Via Email
Honorable Senator Milton E. Potter
Chairperson
Committee on Rules and Judiciary
34th Virgin Islands Legislature
Capitol Building
Charlotte Amalie, St. Thomas, VI 00804
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Re: Bill No. 34-0025 – An Act amending Title 3, section 273 of the Virgin Islands Code by establishing minimum criteria for Public Services Commission members and changing the number of its members (Proposed by: Senators Janelle K. Sarauw and Alma Francis Heyliger)

Good morning Honorable Members of the Committee on Rules and Judiciary: Chair Milton E. Potter, Vice-Chair Kenneth L. Gittens and Senator Novelle E. Francis, Jr., Senator Carla J. Joseph, Senator Franklin D. Johnson, Senator Steven D. Payne, Sr., and Senator Genevieve R. Whitaker. The Public Services Commission wants to thank you for the opportunity to testify today on Bill 34-0025 regarding the composition of the Public Services Commission. We particularly want to thank Senator Janelle K. Sarauw and Senator Alma Francis Heyliger for bringing this bill forward.

As the Legislature has seen over the past several years, the work of the Public Services Commission is critical to the territory, in its oversight of regulated utilities and its functions in conjunction with the Federal Communications Commission on telecommunications. Much of Bill 34-0025 is at the request of the Commission, which has urged the updating and reform of the for many years.

The Commission has had seven authorized members, and two ex officio members of the Senate; those seven seats have not been fully filled in more than a decade. And it is not a surprise – the Commission is time and effort intensive for no direct gain – it is hard work solely for a public benefit.

Critically, the Commission does not have a quorum at this time. Since December 2020 it cannot take action. This is a potentially serious problem: utilities may be able to change rates unilaterally, rate investigations may go undone, and federal benefits lost to companies and the territory.

We note that this legislation would reduce the Commission from 7 voting members to 5 and reduce the quorum requirement from 4 to 3. We support both measures.

The measure expressly authorizes the use of virtual meetings – this is some that the Public Services Commission has been doing for several years. We wish to stress that the Commission
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has been conducting its meetings so that the public and participants could be on either St. Thomas or St. Croix for more than a decade and has been streaming its meetings for the public since before Covid-19. We have invested in more technology to make the process easier and better for all involved.

The measure also permits the appointment of Commissioners who are not full-time residents of the Virgin Islands. This may be necessary to locate individuals who can meet the added requirements for the members of the Commission in background and training that are proposed here. We have had experience with dedicated and competent members of the Commission without this training and background, but we can understand the concern.

Likewise, the bill includes substantial limitation on potential conflicts of interest for Commissioners, on future employment, and on political activity for Commissioners. If similar standards are applied to WAPA’s board, we can understand the approach.

The proposed bill also addresses one of the very longstanding concerns of the Commission, which is the ability of the Commission to be sued and sue in its own name. Historically the Commission has been represented by the Attorney General, who has frequently had to recuse itself due to conflicts and in other instances has appointed special counsel due to the specialized work of the Commission. This is very important and a longstanding request. Thank you.

We note that virtually identical language concerning “sue and be sued” is contained Bill No. 34-0021, which also addresses a key issue not contained here in Bill No. 34-0025: the limitation of personal liability for the Commissioners and their agents and employees. Such limitation is normal for all regulatory commissions, and many other Virgin Islands Commissions. The absence of such protections may be affecting the ability to fill the current vacancies. The Commission strongly supports and has long requested that change.

We thank you for this opportunity to comment, and for your support for this measure.

Sincerely,

Donald G. Cole
Executive Director

cc: Chair Milton E. Potter,
    Vice-Chair Kenneth L. Gittens and
    Senator Novelle E. Francis, Jr.,
    Senator Carla J. Joseph,
    Senator Franklin D. Johnson,
    Senator Steven D. Payne, Sr.,
    Senator Genevieve R. Whitaker.
    Senator Alma Francis Heyliger
    Senator Janelle K. Sarauw
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