



***DRAFT URCA
CONSULTATION PROCEDURE
GUIDELINES***

Consultation Document – URCA 01/2016

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1. INTRODUCTION

The Utilities Regulation and Competition Authority (URCA) is the independent regulator and competition authority for the Electronic Communications Sector (ECS) and the Electricity Sector (ES) in The Bahamas. The Communications Act, 2009 (Comms Act) and the Electricity Act, 2015 (Electricity Act) empower URCA to implement the Electronic Communications Sector Policy (ECSP), the National Energy Policy (NEP) and the Electricity Sector Policy (ESP), and in that regard to enforce the provisions of the Comms Act and the Electricity Act, respectively.

Pursuant to section 11(3) of the Comms Act and section 41(3) of the Electricity Act, URCA has a statutory duty to publish its standard consultation procedures for seeking stakeholder participation in URCA's decision making processes. On 19 August 2009, URCA published Draft Consultation Procedure Guidelines for feedback from the public with the intent that it would have been finalized to address consultations in respect of URCA's then regulatory jurisdiction, the ECS. URCA notes that at the time of publication, URCA had recently transitioned from the Public Utilities Commission and had published other regulatory measures for public comment at the same time as publication of the Draft Guidelines. Due to this, URCA did not receive any formal responses to the Draft Guidelines as anticipated, and in the absence of responses, URCA did not proceed to complete the process in respect of the Draft Guidelines. While the Guidelines were not formally implemented, URCA informally adopted the procedures outlined therein when publishing regulatory and other measures for public consultation in the ECS.

The Draft Guidelines first published in 2009 in respect of the ECS only, have now been updated to take account of URCA's experience with publishing and consulting on regulatory and other measures in the ECS, and to accommodate any necessary changes related to URCA's assumption of regulatory responsibility for the ES. URCA is now publishing the revised Guidelines in furtherance of section 11(3) of the Comms Act and section 41(3) of the Electricity Act. These Guidelines are published in draft to give interested parties an opportunity to comment. The decisions and actions of URCA will affect people and organisations throughout The Bahamas. Therefore, it is important that URCA make regulatory decisions with the widest possible input from those who have an interest in or are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for those who could be affected by or concerned about a particular issue to express their views before a decision on a course of action is taken by URCA.

URCA has a statutory mandate to publish its standard procedure for seeking comments prior to issuing regulatory and other measures.¹ The standard procedures serve as a statutory

¹ Section 9(2) of the Utilities Regulation and Competition Authority Act, 2009 (URCA Act)

mechanism which URCA is obliged to follow thereby providing a level of predictability in URCA's decision making process. This is an important ingredient to building trust and stakeholder confidence in URCA.

This document sets out the Consultation Procedure Guidelines and principles to be followed by URCA in its approach to conducting consultations with members of the public, licensees and stakeholders on regulatory and other measures which, in the opinion of URCA, are of public significance. The Consultation Procedure Guidelines will provide additional regulatory certainty to the process by which consultations are conducted by URCA.

The Consultation Procedure Guidelines will conform to international best practice. As such, an effective consultation should:

- involve, as far as possible, who wish for their voices to be heard, whether small or large companies, industries, consumer and community groups or individuals;
- explain fully the different options being considered by the regulator before a decision is made; and
- assist those with views to respond fully and in an informed manner; and listen to those responses and use them to help to understand the effect of any action to be taken.

While URCA will generally adhere to the Consultation Procedure Guidelines as being proposed, it recognizes the need for the procedure to be sufficiently flexible and dynamic to address the exigencies of the relevant regulated sectors and of particular circumstances. URCA will update these guidelines from time to time to take account of best practice and comments received from interested parties. Although these guidelines set out the approach URCA expects to take, they do not have binding legal effect. Therefore, should URCA find it necessary to depart from the guidelines, URCA will inform the public of its reasons for doing so.

1.1 How to respond to this Consultation

URCA invites comments and submissions on this consultation document from members of the public, licensees and other interested parties. **Responses to this consultation should be submitted to URCA on or before 25 November 2016.**

Persons may deliver their written comments or submissions to URCA's Chief Executive Officer either:

- by hand, to URCA's office at Frederick House, Frederick Street, Nassau; or
- by mail to P. O. Box N-4860, Nassau, Bahamas; or
- by fax to (242) 393-0153; or

- by email to info@urcabahamas.bs.

URCA reserves the right to make all responses available to the public by posting responses online on its website at www.urcabahamas.bs. If a response is marked confidential, reasons should be provided to facilitate evaluation by URCA of the request for confidentiality. URCA may publish or refrain from publishing any document or submission at its sole discretion. URCA will review the responses received and publish a Statement of Results on the consultation and issue the final Consultation Procedure Guidelines.

2. CONSULTATION PROCEDURE GUIDELINES OBJECTIVES

The Consultation Procedure Guidelines will be developed in accordance with the high level sectors' policy objectives and the sectors' related laws. URCA is proposing to set the following objectives for conducting consultations with the public, licensees and other stakeholders:

- (a) to obtain input, information and feedback from persons whose rights or interests may be materially affected or prejudiced by the proposed regulatory and other measure;
- (b) to ensure regulatory transparency and objectivity;
- (c) to protect consumer interests;
- (d) to ensure adequate and accurate information is shared between the public, licensees, stakeholders and URCA;
- (e) to strengthen public, licensee and stakeholder understanding, participation and confidence in the regulatory process;
- (f) to ensure that the public, licensees and stakeholders are given the opportunity to express their views;
- (g) to ensure that URCA has investigated the necessary aspects of an issue so that the public, licensees and stakeholders are adequately informed of the issues surrounding a particular matter; and
- (h) to acquire substantive information and knowledge from the public, licensees, stakeholders and industry professionals on any issue in order for URCA to make informed decisions.

3. NOTIFICATION OF CONSULTATION

Notification of a consultation to be conducted by URCA initiates the consultation process. URCA recognizes that there may be a need by the public, licensees and stakeholders to plan in order to effectively respond to consultations. Resources may also have to be allocated by interested parties to a consultation to critically analyze the regulatory issues under consideration by URCA once the consultation has been published.

URCA, therefore, proposes to publish a notification on the day of the launch of any consultation it intends to conduct. The publication of the notice will be posted on the URCA website at www.urbahamas.bs as well as in at least two (2) national newspapers. Notification of the consultation may also be effected through public announcement on radio stations that broadcast throughout the islands of The Bahamas.² In addition, URCA may email existing licensees and other stakeholders based on a database developed as a result of previous consultations. Any person wishing to be included in this database, should email URCA at info@urbahamas.bs.

URCA proposes that the content of the notification of consultation should include the following:

- (a) title of consultation;
- (b) objectives and overview of the consultation;
- (c) address of website from which downloadable documents can be obtained;
- (d) timelines for submission of responses and comments;
- (e) contact information for the relevant URCA personnel to which queries may be addressed; and
- (f) any other relevant information.

URCA believes it is important to emphasize that there will be prescribed timelines for responding to the consultation once the consultation has been published.

² Regulators such as The Office of Communications (OFCOM) in the United Kingdom and the Telecommunications Regulatory Authority of Lebanon (TRA) have adopted the approach of holding informal discussions with people and organizations in advance of announcing a consultation. URCA's preliminary thinking is that the proposed media through which the public will be notified will be an effective means of communication in The Bahamas.

4. METHOD OF CONSULTATION

URCA will determine the method of the consultation process to take place in respect of any decision or activity proposed to be taken by URCA depending on the nature of the decision itself (special procedures are set out in the laws which have to be followed for issuing Determinations and Adjudications, for example), subject matter, the number of parties potentially affected by a decision, the impact on the public and consumers and consultations with interested parties.

URCA proposes to adopt a formal consultation process in circumstances where the regulatory or other measures are technically complicated and/or have important legal implications. These types of matters usually have the potential to impact a large number of parties and [are of] significant public interest. For example, the determination of whether a licensee has significant market power (SMP) in a relevant market, regulatory issues related to number portability are considered to be technically complicated or decision related to the addition of new generation capacity to the electricity grid..

The contents of a full consultation document will usually be developed within the internal expertise of URCA. The specialized nature and subject matter of a regulatory issue may also require URCA to engage the services of consultants, advisory bodies, industry groups or other such persons. This level of external participation could be at any stage of the consultation process, or there could be more than one consultation process leading to the adoption of regulatory instruments. URCA therefore proposes to engage consultants, industry groups and other such persons where it is necessary in the consultation process to develop complex technical issues in the full consultation document and to assist with providing answers to responses from the public, licensees and stakeholders to such issues.

URCA will follow a consistent approach to designing each formal consultation document. URCA proposes the consultation document to include:

- (a) a front cover with the name of the consultation, the date of issue and the closing deadline for responses;
- (b) a page listing the contents;
- (c) the main body of the document (which will state the reasons for the consultation, the preliminary position of URCA on a particular regulatory issue, the consultation process, etc.);

- (d) a contact name and details of where responses should be submitted;
- (e) a list of focused questions where necessary;
- (f) annexes where necessary (which may include forms, graphs, tables, diagrams, etc); and
- (g) a glossary where necessary.

URCA is of the opinion that the formal consultation process in certain circumstances may not be the most effective medium through which those who have an interest in the outcome of a decision by URCA can express their views. Large companies have experts available to analyse long and complicated documents. Members of the public and small licensees usually do not. Consumer and community groups and individuals sometimes lack both time and specialist skills to effectively respond to formal consultations. To assist those who may fall within the latter categories to express their views, thereby making the formal consultation as effective as possible, URCA proposes to implement the following measures:

- (a) using research to understand the views, needs and behaviour of stakeholders involved in or concerned about the electronic communications and electricity sectors in The Bahamas;
- (b) conducting surveys and opinion polls; and
- (c) reaching out to special interest and community groups who should have an interest in the decisions by having public meetings and open seminars.

When relevant, URCA also proposes to engage the public, licensees and stakeholders through informal consultations. Informal consultations will complement the formal consultation process and should assist all potential respondents to both formal and informal consultations to better understand the issues under consideration. Informal consultations will involve:

- (a) holding face-to-face meetings in the available time nationwide as circumstances dictate;
- (b) using the URCA website (www.urbahamas.bs) and social media to gather feedback online and to provide detailed background information;
- (c) briefing the media through news releases, etc.; and

- (d) communicating directly through the media by writing articles for magazines and newspapers.

5. RESPONSES TO CONSULTATION

URCA will generally request written responses to its consultations. Written responses to formal and informal consultations allow persons to fully express their views and explain why they hold the views they do. Written responses also allow respondents to support their statements with evidence. Moreover, written responses provide an avenue for respondents to raise novel issues that may not have been contemplated by URCA in the consultation process, to which URCA can effectively respond. Notwithstanding this, there may be occasions where URCA will entertain oral responses to consultations. These however are limited to specific instances, such as town meetings and oral hearings, in which cases URCA will organize for a written record of the proceedings.

The importance of written responses to URCA is that they allow URCA to keep an accurate record of the position of the consultation respondents. There will be occasions where the number of responses to a consultation may be large. URCA has a statutory duty to give due consideration to all comments prior to issuing regulatory and other measures.³ It is therefore important that URCA avail itself of the written responses of each consultation respondent in order to properly inform its decision.

6. CONFIDENTIAL RESPONSES TO CONSULTATION

URCA believes it is important for everyone interested in a regulatory issue to see the views expressed by consultation respondents. Therefore, in the interest of transparency, URCA proposes to make all submissions received in response to its consultations available to the public, subject to the confidentiality of the information received. URCA will consider requests to keep certain views and information confidential, and will evaluate requests for confidentiality in line with relevant legal provisions and will not publish or divulge information that is, in its opinion, commercially confidential.⁴

³ See section 9(1)(b) of the URCA Act.

⁴ Section 11(1) of the URCA Act provides that URCA shall be required to publish or otherwise divulge information that in the view of URCA would be commercially confidential. URCA also has a statutory duty under the Data Protection (Privacy of Personal Information) Act, 2003 not to disclose certain types of information and to use such information for the intended purpose for which it was submitted.

URCA proposes the following procedure that it will adopt for the effective handling of confidential information submitted to it by consultation respondents:

- (a) any claim for confidentiality must be accompanied by the reasons;
- (b) where it is asserted that specific harm would be caused to the person claiming confidentiality, sufficient details must be provided as to the nature and extent of such harm;
- (c) a person claiming confidentiality in connection with the information must file with URCA a redacted version of the information or response to be placed in the public domain;
- (d) where URCA has determined that no specific direct harm would likely result from disclosure, URCA will advise the party claiming confidentiality of its decision in advance of publishing the full response;
- (e) where URCA has determined that based on all material information before it, specific direct harm would likely result from public disclosure that justifies a claim for confidentiality, it may:
 - (i) refuse to publish the full document or information in response to the consultation; and
 - (ii) publish the redacted version of the document of information.

URCA proposes to also consider as confidential, information that:

- (a) is a trade secret;
- (b) is of financial or technical nature and is normally treated as confidential;
- (c) if disclosed, is reasonably certain to result in significant financial loss or gain; and
- (d) if disclosed, is likely to result in significant competitive advantage or disadvantage.

7. COMMENTS TO WRITTEN RESPONSES

There may be instances in which responses received by URCA to a consultation demonstrate a misunderstanding by respondents of a position on a regulatory or other measure URCA proposes to issue. Additionally, there may also be instances where the publication of the responses received from respondents to a consultation, warrant follow-up comments by other respondents.

Where such circumstances occur, URCA proposes to include an intermediate stage in the consultation process where URCA publishes the responses and comments received (with any necessary clarification or further information from URCA), and allows respondents to make comments on those responses or clarifications. In such further comments, respondents may correct factual errors, clarify ambiguities or put forward counter arguments.⁵

URCA proposes not to permit the opportunity for making comments to written responses, to be used as an opportunity for respondents to raise new issues.

8. DECISIONS MADE BY URCA FOLLOWING A CONSULTATION

URCA will review and assess each response carefully and objectively. All submissions will be considered and analyzed. URCA's analysis of the responses will be taken into account in its consultation decisions. The consultation decisions by URCA, which will also serve as a report on the consultation, will provide a general review of the submissions that were given either during the formal or informal consultation process, and will also detail URCA's response to the submissions and reasons for URCA's final position.

URCA proposes to publish its consultation decisions in accordance with the URCA Act by publishing it on its website and maintaining copies of its decisions at its principal office for inspection by the public on request during normal business hours without charge.⁶

9. DURATION OF CONSULTATION

URCA is of the opinion that the period for consultation should always be of a reasonable timeframe. Under the URCA Act, URCA must include a minimum time for responding to consultations, which URCA proposes in ordinary circumstances would be no less than thirty (30)

⁵ This is a practice employed by the RIC in Trinidad and Tobago and if adopted should allow for a greater degree of fairness to respondents in the consult process.

⁶ See section 10 of the URCA Act.

days.⁷ URCA believes that where a consultation is too short, some of those with important views to share may not have sufficient time to prepare responses, while if a consultation lasts too long, the market may have changed dramatically. URCA proposes to seek to strike a balance between the two.

URCA therefore proposes that where consultations are complex and contain major policy initiatives and/or are of interest to a wide range of persons, licensees and stakeholders (especially those who may require a longer time to respond), a period of at least 6 to 8 weeks will be allotted for such consultations. URCA proposes a period of thirty (30) days for consultations which fall within one or more of the following categories:

- (a) where there is a need to complete a proceeding within a specified timetable because of market developments or other factors which require the project to be concluded within a short period (e.g. promotional events by telecommunications service providers);
- (b) the issue has already been the subject of a consultation;
- (c) a proposal by URCA will have limited effect on a market; or
- (d) a proposal by URCA is only a limited amendment to existing policy or regulation.

For complex matters, URCA may issue a series of consultations to solicit the views of stakeholders. URCA may, for example, initially issue a consultation that addresses the high-level issues and URCA's preliminary approach to addressing those issues. URCA would then review the comments to this initial high-level consultation before launching a second consultation, which would focus on issues of implementation. In some circumstances, URCA may initially intend to conduct a single-phase consultation but, upon review of the responses to the consultation, it may become apparent that a second phase consultation is required. This is particularly likely to be the case where the responses propose a significant change in approach or it appears that licensees may require assistance from external advisers, such as economists, to respond fully to the consultation.

Whenever URCA launches a consultation it will provide clear timelines for each phase of the consultation including the date for the publication of its decisions.

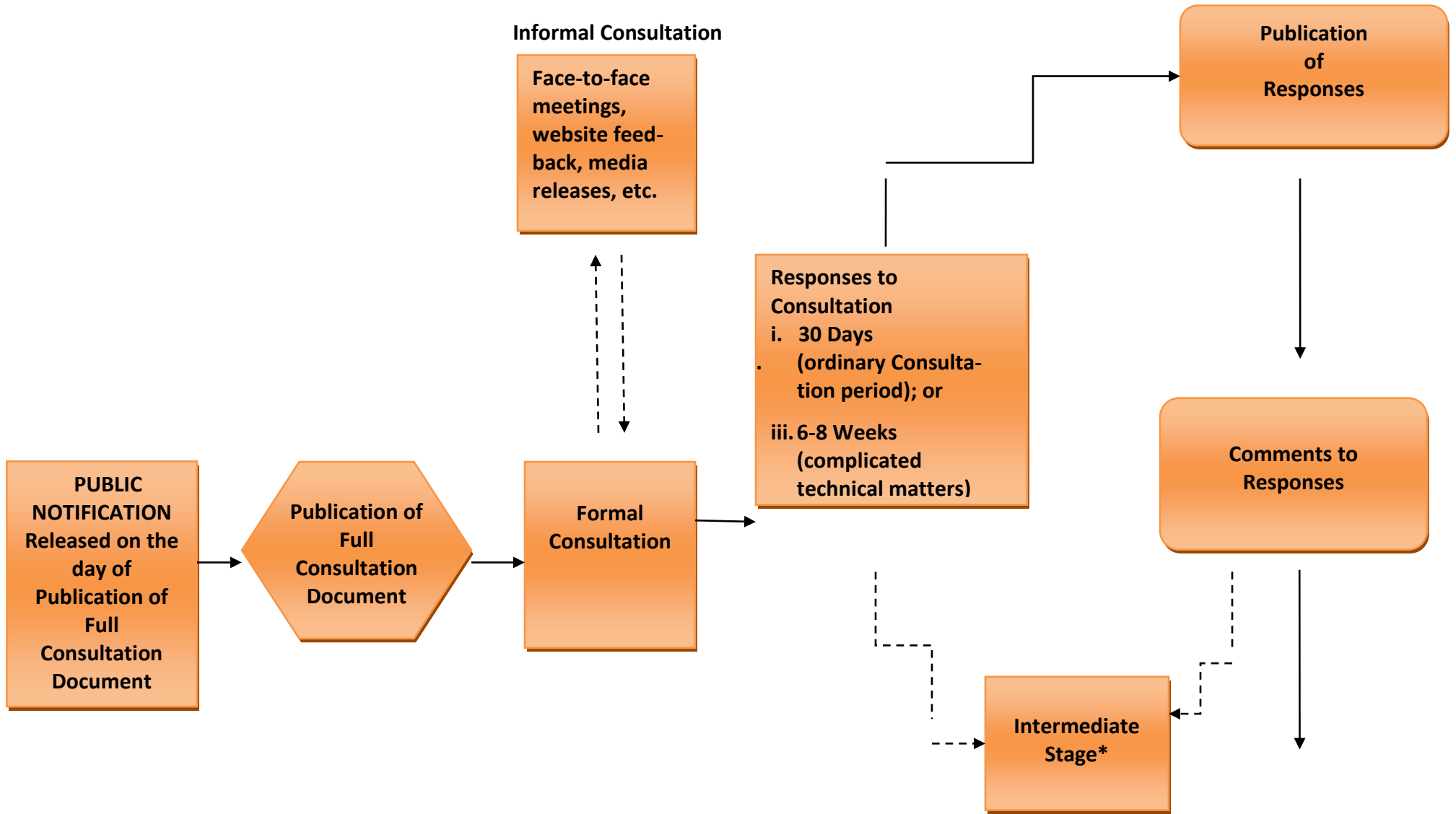
⁷ See section 9(2)(b) of the URCA Act. Unless a statutory timetable needs to be followed for issuing a specific regulatory measure such as a direction under section 100 of the Communications Act, 2009, URCA has discretion to shorten or lengthen this timeframe depending on the circumstances.

It should also be noted that in all instances, URCA reserves the right to extend the period of any consultation where it considers it necessary and appropriate to ensure that the matters being consulted upon are fully aired, and all interested persons are given a reasonable opportunity to respond. URCA may extend consultation timelines in response to a request from an interested person, or on URCA's own initiative. Extensions will be implemented by way of a notice published or disseminated in the same manner as the original consultation notice.

10. NEXT STEPS

URCA invites interested parties to comment on the draft consultation procedure guidelines. Upon consideration of written responses, URCA will publish a Statement of Results along with the Final Consultation Procedure Guidelines. URCA looks forward to constructive engagement with the public on its proposals.

ANNEX: ILLUSTRATION OF HOW CONSULTATION PROCESS WILL WORK



*** As explained in Section 9**

