



Commission

Public Hearing Report on the Application for Renewal of Flow's Licence

12 October 2021

Telecommunications Regulatory Commission

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Introduction

The Telecommunications Regulatory Commission (**Commission**) is the regulatory body established under the Telecommunications Act 2006 (**Act**) with responsibility to license, regulate and develop the telecommunications services industry in the Virgin Islands and to provide for other matters connected therewith.

In accordance with section 6(e) of the Act, the Commission shall determine applications for licences for any of the purposes specified in the Act. The Commission is in the process of determining an application for renewal of a licence that was received from Cable and Wireless (BVI) Limited (**Flow**). As a part of the renewal procedure, the Commission shall call a public hearing during which the Licensee and third parties with a legitimate interest that have duly filed comments or objections which the Commission deems to be relevant, shall have a right to be heard. The Commission held the requisite public hearing on 12 October 2021.

The Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010 requires the Commission to publish a report on a public hearing on its website which summarises the submissions received and, where appropriate, explains the position of the Commission in relation to each of those submissions. Additionally, the Commission may choose to include in such a report only those submissions that it considers to be significant. The Commission, accordingly, issues this report.

This Public Hearing Report summarises the notification methods used by the Commission and comments received at the public hearing.

Notification of the Public Hearing

Multiple methods of communications were used to notify the public of the public hearing including press releases, advertisements in the local newspaper and notifications published on the Commission's website. This section describes the meeting notification and outreach efforts in greater detail.

Notices and Press Releases

The Commission received Flow's application for renewal of its Licence for the Operation of a Telecommunications Network providing Telecommunications Services in the British Virgin Islands on 23rd May 2021. Following receipt of the application for renewal from Flow, the Commission issued a notice on its website and in a local newspaper entitled 'Notice of Application for Renewal of Flow's Licence' on 3rd June 2021, for the purpose of notifying the public of Flow's application for renewal of its Licence and to outline various timelines in the renewal process such as the date of the public hearing, confirmed in accordance with Article 3.3(a) of Flow's Licence. The Notice of Application for Renewal of Flow's licence issued by the Commission on 3rd June 2021, is attached as Annex 1 and can also be found on the Commission's website at <https://www.trc.vg/wp-content/uploads/2021/06/Notice-of-Application-for-Renewal-of-Flows-Licence.pdf>.

The Commission issued a press release on its website entitled "TRC Encourages the Public to Have Their Voices Heard" on 8th June 2021 for the purpose of encouraging any third party with a legitimate concern to duly file any comment on or objection with the Commission to the renewal applications received from Flow and another licensed telecommunications operator. Additionally, the press release was sent to various media houses provided information in respect of the public hearing to be held on 12th October 2021 during which Flow and any third party with a legitimate interest who may have filed relevant comments or objections to the application, will have a right to be heard. The press release issued by the Commission on 8th June 2021 is attached as Annex 2 and can also be found on the Commission's website at <https://www.trc.vg/wp-content/uploads/2021/06/TRC-Encourages-the-Public-to-Have-Their-Voices-Heard.pdf>.

The Commission issued a notice on its website on 4th October 2021 entitled 'Notice of Application for Renewal of Flow's Licence' to call a public hearing during which Flow and any third party with a legitimate interest that filed any relevant comment, or objection will have a right to be heard. The notice issued by the Commission in respect of the public hearing is attached here as Annex 3 and can also be found on the Commission's website at <https://www.trc.vg/wp-content/uploads/2021/10/Notice-of-Public-Hearing-Application-for-Renewal-of-Flows-Licence.pdf>.

The Commission issued a press release on its website on 4th October 2021 entitled 'TRC to Hold Public Hearing on Flow's Application for Licence Renewal' to provide the public with a confirmed location, date, and time for the Public Hearing. The press release issued by the Commission on 4th October 2021, which was also sent to various media houses, is attached here as Annex 4 and can also be found on the Commission's website at <https://www.trc.vg/wp-content/uploads/2021/11/Press-Release-07-2021-Public-Hearing-for-Flow.pdf>.

Public Hearing

This section summarises the venue for the public hearing and describes the meeting format and content of submissions.

Location and Attendance

The public hearing on Flow's application for licence renewal was conducted on the 12th of October 2021 at 9:00 a.m. and held at the Conference Room located at Maria's by the Sea, Road Town, Tortola, British Virgin Islands (**Public Hearing**). In addition to the physical attendances, the Public Hearing was also hosted online by way of a Zoom call to facilitate virtual attendance.

Meeting Format and Content

The Public Hearing commenced with a prayer delivered by a member of the Commission followed by the opening statement presented by Mr. Vance Lewis, the Chairman of the Commission.

The opening statement presented by the Chairman included the introduction of the members attending on behalf of the Commission, acknowledgment of the presence of members of the public, and of Flow's representatives attending virtually. Additionally, the Chairman noted the responsibilities and powers conferred on the Commission under the Act to determine applications for a licence and the overall purpose for the Public Hearing. The Chairman of the Commission confirmed that no written comments or objections to Flow's application were received. Lastly, the Chairman of the Commission confirmed the date of submission of the Commission's Evaluation Report to the Licensee before inviting a representative from Flow to make submissions on behalf of Flow.

After the presentation of the opening statement by the Chairman of the Commission, the Public Hearing continued with submissions from the Country Manager of Flow, Mr. Ravindra Maywahlall. Mr. Maywahlall introduced the team members virtually joining the Public Hearing on behalf of Flow. Mr. Maywahlall confirmed that Flow had no submissions to make at the Public Hearing and he instead offered a few remarks. Mr. Maywahlall stated that Flow had nothing further to add to the Evaluation Report which provided a comprehensive review of Flow's compliance with its obligations under its Licence and submitted that Flow's Licence should be renewed for a further term of 15 years in accordance with the Act. The Country Manager closed his remarks by noting the nature of the Public Hearing and thanked the Commission for the opportunity to make a few remarks.

The Chairman of the Commission offered a closing statement in which he thanked everyone for attending the Public Hearing and noted that the Commission will be producing a report of the hearing to be published on the Commission's website. It was further stated that the report will summarise any submissions received, and where appropriate, the Commission will explain its position. The Chairman explained the next steps in the renewal process, which will be followed by the Commission's written decision on the renewal of the licence term; a decision that should be delivered within one hundred and twenty working days or up to one year from the date of receipt of Flow's application for renewal.

Recording of Proceedings

A recording of the proceedings was undertaken by the Commission to assist with the development of a transcript of the Public Hearing. A copy of the transcript for Flow's public hearing is attached here as Annex 5.

Annex 1

Notice of Application for Renewal of Flow's Licence



Telecommunications Regulatory Commission

Notice of Application for Renewal of Flow's Licence

(3rd June 2021)

TAKE NOTICE THAT:

In accordance with section 6(e) of the Telecommunications Act, 2006 (**Act**), the Telecommunications Regulatory Commission of the Virgin Islands (**Commission**) is responsible for determining applications for licences for any of the purposes specified in the Act. Additionally, in accordance with section 15(2) of the Act, a person who wishes to operate a telecommunications network or provide a telecommunications service shall apply to the Commission for a licence.

The Commission is in receipt of an Application Form for a Public Supplier Licence from Cable & Wireless (BVI) Limited (**Flow**). On 25 May 2007, Flow was granted a Licence for the Operation of a Telecommunications Network Providing Telecommunications Services in the British Virgin Islands (**Licence**). The Licence was issued for a period of 15 years, thus expiring on 24 May 2022. Flow now seeks renewal of this Licence, for an additional period of 15 years.

In accordance with Article 3.3(a) of the Licence, the Commission shall, within ten (10) working days from the date at which the application was received, give notice to the public by publication in the Gazette and at least one (1) domestic newspaper of general circulation. Furthermore, the Commission shall give any interested third party the opportunity to comment on or object to the application. Such interested third party must be given not less than thirty (30) nor more than forty-five (45) working days from the date of this Notice to provide their comments or objections. Accordingly, all comments on or objections to the application must be filed with the Commission on or before 30 July 2021.

All responses to this Notice shall be captioned 'Application for Renewal of Flow's Licence' – and sent to the 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).

TAKE FURTHER NOTICE THAT:

In accordance with Article 3.3(a) of the Licence, the Commission must send to Flow an Evaluation Report (**Report**) within ninety (90) working days from the date of receipt of the application, which will be a matter of public record at the Commission. Accordingly, the Commission will send the Report to Flow on 30 September 2021. The Report will be made available at the Reception desk of the office of the Commission located at 3rd Floor, LM Business Centre, Fish Lock Road, Road Town, Tortola, British Virgin Islands. Alternatively, a copy of the Report will be available on our website (www.trc.vg).

On 12 October 2021, a public hearing will be held at Maria's by the Sea during which Flow and any third party with a legitimate interest may make comments or objections on the application. This is in accordance with Article 3.3(a) of the Licence, which specifies that a public hearing must be held within ten (10) working days of the date of publication of the Report. Participation in this hearing will be limited to those persons who submitted a relevant comment or objection on the application in response to this Notice. A further notice with additional details on the public hearing will be published by the Commission at a later date.

The person responsible for this matter is Mr. Guy L. Malone, Chief Executive Officer, and he can be contacted at gmalone@trc.vg concerning this Notice. All queries in relation to this matter should be copied to Chantal L. Flax-Ward, Chief Legal Advisor, at cflax-ward@trc.vg.

Issued by the Telecommunications Regulatory Commission on the 3rd day of June 2021.

(Sgd.) Guy L. Malone.

Chief Executive Officer

Annex 2

TRC Encourages the Public to Have Their Voices Heard



PR 06/2021

PRESS RELEASE

Contact: Telecommunications Regulatory Commission

Telephone #: 468-4165

TRC Encourages the Public to Have Their Voices Heard

June 8, 2021 - The Telecommunications Regulatory Commission (**Commission**) has received two applications for licence renewal from CCT and Flow. The licence renewal process is governed by section 24 of the Telecommunications Act 2006 and Article 3 of the Licence. In deciding whether or not to renew a licence, the Commission must decide whether the Licensee in question has complied with its various obligations under the Act, the Telecommunications Code, the Licence, and any Commission instructions, and on whether the Licensee has been in persistent breach of any of those obligations.

The Commission is presently revising the terms and conditions of the Licence, focusing on the development of the industry and ensuring that the public's interest is protected.

Additionally, the Commission strongly encourages any interested third party with a legitimate concern to comment on or object to the application as they believe that everyone has the right to have their voice heard. All comments on or objections to the application must be filed with the Commission on or before 30 July 2021.

All responses should be captioned 'Application for Renewal of CCT/Flow's Licence' (specify applicable Licensee) – and sent to the Telecommunications Regulatory Commission, P.O. Box 4401 or 27 Fish Lock Road, 3rd Floor Road Town, Tortola, British Virgin Islands VG1110.

Under Article 3.3(a) of the Licence, the Commission must send to CCT and Flow an Evaluation Report (**Report**) within ninety (90) working days from the date of receipt of the application, which will be a matter of public record at the Commission. Accordingly, the Commission will send the Report to CCT and Flow on 30 September 2021.

On 12th and 13th October 2021, a public hearing will be held at Maria's by the Sea for Flow and CCT, respectively, during which the licensee and any third party with a legitimate interest may make comments or objections to the application.

Participation in this hearing will be limited to those persons who submitted a relevant comment or objection to the application by the specified deadline. The Commission will publish a notice with additional details on the public hearing at a later date.

Note to Editors:

1. The Commission is the statutory body responsible for regulating the telecommunications sector of the Virgin Islands, protecting the interests of users of telecommunications services, ensuring fair competition among operators of telecommunications networks and providers of telecommunications.

Annex 3

Notice of Application for Renewal of Flow's Licence



Telecommunications Regulatory Commission

Notice of Application for Renewal of Flow's Licence

(4th October 2021)

TAKE NOTICE THAT:

On 12 October 2021, a public hearing will be held by the Telecommunications Regulatory Commission of the Virgin Islands (**Commission**) in relation to Cable & Wireless BVI Limited's (**Flow**) application for renewal of its Licence for the Operation of a Telecommunications Network providing Telecommunications Services in the British Virgin Islands (**Licence**). Flow was granted a Licence by the Commission on 25 May 2007 for a period of 15 years, which expires on 24 May 2022, and Flow is seeking renewal of this Licence.

As a part of the renewal procedure specified in Article 3.3(c) of Flow's Licence, the Commission shall call a public hearing during which the Licensee and third parties with a legitimate interest that have duly filed comments or objections which the Commission deems to be relevant, shall have a right to be heard. The date of this public hearing was included in a previous notice issued by the Commission, in accordance with Article 3.3(a) of Flow's Licence.

The public hearing will be held at Maria's by the Sea commencing at 9am. Participation at the public hearing will be limited to Flow and any interested third party who submitted a relevant comment or objection on Flow's application to the Commission by 30 July 2021, in response to the Commission's notice dated 3 June 2021.

As Covid-19 protocols will be in full effect, spaces at the public hearing will be limited accordingly. Participants are required to pre-register their attendance by contacting the Commission at 284-468-4165 or emailing contact@trc.vg. Please ensure to specify the following details:

- 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).
- Individual (natural) persons, should include name and contact details (including email).

TAKE FURTHER NOTICE THAT:

In accordance with section 13(3) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010, a notice of public hearing shall be published by the Commission at least seven days before such hearing.

The person responsible for this matter is Mr. Guy L. Malone, Chief Executive Officer, and he can be contacted at gmalone@trc.vg concerning this Notice. All queries in relation to this matter should be copied to Chantal L. Flax-Ward, Chief Legal Advisor, at cflax-ward@trc.vg.

Issued by the Telecommunications Regulatory Commission on the 4th day of October 2021.

(Sgd.) Guy L. Malone.

Chief Executive Officer

Annex 4

TRC to Hold Public Hearing on Flow's Application for Licence Renewal



PR 08/2021

PRESS RELEASE

Contact: Telecommunications Regulatory Commission

Telephone: 1-284-468-4165

TRC To Holding Public Hearing on Flow's Application for Licence Renewal

4 October 2021 - On 12 October 2021, a public hearing will be held by the Telecommunications Regulatory Commission of the Virgin Islands (**Commission**) in relation to Cable & Wireless BVI Limited's (**Flow**) application for renewal of its Licence for the Operation of a Telecommunications Network providing Telecommunications Services in the British Virgin Islands (**Licence**). Flow was granted a Licence by the Commission on 25 May 2007 for a period of 15 years, which expires on 24 May 2022, and Flow is seeking renewal of this Licence.

As a part of the renewal procedure specified in Article 3.3(c) of Flow's Licence, the Commission shall call a public hearing during which the Licensee and third parties with a legitimate interest that have duly filed comments or objections which the Commission deems to be relevant, shall have a right to be heard. The date of this public hearing was included in a previous notice issued by the Commission, in accordance with Article 3.3(a) of Flow's Licence.

The public hearing will be held at Maria's by the Sea commencing at **9am**. Participation at the public hearing will be limited to Flow and any interested third party who submitted a relevant comment or objection on Flow's application to the Commission by 30 July 2021, in response to the Commission's notice dated 3 June 2021.

As Covid-19 protocols will be in full effect, spaces at the public hearing will be limited accordingly. Participants are required to pre-registered their attendance by contacting the Commission at **284-468-4165** or emailing info@trc.vg.

Note to Editors:

1. The Commission is the statutory body responsible for regulating the telecommunications sector of the Virgin Islands, protecting the interests of users of telecommunications services, ensuring fair competition among operators of telecommunications networks and providers of telecommunications services.

Annex 5

Transcript for Flow's Public Hearing

TRANSCRIPT OF PUBLIC HEARING

TRANSCRIPT OF PUBLIC HEARING
ON APPLICATION FOR RENEWAL OF FLOW'S LICENCE

Tuesday, 12 October 2021

9:00 A.M.



Telecommunications Regulatory Commission

Maria's by the Sea
Road Town
Tortola
British Virgin Islands

**A prayer was offered by a member of the Commission.*

COMMISSION/VANCE LEWIS: Good morning everyone, welcome!

My name is Vance Lewis. I am the Chairman of the Telecommunications Regulatory Commission of the Virgin Islands, which for the purpose of today will be called the Commission. Also joining me at the head table for today's hearing on behalf of the Commission are:

- Vincent Wattley, Deputy Chairman,
- Guy L. Malone, Chief Executive Officer,
- Chantal L. Flax-Ward, Chief Legal Advisor, and
- Ayanna Baptiste-Dabreo, Director of Compliance.

Additionally online, we have Commissioner Bevis Sylvester.

In addition to all of those, we have Mr. George Lewis, he is the Chief Operations Office of the Commission. Frans Vandendries, he is the Regulatory Consultant and he is joining virtually.

And, in presences, we have:

- Gregory Nelson, Chief Spectrum Officer
- Elford Parsons, Chief Technology Officer
- Kevin Richards, Chief Financial Officer, and
- Melissa Farara, Senior Economist.

We also note the presence of Flow representatives, and they are joining us virtually and in presence we have additional members of the public.

Before proceeding any further, I wish to indicate that today's hearing is being recorded for the purposes of assisting the Commission in preparing a report on the hearing, and all submissions made during the hearing are considered non-confidential.

The Commission is the independent regulator for telecommunications in the British Virgin Islands. It was established in 2007 in accordance with the Telecommunications Act of 2006; for the purposes of this hearing, we will call it the Act, with a mandate to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands Policy of 2007.

In accordance with section 6(e) of the Act, the Commission is responsible for determining applications for licences for the purposes specified in the Act. Additionally, in accordance with section 15(2) of the Act, a person who wishes to operate a telecommunications network or provide a telecommunications service shall apply to the Commission for a licence.

On 25 May 2007, Cable & Wireless BVI Limited, now trading as Flow, was granted a Licence for the Operation of a Telecommunications Network providing Telecommunications Services in the British Virgin Islands. The Licence was granted for a period of 15 years and expires next year, that is 2022, on 24 May. It includes a provision that Flow may apply for renewal by submitting an application for renewal to the Commission no later than 12 months prior to the expiration of its Licence term.

On 23 May 2021, the Commission received an application for a Public Supplier Licence from Flow, seeking renewal of its current Licence.

The renewal process is governed by section 24 of the Act and Article 3 of Flow's Licence.

Since receiving Flow's application, the Commission issued a notice on 3 June 2021 informing the public that:

- 1) Flow had applied for renewal of its Licence term;
- 2) Comments or objections to the proposed application should be made in writing to the Commission by 30 July 2021; and
- 3) An Evaluation Report would be sent to the Licensee and become a matter of public record on 30 September 2021.

This notice was issued in accordance with Article 3.3(a) of Flow's Licence and, accordingly, published in the Gazette, as well as a local newspaper and also on the Commission's website.

Further to this notice, the Commission can confirm that it received no written comments or objections to Flow's application within the specified timeline.

Additionally, the Commission's Evaluation Report was submitted to the Licensee on 30 September 2021. This Report states if and to what extent the Licensee has, during the preceding Licence period up to the date of the application, complied with its Licence obligations, regulations, and orders of the Commission, and generally provided the Licensed Services and conducted business in accordance with the Laws of the Virgin Islands. The Commission's Evaluation Report was also published on the Commission's website and is available at the Commission's office for public viewing.

Today, the Commission called a public hearing in accordance with Article 3.3(c) of Flow's Licence to allow Flow, as the Licensee, and any third parties with a legitimate interest who may have filed relevant comments or objections on Flow's application, to have a right to be heard. As stated previously, no written comments or objections were received to the notice. Therefore, the purpose of the Hearing is to allow the Licensee the opportunity to make additional submissions to be heard, or to confirm that they wish not to make any further submissions as it relates to their application for Renewal.

Accordingly, we invite a representative from Flow to speak at this time, and they will be speaking virtually.

Before speaking, please introduce yourself and any members of your team who you choose to introduce.

FLOW/ RAVINDRA MAYWAHLALL: Thank you, Mr. Lewis. My name is Ravindra Maywahlall, the Country Manager for Flow BVI, and with me I have several team members:

- Julie Harris-Hill (Legal Support)
- Melissa Sutherland (Regulatory Support)
- Sheldon Keens-Douglas (Corporate Communication)
- Nadia James (Corporate Communication)
- Thomas Moore (Engineering)
- Akailah Corbin (Business Administrator).

Thank you for the opportunity to make a few remarks at this public hearing. Flow does not have any submissions to make at this hearing as the Commission was advised in Flow's letter of October 7, 2021. However, we are pleased to make a few remarks.

The Commission published its Evaluation Report, Cable and Wireless (BVI) Limited Licence Performance, from May 2007 to May 2021, on 30 September 2021.

The Evaluation Report is a comprehensive review of Flow's compliance with its obligations under its Licence, the regulations issued by the Commission, and the law of the BVI from inception. We can add nothing further to such an extensive document, having already commented on the draft evaluation report ahead of it being finalised and with the intent to update our comments to the Commission now that the final report has been published. Flow has no further submission to present at this public hearing.

Flow is compliant with the renewal procedures contained in section 3.3 of Flow's Licence. The Commission has advised that the Evaluation Report is now a public document available on the Commission's website and on request at the Commission's office. We know that the Evaluation Report found that Flow has to a large extent provided uninterrupted telecommunications services to the Territory of the British Virgin Islands during the term of its Licence, in accordance with the terms of its Licence and the relevant laws and codes.

Flow has, to a large extent, complied with most of its Licence and regulatory obligations. Flow's comments on the Evaluation Report does not in any way seek to link the evaluation report to the public hearing, nor is it meant to do so. The hearing is an independent procedural requirement separate from the publication of the Evaluation Report.

We submit that our Licence be renewed for a further term of 15 years in accordance with section 24(1) of the Telecommunications Act. Flow has operated within the terms of its current Licence and frequency authorisation, and is in material compliance with the applicable telecommunications laws, and regulations, and terms of Flow's operating licence, and spectrum licence.

Nature of the public hearing

Public hearing on the date set forth in the Commission's notice in accordance subparagraph 3.3(a) above, the Commission shall call a public hearing during which the Licensee and third parties with a legitimate interest, that have duly filed comments or objections, which the Commission deems relevant, shall have a right to be heard.

In the absence, as advised by the Commission in its letter to Flow, dated 1 October 2021, of any objections to or comments on Flow's application for renewal of its operating licence by any third parties and given that Flow has no submissions to make as contained in Flow's letter to the Commission, dated October 7 2021 and presented here as well, Flow believes that the Commission has convened a public hearing to fulfill the procedural requirement for public hearing in accordance with section 3.3 of Flow's Licence.

Having fulfilled the requirement of the public hearing, the Commission, however, cannot substitute itself in the proceedings for the public or a third party with a legitimate interest nor can the Commission repurpose the public hearing to make it a meeting between the Commission and Flow.

It is Flow's considered position then, that the Commission will have to reconsider its agenda for this public hearing.

We thank the Commission for the opportunity to make these few remarks.

COMMISSION/VANCE LEWIS: Thank you very much, Mr. Maywahlall, the Country Manager of Flow, for your submissions. Are there any questions from any of the Commission's officers? Anyone on the head table?

COMMISSION/VANCE LEWIS: No

COMMISSION/VANCE LEWIS: As the Chairman of the Commission, I take this opportunity to thank everyone for attending today's hearing in relation to Flow's application for renewal of its Licence. I also thank the Licensee for participating.

Please note that the Commission will be producing of Report of today's hearing and will summarise any submissions received and, where appropriate, explain the position of the Commission in relation to anything said. This Report will be published on our website.

The next step in our renewal process is the continued assessment of Flow's application and this will be followed by our written decision on the renewal of the Licence term, which should be delivered within one hundred and twenty working days or up to one year from the date of receipt of Flow's application for renewal.

In closing, I wish to confirm that the Commission is committed to determining all applications for a licence in an objective, transparent and non-discriminatory basis. Again, I thank everyone for the participation and I bid you a good day.

FLOW/ RAVINDRA MAYWAHLALL: We thank the Commission for its time and do have a pleasant day yourself.