission may in its discretion decide to publish any information on the complaint.

PART V GENERAL DUTIES OF LICENSEES

17. (1) Licensees shall

- (a) resolve complaints in a timely and professional manner;
- (b) keep records of complaints for at least three years from the date of resolution of the complaint;
- (c) establish and maintain effective and easy to use channels of communication for consumers to submit their complaints. Without limiting the generality of such obligation, providers of public telephone services shall ensure that their consumers are able to submit their complaints, as well as report faults, through a number,

Duties of
licensees.

specified in the numbering plan or instructed by the Commission, and shall ensure that consumers are duly informed of this;

- (d) inform consumers and the public of channels of communication for submitting complaints;
- (e) establish and implement effective, efficient, fair, reasonable and non-discriminatory procedures for registering, investigating and resolving complaints. A licensee shall provide the Commission with the procedures in force. The Commission may request a licensee to amend such procedures, where the Commission considers that such procedures may not be sufficiently effective, efficient, fair, reasonable or non-discriminatory;
- (f) inform consumers of their right to submit their complaints to the Commission, where complaints have not been satisfactorily resolved by the licensee within twenty business days. As a minimum, such information shall be included in contracts, standard terms and conditions and bills for telecommunications services;
- (g) no later than ten business days after the end of each quarter, submit to the Commission a report of all complaints the licensee received and resolved in that quarter. The report shall include
 - (i) the number of complaints received and, separately
 - (A) the number of such complaints related to billing and rates;
 - (B) the number of such complaints related to quality of services;
 - (ii) the number of complaints resolved and, separately
 - (A) the number of such complaints related to billing and rates;
 - (B) the number of such complaints related to quality of services;
 - (iii) the number of complaints rejected and, separately
 - (A) the number of such complaints related to billing and rates;

- (B) the number of such complaints related to quality of services;
- (iv) the number of complaints where the licensee fully or partially satisfied grievances of complainants;
- (v) the total value of complaints where reimbursement, compensation, credits or similar actions or facilities were claimed;
- (vi) the total value of reimbursements, compensations, credits or similar actions or facilities;
- (vii) the total value of actual monetary reimbursement or compensations.

(2) A licensee, which has been issued a licence to operate a telecommunications network or provide a telecommunications service prior to these Procedures coming into force, shall

- (a) implement the requirements of subsection (1)(b) to (f) within three months of these Procedures coming into force;
- (b) provide the first report on complaints pursuant to subsection (1)(g) after the end of the second quarter from these Procedures coming into force.

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

(Sgd.) Collin Scatliffe
Chairman of the Board