



# **Guidelines for developing Licensee Consumer Complaints Handling Procedures**

## **Consultation Document**

**ECS 23/2011**

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## 1. Introduction

Liberalisation in the electronic communications sector (ECS), consequential to the establishment of the new regulatory regime in The Bahamas in September 2009 has resulted in increased competition within the sector. Electronic communications service providers are now offering consumers an expanded number and variety of products and services. As such, the expectation by consumers of receiving high quality service makes complaints inevitable and the means by which consumers can seek redress for unsatisfactory service quality from the service provider become even more important. While the Utilities Regulation and Competition Authority (URCA) recognises that some service providers have made strides to ensure the delivery of high quality service and customer care, it believes that minimum standards for the satisfactory handling of consumer complaints are required in an expanding, liberalised sector.

URCA also recognises the absence of consumer advocacy groups in The Bahamas to effectively address matters on behalf of consumers regarding the ECS. This absence places on URCA a greater level of responsibility to ensure that service providers establish the mechanisms through which consumers can have their complaints properly received, effectively handled and expeditiously resolved by the service provider. Consumers should be able to have reasonable access to a procedure that is simple, transparent, free-of-charge and allows for a satisfactory resolution of their complaints with a service provider.

URCA has given careful consideration, *inter alia*, to the provisions of the Consumer Protection Act, 2006 (CPA) within the context of matters specifically related to the ECS that may adversely affect the consumer. While the CPA is of general application and therefore applies to the ECS, URCA is of the opinion that procedures for the handling of consumer complaints which allow for a fair and reasonable treatment of sector specific issues in a timely manner are needed to augment the protections provided by the CPA.

It is URCA's intent that each service provider should, with URCA's oversight and guidance, develop and implement a set of procedures for the handling of consumer complaints ("Complaints Procedures"), consistent with the best practices that obtain internationally for electronic communications services. It is for that reason operating licences granted by URCA contain a requirement for the licensee to establish procedures for the handling of complaints from residential and small businesses.

URCA is of the opinion that it is the service providers that must deliver swift action regarding the development and implementation of Complaints Procedures. URCA is aware that there are service providers, although required under their licence, which

have not developed procedures to adequately handle consumer complaints. URCA is also aware, through various consumer complaints it has received, that there is scope for considerable improvement regarding the procedures that have been developed by certain service providers. This Consultation document therefore proposes certain minimum standards, consistent with international best practices, to guide service providers in the development of their Complaints Procedures. URCA also proposes an approval process for the Complaints Procedures, so that URCA is able to ensure that they meet the standards imposed by URCA.

URCA encourages full participation in this Consultation process by all stakeholders and interested parties.

## **1.1 Background**

The licensing regime as established under Part IV of the Communications Act, 2009 (“Comms Act”)<sup>1</sup> requires a person who wishes to establish, maintain and operate a network or provide a carriage service, including by use of any radio spectrum to firstly obtain a licence. URCA may issue an operating licence in circumstances where such person intends to provide an electronic communication service to a third party for commercial gain. The type of operating licence issued by URCA to a person that provides an electronic communications service to consumers for commercial gain is either an Individual Operating Licence or a Class Operating Licence Requiring Registration<sup>2</sup>. These types of licences attract consumer protection licence conditions and obligations.

In exercise of its powers under Part IV of the Comms Act<sup>3</sup>, URCA has set licence conditions with which a person providing a service under an Individual Operating Licence or a Class Operating Licence Requiring Registration is obligated to comply<sup>4</sup>. URCA has additionally set Consumer Protection Obligations as part of the licence conditions under the respective licences that specifically address the policy objective of the Comms Act to “*further the interests of consumers*”.

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<sup>1</sup> See particularly section 16 of the Comms Act

<sup>2</sup> In making its decision regarding the type of Operating Licence to issue, URCA is guided by the criteria as described in its Licensing Guidelines. See particularly section 2 of the “*Guidance on the Licensing Regime under the Communications Act, 2009 Guidelines – ECS 15/2009*” document published on the URCA website at [www.urbahamas.bs](http://www.urbahamas.bs) for a full explanation of the types of licences issued by URCA under the Comms Act.

<sup>3</sup> See sections 19(3) and 20 respectively of the Comms Act.

<sup>4</sup> See particularly Condition 18 and 1.16 of the respective Operating Licences.

Since September 2009, URCA has received (and continues to receive) various complaints<sup>5</sup> from dissatisfied consumers concerning issues related to quality of service, billing, installation and repairs, late and disconnection fees charged by service providers and the general level of response in the handling of their complaints by such service providers. These service providers have either been an Individual Operating Licensee or a Class Operating Licensee (hereinafter collectively referred to as “Licensees”). In response, during the fourth quarter of 2010, URCA exercised its powers for the purpose of carrying into effect the policy objective of furthering the interests of consumers by requiring each Licensee to submit to URCA, *inter alia*, its procedures for handling consumer complaints.

While it may not be wholly correct to state that a mechanism for effective redress of consumer complaints is completely missing, having reviewed the various procedures submitted to URCA, URCA is of the opinion that an *ad hoc* approach, response to and current treatment of consumer complaints by the Licensees will not suffice. Therefore, URCA believes that guidance to the Licensees regarding the development and implementation of a suitable Complaints Procedures is necessary and should make a marked difference in the overall complaints handling process.

## **1.2 Objectives of this Consultation**

URCA is seeking views from members of the public, licensees and interested parties in relation to the introduction of a minimum set of criteria to be included by each Licensee in its Complaints Procedures. Such criteria aim to provide practical guidance for the step by step handling of a complaint by the Licensees and should also inform the consumer of the level of response to be expected from such Licensees when handling their complaint.

In this Consultation, URCA is focused on establishing certain high level standards for complaints handling to ensure that consumers are able to easily know how to make a complaint (when necessary) and that consumers can be confident that their service provider will have in place the appropriate processes to receive and resolve complaints.

URCA has limited the scope of this Consultation so as not to be overly prescriptive in proposing how service providers are expected to engage with consumers regarding the handling of complaints.

This Consultation therefore has the following as its core objectives:

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<sup>5</sup> See URCA’s Annual Report 2010 under the rubric “Consumer Protection” at p. 19

- (i) to achieve the policy objectives of the Comms Act to further the interest of consumers;
- (ii) setting a minimum set of criteria to be included by the Licensees into their Complaints Procedures ;
- (iii) standardising the minimum criteria which are to be adopted and incorporated by the Licensees into their Complaints Procedures ; and
- (iv) establishing fair and reasonable criteria against which URCA may discharge its statutory duty to monitor and enforce consumer protection licence conditions vis-à-vis consumer complaints handling.

### **1.3 Structure of the Document**

The remainder of this document is structured as follows:

- Section 1: Continues by outlining how persons may respond to and participate in this consultation process;
- Section 2: Outlines the legal basis and framework under which URCA is conducting this consultation;
- Section 3: Provides a proposed working definition for the term “complaint”;
- Section 4: Describes the effect of the Complaints Procedures on the legal rights and remedies of consumers;
- Section 5: Describes the high level principles to be applied in developing and implementing the Complaints Procedures;
- Section 6: Explains which Licensees under the Comms Act are required to establish Complaints Procedures;
- Section 7: Details what should be contained in the Complaints Procedures;
- Section 8: Describes URCA’s “Next Steps” in the consultation process; and
- Annex A: Summarises the questions raised in this Consultation document.

### **1.4 Responding to this Consultation**

URCA invites written comments and submissions from members of the public, licensees and interested parties on the issues raised in this Consultation document. Persons may

deliver their written comments or submissions to the Director of Policy and Regulation of URCA either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau, Bahamas; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to [info@urcabahamas.bs](mailto:info@urcabahamas.bs) .

All comments and submissions to this Consultation document should be submitted on or before **February 10, 2012**. URCA will acknowledge receipt of all responses.

It would be helpful if responses include direct answers to the questions asked in this Consultation document, which have been listed at Annex A for ease of reference. It would also be helpful if respondents would give full explanation to the answers submitted or views held on any of the issues raised or proposals made in this Consultation.

### **1.5 Confidentiality**

URCA believes that, as a matter of transparency and good regulatory practice, it is important for the public and interested parties to this Consultation process to have sight of the views and positions expressed by all respondents. As such, as soon as reasonably practicable after the close of the response date for this Consultation, URCA intends to publish all responses on the URCA website.

However, URCA may treat as confidential responses that are clearly marked (in part or full) as being confidential. Explanations should be provided to justify any information that is submitted on a confidential basis. In such circumstances, a redacted version should also be submitted to URCA. URCA has the sole discretion to determine whether to publish any submission marked as confidential.

### **1.6 Intellectual property**

Copyright and all other intellectual property that forms any part of a response to this Consultation will be assumed to be licensed to URCA for its use during this Consultation process.

## **2. Legal Framework**

The Comms Act establishes the law applicable to the ECS and empowers URCA, as the regulator for the ECS, with implementing the Electronic Communications Sector Policy.

Under the Comms Act, URCA is also charged with enforcing the provisions of the Comms Act and licence conditions.

Under section 4 of the Comms Act, the electronic communications policy has as part of its objectives:

- “to further the interest of consumers by promoting competition and in particular –***
- (i) to enhance efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;*
  - (ii) to promote investment and innovation in electronic communications networks and services; and*
  - (iii) to encourage, promote and enforce sustainable competition...”*

Under section 8 of the Comms Act, URCA has powers to give effect to the electronic communications policy objectives. Section 8(1) provides, inter alia:

- “For the purposes of carrying into effect the electronic communications policy objectives, URCA shall have the power to issue any regulatory and other measures and in particular shall –*
- (e) issue directions, decisions, statements, instructions and notifications; and*
  - (m) exercise any other powers assigned to it by this Act or any other law”.*

Under section 45(1) of the Comms Act, *“URCA shall have a duty to monitor and enforce the consumer protection conditions in the licences”*. URCA has exercised its powers, in this regard, to the extent that it has imposed licence conditions which require service providers to establish and maintain procedures for the handling of complaints with respect to Residential Customers and Small Business Customers.

Licensees that have been issued an Individual Operating Licence or a Class Operating Licence Requiring Registration are required to establish and maintain procedures for the handling of complaints under condition 18 and 1.16 of the respective licences. The licence conditions are identical and provide:

- “Without prejudice to any regulations that URCA may issue under section 45(2) of the Communications Act, as soon as practicable and in any event within six (6) months of the Commencement Date, the Licensee shall **establish and thereafter maintain procedures for the handling of complaints** made by Residential Customers or its Small Business Customers in relation to the provision of Public Services”.*



It is primarily on the foregoing statutory basis, and with the aim of protecting the interests of consumers in an increasingly liberalised ECS, that URCA in consultation with members of the public, licensees and interested parties is seeking to implement standardised criteria to be incorporated into Licensees' Complaints Procedures.

### **2.1 Interpretation**

Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Consultation document and otherwise words and expressions shall have the same meaning assigned to them under Comms Act, and otherwise the Interpretation and General Clauses Act, Chapter 2.<sup>6</sup>

## **3. Defining what is a “complaint”**

The term “complaint” appears in the Comms Act and licence documents issued by URCA but has not been defined. It is expected that Licensees will have differing positions on which transactions between itself and consumers may be considered a complaint. URCA believes that a common definition for the term “complaint” brings a greater level of certainty when determining the full nature and scope of the transaction between the Licensees and the consumer to which the Complaints Procedures should apply. URCA therefore proposes the following working definition that can be applied across the sector:

**Complaint means:** *“an expression of dissatisfaction made by a consumer to the Licensee related to the Licensee’s provision of electronic communications services to that consumer, or to the complaint-handling process itself, where a response or resolution is expected”<sup>7</sup>.*

URCA is of the opinion that the proposed definition will capture those matters that may lead to a consumer becoming dissatisfied with the service level from the Licensee. Further, URCA also believes that the proposed definition should lessen potential uncertainty to the complaints handling process for consumers and Licensees as it is not always apparent whether an issue raised by a consumer is, in fact, a complaint.

**Question 1: Do you agree that a definition for the term “complaint” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the propose definition, kindly explain and suggest an alternative.**

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<sup>6</sup> Statute Laws of The Bahamas

<sup>7</sup> This proposed working definition is an adaptation of the definition as contained in the UK Ofcom consumer complaints procedure.

#### **4. Effect of the Consumer Complaints Procedures**

Notwithstanding anything contained in the Complaints Procedures, Licensees should ensure that nothing therein should operate so as to limit or exclude any legal rights or remedies of any consumer. Particularly, nothing in the Complaints Procedures should derogate from any right or remedy the consumer may have under the Consumer Protection Act, 2006 or any other law for the time being in force in The Bahamas.

#### **5. Principles of the Consumer Complaints Procedures**

URCA is of the opinion that the development of the Complaints Procedures should be guided by the high level principles of fairness and reasonableness. These principles should be applied by the Licensees to the resolution of all non-written (telephone and walk in customers) and written (e-mail, facsimile, post or otherwise) consumer complaints made to such Licensees. URCA believes that the most fundamental elements of a complaints handling procedure that is fair and reasonable is one that is accessible, transparent, timely and effective. URCA therefore proposes that these fundamental principles are embodied in the Procedures developed by Licensees.

**Question 2: Do you agree that the principles of fairness and reasonableness should guide the development of the Complaints Procedures? Please provide an explanation for you answer.**

##### **5.1 Accessibility of the Consumer Complaints Procedures**

It is URCA's intention to ensure that the availability of information on the complaints handling process is accessible in a manner that is not complex or cost prohibitive to consumers, which could have the unintended effect of deterring consumers from lodging a complaint. URCA believes that the Complaints Procedures should be readily accessible to all consumers free of charge and should be widely communicated to stakeholders as possible. URCA therefore proposes that the Complaints Procedures should contain a clear statement that the Complaints Procedures document is to be made available without cost to the consumer.

**Question 3: Do you agree that the Complaints Procedures should be made available to consumers without cost? If not, please provide reasoning for your disagreement and suggest a possible cost effective means in the alternative.**

The above reference to "all consumers" includes those with special needs. Licensees are encouraged to make adequate provisions to ensure that, where necessary, elderly

persons and persons with physical disabilities are able to access the Licensee's complaint handling process, such as:

- (i) providing an inquiry line, including direct access via a toll free number; and
- (ii) ensuring that complaints from third parties, who are acting on behalf of customers with special needs, can be made by the authorized representative of such customers by providing a means of authorization that is easily established and verifiable.

In cases where customers specifically request assistance in lodging and resolving a complaint consequential to special needs, Licensees are also encouraged to provide whatever reasonable assistance possible as there may be a number of reasons for the request (for example, language challenges, senior citizen or physical disability).

URCA is of the opinion that consumers must firstly be made aware of the existence of the Complaints Procedures in order for it to be meaningful or serve any useful purpose. Notification of the existence of the Complaints Procedures and information regarding its availability should therefore be given to the customers of a Licensee. URCA believes the most cost effective means of providing such notification may be by periodic inserts into customer billing by the Licensee. As such, URCA proposes that notification of the existence of the Consumer Complaints Procedures be given to all customers and done by periodic billing inserts.

URCA is cognizant of the variation in size and customer base of Licensees and therefore proposes that the Complaints Procedures be published on a Licensee's website (where a website exists), circulated to new customers and be available upon reasonable request in hard copy or other format. Additionally, in order to ensure consumers are able to easily access and follow the information provided by Licensees on the handling of consumer complaints, URCA proposes that the Complaints Procedures be accessible as a standalone document.

**Question 4: What media do you believe should be used to notify customers of the existence of the Complaints Procedures? Please give reasoning for your answer.**

**Question 5: What media do you believe should be used to make the Complaints Procedures available to consumers? Please give reasoning for your answer.**

## 5.2 Transparency of the Consumer Complaints Procedures

The Licensees' procedures for lodging, investigating and resolving a complaint should be clear and highly visible to consumers. Consumers should be made fully aware of their right to complain and the right to escalate an unresolved complaint.

It is essential for the processes at every level under the Complaints Procedures to be easily understood. URCA believes that the use of plain language assists in the understanding of the Complaints Procedures. URCA therefore proposes that the use of legal and technical terminology in the Complaints Procedures by Licensees should be minimized or, wherever possible, avoided.

URCA also considers transparency to encompass a process to notify consumers of the introduction of any significant changes to the Complaints Procedures by the Licensee. In addition to being notified of such changes, consumers should also be informed by the Licensee of the nature of the changes to the Complaints Procedures and the potential impact such changes may have on their right to complain or to have their complaint resolved. URCA therefore proposes that the Complaints Procedures provide for the notification and informing of consumers of any significant changes to the Complaints Procedures<sup>8</sup>.

**Question 6: Do you agree that, as a matter of transparency, consumers should be notified and informed by the Licensee of any significant changes to the Complaints Procedures? Please explain.**

## 5.3 Effectiveness of the Consumer Complaints Procedures

URCA believes that complaints handling should be viewed by the Licensee as an opportunity to improve its service offerings. An effective set of Complaints Procedures go to the core of establishing processes that will enhance customer confidence and satisfaction through the handling of consumer complaints by the Licensee. While the determination of the effectiveness of the Complaints Procedures may be subjective to each Licensee (and therefore difficult to measure), URCA considers that Complaints Procedures which set clearly established timeframes for the speedy handling of complaints and a reasonable escalation process for either resolving or appropriately referring complaints, should be effective.

Additionally, Complaints Procedures may be considered effective where there is satisfactory resolution of a consumer complaint consequential to the actions taken by the Licensee in accordance with such procedures. This will require an ongoing consumer complaints analysis by the Licensee in order to identify and address areas in

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<sup>8</sup> Changes to the code have been further addressed at section 7.10 below.

the Complaints Procedures which require attention and improvement. URCA therefore proposes that the Complaints Procedures should have a mechanism for periodic review by the Licensee. URCA intends to leave the periodic review, analysis and any revision of the Complaints Procedures to the Licensee. However, where URCA receives an inordinate number of consumer complaints on the processes under the Complaints Procedures, URCA proposes to initiate measures that will require the Licensee to review, analyse and revise the Complaints Procedures, as appropriate.

**Question 7: Do you agree that the periodic review, analysis and revision of the Complaints Procedures by the Licensee should allow for it to be more effective in its application? Kindly explain.**

## **6. Who should establish Consumer Complaints Procedures?**

Licensees who have been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration<sup>9</sup> under Comms Act by URCA are required to establish and maintain procedures for the handling of complaints made by their Residential Customers and Small Business Customers in relation to the provision of public services. This is in keeping with the Consumer Protection Obligations under the licences so as to ensure that consumers of electronic communications services have adequate information and protection regarding the services provided to the public for commercial gain by such Licensees.

For the avoidance of doubt, the term “Public Services” has been given an identical definition under the respective licences to mean any Carriage Service that is provided so as to be available for use by members of the public. The term “Carriage Service” has been defined under the Comms Act to mean *“any service consisting in whole or in part of the conveyance of signals by means of a network, except in so far as it is a content service, including the provision of ancillary services to the conveyance of signals and conditional access or other related services to enable a customer to access a content service”*.

Therefore, voice telephony, data and internet services are all contemplated under this definition, and Licensees that provide such carriage services have a responsibility to establish Complaints Procedures.

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<sup>9</sup> See URCA’s “Guidance On The Licensing Regime Under The Communications Act, 2009 Guidelines – ECS 15/2009 document for further explanation on the types of licences issued under the Comms Act by URCA.

## **7. What should be contained in the Consumer Complaints Procedures**

URCA believes that if the complaints handling process is to work effectively for consumers, a number of critical elements must be contained in the Complaints Procedures.

### **7.1 Lodging a complaint**

It is essential that the process under the Complaints Procedures for the submission of complaints is flexible and easy to understand and followed by consumers. The Complaints Procedures should provide information to consumers on how and where to lodge a complaint by clearly stating the Licensee's:

- (i) contact points or locations where complaints can be lodged;
- (ii) contact details (namely, Licensee's telephone and fax numbers specific to lodging a complaint, postal and email addresses); and
- (iii) business hours for contact points or locations for lodging complaints.

URCA proposes that, when a Licensee receives a complaint, the Complaints Procedures should provide for the complaint to be properly recorded/logged with supporting information and assigned a unique identifier code (a unique number for each complaint given to each complainant for future tracking of the complaint). It is also proposed that the Licensee should devise a complaint form to receive and document each complaint. The complaint form should provide, as a minimum, for the recording of the following information to effectively receive and process the complaint:

- (i) details of the complainant or person acting on behalf of complainant (i.e. name, mailing address, phone and email contact, etc.);
- (ii) date complaint filed;
- (iii) product/service description being complained about;
- (iv) particulars of the complaint;
- (v) possible due date for response;
- (vi) requested remedy;
- (vii) immediate action taken (if any); and
- (viii) enclosures (i.e. list of document supporting complaint).

### **7.2 Acknowledgement of complaint**

The Complaints Procedures should provide for the receipt of each complaint to be acknowledged to the complainant within a specified period. Timelines should be indicated for the formal acknowledgement of complaints. URCA proposes a maximum period of five (5) business days from the lodging of a complaint as a reasonable period within which the formal acknowledgement of receipt of a complaint should be given by the Licensee to the complainant.

### 7.3 Responsiveness

The Complaints Procedures should make provisions for realistic timelines for the possible resolution of the complaint, where the complaint cannot be immediately resolved. URCA proposes fifteen (15) business days as a reasonable period for the resolution of all bona fide complaints. URCA believes that only in exceptional circumstances a complaint should remain unresolved for more than thirty (30) business days. In the event the Licensee regards the complaint as frivolous or vexatious<sup>10</sup>, the consumer should be informed accordingly and provisions under the Complaints Procedures should be made for possible further recourse where the consumer remains dissatisfied. Such recourse should be in accordance with the escalation process established under the Complaints Procedures.

**Question 8: Do you believe that fifteen (15) business days (and in exceptional circumstances up to thirty (30) business days) is a reasonable period within which a complaint should be resolved? Please provide an explanation for your answer.**

URCA recognises that certain types of complaints may take longer to resolve depending on the nature and complexity of the complaint. However, in order to protect consumers, both small business and residential, against inordinate delays in processing and resolving complaints, URCA proposes that the Complaints Procedures contain detailed information on the target timelines for the resolution of complaints. In this regard, URCA proposes that complaints be placed into categories with reasonable timelines for the resolution of each (e.g. installation, billing, service degradation, repairs, miscellaneous, etc.).

**Question 9: Do you agree with URCA's proposal that complaints should be categorised in order to establish reasonable timelines for resolution? If not, kindly suggest an alternative approach.**

### 7.4 Escalation

URCA believes that a clear internal escalation procedure should be included in the Licensees' Complaints Procedures to ensure that consumer complaints are not ignored or allowed to drag on unnecessarily. Unresolved complaints should be dealt with according to internal escalation processes established by Licensees and should be described in the Complaints Procedures.

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<sup>10</sup> URCA believes that frivolous and vexatious complaint is very narrow category where it is readily apparent that the consumer is pursuing a complaint that is totally without merit and made with the intention of harassing or creating an unnecessary burden for the Licensee.

An escalation process should allow for unresolved consumer complaints to be referred upwards from front-line personnel through their line manager. The Licensee's front-line complaint handling personnel should be empowered with clear delegation to resolve consumer complaints at first contact. Where it is evident that the front-line personnel are unable to satisfactorily resolve the consumer's complaint, the escalation process should entail a procedure for referral of the complaint to more senior staff for review or investigation.

**Question 10: Do you believe that an internal escalation procedure is appropriate for inclusion in the Complaints Procedures? Kindly explain.**

URCA recognises the need for a degree of flexibility with regards to time frames for the escalation procedures and considers that consumers should be given indicative time frames having regard to the nature and level of additional investigation which will be required. However, URCA proposes that the Complaints Procedures include a mechanism to keep consumers informed at regular intervals of the progress of the complaint and be given an estimation of the time needed to investigate and resolve the complaint.

**Question 11: Should the escalation procedure be subject to timeframes within which the complaint should be resolved, depending on the nature of the complaint? If so, please suggest timeframes and provide reasoning for your suggestions.**

There will be circumstances where, despite the earnest efforts of both the consumer and the Licensee, the consumer remains dissatisfied after seeking to have a complaint resolved. URCA believes that in order to ensure the protection of consumers where consumers are dissatisfied with the response received from a Licensee regarding a complaint or with the outcome of a complaint, the Consumer Complaints Procedures should also make consumers aware of their right to seek independent advice or escalate the matter to the sector regulator.

URCA considers it is important to emphasize that it will not serve as a substitute for inadequate customer care from Licensees. Consumer complaints should only be referred to URCA where the internal procedures of the Licensee established in accordance with the Complaints Procedures have been fully exhausted. However, the Complaints Procedures should clearly state that customers may seek URCA's intervention where they are dissatisfied with the outcome of the Licensee's complaints handling procedures, particularly where the Licensee's procedures have been exhausted without satisfactory resolution of their complaint.

URCA believes that this is a convenient juncture to re-emphasize that the primary focus of this Consultation document is to provide practical guidance for the development of



handling of consumer complaints by Licensees. URCA therefore signals its intent to publish its approach and internal processes to resolving outstanding consumer complaints referred to it under the Licensees' Complaints Procedures. The measures to be contained in the proposed internal processes document will be of regulatory significance thereby warranting public consultation. As such, a public consultation on its procedures for resolving consumer complaints (and other disputes) will be undertaken by URCA. Listed below are some of the broad areas of emphasis expected to be included in the URCA consultation document:

- (i) The scope of URCA's powers to resolve consumer complaints;
- (ii) Grounds on which URCA will accept or refuse a complaint;
- (iii) Information and evidence gathering;
- (iv) Procedure for filing complaints;
- (v) Recording/logging of complaints;
- (vi) Monitoring and management of complaints;
- (vii) Timelines for resolving complaints;
- (viii) Record keeping;
- (ix) Decisions and Remedies;
- (x) Form to be completed when filing a complaint; and
- (xi) Review of complaints handling procedure.

**Question 12: What are your views on URCA conducting a public consultation on its approach and internal processes to resolving outstanding consumer complaints (and other disputes)?**

### **7.5 Communicating a decision**

URCA proposes that the Complaints Procedures should include provision for the decision or any action taken regarding the complaint to be effectively communicated to the customer as soon as reasonably possible. An initial communication in this regard may be verbal but should be followed-up with a written communication.

### **7.6 Closing a complaint**

URCA believes that it is important for Licensees to have the appropriate steps under the Complaints Procedures for identifying those complaints that have been resolved or remain unresolved after a proper investigation, before closing the complaint. While URCA does not believe that it is within its remit to investigate whether any individual complaint has been resolved or unresolved, the following key considerations may assist the Licensee to determine whether a complaint can reasonably be considered resolved:

- (i) **whether the consumer has indicated explicitly, or it can be reasonably inferred, that the consumer no longer wishes to pursue the complaint.**  
For example, if there was no further contact with the Licensee regarding

the complaint over a protracted period – possibly eight (8) weeks;

- (ii) **whether the Licensee and the consumer have agreed a course of action which, if taken, would resolve the complaint to the satisfaction of the consumer.** For example, where the Licensee has agreed with the consumer to refer the complaint to the regulator for final determination; or
- (iii) **whether the Licensee has taken actions that mean it is reasonable to consider the consumer is no longer dissatisfied.** For example, the Licensee could consider the complaint resolved and thereby close the complaint where it has provided appropriate relief to the consumer (e.g. refund or other compensation, remedy the event complained about, or provided a satisfactory explanation to the consumer) and it is reasonable to conclude that such steps have effectively addressed the complaint.

Should the consumer accept the proposed decision or action taken by the Licensee, URCA proposes that the Consumer Complaints Procedures should provide for the decision or action carried out to be recorded.

Should the complainant reject the proposed decision or action, URCA proposes that the Consumer Complaints Procedures should also provide for the decision to be recorded and the consumer be informed of alternative forms of recourse available, particularly the escalation process established under the Consumer Complaints Procedures.

### **7.7 Traceability of complaints and retaining records**

URCA believes that the maintenance of consumer complaint records serves the best interests of the Licensee, consumers and the regulator.

While a Licensee is usually required to archive its records of consumer complaints for the purpose of auditing by the regulator, archiving also allows the Licensee to adequately map its progress over time regarding its relationship with its customers. Moreover, record keeping can serve as an instrument to evaluate levels of customer care and satisfaction.

Complaints record keeping can benefit the consumer by having complaints properly documented for future reference should service-related issues arise repeatedly over the contractual period. Additionally, consumers can benefit from efficient complaints handling procedures, by the Licensee drawing on records in which similar complaints by other consumers have resulted in some form of recommendation or resolution.

URCA is of the opinion that consumers should also be provided with the means to track the progress of their complaint and be able to trace the actions taken by the Licensee to effectively resolve the matter. URCA therefore proposes that the Consumer Complaints Procedures make provision for consumers to track their complaint. In this regard, the Licensee should utilize a unique identifier in order to facilitate a timely and accurate response to a consumer when enquiries on their complaint are made.

**Question 13: What measures do you believe that service providers should implement to ensure that consumers would be able to track the progress of their complaint?**

URCA believes that there should be minimum obligations on Licensees to retain records of a consumer complaint in order to facilitate any possible investigation by URCA into the handling of a consumer complaint by the Licensee. The retention of complaint records should allow for URCA to monitor the Licensees performance in relation to the efficacy of complaint handling mechanisms. A complaints database should serve as a reliable reference source for the computation of consumer satisfaction by URCA. The Consumer Complaints Procedures should therefore provide an adequate and systematic record keeping of complaints and their outcomes.

While record keeping obligations should have a positive impact on URCA's ability to pursue effective enforcement, URCA is mindful to balance this objective against the cost which such record keeping could impose on Licensees. The regulatory measure regarding record keeping URCA proposes would not require the Licensee to collect information it does not currently hold but would only impose on it an obligation to retain that information for a reasonable period. URCA therefore proposes that all information collected and recorded by the Licensee throughout the complaints handling process by the Licensee be kept for a minimum period of no less than twelve (12) months<sup>11</sup> following the resolution of the complaint (whether resolved by the Licensee or referred to URCA). Records of consumer complaints should be kept in print and electronic format and should include the following, at a minimum, as part of the record:

- (i) name and address of the complainant;
- (ii) customer account information;
- (iii) date and time complaint was received;
- (iv) the nature of the complaint and particulars;
- (v) current status of the complaint;
- (vi) the results of any investigation;
- (vii) the resolution of the complaint;

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<sup>11</sup> Other jurisdictions vary from a six (6) months requirement to a proposed period of four (4) years (see Ofcom and Telecommunications Authority of Trinidad and Tobago (TATT) respectively).

- (viii) date and time of such resolution; and
- (ix) statement of whether the complaint has been escalated to URCA.

**Question 14: Do you agree that provisions should be made for the retention of records of complaints and how long do you think these records should be kept?**

### **7.8 Confidentiality**

The Complaints Procedures should provide for personally identifiable information of the complainant to be available only where needed, but only for the purposes of addressing the complainant by the Licensee. The Licensee should actively protect against personal information of the complainant being disclosed, unless the complainant expressly consents to its disclosure. URCA therefore proposes that a clear statement to this effect be included in the Complaints Procedures.

### **7.9 Time limit for lodging complaint**

URCA believes that the operations of the Licensees that are required to develop and implement Complaints Procedures are dynamic and therefore time limits should be placed on the period for which a complaint can be brought.

Consumer complaints should be made within a reasonable time after the incident being complained about has occurred. URCA proposes a period not exceeding ninety (90) days as a reasonable time within which a consumer should be required to lodge a complaint. URCA believes that the proposed timeframe should decrease the likelihood of frivolous complaints being lodged. It should assist with ensuring that accurate details concerning the complaint are readily available. More importantly, the proposed timeframe should allow Licensees to better direct resources to actually resolving complaints rather than having to research and retrieve archived information related to a complaint on incidents that may have occurred over a longer period.

It is not the intent of URCA to discourage Licensees from receiving and resolving complaints that may fall outside the proposed timeframe. URCA encourages Licensees to consider extenuating circumstances that may have caused an inordinate delay in the lodging of a complaint and to make every effort to resolve such complaints.

**Question 15: Do you agree that the proposed ninety (90) day timeframe is a reasonable period within which a complaint should be lodged. Please explain.**

### **7.10 Changes to the Complaints Procedures**

URCA believes that any changes to the Complaints Procedures should be done in a manner that is transparent. Consumers should be made aware of changes to the Complaints Procedures and how such changes may impact them. URCA therefore

proposes that changes or amendments to the Complaints Procedures be made by the Licensee only after firstly obtaining prior approval by URCA.

URCA further proposes that the Complaints Procedures should contain a statement to the consumer which clearly indicates that the provisions of the Complaints Procedures and any amendments made thereto have met the approval of URCA.

**Question 16: Do you believe that URCA should firstly approve proposed changes to the Complaints Procedures by the Licensee? Please explain your answer.**

### **7.11 Branding issues**

URCA proposes that where the service provider has more than one customer-facing brand (that is, any of the Licensee’s brand with which the consumer directly deals), product or company name, the Complaints Procedures should clearly refer to all brands and/or names that should be recognized by the customer.

## **8. Next Steps**

URCA will carefully consider all comments and submissions received within the prescribed timeline for responding to this Consultation document. URCA intends to issue a Statement of Results and Final Decision to this Consultation within thirty (30) calendar days following the end of the consultation period. URCA will give full reasons for its decisions.

The Final Decision will specify and notify Licensees of the minimum criteria to be included in the Complaints Procedures. Licensees would be required to modify existing procedures within a stipulated time frame to include the criteria specified in the Final Decision. URCA therefore proposes that any necessary modifications should be submitted to it for review by all Licensees no later than ninety calendar (90) days from the date of publication of the Final Decision.

URCA further proposes to issue a “Statement of No Objection” where the Licensee has developed its Complaints Procedures in accordance with URCA’s Final Decision and a “Statement of Objection” where the Complaints Procedures by a Licensee do not meet the criteria under the Final Decision. Where a “Statement of No Objection” has been subsequently issued by URCA, the Licensee will have within thirty (30) calendar days thereafter to implement the Complaints Procedures. Where URCA has issued a “Statement of Objection” it will provide clear directions to the Licensee regarding the necessary modifications required to be made to the Complaints Procedures. In the latter circumstance, the Licensee will be required to re-submit its Consumer Complaints Procedures to URCA for further review.

URCA is particularly seeking the views of respondents as to an appropriate time frame within which Licensees would have to modify and implement their Complaints Procedures.

**Question 17: What do you consider would be an appropriate time frame within which modifications or amendments to existing Licensees' Complaints Procedures consequential to this consultation should be made?**

## Annex A – Summary of Consultation Questions

**Question 1: Do you agree that a definition for the term “complaint” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the propose definition, kindly explain and suggest an alternative.**

**Question 2: Do you agree that the principles of fairness and reasonableness should guide the development of the Complaints Procedures? Please provide an explanation for you answer.**

**Question 3: Do you agree that the Complaints Procedures should be made available to consumers without cost? If not, please provide reasoning for your disagreement and suggest a possible cost effective means in the alternative.**

**Question 4: What media do you believe should be used to notify customers of the existence of the Complaints Procedures? Please give reasoning for your answer.**

**Question 5: What media do you believe should be used to make the Complaints Procedures available to consumers? Please give reasoning for your answer.**

**Question 6: Do you agree that, as a matter of transparency, consumers should be notified and informed by the Licensee of any significant changes to the Complaints Procedures? Please explain.**

**Question 7: Do you agree that the periodic review, analysis and revision of the Complaints Procedures by the Licensee should allow for it to be more effective in its application? Kindly explain.**

**Question 8: Do you believe that fifteen (15) business days (and in exceptional circumstances up to thirty (30) business days) is a reasonable period within which a complaint should be resolved? Please provide an explanation for your answer.**

**Question 9: Do you agree with URCA’s proposal that complaints should be categorised in order to establish reasonable timelines for resolution? If not, kindly suggest an alternative approach.**

**Question 10: Do you believe that an internal escalation procedure is appropriate for inclusion in the Complaints Procedures? Kindly explain.**

**Question 11: Should the escalation procedure be subject to timeframes within which**

the complaint should be resolved, depending on the nature of the complaint? If so, please suggest timeframes and provide reasoning for your suggestions.

**Question 12: What are your views on URCA conducting a public consultation on its approach and internal processes to resolving outstanding consumer complaints (and other disputes)?**

**Question 13: What measures do you believe that service providers should implement to ensure that consumers would be able to track the progress of their complaint?**

**Question 14: Do you agree that provisions should be made for the retention of records of complaints and how long do you think these records should be kept?**

**Question 15: Do you agree that the proposed ninety (90) day timeframe is a reasonable period within which a complaint should be lodged. Please explain.**

**Question 16: Do you believe that URCA should firstly approve proposed changes to the Complaints Procedures by the Licensee? Please explain your answer.**

**Question 17: What do you consider would be an appropriate time frame within which modifications or amendments to existing Licensees' Complaints Procedures consequential to this consultation should be made?**