



Commission

Public Supplier Application Form

Consultation Document

Consultation

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Reference Number: 1/2021

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 draft Application Form, as an Annex to this consultation document.

The Application Form will provide, subject to consultation, 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

We are publishing this consultation document to provide our stakeholders – operators, the public and other interested parties – with the opportunity to comment on our 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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Instructions for submitting a Response

The Telecommunications Regulatory Commission of the British Virgin Islands (the **Commission**) invites comments on this consultation document from all interested parties. Comments should be submitted by 2 March 2021.

We strongly prefer responses to this document to be sent by email to consultations@trc.vg (indicating the subject: "Consultation on the Public Supplier Application Form". Alternatively, responses may be sent to the address (or the P.O Box number) set out below:

Consultation on the Public Supplier Application Form – Telecommunications Regulatory Commission, P.O. Box 4401 or 27 Fish Lock Road, 3rd Floor Road Town, Tortola, British Virgin Islands VG 1110.

Responses from corporate bodies (legal persons) should include:

- the name of the company/institution/association/other organisation;
- the name of a principal contact person; and
- full contact details (physical address, postal address, telephone number, fax number and email address).

Responses from individual (natural) persons, should include name and contact details (including email).

We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of the responses and help to maintain confidentiality where appropriate.

In the interest of transparency, the Commission will make all submissions received available to the public, subject to the confidentiality of the information received. The Commission will evaluate requests for confidentiality according to relevant legal principles.

Respondents are required to clearly mark any information included in their submission which they consider to be confidential and provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission. The Commission will determine whether information claimed to be confidential is to be treated as such and, if so, will not publish that information. In respect of information that is determined to be non-confidential, the Commission may publish or refrain from publishing such information at its sole discretion.

Once the Commission has received and considered responses to this consultative document, it will issue a final Public Supplier Application Form. This will be published on the Commission's website.

Cover sheet for response to a Commission consultation

BASIC DETAILS

Consultation title: To
(Commission Contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

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 a draft 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 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 draft Application Form is attached to this consultation document and the various sections are summarised below.
- 3.2 The Commission strongly encourages respondents to read the Application Form prior to submitting comments, as this summary is not exhaustive.
- 3.3 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.
- 3.4 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 decuplicate.
- 3.5 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.
- 3.6 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.
- 3.7 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.
- 3.8 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.

- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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: The Draft Application Form

Please refer to the next document in this consultation titled 'Public Supplier Application Form' for the draft Application Form.