



Commission

Public Supplier Application Form

Statement

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About this document

The Telecommunications Regulatory Commission (the “**Commission**”) is a statutory body with responsibility for development and regulation of the telecommunications services industry in the British Virgin Islands.

Under section 6(e) of the Telecommunications Act, 2006 (the “**Act**”) the Commission is required to “*determine applications for licences and frequency authorisations for any of the purposes specified in this Act and monitor, enforce and ensure effective compliance therewith and to issue instructions accordingly*”. In accordance with this section and other sections of the Act, the Commission has created a new application form for a Public Supplier Licence (the “**Application Form**”).

In this document, the Commission outlined:

- The legal framework, as applicable, to the development of the Application Form;
- The objectives of the Application Form; and
- The Application Form, as an Annex to this consultation document.

The Application Form will provide the method by which new applicants, and existing licensees desirous of being renewed, will apply and be considered for a public supplier licence, in relation to the operation of telecommunications networks and provision of telecommunications services in the British Virgin Islands.¹

This Application Form takes into account stakeholder responses to our consultation on the proposed Application Form for a Public Supplier Licence.

¹ Please note that the Commission is developing a Fee Schedule which would include, among others, the fees associated with the grant or renewal of a Public Supplier Licence. This Fee Schedule will be consulted upon separately.

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Introduction

- 1.1 The Commission is the independent regulator for telecommunications in the British Virgin Islands, established in 2007 in accordance with the Act. Our mandate is to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands.² Our principal statutory functions are set out in section 6 of the Act.
- 1.2 One of our principal functions include the determination of applications for licences (section 6(e) of the Act). In accordance with this statutory obligation, *inter alia*, this document includes an Application Form for a Public Supplier Licence.
- 1.3 In licensing, our role is to enable and facilitate the availability of telecommunications infrastructure and services in the British Virgin Islands. This is done with a view to ensuring long-term benefit for the residents, businesses and visitors in the Territory. The development of the Application Form was steered by this mission.
- 1.4 The Application Form is the framework by which the Commission will collect relevant and required information from new applicants and existing licensees desirous of being renewed for the purpose of operating a telecommunications network and/or providing a telecommunications service in the British Virgin Islands.
- 1.5 The Commission has adopted six essential principles of regulation consistent with international standards and best practice, namely, accountability, focus, predictability, adaptability, efficiency and balance. We are confident that the introduction of the Application Form is complementary to these principles.

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http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf

The Legal Framework

The Commission is guided by its statutory remit in developing the Application Form, notably the provisions that are outlined below.

Principal Functions

- 2.1 The principal functions of the Commission are stipulated at section 6 of the Act. Specifically, Section 6(e) outlines that, in the telecommunications services industry, the Commission is to:

“determine applications for licences and frequency authorisations for any of the purposes specified in this Act and monitor, enforce and ensure effective compliance therewith and to issue instructions accordingly”

Requirements for a Licence

- 2.2 When considering licence applications, section 15 of the Act is instructive, whereby section 15(2) states in part:

“[...] a person who wishes to operate a network or provide a service described in subsection (1) shall apply to the Commission for a licence in the manner prescribed in the Telecommunications Code.”

- 2.3 Section 15(1) of the Act refers to the operation of a telecommunications network or provision of a telecommunications service and specifies that the Commission is the only body with authority to grant such a licence.

Other Legal Provisions

- 2.4 Additionally, it is judicious to consult on the Application Form considering section 4(1) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010, which states:

“(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.”

- 2.5 In light of the foregoing provisions, the Commission has the appropriate authority to develop the Application Form.

Application Form Objectives

The Commission considers that it is in the interest of the public and in keeping with the Commission's mandate under the Act to develop a new application form for a Public Supplier Licence, to ensure the collection of relevant and required information from applicants seeking to be licensed for the operation of telecommunications networks and provision of telecommunications services. This will ensure that the process is objective, transparent, and non-discriminatory, pursuant to section 15(7) of the Act.

- 3.1 The Application Form is attached to this Statement and the various sections are summarised below.
- 3.2 The attached Application Form consist of 9 sections, as follows:
 - General Instructions;
 - Submission Checklists.
 - The substantive Application Form;
 - Annex 1 – Criteria for the Grant of a Public Supplier Licence;
 - Annex 2 – New Applicant's Business and Proposed Network(s) and/or Services(s);
 - Annex 3 – Renewal Applicant's Business and Network(s) and/or Service(s);
 - Annex 4 – Current & Proposed Technical Requirements;
 - Annex 5 – The Fit & Proper Persons Questionnaire; and
 - Annex 6 – Compliance with Telecommunications Act, the Regulations, the Telecommunications Code, the conditions, and obligations of the licence.
- 3.3 General Instructions provide guidance for all applicants in completing the Application Form. It specifies which sections are to be completed by all applicants versus new applicants or applicants seeking renewal. It cautions that the Application Form is to be submitted to the Commission with relevant supporting documents and in decemuplicate.
- 3.4 Submission Checklist are included for new applications and renewal applications. These specify which documents are to be submitted, based on the category that an applicant falls into, and provides a specific area for applicants to indicate whether the document has been submitted with their Application Form or is considered to be not applicable to their application.
- 3.5 The Form is divided into six (6) parts comprising of application details, applicant details, business details, the history of the applicant, and the applicant's activities in the telecommunications sector. There is also a section for all applicants to certify that the information provided in the Application Form is true and accurate.
- 3.6 Annex 1 details the criteria that the Commission will assess when evaluating an application for the grant of Public Supplier Licence. It specifies the technical, socioeconomic, and environmental factors that we will consider.
- 3.7 Annex 2 outlines the activities and information that should be included by new applicants as a part of their proposed business plan over the first 5 years of operation. Information that new applicants must submit include a description of their product and service offerings, marketing plans and financial information.
- 3.8 Annex 3 also relates to activities and information that should be included in a 5-year business plan, if the licence was extended. This section relates to renewal applicants only. Some additional

information to be provided would be based on current activities in the telecommunications market during the last 5 years of operation.

- 3.9 Annex 4 stipulates the technical information that must be provided by applicants to allow the Commission to evaluate, amongst other things, their network architecture, traffic flow capacities, and quality of service.
- 3.10 Annex 5 outlines the questions that form a fit and proper person questionnaire for the Commission to determine, based on the information submitted, whether it regards a person to be fit and proper, so as to be issued a Public Supplier Licence.
- 3.11 Annex 6 contains a compliance questionnaire to be completed by applicants seeking renewal. The information obtained in response to the compliance questions will enable the Commission to determine whether the applicant has been in compliance with the Act, Codes and their licence. This is in keeping with the Commission's statutory obligation to assess compliance as a consideration in the process for renewal of a licensee, pursuant to section 24(1)(b) of the Act.
- 3.12 The sections of the Application Form, as listed above, are appropriate and provide a comprehensive mechanism to solicit required and relevant information for the Commission to make a determination in relation to applications for a Public Supplier Licence.

Annex: Responses to the Public Supplier Application Form

We received two responses to our Consultation on the Public Supplier Application Form within the specified consultation period. These responses were submitted by Cable & Wireless (BVI) Limited (“**Flow**”) and Digicel (BVI) Limited (“**Digicel**”). Accordingly, in finalising the Application Form, we have considered the views of both respondents and have published their submission in full on our website. Below, we provide our response to key points raised during the Consultation.

Preliminary Comments

Shortening of the consultation period

Digicel was the sole respondent who submitted a comment in relation to the shortening of the consultation period by the Commission. In summary, Digicel stated that the shortening of the consultation was unwarranted, unjustified, and lacked due process. The Commission in its notice dated 2 February 2021 stated that:

‘The Commission is of the view that a shortened consultation period is necessary in relation to this consultation, as the Application Form in its final structure is needed as the licences for public suppliers who currently operate in the telecommunications market are due to expire in 2022. Article 3.2 of their Licence for the Operation of a Telecommunications Network providing Telecommunication Services in the British Virgin Islands (the Licence) specifies that a Licensee may apply for renewal of their Licence by submission of an application for same to the Commission no later than twelve calendar months prior to the end of the Licence Term. In accordance with this timeline, the Commission notes that the earliest of those application are due no later than May 2021. As such, the Commission has determined that the final Application Form is needed urgently and will allow 14 days for responses to this consultation. Accordingly, this consultation will close on 2 March 2021.’

Section 7(2) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010 outlines that the Commission may shorten the 28-day period for a public consultation period where it has been found to be necessary and with an explanation for such shortening. It is noteworthy that this power is within the Commission’s discretion and an explanation has been provided in our notice.

Further round of consultation

Digicel also commented that it expected a further round of consultation to be held. Having considered this position, the Commission found no basis for a further round of consultation. The urgency of the subject matter being consulted upon required a shortened consultation period, as explained in our notice dated 2 February 2021, the significant part of which is reiterated above. Any further round of consultation will result in lengthening the consultation to the original timeline or longer, which negates the reasoning for shortening the timeline initially and our ability to progress this pertinent matter. Having reviewed the responses, we did not find such significant

issues raised which led the Commission to believe that additional discussions on this matter were necessary.

Reservation of response at a later date

We note that both respondents made comments in relation to reserving their right to reply until a later date. We wish to reiterate that this consultation closed on 2 March 2021 and no further responses will be accepted by the Commission.

Objectives of the application form

Digicel was the sole respondent that sought additional information in relation to the objectives of the Application Form, what the Commission has set out to address and what shortcoming(s) were identified in the current process. By revising the Application Form, the Commission is seeking to be informed of the persons that are desirous of applying for a licence to operate a telecommunications network and/or provide a telecommunications service, whether as a new applicant or a licensee seeking renewal.

The industry standard for the term of licences in the telecommunications industry has demonstrated to the Commission the importance of soliciting pertinent information from applicants before the grant of a licence. Presently, the Commission is seeking information that it is rightfully entitled to, whether under the Act, Codes or licences. The Commission's application form is self-explanatory. The renewal process is new to both the Commission and the licensees. We are now seeking to move forward in a manner that is beneficial to the Commission and the industry at large, including most importantly - consumers. The Commission has researched other application forms in the Region. We have consulted other Regulators and have benchmarked our Application Form against other forms we have had the benefit of obtaining. Therefore, we are confident that the Application Form is in line with applicable regional standards.

General Instruction

No comments were specifically submitted by either respondent in relation to this section of the Application Form. Nonetheless, due to responses raised by the respondents in relation to other areas of the Application Form, the Commission has amended the form to specify that only Applicants for renewal are required to submit the information requested in Annex 4h. and i. There has also been an addition to specify that only applicants for renewal can select Unitary Licence and a new applicant will have to apply for a Public Telecommunications Network and/or Public Telecommunications Service.

Submission Checklists for New and Renewal Applications

No comments were specifically submitted by either respondent in relation to this section of the Application Form. Accordingly, this section remains unchanged.

The Application Form

The Commission received comments from Flow in relation to the substantive Application Form. We were pleased that Flow acknowledged that the form is consistent with other forms of this

nature used in the Caribbean Region. In revising the form, it was the Commission's hope and intent to ensure that it met and, where applicable, exceeded regional and international standards.

Application Details

Flow expressed some concern in relation to the types of licences listed in the Application Form for an entity to apply for, namely Public Telecommunications Network, Public Telecommunications Service and Other. Their issue related to the fact that Flow, as they stated, was granted a Licence for the Operation of a Telecommunications Network providing Telecommunications Services, with a provision that allowed for renewal of that licence type for another 15 years. The Commission acknowledges the points raised by Flow in relation to the licence types and have amended the form to include Unitary Licence. The licence type 'other' has been removed.

Business Details & History of Applicant

Flow stated that the purpose of the Application Form was to obtain information from and on corporate entities already providing or intending to provide services in the British Virgin Islands, as opposed to persons that are not applying to perform such activities. On this basis, they opine that information requested by the Commission at Part 3.5 and 4.8 of the Application Form, is disproportionate, unnecessary, and unreasonable.

On the contrary, the Commission's mandate is to know who it is granting licences to in order to ensure fulfilment of various due diligence requirements. We are developing this form in the present year, with new international obligations to consider such as the beneficial owner(s) of an entity. While, according to Flow, other islands may not have considered such requirements, the Commission is revising the Application Form in an era where more information is required to ensure that our due diligence requirements are met. We are seeking to create a form that will be a new standard in the Region through amplifying our requirements and ensuring that the public's interest is secured. It is noteworthy that the Application Form may not be amended again for several years and therefore we must consider matters futuristically.

Annex 1 – Criteria for the Grant of a Public Supplier Licence

Digicel impressed upon the Commission to amend a condition for the grant of a licence, which related to outstanding payments to reflect that such were not the subject of a dispute or a matter awaiting determination by the Commission, courts, or other relevant authority. The Commission was of the view that this was an appropriate revision to be made and accordingly edited that item in Annex 1 to reflect such amendment.

Furthermore, Digicel sought clarification in relation to the ultimate statement in Annex 1, to understand the intent of the statement and what it sets out to achieve. The statement is a summary of the requirements in section 24 of the Act where the Commission is obligated to measure compliance of an operator with the Act, Codes, their licence and any instructions issued by the Commission. In this regard, we are mindful of existing licenced operations. Furthermore, the Commission is the ultimate body with the authority to grant or deny a licence. We are mindful of our duty to ensure a competitive market, as contained in section 6(d) of the Act and are cognisant of interests within operators in this regard and our ability to make recommendations on

divestment, if necessary, to ensure a competitive market. To avoid any confusions, we have revised the language in the ultimate statement to reflect this intent and objective.

Annex 2 & 3 – New and Renewal Applicant Business and Network and/or Service(s)

Both respondents raised concerns in relation to Annex 3. In summary, their concerns related to forecasting subscribers and coverage service, marketing plans, contributions to the industry, financial information from their operating group, the number of good standing certificates being required, and the demand of a \$1million bond in lieu of an insurance certificate. The respondents sought more information in relation to the level of detail required, the basis on which certain information was being requested and what reliance would be placed on the information by the Commission.

The respondents also raised concerns in relation to the confidentiality of information when submitted to the Commission. We wish to state unequivocally that the Commission considers all operator information to be highly confidential. We recognise that disclosure of any information could be detrimental to a licensee and to the Commission's reputation. We will always re-evaluate our confidentiality and privacy policy to ensure that it represents the strongest measures to ensure information security.

Subscribers and Marketing Plans

As it relates to the forecasting of subscribers and services under Annex 3Bii and 3Biii, the information being requested is pertinent for considering whether to grant a licence. Forecasting is an indicator of what prices are going to be offered in the market, intended revenues and the licensee's business potential in prospective projects. This is a tool by which the Commission can gain a holistic view of where the BVI telecommunications market is and where it is projected to go in the future years. Telecommunications is a fast-changing industry, and one that has been identified as a socio-economic right. Therefore, the Commission must ensure that there is sufficient intention by all licensees to appropriately service the industry in accordance with submitted financial projections. This ensures that as an industry, we can strategically plan the direction of the telecommunications market, which significantly contributes to the BVI's economy. Notwithstanding the foregoing, the Commission acknowledges that forecasting is not a consideration which licensee can be strictly held to if there are changes in circumstances, such as pandemics or other force majeure events. These will be analysed on a case-by-case basis and considered based on applicable licence conditions.

Aside from the information stated above, the Commission does not believe that there is any revision necessary to Annex 3Bii, iii, or iv. The information that the Commission has requested is clear and the application has been maintained in its current form.

Additionally, clarity was sought from the Commission in relation to the marketing information being requested from operators. Specifically, Digicel questioned, amongst other things, the reason for such a request. The Commission's work has revealed, amongst other things, that operators need to build stronger customer relationships. Creating and preserving the best possible customer experience is business-critical to maintaining customer loyalty, attracting new customers, communicating effectively on issues or problems with their network/service(s) and remaining competitive. As such, we are attempting to address this gap by reviewing the marketing plans of

operators seeking to be renewed, as well as obtaining marketing material from new applicants. This will allow the Commission to fulfill our duty of protecting the public's interest, by ensuring there are appropriate plans in place to provide sufficient information to consumers to enable them to take full advantage of the telecommunications resources that are available in the British Virgin Islands.

Financial Information and Good Standing

Flow raised a concern with the information requested at Annex 3E(a)(vi), alleging amongst other things, that they are not aware of any regulators in the Region where they operate that has such clauses in the application form. On the contrary, the Telecommunications Authority of Trinidad and Tobago, in their application form, requests the same information using the term 'guarantor' instead of 'operating group'. We have amended our form to add the term 'guarantor'. This information, as related to the operating group, is vital to the Commission in being able to determine what impact, financial or otherwise, it has on the local market and the ability of the local entity to competitively operate in the market. We must know who controls the entity, as the controlling power has the authority to influence the overall development of the industry.

We note the concerns raised by Flow in relation to the number of certificates of good standing being requested by the Commission. However, we see no merit in their position. A part of our corporate social responsibility as the regulator of telecommunications in the British Virgin Islands is to ensure that the persons that we are licensing are in good standing with the various public entities with which they do business. Notwithstanding the foregoing, we recognise that there can be delays in obtaining the certificates of good standing. Therefore, we are willing to accept a receipt from the respective entity, showing that the good standing certificate has been requested, subject to provision of the good standing certificate on receipt, which must be submitted before grant of the licence, should the applicant be successful in their application. We also note Flow's indication that an applicant may be unable to obtain a certificate of good standing where there is a legitimate dispute with one of the bodies from which it is required to obtain a certificate. Should this be the case, this should be indicated by an applicant within their application.

Disaster Recovery Bond

The Commission acknowledges the concerns raised by both respondents in relation to the requirement of a \$1million bond where an insurance certificate is not provided. We are amenable to removing this requirement, subject to the submission of a certificate of insurance.

For the avoidance of doubt, the \$1million bond was not intended to be money submitted to the Commission. Rather, it would have been money that was held by the bank, under stipulations agreed by both the Commission and each licensee. The money would have only been used by the Commission in the event of a disaster, to clean up damaged or destroyed network infrastructure or the like. The Commission has found this to be an appropriate alternative to an insurance certificate based on occurrences following the hurricanes of 2017, where network infrastructure was damaged/destroyed and clean up was delayed or non-existent. This posed a danger to the public at large. Natural disasters of this type are forecasted to be more of a normal occurrence. Therefore, from lessons learnt, we are seeking to ensure that there is appropriate protection for the industry to ensure the continuous provision of services and safety of the public.

While this provision is being removed from the Application Form, the Commission will keep this under consideration as an amendment to the licence or Act, as appropriate.

Annex 4 – Current & Proposed Technical Requirements

Flow expressed that the Commission's requirement under this section of the Application Form to provide the documents specified at Annex 4h and Annex 4i were onerous, unreasonable, and burdensome.

The Commission is mindful that this information is required from all licensees as a part of their licence obligations. Having considered this, the Commission has decided that these requirements would only apply to new applicants.

In respect of applicants seeking renewal, we recognise that it is more suitably placed as a consideration in relation to their compliance evaluation when considered for renewal under section 24 of the Act.

Annex 5 – Fit & Proper Persons Questionnaire

The Commission received several comments from Flow in relation to this section of the Application Form. In Summary, Flow opined that question 9 through 15 were overly broad and suggested revisions were included in their response. Some revisions were made, in the Application Form, to these questions, as outlined below.

Question 9 was revised to specify that information on shareholders would only relate to those with a controlling/significant interest, as specified at Part 3.3 of the Application Form and to delete the reference to officers.

Question 10 was revised to specify that information on shareholders would only relate to those with a controlling/significant interest, as specified at Part 3.3 of the Application Form and to delete the reference to officers. Furthermore, the Commission acknowledges that being subject to disciplinary or criminal proceedings is not an indication of guilt. However, the Commission is cognisant that directors, controlling shareholders and managerial staff control the operations of an organisation and notification of disciplinary or criminal proceedings may be an indication of practices employed within the licensee, which the Commission would need to be cognisant of, as we strive to ensure that the telecommunications industry operates legally and in compliance.

Question 11 has been edited to specify that the 'telecommunications regulatory system' being referred to is that in the British Virgin Islands and the word 'equivalent' in reference to standard or requirements of other regulatory authorities, has been removed.

Question 12 remains unchanged.

Question 13 was revised to direct the question to the Applicant only. Accordingly, reference to the Applicant's directors, shareholders, managerial staff and/or officers were deleted.

Question 14 was revised to specify that information on shareholders would only relate to those with a controlling/significant interest, as specified at Part 3.3 of the Application Form, and to delete the reference to officer.

Question 15 was revised, as suggested by Flow, to read 'Has the Applicant or Applicant's directors, ever been disqualified from acting as director?'

Annex 6 – Compliance with Telecommunications Act, the Regulations, the Telecommunications Code, the conditions and obligations of the licence

Digicel raised an issue with the first question in this section, essentially suggesting that the question was loaded, open-ended and unacceptable. A suggested redrafting was included in their response. Having considered their reasoning, the Commission found that there was no issue with the relative question as drafted.

Section 24 of the Act requires the Commission to consider the extent to which operators have complied with the Act, Code, Regulations, Licences and instructions issued by the Commission. Furthermore, each operator is fully aware that they are statutorily and contractually mandated to perform certain obligations and duties, as contained in the telecommunications framework and licences. The first question of Annex 6 solicits the Applicant's view of their compliance in this regard.

Annex 2: The Application Form

Please refer to the next document in this consultation titled 'Public Supplier Application Form (Final Version)' for the Application Form.