



The Utilities Regulation and Competition Authority's Standard Consultation Procedures

STATEMENT OF RESULTS

URCA 05/2021

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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 established under the Utilities Regulation and Competition Authority Act, 2009 (“URCA Act”).

As it relates to the ECS, URCA is responsible for licensing undertakings that establish, operate or maintain an electronic communications network or provide a carriage service, including by use of any radio spectrum in accordance with the Communications Act, 2009 (“Comms Act”).

Similarly, in the ES, URCA is responsible for the licensing of all generation, transmission, distribution and supply of electricity within, into, from or through The Bahamas in accordance with the Electricity Act, 2015 (“EA”).

URCA also regulates both the ECS and ES through the Comms Act and EA which set out, inter alia, the functions and powers of URCA to issue regulatory and other measures to regulate the respective sectors. In carrying out this function, URCA has an obligation under the URCA Act, the Comms Act and the EA to allow persons with a sufficient interest an opportunity to comment on proposed regulatory and other measures which, in the opinion of URCA, are of public significance and further to give due consideration to those comments prior to introducing those measures (“consultation¹”).

Insofar as it concerns the procedure for how consultations are conducted, URCA has an obligation under section 9(2) of the URCA Act, section 11(3) of the Comms Act and section 41(3) of the EA to publish its standard consultation procedures for seeking licensees, stakeholder and interested parties participation in URCA’s decision making processes.

URCA’s standard consultation procedures (“SCP”) for seeking licensees, stakeholders and interested parties participation in its decision making process as contained herein sets out URCA’s policy, guidelines and procedure for engaging relevant stakeholders in consultation for relevant regulatory and other measures.

The SCP contained herein indicated URCA’s current thinking and URCA will therefore update its SCP from time to time to take into account best practices and to reflect developments in best practices relative to public consultations.

¹ Section 9 of the URCA Act, Section 11 of the Comms Act and Section 41 of the EA.

1.1 Background

Having regard to URCA's statutory mandate to issue its SCP, on 13th April 2017, URCA issued its "Consultation Procedure Guidelines"² which outlines the principles which are 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.

At the time of implementing the 'Consultation Procedure Guidelines' in 2017, it was stated that *"URCA will update these guidelines from time to time to take account of best practice and comments received from interested parties."*³

Since the publication of the 'Consultation Procedure Guidelines', there have been changes to the regulatory framework of both the ECS and ES, inclusive of, for example, the introduction of new licensees.

Additionally, URCA has noted comments received from various licensees and stakeholders, expressing a desire to make an input in relation to URCA's SCP.

Having regard to, inter alia, the passage of time since the implementation of the "Consultation Procedure Guidelines" in 2017, comments received from licensees, stakeholders and interested parties, the evolution in the ECS and ES, coupled with the introduction of licensees who did not have an opportunity to comment previously in relation to URCA's SCP, URCA considers it in the public interest to review and update its SCP.

Accordingly, on 23rd August 2021, URCA issued a Consultation Document (URCA 03/2021) in respect to its proposed revision to URCA's SCP. Persons were invited to return any comments concerning URCA 03/2021 on or before 23rd September 2021. No comments were received.

1.5 Structure of the remainder of this document

The remainder of this consultation document is structured as follows:

Section 2: Outlines the legal basis and framework under which URCA has exercised its power to implement its Standard Consultation Procedure ("SCP");

Section 3: Outlines URCA's Standard Consultation Procedure ("SCP");

² URCA 04/2017

³ URCA 01/2016 - [DRAFT URCA CONSULTATION PROCEDURE GUIDELINES \(urcabahamas.bs\)](https://www.urbahamas.bs/)

2. Legal Framework

This section outlines the regulatory and legal framework under which URCA has exercised its power to establish its SCP.

2.1 The Utilities Regulation and Competition Authority Act, 2009

The URCA Act establishes URCA as a public authority with various functions set out in section 4 of the URCA Act, in addition to any other responsibility conferred on URCA under any other regulated sector law.

Section 9 of the URCA Act establishes a statutory duty for URCA to consult when issuing regulatory and other measures, subject to any specific procedures under any regulated sector law which are in the opinion of URCA, are of public significance.

Section 9(3) of the URCA Act further outlines that a regulatory or other measure is likely to be of public significance if it relates to a regulated sector and can lead to --

- (a) a major change in the activities carried on by URCA under the URCA Act or any other enactment;
- (b) a significant impact on persons carrying on activities in a regulated sector; and/or
- (c) a significant impact on the general public in The Bahamas or in a part of The Bahamas

In relation to the consultation procedure, the section 9(2) of the URCA Act specifically outlines that –

“(2) URCA shall, as soon as practicable, publish its standard procedures for seeking comments, which shall include –

- (a) how consultations will be published;
- (b) the minimum time for responding to consultations, which in ordinary circumstances shall be no less than thirty (30) days;
- (c) how URCA will publish comments or summaries of comments received; and
- (d) guiding principles for determining when URCA may derogate from the standard procedures.”

2.2 The Communications Act, 2009

The Comms Act empowers URCA, as the regulator for the ECS in The Bahamas, with implementing the ECS policy, enforcing provisions of the Comms Act and enforcing licensee’s license conditions.

Section 11 of the Comms Act establishes a statutory duty for URCA to follow the specific procedures set out in section 95 and 104 of the Comms Act when issuing regulatory and other measures referred to in those sections, and where there are no set procedures, the Comms Act sets out an obligation on URCA to consult on matters where in the opinion of URCA the matters are of public significance.

Section 13 of the Comms Act outlines that a regulatory or other measure is likely to be of public significance if it relates to the electronic communications services or networks and can lead to one or more of the following -

- (a) involve a major change in the activities carried on by URCA under the CA;
- (b) a significant impact on persons carrying on activities in those areas where URCA has functions under the CA; and
- (c) a significant impact on the general public in The Bahamas.

The Comms Act further stipulates that in relation to URCA's duty to consult under section 11 of the Comms Act, that sector policy, regulations, technical rules and standards shall be considered regulatory or other measures of public significance.

In relation to the consultation procedure, section 11(3) of the Comms Act mandates that –

“(2) URCA shall, as soon as practicable after the [CA] comes into force, publish its standard procedures for seeking comments, which shall include –

- (a) how consultations will be published;
- (b) the minimum time for responding to consultations, which in ordinary circumstances shall be no less than thirty calendar days;
- (c) how it will publish comments or summaries of comments received; and
- (d) guiding principles for determining when it may derogate from the standard procedures.”

2.3 The Electricity Act, 2015

The EA empowers URCA as the regulator for the ES in The Bahamas, with implementing the ES policy, enforcing provisions of the EA and enforcing licensee's license conditions.

Section 41 of the EA establishes a statutory duty for URCA to follow the specific procedures set out in sections 64 and 65 of the EA when issuing regulatory and other measures referred to in those sections, and where there are no set procedures, the EA sets out an obligation on URCA to consult on matters where in the opinion of URCA such matters are of public significance.

Section 42 of the EA outlines that a regulatory or other measure is likely to be of public significance if it relates to electricity supply systems or services, energy efficiency programmes,

or renewable energy resources and can lead to one or more of the following --

- (a) involve a major change in the activities carried on by URCA under the EA;
- (b) a significant impact on persons carrying on activities in those areas where URCA has functions under the EA; and
- (c) a significant impact on the general public in The Bahamas.

The EA further stipulates that in relation to URCA's duty to consult under section 41 of the EA, that the national energy policy, regulations, technical rules, and standards issued by URCA shall be deemed to be regulatory or other measures of public significance.

In relation to the consultation procedure, section 41(3) of the EA mandates that –

“(2) URCA shall, as soon as practicable after the date this Act comes into force, publish its standard procedures for seeking comments, which shall include –

- (a) how a notice of consultation requesting comments will be published;
- (b) the minimum time for responding to a notice of consultation, which shall in ordinary circumstances, shall be not less than thirty calendar days commencing on the day after URCA publishes the notice of consultation;
- (c) how it will publish comments or summaries of comments received; and
- (d) guiding principles for determining when URCA may depart from the standard procedures.

3. URCA’s Standard Consultation Procedures

3.1 Introduction

This section sets out URCA’s SCP which are aligned with the statutory requirements⁴ of the URCA Act, the Comms Act and the EA and international best practices.

Having regard to the similarities between the statutory requirements for consultation procedures under relevant Bahamian law and the need for uniformity across the sectors, URCA adopts the SCP set out herein for all consultations required under the URCA Act, the Comms Act, the EA or any other law or regulatory measures.

URCA’s SCP set out herein is not applicable to consultations conducted by URCA relative to sections 95 and 104 of the Comms Act or 64 and 65 of the EA. This is because the respective legislation already set out the specific procedures that URCA must follow when issuing regulatory and other measures referred to in those sections.

3.2 Notification of a 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, will 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 on the date of issuance and in at least two (2) national newspapers as soon as practicable. Notification of the consultation may also be effected through public announcements 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@urbahamas.bs.

The notification of consultation should include, but will not be limited to, the following:

- (a) title of consultation;
- (b) objectives and overview of the consultation;

⁴ Section 9 of the URCA Act, section 11 of the Comms Act and section 41 of the EA.

- (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.

3.3 Methods of Consultation

URCA will decide 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 following:

- 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.

Informal consultation process

An informal information gathering consultation process may 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. Comments submitted may be utilized for the purpose of informing policy and the development of 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.

When relevant, URCA may 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.

Formal consultation process

URCA will adopt a formal consultation process in circumstances where based on its internal expertise, it has developed a considered position and/or 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 usually 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 decisions 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 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, if needed. 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 standards or instruments. URCA, therefore, may 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.

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 clearly state the policy and regulatory

- 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.

Alternative Consultation Approaches

Notwithstanding the existence of informal and formal consultation processes, URCA considers that in certain circumstances, these processes 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 implements 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 among the general public and/or focus groups;
and
- (c) reaching out to special interest and community groups who may have an interest in the decisions by having public meetings and open seminars.

3.4 Responding to Consultations

URCA will generally request written responses to its consultations. Notwithstanding this, there may be occasions where URCA will entertain oral responses to consultations. These, however, will be limited to specific instances, such as town meetings and oral hearings, in which case URCA will organize for a written record of the proceedings.

3.5 Confidential Responses to Consultation

All submissions received in response to URCA's consultations are 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 confidential⁵.

URCA adopts the following procedure for the handling of confidential information submitted to it by consultation respondents:

- (a) any claim for confidentiality must be accompanied by full 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; a person claiming confidentiality in connection with the information must also file with URCA a redacted version of the information or response to be placed in the public domain;
- (c) 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;
- (d) 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:
 - refuse to publish the full document or information in response to the consultation; and
 - publish the redacted version of the document of information.
- (e) URCA may also consider as confidential, information that:
 - (i) is a trade secret;
 - (ii) is of financial or technical nature and is normally treated as confidential;
 - (iii) if disclosed, is reasonably certain to result in significant financial loss or gain; and
 - (iv) if disclosed, is likely to result in significant competitive advantage or disadvantage.

3.6 Duration of Consultation

Consultations will last for a period of thirty (30) calendar days for consultations which fall within one or more of the following categories:

⁵ Section 11 of the URCA Act, Section 14 of the Comms Act, Section 75 of the EA

- (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.

Therefore, 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 six to eight weeks will be allotted for such consultations.

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.

3.7 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 may 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 allow respondents to make comments on those responses or clarifications within a specified timeframe of two to four weeks. In such further comments, respondents may correct factual errors, clarify ambiguities or put forward counter arguments.

An opportunity for making comments to written responses shall not be used as an opportunity for respondents to raise new issues.

3.8 URCA's Timeframe to Decide Following a Consultation

URCA shall be allowed a reasonable timeframe to consider, analyze and apply comments to its decision-making process following a consultation.

In assessing the reasonableness of a response timeframe, the following will be considered: -

- (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) where there is a need to complete URCA's response within a specified timetable because of a statutory requirement;
- (c) the complexity of the matter being consulted;
- (d) the volume of responses and comments received in relation to the consultation; and
- (e) the complexity of responses and comments received in relation to the consultation.

Where the subject of the consultation is simple and there is a small volume of responses or where there is a statutory requirement to do so, URCA will analyse comments received and make its decision within one month from the deadline set by URCA in which individuals are to provide their comment on the proposed regulatory or other measure.

Where consultations are complex and where there are voluminous responses, a period of at least six to eight weeks will be allotted for URCA to analyse the comments received and make its decision from the deadline set by URCA in which individuals are to provide their comment on the proposed regulatory or other measure.

Where URCA utilizes an intermediate stage in the consultation process and it publishes the responses and comments received as fully set out in Section 4.6 herein that the period for URCA to make its decision would be extended to within one month from the deadline set by URCA in

which individuals are to provide their further comments.

Where the timeline for comment by stakeholders or affected parties has been extended by URCA, any period requiring URCA to make a decision will commence on the day after the expiry of the extension given by URCA.

An illustrative example of the consultation process and effect of the various timeframes is as follows:

	Initial Consultation	Factors Affecting URCA's timeframe to respond	URCA's resulting timeframe to respond
Scenario 1 – A simple consultation	On 1 st July 2021 URCA proposes and publishes a regulatory or other measure of public significance requiring consultation. URCA sets a deadline of 30 days and requests comments by 1 st August 2021.	The subject matter of the consultation is simple, there is a small volume of responses to the consultation received and/or there is a statutory obligation to respond within a month.	URCA considers the comments received and makes its decision within one month, on or before 1 st September 2021.
Scenario 2 – A complex consultation	On 1 st July 2021 URCA proposes and publishes a regulatory or other measure of public significance requiring consultation. URCA sets a deadline of 30 days and requests comments by 1 st August 2021.	The subject matter of the consultation is complex and/or the number of responses to the consultation is voluminous.	URCA considers the comments received and proposes to make its decision within a period of 6-8 weeks on or before 15 th September 2021.
Scenario 3 – A consultation with an interim step or a granted extension for comments by URCA	On 1 st July 2021 URCA proposes and publishes a regulatory or other measure of public significance requiring consultation. URCA sets a deadline of 30 days and requests comments by 1 st August 2021.	URCA receives comments by 1 st August 2021 that require clarification and uses an intermediate stage and sets a deadline for clarification by 1 st September 2021. OR URCA receives requests for an extension for which comments can be made and extends the deadline to 1 st September 2021.	URCA considers the comments received and proposes to make a decision within one month from the end of the intermediary stage or extended deadline for comments which would be on or before 1 st October 2021.

3.9 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 will 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.

3.10 Guiding Principles for Derogation from Standard Procedures

While URCA will generally adhere to the SCP, it recognizes the need for the procedure to be sufficiently flexible and dynamic to address the exigencies of the relevant regulated sectors and of circumstances.

Further, URCA does not intend to fetter its statutory authority and discretion in relation to consulting with the public, licensees and stakeholders.

Where URCA derogates from the set principles in this document, it will inform relevant parties of the reasons by publication on its website.

Timeframes

The various timeframes set out in this document as it relates to the provision of comments and URCA's response ought to be reasonable and flexible having regard to the circumstances of each consultation.

Where a matter involves issues of national emergency or where a matter involves a set of circumstances that may be financially or commercially time sensitive, it may in its discretion shorten the timeframes as set out in its SCP.

Abandonment and/or re-issuing a Consultation

Where, as a result of comments received during the consultation process, among other things, it will be open to URCA to consider making substantive changes to consultation documents. If the changes are, in URCA's opinion, to the extent that there is virtually total transformation of the original document, URCA may consider abandoning the initial consultation or re-issuing the consultation document for new comments.

In the event that a consultation is abandoned, URCA will issue a notice informing the general public and interested parties of its decision to abandon the consultation.

In this event, depending on the level of comments received during the initial consultation, among other things, and the urgency of the matter being consulted on derogate from its standard procedure.