

**COMMUNICATIONS AUTHORITY
ADMINISTRATIVE RULES**

OF

PRACTICE AND PROCEDURE

COMMUNICATIONS AUTHORITY ADMINISTRATIVE RULES OF PRACTICE & PROCEDURE

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PREAMBLE

These Administrative Rules of Practice and Procedure are hereby established to set forth the means by which persons wishing to participate in or initiate proceedings before the Authority shall do so.

PART I GENERAL

1 A. Short Title and Commencement.

These Rules may be cited as the Communications Authority Administrative Rules of Practice and Procedure, 2006 and shall come into force on such date as the Minister may by notice in the Gazette prescribe.

B. Application

These Rules are issued subject to the Act and Regulations made there-under and shall apply to the extent that they are not inconsistent with the Act and Regulations

2 Definition

For purposes of these Rules, any word or phrase to which a meaning has been assigned in the Telecommunications Act shall have such meaning. In these Rules, unless otherwise indicated or required by law,

- 2.1 “**the Act**” means the Telecommunications Act Chapter 469 of the Laws of Zambia.
- 2.2 “**Authority**” means the Communications Authority.
- 2.3 “**complainant**” means a person who has filed a complaint with the Authority in accordance with these Rules.
- 2.4 “**consumer**” means a natural or corporate person who is, was or may in the future be an ultimate or final user of telecommunication services.
- 2.5 “**customer**” means any person that is an end user of, or a purchaser of the services of a telecommunication service provider or operator.
- 2.6 “**ex parte**” means a presentation that, if written, is not served on the opposing parties to the proceeding, or, if oral, is made without advance notice to the opposing parties and without opportunity for them to be present.
- 2.7 “**interrogatory**” means any request in writing for information or particulars made to a party in a proceeding.
- 2.8 “**intervenor**” means any person who has filed a notice of intervention as a matter of right, or one who has been granted permission to intervene by the Authority.

- 2.9 “**filing**” means placement with the Authority of any application, pleading, paper or other document, either by delivery to the Authority in person, or by any other means provided for in these Rules.
- 2.10 “**official service list**” means the list of each and every party to a proceeding before the Authority.
- 2.11 “**party**” means any person with the right to participate in a proceeding, unless such person becomes an intervenor in accordance with Rule 20.
- 2.12 “**person**” means any human being or legal entity interested in the actions of the Authority, including a licensee or telecommunication service provider or operator.
- 2.13 “**petitioner**” means a person who has requested a relief from the Authority.
- 2.14 “**pleading**” means an application, petition, complaint (except an informal consumer complaint), answer, intervention, notice, motion, statement of position, brief, exception, application for rehearing, review, reconsideration or re-argument, response to pleadings, proposed finding of fact and conclusions of law and proposed orders, which document shall become a part of the official file in the proceeding.
- 2.15 “**proceeding**” means any inquiry, complaint or other matter initiated by the filing of an application, complaint or request to the Authority, or initiated by the Authority on its own motion.
- 2.16 “**public holiday**” means any day so designated by the Government.
- 2.17 “**Registrar**” or “**Designated Officer**” means the person responsible for the records and official files of the Authority, and for other administrative duties as may be assigned from time to time.
- 2.18 “**Report and Order**” means a document setting forth a final decision of the Authority.
- 2.19 “**respondent**” means a person against whom a formal or informal complaint has been filed or against whom a proceeding has been initiated by the Authority pursuant to these Rules.
- 2.20 “**response**” means the answer to an application, petition, formal or informal complaint, motion, statement of position, brief or exception.
- 2.21 “**Rules**” shall mean these Rules.
- 2.22 “**tariff**” means any publication containing rates, charges, rules, classifications, regulations, conditions, specifications or requirements which in any way affect or relate to the furnishing by a regulated entity of telecommunication services or facilities to any person.

2.23 **“Subscriber”** shall have the same meaning assigned to Consumer in terms of Rule 2.4 hereof.

2.24 **“telecommunication service provider”**
means any person or entity that provides or offers to provide a telecommunications service, facilities and/or switched access service for compensation.

3 **Correspondence with the Authority**

3.1 All correspondence addressed to the Authority concerning proceedings subject to these Rules shall be forwarded to the Registrar and or any officer designated by the regulatory body for such purpose (the Designated Officer) at the Authority’s address, unless otherwise specifically ordered.

3.2 The Office hours of the Authority shall be Monday through Friday from 0800 hours to 1700 hours or as prescribed by the Authority from time to time.

4. **Registrar/Designated Officer**

4.1 The duties and responsibilities of the Registrar/Designated Officer shall be as follows:

- (a) All orders, decisions, resolutions, hearing notices, declarations and other actions of the Authority shall be authenticated or signed by the Registrar/Designated Officer or such other person as may be authorized by the Authority.
- (b) The Registrar/Designated Officer shall issue all notices of hearings and other processes as may be directed by the Authority.
- (c) Unless otherwise required by law, the Registrar shall serve one copy of every order in a proceeding on each party of record in that proceeding.
- (d) The Registrar shall assign to each proceeding a file number and a title that is descriptive of the subject matter of the proceeding, which number and title shall appear on all notices issued, orders made and papers filed in such proceeding.
- (e) Unless otherwise provided by law or these Rules, pleadings, affidavits and other papers to be filed with the Regulator shall be filed in the office of the Registrar.

- (f) The Authority may establish a schedule of fees and charges which shall apply for purposes of fulfilling requests for copies of documents maintained by the Registrar/Designated Officer, which fees shall cover the Authority's administrative costs related to processes and procedures prescribed herein.

5. **Filing of Documents**

- 5.1 Unless otherwise provided for in these Rules or required by the Authority, Pleadings, Applications, Requests and other papers or documents required to be filed by a particular date must be received for filing at the Authority's headquarters, within the time limits, if any, for filing, during the Authority's office hours.
- 5.2 For purposes of determining the date and time of the Authority's receipt for filing of any pleading or other paper, the date and time of the Authority receipt, and not the date of deposit in the mail or other means of delivery, shall govern.
- 5.3 All pleadings duly filed, including any and all exhibits and/or attachments thereto, shall constitute a part of the official file in each proceeding.
- 5.4 Unless otherwise provided by law or these Rules, Pleadings, papers and other documents are considered to be filed with the Authority upon their receipt and date stamping at the location designated for filing by the Authority.
- 5.5 The Authority may provide rules for electronic notice, filings and procedures concerning any matter before the Authority, including the payment of any fees where applicable, with such safeguards and procedures as may be stipulated to ensure fair consideration of matters and treatment of parties that participate in proceedings before the Authority to a level comparable to physical paper equivalence.

6. **Proof of Service**

- 6.1 Unless otherwise indicated, all parties making filings in any proceeding before the Authority must serve copies of those filings on all other parties to the proceeding.
- 6.2 Service shall be made by that party or by his representative on or after the day on which the document is filed with the Authority, and shall be made in paper form with the signature affixed, even if the document is filed in electronic form, unless the party to be served has agreed to accept service by some other form. Provided that every document shall

be served no later than three clear days before a hearing, and for the purpose of such service, such period shall not include weekends and public holidays.

- 6.3 Proof of service may be by written acknowledgement of service, or by certificate of the person effecting the service, in the absence of such written acknowledgement.

7. Frivolous Filings

- 7.1 Requests, complaints, pleadings and other papers which the Authority determines contains matters or requests that are vexatious, moot, premature, repetitive, frivolous or are incomplete, or which plainly do not warrant consideration by the Authority may be denied outright or dismissed.

8. Filing Periods for Pleadings

- 8.1 Unless otherwise provided by these Rules, or ordered by the Authority, pleadings in proceedings shall be filed in accordance with the provisions of this section.

- (a) **Oppositions.** Oppositions to any motion, petition or request may be filed within 10 days after the original pleading is filed.
- (b) **Replies.** The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to the matters raised in the opposition(s), and the reply to all such matters shall be set forth in a single pleading.
- (c) **Additional pleadings.** Additional pleadings may be filed only if specifically requested or authorised by the Authority.
- (d) **Shorter Filing Periods.** Oppositions to a request for stay of any Authority Order, or to a request for other temporary relief, shall be filed within 7 days after the request for stay is filed. The person who filed the request for stay or other temporary relief shall file any reply to the opposition within 5 days after the time for filing oppositions has expired.
- (e) **Ex Parte Dispositions.** As a matter of discretion, the Authority may rule *ex parte* upon requests for continuances, withdrawal of papers and/or pleadings, extensions of time, requests for permission to file pleadings in excess of the length prescribed by the Authority, and requests for temporary or emergency relief, without waiting for the filing of oppositions or replies.

9. Extensions of Time

- 9.1 The Authority, may in its discretion, grant requests for extension of time.
- 9.2 Parties shall request an extension of any period of time set by these Rules or the Authority by filing with the Authority at least 7 days or as soon as practicable before the filing deadline, a request for an extension of time, which request shall contain facts setting forth the extraordinary circumstances giving rise to the need for the extension of time.
- 9.2 Parties requesting an extension of time shall notify other parties in the proceeding of the fact that a request for extension of time has been (or is being) filed.

10. Stay of Proceedings

- 10.1 Where a party to a proceeding has not complied with any requirement of these Rules or any direction on procedure issued under these Rules the Authority may stay the proceeding until such time that it is satisfied that such requirement has been complied with or take such other steps as it considers just and reasonable.

11 Formulation of Issues

- 11.1 If it appears to the Authority at any time that the statements in an application, answer, intervention or reply do not sufficiently raise or disclose the issue of fact in dispute between the parties, the Authority may direct the parties to prepare issues that shall, if not agreed to by the parties, be settled by the Authority.

12 Production and Discovery

- 12.1 Any party to a proceeding may, at any time before the hearing of the proceeding, give notice in writing to any other party in whose application answer, intervention or reply or response to an interrogatory reference has been made to a document to produce that document for inspection by the party giving the notice and to permit him or his attorney to make copies thereof.
- 12.2 Any party who fails to comply with a notice given to him pursuant to Rule 12 (1) within 10 days from the receipt thereof shall not thereafter be at liberty to put the document referred to in the notice in evidence on his behalf in the proceeding, unless he satisfies the Authority that he had sufficient cause for not complying with the notice.

13 Interrogatories

- 13.1 Where in any proceeding the Authority permits interrogatories to be directed to a party and such interrogatories have been served on the party within the time limit directed by the Authority, the party shall:
- a) Within the time limit directed by the Regulator, provide a full and adequate response to each interrogatory on a separate page or pages, headed as indicated.
 - b) File a copy of the responses with the Authority.
- 13.2 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall:
- (a) Where the party contends that the interrogatory is not relevant, provide a response that sets out reasons in support of that contention;
 - (b) Where the party contends that the information necessary to provide a response is not available, provide a response that sets out the reasons for the unavailability of such information and provide an alternative available information that the party considers would be of assistance to the person directing the interrogatory; or
 - (c) Where the party contends that the information sought is of confidential nature within the ambit of Rule 22 provide a response and file with the Authority a copy of the response provided.

14 Specifications for Pleadings and Papers Filed with the Authority

- 14.1 Unless otherwise stated in these Rules, or otherwise indicated in a licence application or Form, all correspondence filed with the Authority shall be in print or mechanical form.
- 14.2 If papers are prepared by mechanical means, they must be prepared in black ink, with at least a 2.5-centimetre margin on all sides, and must be double-spaced on paper.
- 14.3 If papers are written by hand, they shall be prepared in black ink, shall be clearly legible and the ink used shall be of a sufficient strength so that the writing does not appear faint or difficult to read.

- 14.4 All papers filed with the Authority shall be accompanied by a cover letter containing the signature of the filer or, in the alternative, the last page of the core document shall be signed by the writer of the document.
- 14.5 Whether mechanically prepared or handwritten, all documents must be collated and each shall be consecutively numbered at the bottom of each page and securely stapled in the upper left-hand corner.
- 14.6 All papers filed with the Authority must be written in English or such other language as the Authority may prescribe.
- 14.7 Unless otherwise stated, all papers filed with the Authority must be filed with an original and three (3) copies.
- 14.8 The Authority may limit the number of pages for any document that may be filed in a proceeding. Such page limit may be waived, and permission to file pleadings in excess of the predetermined page limit may be granted only for good cause shown.
- 14.9 Requests to file papers in excess of the page limit must be made at least 7 days before the deadline for filing the paper at issue, and shall contain a concise statement as to why the filing in excess of the page limit is necessary in the case.

15 Content of Pleadings

- 15.1 All pleadings must be clear, concise and explicit.
- 15.2 All matters concerning a claim, defence or requested remedy, including damages, should be pleaded fully and with specificity.
- 15.2 Legal arguments must be supported by appropriate judicial, legislative or Authority precedent, and opposing authorities must be distinguished.
- 15.3 Copies must be provided of all authorities relied upon which are not readily available in the national reporting systems.
- 15.4 Specific reference must be made to any licence provision or tariff provision relied upon in support of a complaint or defence. Copies of relevant portions of tariffs and Licences that are referred to or relied upon in a complaint or answer must be attached to the complaint, answer or other pleading in which they are referenced.
- 15.5 In its discretion, the Authority may order that the parties file additional pleadings or statements, or undertake discovery proceedings including briefs, written interrogatories and other supplementary documents or pleadings.

16 Withdrawal of Papers

16.1 Any party may file a request for the dismissal or withdrawal of any application, request or pleading.

17 Accuracy and Completeness of Representations made to the Authority

17.1 Every person making any representation orally or in writing to the Authority is responsible for the continuing truth, accuracy and completeness of information furnished in a pending proceeding, whether for license, approval, certification or registration.

17.2 Whenever the information furnished in a pending proceeding is no longer substantially accurate and complete in all significant respects, the person making the representation shall as promptly as possible, and in any event within 30 days, unless good cause is shown, amend or request the amendment of the statement, pleading or paper so as to furnish such additional or corrected information as appropriate.

18. Address of Parties

18.1 Each party shall furnish the Authority with an address to be used by the Authority in serving documents or directing correspondence to that party.

19. Appearances before the Authority

19.1 All parties and witnesses participating, or compelled to participate, in proceedings of any kind before the Authority may be represented by counsel at their own expense should they so desire.

20 Intervention

20.1 Any interested person, licensee or telecommunication service provider or operator may intervene in respect of proceedings under these Rules by:

(a) Filing with the Authority, as soon as practicable a letter of intervention that states clearly the intervener's views regarding the proceeding including any comments or views the intervener considers appropriate, together with any relevant information that may be useful in explaining or supporting those views.

(b) The intervener shall serve a copy of the letter of intervention on all parties in the proceeding.

21. Consolidation

- 21.1 The Authority may, upon motion by a party to the proceedings or upon its own motion, where such action will best conduce to the proper dispatch of business consolidate, for hearing or otherwise:
- a) Any cases which involve the same applicant or involve substantially the same issues, or
 - b) Any applications which present conflicting or mutually exclusive claims.

22. Confidentiality

- 22.1 Where a document is filed with the Authority by a party in any proceeding, the Authority shall place the document in the public record, unless the party filing the document asserts a claim of confidentiality at the time of filing.
- 22.2 Unless otherwise specified in these rules or in the Act, any party participating in a proceeding before the Authority may request that information contained in a document filed by that party with the Authority be considered confidential and thus, not be disclosed to the public.
- 22.3 A claim of confidentiality shall be made only by the party to whom the confidential information belongs.
- 22.4 Confidential treatment may be requested for any information relating to the financial capacity or business plan of any person or to any other matter reasonably justifying confidentiality, as provided by common law or statute.
- 22.5 Request for confidential treatment shall be made at the time of filing with the Authority of the document containing the purported confidential information, and shall be accompanied by a concise statement indicating the type of information and why the information is confidential.
- 22.6 Where it is asserted that specific and direct harm would accrue to the party claiming confidentiality, sufficient facts and details shall be provided as to the nature and extent of such harm. The request shall include the confidential information, in a separately sealed envelope, which shall be marked with the filing date, file number, title of the proceeding, the name of the party to whom the information belongs and the signature of the person requesting the confidential treatment.
- 22.7 Once properly filed and identified as confidential information within the meaning of this Rule, the information shall be presumed confidential at the time of filing.

- 22.8 In each filing containing a request for confidential treatment of information, an abridged version of the filing shall be placed in the public record of the proceeding. The abridged version shall contain blank pages indicating that purported confidential information is contained on those pages and these blank pages shall be inserted into each filing in place of the pages containing the said information.
- 22.9 If the Authority rejects a confidential designation, it shall notify the party claiming confidential treatment in writing of the Authority's desire to publicly disclose the purported confidential information. In such cases, the party claiming confidentiality shall have 10 days to file a reply, unless the Authority otherwise directs.
- 22.10 Any person desiring public disclosure of information in respect of which there has been a proper claim of confidentiality may file with the Authority:
- a) A request for public disclosure of the information, setting out the reasons therefore, including the public interest in the disclosure of the information; and
 - b) Any material in support of the reasons why such information should be publicly disclosed.
- 22.11 A copy of a request for the public disclosure of information shall be served on the party claiming confidentiality, and that party may, unless the Authority determines otherwise, file a reply with the Authority within 10 days after the date of service of the request, and shall, where a reply is filed, serve a copy thereof on the party objecting to the confidential designation.
- 22.12 The Authority may dispose of a claim for confidentiality on the basis of the documentation filed or may, if it considers such procedure to be just and proper, refer the matter for hearing.
- 22.13 Where the Authority is of the opinion that, based on all the material before it, the specific direct harm likely to result from the public disclosure justifies a claim for confidentiality, the Authority may:
- a) Order that the document not be placed on the public record;
 - b) Order limited disclosure of the document, or that the document be disclosed to a selected number of particular persons;
 - c) Order disclosure of an abridged version of the confidential information; or
 - d) Order that the document be disclosed to parties at a hearing to be conducted in camera.

- e) Where the Authority orders limited disclosure, the Authority may direct that each person who is granted access to the information, signs a non-disclosure agreement in a prescribed form. The said non-disclosure agreement shall be subject to the Authority's approval as to substance, and shall bind persons having access to such information.

23. Content of Regulatory Decisions

- 23.1 Subject to the Act and any regulations made there under in force, decisions of the Authority shall take such form that the Authority may deem appropriate and shall generally include the reasons for the Authority's conclusions, orders, rights and or virtues or such other information as the Authority deems appropriate and relevant .

24. Requests for Clarification of Final Regulatory Decisions

- 24.1 Any party to a proceeding which has resulted in a final regulatory decision may file a request that the Authority clarify its final decision in that proceeding, in respect of any matter which remains unclear or confusing with respect to such decision. Such request must be filed within 7 days of the regulatory decision and must be served on all parties to the proceeding.
- 24.2 Opposition to requests for clarification must be filed within 10 days after the request for clarification is filed, and shall be served upon the petitioner and all other parties to the proceeding. Oppositions shall be strictly limited to matters raised in the request for reconsideration, and matters outside those raised in the request for reconsideration shall not be considered by the Authority.
- 24.3 The petitioner may file a reply to any oppositions within 7 days after the oppositions are filed, and such replies shall be strictly limited to matters raised in the opposition, and must be served on all parties to the proceeding.
- 24.4 Matters outside those raised in the request for clarification shall not be considered by the Authority.
- 24.5 The Authority shall, within 30 days, deny or grant the request in whole or in part in the form of an order containing a concise statement giving reasons for the action taken.

25 Verification

- 25.1 The Authority may, at any time, require the whole or any part of any application, answer, intervention or reply or a response to an interrogatory to be verified by affidavit by giving a notice to that effect to the party from whom such verification is required.

- 25.2 If a notice given under Rule 25 (1) is not complied with, the Authority may set aside the application, answer, intervention or reply or the response to an interrogatory or strike out any part thereof not verified in accordance with the notice.

26 Directions on Procedure

- 26.1 Where it deems it appropriate in any proceeding, the Authority may issue directions on procedure, which shall govern the conduct of the proceeding and prevail over any provision of these Rules that is inconsistent with those directions.
- 26.2 Any person intending to make an application to the Authority may, prior to filing the application, apply ex parte to the Authority for the issuing of directions on procedure relating thereto.

27 Participation in Proceedings by Authority Staff

- 27.1 All staff of the Authority, may participate in proceedings before the Authority to the same extent that any other member of the public may participate in proceedings, provided that, like other parties, they shall be likewise bound by these Rules.

28 Dispute resolution

- 28.1 In any proceeding, the parties may agree to binding or non-binding arbitration and or meditation of their dispute. The arbitrator/mediator and the rules pursuant to which the arbitration shall occur shall be agreed upon by the parties in advance of the arbitration/mediation and be lodged with the Authority within 14 days of its conclusion.
- 28.2 Within 30 days of issuance of the arbitrator's decision in any non-binding arbitration proceeding or mediatiان, any party may request that the Authority schedule a formal hearing regarding the dispute.

PART II PROCEEDINGS INITIATED BY THE Authority

29 Procedures and Guidelines Making Proceedings.

- 29.1 Subject to the Act and Regulations made thereunder, the Authority may, on its own motion or upon request by any interested person, institute such proceedings as it may deem necessary from time to time in connection with any matter and issues over which it has jurisdiction under the law, or for the purpose of obtaining information necessary or helpful in the determination of its practices, the carrying out of its duties or the formulation or amendment of its guidelines or these Rules.
- 29.2 Procedures to be followed by the Authority shall, unless specifically prescribed in these Rules, be such as in the opinion of the Authority will best serve the purposes of the proceedings.

30 Declaratory Decisions

- 30.1 Upon request or on its own motion, the Authority may issue decisions determining a controversy or removing uncertainty. In doing so, the Authority in its discretion, may hold hearings or conduct any other proceedings allowed under the Act in furtherance of issuance of declaratory decisions.
- 30.2 Any interested person may request the issuance of a declaratory decision as follows:
- a) Requests for declaratory decisions shall be filed in person at the Authority's office and shall contain the specific reasons for the request, along with the precise nature of the decision requested, together with the views, facts, arguments and data deemed relevant to support the action requested, and shall specifically indicate how the interests of the requestor shall be affected by the requested decision.
 - b) The Authority may decline to consider requests that are moot, vexatious, premature, repetitive, frivolous or which plainly do not warrant consideration by the Authority. .
 - c) Unless the Authority determines that a request is moot, vexatious, premature, repetitive, frivolous, or plainly does not warrant consideration, upon receipt of any request for declaratory ruling, the Authority shall cause a summary of the requested action to be published in the Government Gazette and one daily newspaper of national circulation, together with a notice summarizing the material issues and facts raised in the request, and inviting interested persons to furnish the Authority with comments thereon or representations in regard thereto.

- d) Any interested person may file a response or opposition to any request for declaratory ruling, provided such response or opposition is filed within 15 days of the publication of the fact of the request. Any response or opposition must be accompanied by proof of service on the requestor.
- e) Any interested person may file a reply to the statements contained in a response or opposition to any requested declaratory ruling, provided that such reply is filed within 15 days of the filing of the response or opposition, and is accompanied by proof of service on the petitioner and the parties filing the statement(s) to which the reply is directed.
- f) No additional pleadings may be filed unless specifically requested by the Authority.
- g) The Authority may deny the requested declaratory ruling, and shall state the grounds for such denial.
- h) Unless specifically requested by the Authority, no pleadings other than those specified in this Rule will be accepted for filing in a declaratory ruling proceeding.
- i) After receipt of a Request For Declaratory Ruling, the Authority may grant the entire Request, or grant and/or deny the Request in whole or in part, or it may request comments regarding the Request. The Authority shall have the discretion to entertain requests for expedited treatment of any Request For Declaratory Ruling.

PART III HEARINGS

31 Convening Hearings

- 31.1 The Authority may convene a hearing for the purpose of investigation or adjudicating any matter over which it has jurisdiction pursuant to the Act.
- 31.2 Unless a hearing is required by law, the Authority, may in any matter before it, including formal applications, requests and petitions order that such matter be adjudicated, on the written record before the Authority including all pleadings, affidavits, exhibits and other documentation that is a part of the official record of the proceeding.
- 31.3 A hearing may be followed by an order based on the facts presented at the proceeding, and on any written record.
- 31.4 Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.
- 31.5. In no event shall a hearing take place on less than 7 days notice, unless it is a postponement or continuation of a previously scheduled hearing or it is a hearing scheduled on an expedited basis.
- 31.6 A Notice of Hearing shall take such form and contain such information as the Authority may specify. Such form of notice shall include formal notice to parties to the proceeding, notices on a web site and/or official gazette.

32 Preparation of Transcript

- 32.1 The Authority shall designate from time to time a reporter for the recording and transcribing of hearing proceedings.

33. Examination of witnesses

- 33.1 Witnesses at a hearing shall be examined in person on oath unless otherwise provided by these Rules.
- 33.2 The Authority may, at any time, order that:
 - a) Any particular facts be proved by affidavit;
 - b) The affidavit of any witness be read at a hearing on such conditions as the Authority deems reasonable; and
- 33.3 Where relevant expert memoranda or reports have been prepared by witnesses prior to the commencement of a hearing, the Authority may

permit the introduction of those memoranda or reports as evidence in chief by a witness who:

- a) Testifies as to his qualifications to draw the conclusions contained in the memoranda or report; and
- b) Confirms that the memoranda and/or report was prepared under his direction and control, and is accurate to the best of his knowledge and belief.

34 Expert Examination

34.1 The Authority may appoint an expert for purposes of assisting the Authority in the conduct of the hearing and generally advising the Authority on technical matters.

35 Pre-Hearing Conference

35.1 Prior to a hearing, the Authority may, in its discretion, require the parties to participate in a pre-hearing conference.

35.2 At the pre-hearing conference, the following issues may be discussed:

- a) The necessity or desirability of simplification, clarification, amplification or limitation of the issues;
- b) The admission of facts and the genuineness of documents, and the possibility of stipulating to facts in dispute;
- c) The procedure and approximate duration of the hearing;
- d) The limitation of the number of witnesses;
- e) The necessity or desirability of amending pleadings and offers of settlement or proposals of adjustment;
- f) The date for the formal hearing; and
- g) Any other matters as may expedite the conduct of the hearing.

PART IV Subscriber/Consumer Complaints

36 Application of Part IV

- 37 1.This Part applies to any application or complaint made by a subscriber or a potential subscriber of a service in connection with:
- 37.1.1 Quality of service;
 - 37.1.2 Accessibility of service;
 - 37.1.3 The application of one or more provisions of the service provider's tariffs to the subscriber;
 - 37.1.4 Disconnection or reconnection of service or facilities; or
 - 37.1.5 Any other matter respecting the relations between the service provider and the subscriber.
- 37.2 An application or complaint under this Part may be made by mailing or delivering by hand a letter to the Authority setting out the facts and requesting relief.
- 37.3 Where the Authority considers that an application or complaint warrants investigation, it shall forward a copy of the letter received under Rule 37 (2) or a summary thereof to the service provider requesting comment, and the service provider shall reply within 14 days or such other period as the Authority may specify.
- 37.8 The Authority may deal with the application or the complaint on the basis of the written documentation before it, or may
- 37.9 require further information to be furnished by one or more of the parties;
or
- 37.10 issue directions on procedure if the Authority considers that the application or complaint warrants an oral hearing or other form of proceeding.
- 37.11 Where an application or complaint under this Part seeks relief on an emergency basis, such application or complaint may be made orally to an officer of the Authority, and the Authority may, where an interim settlement cannot be reached issue an interim ex parte order authorizing, requiring or forbidding anything to be done that the Authority would be empowered, on application, notice and hearing, to authorize require or forbid. The Authority shall, in such a case, require the applicant to file a further application or complaint in written form to be disposed of according to the procedure set out in this Part.

37.12 A complaint under this Part shall *inter alia* contain the following information;

- (a) the name, address, telephone number and identification number of the consumer complainant;
- (b) the name of the licensee and/or telecommunication service provider against which the complaint is made;
- (c) a complete statement of the facts tending to show that such licensee and/or telecommunication service provider did or omitted to do anything in violation of the Act or the telecommunication service provider's license or tariff;
- (d) a copy of the final letter(s) from the licensee and/or telecommunication service provider demonstrating, or otherwise certify, that all efforts to resolve the matter between the consumer customer and the licensee and/or telecommunication service provider have been exhausted;
- (e) The specific relief sought.

37.13 Verbal informal consumer complaints shall be filed via telephone or as stipulated by the Authority from time to time, by calling the Authority's office or by visiting the Authority's office in person.

37.14 Upon receipt of a verbal consumer complaint, the Authority's designated officer who receives the complaint shall have the discretion to request that the consumer complainant forward a written explanation of the complaint to supplement the Authority's notes taken during the conversation and/or copies of any documents that support the consumer complaint and shall advise the consumer's that s/he may request a hearing on the matter.

37.15 A form provided by the Authority may be used for written informal consumer complaints under this Rule. Such a form shall be available through the internet web site of the Authority and may be filed electronically with the Authority.

37.16 Upon receipt of a written or verbal informal consumer complaint, the Authority shall forward a copy of the complaint, or, in the case of a verbal complaint, a summary of the allegations contained in the complaint and/or the consumer complainant's supplemental written explanation, to the appropriate telecommunication service provider and/or licensee for investigation, and shall advise the telecommunication service provider or licensee of the time within which it must respond to the complaint.

37.17 The telecommunication service provider's and/or licensee's response shall advise the Authority in writing of its satisfaction of the complaint or of

its refusal or inability to do so, and, if a hearing is desired by the telecommunication service provider and/or licensee, a request for such hearing, together with the basis for such request. The telecommunication service provider and/or licensee shall, if requested by the Authority, send a copy of its response to the consumer complainant.

37.18 Upon investigation, where it appears to the Authority that there are clear indications from the telecommunication service provider's and/or licensee's response, or from communications received from the consumer complainant that the matter has been resolved, the Authority may, in its discretion, consider the matter to be closed. In such case, the Authority shall forward a notice to the consumer complainant and the telecommunication service provider and/or licensee indicating that the matter is resolved and closed. The Authority shall outline the basis for the its conclusion that the matter has been resolved.

37.19 The Authority under this Rule may order the telecommunication service provider and/or licensee to take any steps or perform any actions that it is required to perform under the terms of the Act, its license or its tariff. The Regulator may impose sanctions or penalties on the telecommunication service provider and/or licensee to the extent permitted by the Act.

38 Non-Consumer, Operator, Reseller, and Competitor Complaints

38.1 Any person or entity that is not a consumer within the meaning of the Act may file a complaint with the Authority alleging violation of the Act, these Rules, a licence issued by the Authority or a tariff filed with the Authority. The said complaint shall be filed within 7 (seven days) from the date when the complainant first knew or should have known of the alleged violation.

PART V APPLICATION FOR APPROVAL OF NEW OR AMENDED TARIFFS

39 Procedure for Application for Tariff Approval

39.1 Applications for approval of new or amended tariff shall be made by filing the following documentation with the Authority:

- (a) A Tariff Notice consecutively numbered beginning with the number one and substantially in such a form as may be specified by the Authority.
- (b) A copy of the proposed new or amended tariff pages for which approval is sought, in the form required by this Rule;
- (c) A letter explaining fully the reasons for the changes for which approval is sought; and
- (d) Any supporting documentation as may be required by the Authority and in such form as the may be specified.

39.2 Any proposed new or amended tariff pages shall be filed in the form in which they are proposed to be issued except that the words "PROPOSED TARIFF" shall be printed or stamped in red ink at the top of each page and shall contain such other referencing as the Authority may direct.

40 Amending Application

40.1 A regulated service provider may amend its application under this Part by proposing further changes in the tariff affected and, in such cases:

- (a) Shall file with the Authority, the material required to be filed with such modifications as the circumstances require.
- (b) Shall number the new Tariff Notice as in the original Tariff Notice but with the addition of a letter, for example "Tariff Notice 1A".
- (c) Shall amend the filing date and proposed effective date.
- (d) May relate the supporting documentation only to the amendment to the original application.

41 Filing and Effective Dates

41.1 In this Part, "filing date" means:

- (a) Where a Tariff Notice and accompanying material is delivered by hand to the Authority, the date it is delivered; or
- (b) Where a Tariff Notice and accompanying material is mailed to the Authority, the date of receipt thereof by the Authority.
- (c) The proposed effective date for any new or amended tariff pages shall be as directed by the Authority.

42 Notice to Interested Parties

42.1 Where the Authority determines that a public notice shall be issued with respect to an application filed under this Part, and where a person or association is registered or known to be an interested party by the Authority with respect to that application, the regulated service provider shall, forthwith, serve on the person or association the following material:

- (a) A copy of all material filed with the Authority;
- (b) A copy of the existing tariff that would be changed if the application were approved, with the words "EXISTING TARIFF" printed or stamped in red ink at the top of each page; and
- (c) A covering letter in such form as the Authority may specify.

Provided that the Authority may where it deems fit require service of such documents to be effected by notice in a daily newspaper of national circulation in such form as the Authority may prescribe.

42.2 Any person or association may request to be furnished by a service provider with a copy of an application under this Part, and on receiving the request, the service provider shall thereupon serve that person or association with the material specified in Rule 42.1 with respect to the application.

43 Letter of Intervention

43.1 Any interested person or association may intervene in respect of an application under this Part by mailing or delivering by hand a letter of intervention to the Authority and serving a copy thereof on the service provider:

- (a) Within 21 days of the filing date; or
- (b) Where a public notice has been issued, on or before the date specified in the notice.

- (c) Where an application under this Part is for amendments to tariff resulting from an earlier decision of the Authority, and the decision has made provisions for further interventions, any further intervention shall be filed with the Authority and a copy thereof shall be served on the service provider within the period specified in the decision.

43.2 A letter of intervention referred under this Rule:

- (a) Shall clearly state the intervener's views regarding the application together with any relevant information that may be useful in explaining or supporting those views;
- (b) May include a statement of intention to appear at a public hearing should one be held; and
- (c) May include any comments the intervener considers appropriate.

44 Service Provider's Reply

44.1 The Service Provider may file a reply with the Authority:

- (a) Within 10 days after receiving a letter of intervention, or
- (b) Where a public notice is issued, within 10 days after the final date for interventions; and
- (c) Shall, where a reply is filed, serve a copy of the reply on the intervener.

45 Disposition of Applications

45.1 The Authority may dispose of an application under this Part on the basis of the written documentation before it or may:

- (a) Require further information to be furnished by one or more of the parties; or
- (b) Issue directions on procedure if an oral hearing or other form of proceeding is warranted.

45.2 The Authority shall dispose of an application under this Part by issuing a decision or order;

- (a) Approving the application and ordering the proposed tariff pages to be issued by the service provider;

- (b) Approving the application subject to a further amendment of the proposed tariff pages and ordering the proposed tariff pages as amended to be issued by the service provider; or
- (c) Denying the application.
- (d) Giving directions on procedure if an oral hearing or other form of proceeding is warranted.

45.3 New or amended tariff pages issued pursuant to a decision or order of the Authority under this part shall:

- (a) Be worded and printed exactly as proposed to the Authority or as required to be amended by the Authority;
- (b) Have removed therefrom any printing or notices printed in red ink; and
- (c) Comply with all the Authority's requirements governing tariffs.

PART VI: LICENSING

46 General Provisions Relating to Licences and General Authorizations.

46.1 Subject to such exemptions as may be provided for in the Act no person shall:

- (a) Provide a telecommunications service to the public, or
- (b) Operate a telecommunications network used to provide a telecommunications service to the public,

Except under and in accordance with a telecommunications licence issued by the Authority, or under a general authorization granted by the Authority in respect of a particular service

46.2 All licences shall be in writing, and shall be available for inspection by the public.

46.3 There shall be such types of licences and classes thereof as the Authority may prescribe in accordance with the provisions of the Act.

46.4 The Authority may forestall any requirements associated with formal licenses by issuing general authorizations for categories of service or providers.

46.5 The Authority shall consider and make a decision on any licence application within the prescribed period.

47 Conditions of Licences

47.1 The Authority may impose such conditions on licences as may be necessary to achieve the objectives of the Act and/or Government policy, including, without limitation, conditions that address the following matters:

- (a) Scope of services to be offered;
- (b) Quality of service parameters;
- (c) Terms and conditions of exclusivity if any
- (d) Requirements relating to contribution to universal service/access;
- (e) Network or service rollout requirements;

- (f) Additional service obligations;
- (g) Limitations on ownership of other service providers if any;
- (h) Specific tariff conditions;
- (i) Requirements relating to the filing of information by the licensee with the Authority;
- (j) Requirements for co-operation with the Authority in the exercise of its duties under the Act;
- (k) The level of segregation of telecommunications services for accounting and other regulatory purposes as may be determined by the Authority; and
- (l) Requirements with respect to billing, inquiry services and emergency services.

47.2 Licences for the same type of service shall have the same conditions unless differences are objectively justified by different circumstances.

47.3 The Authority may issue licences for such duration as it deems appropriate.

47.4 The Authority may issue directives requiring one or more service providers to file a plan for the approval by the Authority regarding the provision of disaster and emergency telecommunications services.

48 Procedures for the Grant of Telecommunications Licences

48.1 An application for the grant of a licence shall be determined in accordance with procedures established by the Authority, details of which shall be set out in a notice given by Authority.

48.2 The procedures specified under Rule 48.1 shall include time limits for dealing with the grant of licences.

48.3 Where the person applying for a licence fails to provide any information which the Authority reasonably requires in order to satisfy itself that the applicant is able to comply with the terms, provisions and limitations in the licence the Authority may refuse to grant the licence.

48.4 Where the Authority refuses a licence the Authority shall give to the person applying for the licence the reasons in writing for the

refusal and shall specify a period of not less than 14 days within which representations with respect to the proposed refusal may be made.

48.5 The Authority shall give notice of any proposals that it may have to limit the number of licences that it grants, for the purpose of ensuring the efficient use and management of the electromagnetic spectrum.

48.6 A notice under this Rule shall be published in such manner as the Authority considers appropriate for the purpose of bringing the issues to which the notice relates to the attention of those likely to be affected by them, and a reference to such notice shall also be published in the public media.

49 Licensing Process and Criteria

49.1 Each applicant for a licence shall, at a minimum, provide the information set out below:

- (a) Name, address and other location co-ordinates of the applicant;
- (b) A description of the specific type of service that the applicant proposes to provide, and the geographic area the telecommunications service would cover;
- (c) A description of the specific network and telecommunications transmission system that the applicant proposes to establish and operate, and the schedule for implementation and roll-out of the network and system;
- (d) Clear evidence that the applicant has the financial capability to provide the proposed services and to implement the proposed network; and
- (e) Clear evidence that the applicant has the technical capability and experience or has access to the technical capability and experience to provide the proposed services and to implement the proposed network.

49.2 The Authority may, from time to time, publish information regarding procedures and requirements for applications for different types of licences and such publication shall provide:

- (a) Sufficient information regarding the proposed licence to enable applicants to file complete applications;
- (b) Sufficient time between the date of the publication and the due date for the submission of applications to enable applicants to file complete applications;
- (c) For an appropriate degree of public consultation, to be determined in the Authority's discretion, depending on the Authority's assessment of the importance of the licence;
- (d) All of the licensing criteria and the period of time required to reach a decision concerning an application for a licence; and
- (e) Any other objective standards that the Authority may determine.

49.3 Subject to Rule 22, the Authority may publish the information filed with it pursuant to this Rule.

49.4 The Authority shall provide reasons for the denial of a licence, or for its refusal to accept a registration of licence, to the applicant upon request.

50 **Licensing in Situations of Scarcity**

50.1 The Authority may limit the number of licences issued in a given telecommunications market segment:

- (a) During the period of transition towards competition in order to promote the orderly and rapid development of that type of telecommunications network or service;
- (b) If frequencies are not available for allocation in sufficient quantity.

50.2 If the number of licences is to be limited pursuant to this Rule, the Authority may select a licensing process based on the type of telecommunications service or telecommunications network under consideration. In this regard the Authority may select:

- (a) A comparative evaluation process in accordance with Rule 51 hereof;
- (b)** An auction process in accordance with Rule 52 hereof ; or

(c) Such other process as the Authority deems appropriate in the circumstances.

50.3 The Authority shall publish its decision on the choice of type of licensing process in terms of Rule 50.2 as well as any rules it considers appropriate for the conclusion of the licensing process.

50.4 Where the Authority limits the number of licences being awarded, the process for the issuance of such licences shall be objective, transparent, and non-discriminatory.

51 **Comparative Evaluation Process**

51.1 When conducting a comparative evaluation process, the Authority shall determine which applicant is, on the basis of financial and technical capability, best placed to satisfy users' demand for the relevant telecommunications network or telecommunications service.

51.2 The Authority shall conduct a pre-qualification process during which each potential applicant shall provide:

(a) Clear evidence that the applicant has the financial capability to provide the proposed services and implement the proposed network; and

(b) Clear evidence that the applicant has the technical capability and experience or has access to the technical capability and experience to provide the proposed services and implement the proposed network.

51.3 The Authority shall invite applicants who provide the evidence required under Rule 51.2 in a form and substance satisfactory to the Authority, to submit applications in the comparative evaluation process and such applications shall contain the information specified in Rule 51.2 and such other information as may be reasonably required by the Authority.

51.4 The Authority shall establish a process for the comparative evaluation process which process shall comply with this Rule.

51.5 The comparative evaluation of applicants shall be based on such objective criteria as the Authority may determine.

51.6 Subject to Rule 22, the Authority may publish the information filed with it pursuant to this Rule.

52 **Auction Process**

- 52.1 Prior to conducting an auction for a licence to provide a telecommunications service, the Authority shall conduct a pre-qualification process during which each applicant must provide:
- (a) Clear evidence that the applicant has the financial capability to provide the proposed services and implement the proposed network; and
 - (b) Clear evidence that the applicant has the technical capability and experience or has access to the technical capability and experience to provide the proposed services and implement the proposed network.
- 52.2 The Authority shall invite qualified applicants who provide the evidence required under Rule 52.1 in a form and substance satisfactory to the Authority to participate in the auction process.
- 52.3 The Authority may establish rules for an auction process, including the qualification process, and those procedures shall be published by public notice at least 30 days before the conduct of the auction.

53 Radio Licences

- 53.1 Where an applicant for a telecommunications licence, or for renewal of a telecommunications licence, requires frequency spectrum for the provision of the telecommunications services or the operation of telecommunications network contemplated in the application, the applicant shall file an application for issuance or renewal of a radio licence and the Authority shall process both applications concurrently.
- 53.2 The Authority shall not deny issuance or renewal of a radio licence to an applicant described in Rule 52.1 unless the Authority is satisfied upon the evidence before it that the radio licence must be denied because:-
- (a) Of unavailability of frequency spectrum;
 - (b) The need to avoid harmful interference with other telecommunications services provided by a service provider;
 - (c) Issuance of the radio licence would otherwise contravene the relevant legislation; or
 - (d) The telecommunications licence to which the radio licence relates is not granted or renewed
 - (e) It is in the interest of national security

- (f) The licence fee in respect of the application has not been paid or, in the case of an application for renewal, that the applicant has not met the relevant licence conditions for the renewal including the payment of spectrum fees.

Variation or Revocation of Licence

- 54.1 Where the Authority intends to vary or revoke a licence the Authority shall give to the person holding the licence notice:-
- (a) Stating the reasons for the intended variation or revocation; and
 - (b) Specifying a period not less than 28 days from the date of the notice within which representations with respect to the Authority's action may be made.
- 54.2 If the proposed variation or revocation is the result of a breach of a term, provision or limitation of the licence:
- (a) The notice given to the person holding the licence shall state that the proposed variation or revocation will be withdrawn or modified if the breach is remedied within the period of 28 days commencing with the date of notice; and
 - (b) The Authority shall within the period of 28 days following the period referred to in paragraph (a) confirm, modify or withdraw the variation or revocation and give notice of the decision and the reasons for it to the person holding the licence.
- 54.3 Rule 54.2 shall not apply to prevent the variation or revocation of a licence within the period of 28 days referred to in 54.2(a) where the Authority considers that-
- (a) Such decision is required to limit or prevent interference; or
 - (b) The person holding the licence has repeatedly breached a term, provision or limitation of the licence,
 - (c) The licence conditions authorise it to do so
- but in either case the Authority shall review its decision in the light of any subsequent representations being received with respect to the variation or revocation within the said period of 28 days.
- 54.4 Rule 54.2 shall further not apply in relation to any variation or revocation of a licence which appears to the Authority to be requisite or expedient –
- (a) In the interests of national security; or
 - (b) For the purposes of complying with any international agreement or arrangements to which the Country is a party.

55. National Telecommunications Registry

55.1 The Authority shall maintain and publish a National Telecommunications Registry which shall contain:

- (a) The full text of all licences and registrations;
- (b) decisions;
- (c) All type approvals and technical standards prescribed by the Authority;
- (d) Reference Interconnection Offers;
- (e) Interconnection agreements as may be required by the Authority;
- (f) A list of all fees set pursuant to the Act; and
- (g) The National Frequency Plan Register.

PART VII APPEALS AGAINST THE AUTHORITY'S DECISIONS

56 Appeals Procedure

56.1 Appeals against the decisions of the Authority shall be as provided for in the Act.

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