



CONSULTATION PROCEDURE GUIDELINES

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CONTENTS

1. INTRODUCTION	1
2. OBJECTIVES OF THESE CONSULTATION PROCEDURE GUIDELINES.....	1
3. NOTIFICATION OF CONSULTATION	2
4. METHOD OF CONSULTATION	2
5. RESPONSES TO CONSULTATION	5
6. CONFIDENTIAL RESPONSES TO CONSULTATION	5
7. COMMENTS TO WRITTEN RESPONSES	6
8. DECISIONS MADE BY URCA FOLLOWING A CONSULTATION	7
9. DURATION OF CONSULTATION	7

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 issues these Guidelines pursuant to its statutory duty under section 11(3) of the Communications Act, 2009, (Comms Act) and section 41(3) of the Electricity Act, 2015 (Electricity Act) to publish its standard consultation procedures for seeking stakeholder participation in URCA's decision making processes. These Guidelines outline the principles which will 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.

2. OBJECTIVES OF THESE CONSULTATION PROCEDURE GUIDELINES

These Consultation Procedure Guidelines have been developed in accordance with the high level sectors' policy objectives and the sectors' related laws. URCA 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 recognises 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 analyse 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.urcabahamas.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. 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@urcabahamas.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 emphasise that there will be prescribed timelines for responding to the consultation once the consultation has been published.

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.

An informal information gathering process may also be used in some circumstances where URCA is seeking to have input before it develops a considered position. In those cases, URCA may invite interested parties to submit comments and contributions on various topics and issues affecting a regulated sector, to inform URCA's development of a more formal consultation document. An invitation for submissions may be made by direct mail or notice published in the daily newspapers, on television, radio, or URCA's website. Papers submitted may be utilized for the purpose of informing policy and the development initiatives in the regulated sectors generally or may be a preliminary step to a public consultation as URCA in its discretion may determine, having regard to factors such as the complexity of the issues involved and the impact to the community.

The contents of a full consultation document will usually be developed within the internal expertise of URCA. The specialised 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 understanding 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.urcabahamas.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.¹ 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

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.²

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;

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

² Section 11(1) of the URCA Act provides that URCA shall not 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.

- (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 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.³

³ 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.

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 analysed. 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.⁴

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) days.⁵ 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);

⁴ See section 10 of the URCA Act.

⁵ 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, or under section 64 of the Electricity Act, 2015, URCA has discretion to shorten or lengthen this timeframe depending on the circumstances.

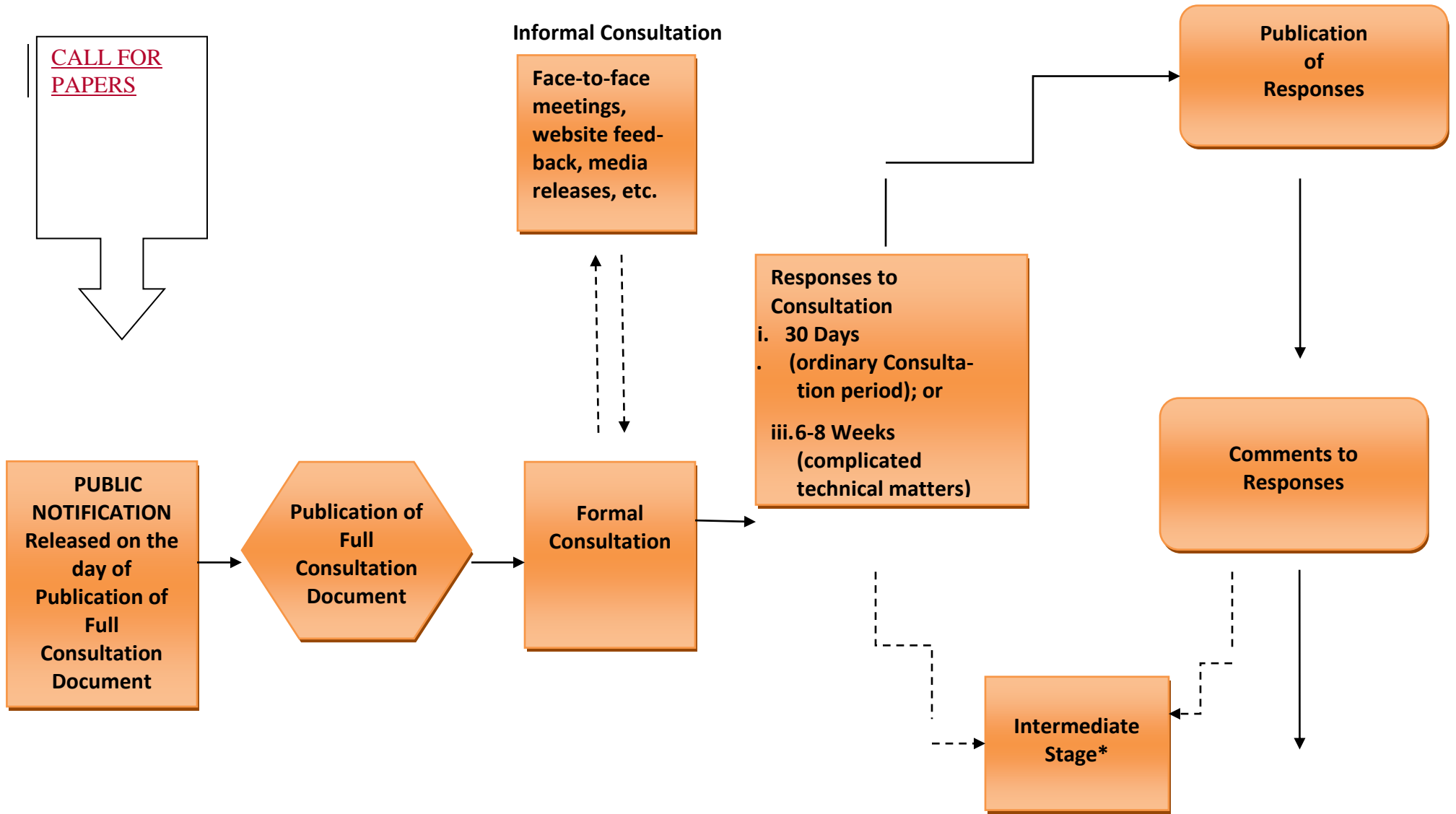
- (b) the issue has already been the subject of a consultation;
- (c) a proposal by URCA will have limited effect on a market; or
- (d) a proposal by URCA is only a limited amendment to existing policy or regulation.

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.

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.

ANNEX: ILLUSTRATION OF HOW CONSULTATION PROCESS WILL WORK



*** As explained in Section 9**

