



# Commission

# Penalty Guidelines, 2024

## Consultation Document

Consultation

Publication date: 26 September 2024

Closing date for responses: 7 November 2024

Reference Number: 3/2024

## 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(j) of the Telecommunications Act, 2006 (the “**Act**”) the Commission is required to “*collect all fees and any other charges payable to the Commission under this Act*”. In accordance with this section and other sections of the Act, the Commission has developed a draft Telecommunications Code (**Part x**) (Penalties) Guidelines, 2024 (the “**Guidelines**”).

In this document, the Commission outlined:

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

The Guidelines will provide, subject to consultation, the framework that we will consider when determining the amount of any penalty to be imposed when exercising our enforcement powers under section 75(2)(b) of the Act.

We are publishing this consultation document to provide our stakeholders – operators, the public and other interested parties – with the opportunity to comment on the Guidelines that we propose to implement to assist us in determining the quantum of penalties, as may be applicable to licensees and authorisation holders against whom we may need to exercise our enforcement powers.

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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 7 November 2024.

We strongly prefer responses to this document to be sent by email to consultations@trc.vg (indicating the subject: "Consultation on the Penalty Guidelines, 2024". Alternatively, responses may be sent to the address (or the P.O Box number) set out below:

Consultation on the Penalty Guidelines, 2024 – 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 deliver the final Telecommunications Code (**Part x**) (Penalties) Guidelines, 2024 to the Ministry with responsibility for telecommunications for approval and it will be published in the Gazette.

## 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.<sup>1</sup> Our principal statutory functions are set out in section 6 of the Act.
- 1.2 One of our principal functions include the collection of all fees and any other charges payable to the Commission under the Act (section 6(j) of the Act). In accordance with this statutory obligation, *inter alia*, this document includes a draft Telecommunications Code (Part x) (Penalties) Guidelines, 2024.
- 1.3 Furthermore, pursuant to section 75(2(b) of the Act, the Commission may take enforcement action in certain circumstances against a licensee or authorisation holder. In exercising our enforcement powers, our main aim is to deter the respective licensee or authorisation holder and the wider industry from participating in illegal activities and contravening regulatory requirements. This is done with a view of protecting telecommunications users to ensure long-term benefit for the residents, business and visitors in the Territory. The development of the Guidelines was steered by this mission.
- 1.4 The Guidelines will guide the Commission in relation to the imposition of fines on licensees and authorisation holders in the British Virgin Islands, where the Commission is entitled to take enforcement action in accordance with the Act.
- 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 that the introduction of the Guidelines 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](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 Guidelines, 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(j) outlines that, in the telecommunications services industry, the Commission is to:

*“collect all fees and any other charges payable to the Commission under this Act.”*

### Enforcement Action

- 2.2 When considering the exercise of enforcement powers through the imposition of a fine, section 75 of the Act is instructive, whereby section 75(2)(b) states:

*“If the Commission is entitled to take enforcement action under subsection (1), it may, without prejudice to its powers under sections 49 and 76, exercise one or more of the following powers:*

*[...]*

*(b) impose a fine on the licensee or authorisation holder in such amount as it thinks fit.”*

- 2.3 Section 75(1) of the Act refers to the circumstances in which the Commission may take enforcement action against a licensee or authorisation holder, which includes, amongst others, where the opinion of the Commission is such that the licensee or authorisation holder has contravened or is in contravention of the Act, the Regulations or the Telecommunications Codes.

### Other Legal Provisions

- 2.4 The Commission is empowered to implement the Guidelines as a part of the Telecommunications Code, pursuant to section 91(3) of the Act, which states *“the Commission may from time to time issue, supplement or update such guidelines, standards and other requirements relating to telecommunications as the Commission thinks fit, which together shall constitute the Telecommunications Code.”*

- 2.5 Additionally, it is judicious to consult on the Guidelines 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.”*

## Penalty Guidelines Objectives

**The Commission considers that it is in the interest of the industry and in keeping with the Commission's mandate under the Act to regulate the process and considerations applicable to the exercise of its enforcement powers when imposing a fine. This will ensure that the process is objective, transparent and non-discriminatory.**

- 3.1 The draft Guidelines are attached to this consultation document and are summarised below.
- 3.2 The Commission strongly encourages respondents to read the Guidelines prior to submitting comments or answering the consultation questions in the next section, as this summary is not exhaustive.
- 3.3 The attached Guidelines are divided into 5 parts and consist of 23 sections, which address:
  - The legal framework, purpose and scope of the Guidelines;
  - The details of the penalty assessment process;
  - The actions of the Commission after having determined the penalty, including timelines for the licensee or authorisation holder to make representations to the Commission, the applicable limitation period and instances which may prompt the Commission to depart from the Guidelines;
  - The alternative powers of the Commission in relation to enforcement action and other general provisions; and
  - Required compliance with the Guidelines.
- 3.4 Part I covers the preliminary provisions of the Guidelines, citing its purpose as establishing factors that the Commission will consider when determining the amount of a penalty and to ensure that any penalty imposed serves the overarching aim of deterrence. It notes that the Guidelines are applicable to all licensees and authorisation holders in the telecommunications services industry.
- 3.5 Part II highlights the ability of the Commission to impose penalties, preceded by a penalty assessment, which may include consideration of case law. The relevant factors that the Commission will consider in determining the amount of a penalty are listed.
- 3.6 Part III details the procedure to be followed by the Commission once a penalty has been determined, including issuance of a proposed penalty notice to the licensee or authorisation holder. Following this, a licensee or authorisation holder must be given an opportunity to make representations to the Commission within a specified timeframe. Additional provisions cover the applicable limitation period for administrative penalties, circumstances in which the Commission may depart from the Guidelines and periodic review of the Guidelines by the Commission.
- 3.7 Part IV comprises general provisions such as the powers of the Commission to take other enforcement action, applicability of compound penalties, as well as the ability of licensees or authorisation holders to pay imposed fines by way of instalments.
- 3.8 Part V specifies the relationship of the Guidelines with licences and establishes that any penalty left unpaid will attract interest, both of which will be recoverable by the Commission through civil proceedings.
- 3.9 It is proposed that the Guidelines will be implemented as a part of the Telecommunications Code, in exercise of the Commission's powers under sections 6(j), 75(2)(b) and 91(3) of the Act.



## Consultation Questions

**Based on the above, the Commission invites all interested parties to submit their comments, with supporting evidence, on the following questions.**

1. Do you agree that the Commission should undertake a penalty assessment, as outlined by section 6 of the Guidelines before imposing a fine under section 75(2)(b) of the Act?
2. Do you agree with the primary considerations proposed by the Commission in Part II of the Guidelines, to be taken into account when undertaking a penalty assessment? Specifically, what are your views on the considerations listed at sections 8, 9(1) and (2) of the Guidelines. Would you add or subtract any factors? Please explain your reasoning in detail, along with providing supporting evidence, as may be applicable.
3. What are your views on the proposed procedure for notifying a licensee or authorisation holder of a proposed penalty, as contained in section 10 of the Guidelines? What, if any, alternative measures do you propose and why?
4. Do you agree with the circumstances under which the Commission may depart from the Guidelines, as contained in section 13? If not, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please include the specific section(s) that you take issue with in your explanation.
5. Are there any other concerns, interests or obligations that the Commission should consider including in these Guidelines? If so, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please specify the Part and/or section under which you propose to include an additional provision.
6. Please provide your views on any other matters you consider relevant to this consultation.

## Annex: The Draft Guidelines

Please refer to the next document in this consultation titled 'Telecommunications Code **(Part x)** (Penalty) Guidelines, 2024' for the draft Guidelines.