

REPUBLIC OF IRAQ

COMMUNICATIONS AND MEDIA COMMISSION



CONSULTATION DOCUMENT

Rules of Procedure Regulation

JUNE 2016

INTRODUCTION

The Communications and Media Commission (CMC) has engaged a firm of consultants to assist it with a review of the regulatory framework. Having carried out this review in regard to Rules of Procedure, including matters related to complaints and appeals, and the legal powers and mandates of CMC in this regard, the consultants have produced a draft regulation, based on international best practice, and conforming to the relevant Iraqi legal mandates, including the Constitution and Order 65.

Now the CMC wishes to obtain the views of interested individuals and persons on this draft regulation before it is considered for final approval and implementation.

Hence, the CMC invites the public, operators and other interested persons to provide it with their comments on the draft regulation set out in this document. Any views or comments should be made in writing addressed to:

IRAQ – Baghdad

Al masbah – hay babel

District #: 929, Street #: 32, Building #: 18

Or electronically to;

consultation@cmc.iq

22/7/2016

Submissions are needed in soft copy only and may be in English or Arabic; dual-language submissions will be extremely helpful.

In the interests of transparency, the CMC expects to publish submissions. Stakeholders should indicate clearly any part of their submission that they would not wish to be included in a published version, explaining why this part should be treated as confidential.

REGULATION ON RULES OF PROCEDURE OF THE COMMUNICATIONS AND MEDIA COMMISSION OF IRAQ

PREAMBLE

On this [] day of [], 2016, the Board of the Communications and Media Commission of Iraq hereby issues the following Regulation:

AUTHORITY

The Commission, after careful consideration of the provisions of the Constitution of Iraq, including particularly Article 103 in conjunction with Article 110 concerning the Communications and Media Commission (“the Commission”), as well as those provisions concerning fundamental due process, including specifically Articles 19, 93, 94 and 100 setting forth requirements to be met by the Commission concerning administrative processes; and

having further considered the mandates of CPA Order 65, providing for the establishment and functions of the Commission, including but not limited to the specific powers and obligations provided for in Article 1(7) in conjunction with Article 3(1) committing the Commission to principles of objectivity, transparency, non-discrimination, proportionality and due process in carrying out its duties; and

in furtherance of the mandates of CPA Order 65 Sections 4, 8, 10 and 11 as these relate to the requirements for the establishment of procedural rules and functions, including particularly the establishment and functioning of a complaints mechanism and the manner in which appeals from initial Commission decisions must be considered;

have decided to promulgate this regulation in furtherance of, and in conformity with the requirements set out above.

RECITATIONS

Cognizant of its mandate under CPA Order 65, calling for the Commission to be an open and transparent regulatory organization guided by best international practices and the several detailed provisions made in said Order 65 to this end, the

Commission has developed this Regulation setting out its Rules of Procedure. The Commission, in setting out its standard procedures in this form, seeks to ensure transparency of its processes and provide accountability to its stakeholders and the public through the publication of these rules binding both it and the regulated industry, and ensure objectivity and non-discrimination in its work.

Further, the Rules of Procedures set out in this Regulation are designed to guarantee appropriate standards of due process protections to all parties, including in respect of justification, reasonableness and an absence of bias on the part of the decision-maker.

Article I. SHORT TITLE, OBJECTIVES AND PRINCIPLES

- (1) This regulation shall be known as the Commission Rules of Procedure.
- (2) These Rules of Procedure provide for procedural standards to be observed in all Commission actions falling within the scope of this regulation, including but not limited to:
 - (a) objective, standardized processes designed to ensure non-discrimination and avoidance of conflict of interest;
 - (b) requiring transparency through open, documented and public processes as well as reasoned decision-making under published and predictable procedures;
 - (c) proportionality of procedures and the problems or issues to which they respond, including in order to ensure access by consumers and other stakeholders to Commission processes and dispute resolution; and
 - (d) treating every party before the Commission with justice, including but not limited to due process requirements provided under these Rules of Procedure.

Article II. SCOPE OF APPLICATION

- (1) These Rules of Procedure promulgated by the Commission apply to the entire subject matter jurisdiction of the Commission as set out in

CPA Order 65 Article 3(1), providing for the Commission to be solely responsible for licensing and regulating Telecommunications, broadcasting, Information Services and other media in Iraq.

- (2) This Rules of Procedure regulation promulgated by the Commission obliges any and all Commission licensees to the full extent of their provision of jurisdictional services that may be regulated by the Commission under Order 65, any Regulations, Codes of Practices or other binding rules issued thereunder; this regulation also applies to any person insofar as they or their activities fall into the jurisdictional remit of, or relates to their interaction with the Commission; finally, this regulation binds all of the Chief Executive Officer and Commission staff acting under powers delegated by him, the Hearings Panel and Appeals Board.
- (3) This regulation provides for certain rights of persons not providing jurisdictional services, without in any way limiting their rights to seek legal recourse in the courts of law, noting, however that the courts of law may require claimants to have exhausted the available remedies set out in this regulation.
- (4) The powers and prerogatives of the judiciary provided for under the Constitution and the applicable laws, including any and all provisions allowing for recourse to the courts, are not affected by this Commission regulation. In case of a conflict of provisions, the statutory laws regulating access to the courts take precedence.

Article III. DEFINITIONS

- (1) In these regulations, any expression or word having a defined meaning as per Order 65 shall have the same meaning unless the context, or any following definition, clearly indicates otherwise.
- (2) Unless otherwise defined in the particular articles in which they occur, for purposes of these regulations, the following terms shall have the following meanings:

- (a) *Adjudicative Proceeding* or *Adjudication* is a quasi-judicial process and for purposes of this Regulation means the formal process for hearing and resolving the factual and/or legal matters in dispute between specific parties, including potentially the Commission, before an arbiter such as the Chief Executive Officer, the Hearing Panel and the Appeals Board and concluding same in a decision determining the rights and obligations of and between the named parties involved. Any particular Adjudication is specific to the named parties, whose views are heard and determined and hence excludes Rulemaking proceedings.
- (b) *Appeals Board* means the Appeals Board established in terms of Section 4 of Order 65;
- (c) *Board* means the Board of the Commission;
- (d) *Commission* means the Iraqi Communications and Media Commission established in terms of Order 65 and a reference to the Commission includes a reference to any person or body with specific authority to deal with Commission matters in terms of the powers delegated to such person or body by the Commission;
- (e) *Confidentiality* request means a request for confidentiality made in terms of Article VIII of these Regulations;
- (f) *Country Code Top Level Domain* or *ccTLD* means those internet addresses within the “iq” suffix intended to stand for the Republic of Iraq;
- (g) *Days*, unless otherwise specified, means calendar days;
- (h) *Decision* means a determination in regard to a particular, named person or person, including but not limited to cases to which such named person(s) are parties and the direct effect of which is intended to be specific and limited to that party or parties;

- (i) *Chief Executive Officer or CEO* means, in this regulation, the position provided for in Section 4 of Order 65 and termed Chief Executive Officer, and a reference to the Chief Executive Officer or CEO includes a reference to any person or body with specific authority to deal with matters within the powers of the CEO where these powers have been delegated to such person or body by the CEO;
- (j) *CMC Inspector* means an official appointed by the Chief Executive Officer in terms of the provisions of Article XXIV of this Regulation.
- (k) *Dispute Resolution* means for the purposes of this regulation a quasi-adjudicative proceeding, which – in contrast to Adjudication – is characterized by informal interactions as between the parties engaged in a negotiation or a dispute and the Commission-designated arbiter. In Dispute Resolution by or under the authority of the Chief Executive Officer, the Commission provides a process and an arbiter empowered to both mediate between and impose a set of terms resolving the dispute on the parties;
- (l) *Enquiry* means, for the purposes of this regulation a quasi-legislative process intended and designed to elicit information from stakeholders and the interested public at large concerning the need for Commission policy development and potential interventions in the character of a rule, including but not limited to Regulations or Codes of Practice, that will be applicable to an entire category of actors or situations, services, or technologies, among others;
- (m) *Ex parte communication* means for purposes of this Regulation any oral or written communication not on the public record of a proceeding and with respect to which reasonable prior notice to all parties to a proceeding, or reasonably expected to be interested in a proceeding was not given.

- (n) *Gazette* means the official publication of the government of the Republic of Iraq;
- (o) *Hearings Panel* means the Hearings Panel established in terms of Section 4 of Order 65;
- (p) *Inspector-General* means the Inspector-General provided for in Section 4 of Order 65;
- (q) *Investigations* for purposes of this regulation encompass any actions by the Chief Executive Officer to collect information, data, objects, testimony or declarations and the like that are appropriate for arriving at an initial determination of whether non-compliance with the law, Regulations or Codes of Practice, licenses or authorizations or other binding standards set by the Commission has taken place, or may be taking place, and whether, upon this determination, an Adjudicatory Proceeding will be initiated. Such Adjudications, including before the Chief Executive Officer, the Hearing Panel or the Appeals Board are distinct and separate from investigations.
- (r) *Licence* means an authorization granted to a named party in terms of Order 65 or any Regulation passed thereunder;
- (s) *Licensee* means any person granted a licence in terms of Order 65 or any Regulation passed thereunder;
- (t) *Order 65* means the 2004 Order promulgated by the Coalition Provisional Commission bearing this sequence number, as amended;
- (u) *Person* means any natural or legal person;
- (v) *Regulation* means a binding Commission statement in the nature of a rule applicable to all, or to a particular class of persons under its jurisdiction and having future effect designed to implement, interpret, and/or prescribe Commission law or policy in a binding and definitive manner;

(w) *Republic* means the Republic of Iraq; and

(x) *Rulemaking* for the purposes of these Rules of Procedure mean quasi-legislative processes intended and designed to solicit commentary and information from stakeholders and the interested public at large in respect of a specific draft Regulation, Code of Practice and similar instrument of a binding nature applicable to an entire category of actors or situations, services, or technologies, among others.

(3) The use of the male pronoun where it occurs in this Regulation must be understood as a reference to a person of any gender.

Part I: General Provisions

Article IV. TYPES OF FILINGS

(1) Unless otherwise specified in this Regulation, the Commission will entertain the following types of filings to which these Rules of Procedure provided herein apply:

(a) Applications for authorization and/or approval, including but not limited to:

(i) Licences to authorize the provision of services as provided for in Order 65, including without limitation: broadcasting services, telecommunications services, information services, as well as radio operator licenses and assignments of radio frequency spectrum. All such applications are to made in accordance with the applicable licensing regulation(s) or invitations to apply, as the case may be, published by the Commission from time to time; or

(ii) Approvals relating to licence-related and other benefits available under Order 65 and Commission Regulations and requiring affirmative Commission action, including, without limitation, for the assignment of numbers from the national numbering plan, addresses in the “iq” country

top-level domain or ccTLD, and telecommunications or radio equipment type approval. All such applications for approvals are to be made in accordance with applicable Regulation(s), published by the Commission from time to time;

- (b) Petitions from any interested person in relation to a request for regulatory action on the part of Commission other than a complaint; these are to be made in writing and must specify the regulatory action requested to be taken, including for example, the holding of an enquiry, development, reconsideration, or change of a Regulation, the making available of a licence or regulated resource, or the request for Dispute Resolution and so forth. At minimum, Petitions are required to clearly set out:
 - (i) the facts giving rise to the petition;
 - (ii) the legal basis of the petition, for example, an exercise of discretion on the part of the Commission which is authorised in terms of Order 65 or any Regulation or Code of Practice made thereunder; and
 - (iii) the petitioner's desired outcome in respect of his Petition.
- (c) Complaints may be considered by the Chief Executive Officer, or the Hearings Panel. All complaints directed to the Hearings Panel must be filed with the Chief Executive Officer, who may, in his reasonable discretion, directly escalate complaints to the Hearings Panel where the allegations warrant such referral upon initial review.
- (d) Complaints made for consideration by the Chief Executive Officer may be styled either formal or informal. In this regard the following requirements apply:
 - (i) Informal Complaints, including but not limited to consumer complaints, must be made in writing without any particular format, but including at least the

complainant's contact information and sufficient facts as to the issue complained about to allow for an initial view of whether a violation of law, Commission Regulations or other relevant standard is alleged. Informal Complaints cannot be made to the Hearings Panel which is tasked to consider only grave and serious matters in terms of section 4(3) of Order 65; or

- (ii) Formal Complaints must be made in writing to the Chief Executive Officer and may be considered either by the Chief Executive Officer or the Hearing Panel. Unless specified as a Formal Complaint, the Chief Executive Officer has the discretion to treat the complaint as an Informal Complaint. Formal Complaints are required to be detailed and to clearly set out:
 - (aa) the person against whom the complaint is being laid;
 - (bb) the conduct being complained of;
 - (cc) the facts giving rise to the complaint;
 - (dd) the legal basis of the complaint, for example, failure to comply with a particular provision of Order 65 or any Regulation or Code of Practice or Ethics made thereunder, a licence condition, provision of a carrier-to-carrier agreement filed with the Commission; and
 - (ee) the complainant's desired outcome in respect of the complaint. Where the complaint seeks damages to be awarded, a clear and detailed calculation of the basis for such claims for damages must also be provided.
- (e) Appeals to the Appeals Board for review of actions of the Board, or of the Chief Executive Officer or the Hearings Panel must:

- (i) With respect to Appeals requesting a review of actions of the Chief Executive Officer or the Hearing Panel:
 - (aa) set out the basis of the appeal in detail, including but not limited to clearly identifying the decision being appealed against and the body or person that made the decision; and
 - (bb) stating the factual and legal basis for the appeal.
- (ii) with respect to Appeals for review of actions of the Board of the Commission, and in addition of the requirements of paragraph (e)(i), such requests must meet the following criteria:
 - (aa) the appellant must be claiming to be aggrieved by a rule, regulation, Code of Practice, or decision adopted by the Board in terms of Section 8(8) of Order 65; and
 - (bb) the appellant must include a detailed statement as to the direct and detrimental effect or harm of the rule, Regulation, Code of Practice or decision he is challenging upon him personally, in order to have standing as an aggrieved party before the Appeals Board.
- (f) Tenders, offers or bids in response to procurement proceedings of the Commission. All submissions in this regard are to be made in accordance with the applicable procurement Regulation(s), published by the Commission from time to time; or
- (g) Other filings: in the interests of transparency and responsiveness the Commission may, in its sole and absolute discretion, accept other written filings not falling into any of the above categories where it is in the public interest to do so.

- (2) None of the foregoing provisions of this article apply to, or in any way limit, the rights and duties of any person to provide information or make complaints directed to the Inspector-General in relation to any and all matters he is entrusted with under Order 65 and other relevant laws.

Article V. PLACE AND MANNER OF FILING

- (1) All filings, except as provided for in this section, have to be submitted electronically to the Chief Executive Officer, including those directed to the Hearings Panel, or the Appeals Board, as the case may be, via the Commission's website which is to have specific email addresses to which the respective filings can be addressed. Exceptions to this rule are --
 - (a) Petitions or Complaints made by a person other than a Licensee or operator on their own behalf only, in which case paper filings delivered at the Commission's premises will be accepted; or
 - (b) where another Commission regulation applicable to particular types of filings specifically allows or requires other forms of filing.
- (2) The Commission, through its website, will provide a dated acknowledgement of receipt in electronic format immediately upon filing, which constitutes proof of filing. For filings under sub-section (1)(a) or (b), CMC will provide a date-stamped receipt.
- (3) The Chief Executive Officer or the Appeals Board, as the case may be, can require under specific Regulations applicable to particular circumstances that additional paper copies be filed, depending on the nature of the filing or the processes that are to be followed in respect of such filing.

Article VI. COMPUTATION OF TIME

- (1) Time frames for taking any action responsive to any Rulemaking, including but not limited to Regulations and Codes of Practice, and

any Decision of the Commission, including any decisions of the Board, the Chief Executive Officer, the Hearing Panel or the Appeals Board and persons authorized by these, are computed starting from the date at which such document is published in the Gazette and on the Commission's website, whichever is later.

- (2) Time frames for the Commission to initiate particular processes are determined from the date of receipt of the filing as per the acknowledgement of receipt provided by the Commission.

Article VII. FILING FEES

- (1) The Commission may, by Regulation, establish a schedule of filing fees for a limited range of processes frequently undertaken under determined and identical procedures. Such filing fees applicable to particular types of filings will be decided on a cost-oriented basis to reflect the demand of particular processes on the resources of the Commission.
- (2) Notwithstanding the foregoing, informal complaints will have no filing fee to ensure access to the Commission by any consumer.

Article VIII. CONFIDENTIAL INFORMATION

- (1) When a person submits information to the Commission, whether voluntarily or in terms of a notice referred to in Articles XXIV and XXVI, such person may request that specific information be treated as confidential information, including where the information for which confidentiality is sought, contains or implicates sensitive private or business information of the kind set out in paragraph (5) of this Article.
- (2) The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential, which explanation must be signed by the requestor and attest to the truth of the claimed grounds for confidentiality.
- (3) Within 14 business days of receiving a request for confidential treatment of information, the Commission must make a determination

as to whether or not confidentiality will be granted and provide the requestor with written reasons for a favourable or negative determination.

- (4) Should the Commission determine that a request for confidentiality cannot be acceded to, the party having providing the information may be given an opportunity to withdraw the information that was the subject of the confidentiality request if and to such as extent as such information was voluntarily submitted to the Commission.
- (5) When considering a request contemplated in paragraph (1) of this Article, the Commission must treat the following kinds of information as presumably entitled to confidentiality, namely —
 - (c) trade secrets of such person;
 - (d) financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which is likely to cause harm to the commercial or financial interests of such person;
 - (e) information, the disclosure of which could reasonably be expected—
 - (i) to put the person at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice the person in commercial competition; or
 - (iii) to result in the disclosure of sensitive private information; or
 - (iv) endanger the safety of any person
 - (f) the names of prospective employees; or
 - (g) business plans of a licensee.
- (6) A determination of confidentiality may not be made in respect of a document or of any information that is in the public domain or is required to be disclosed by operation of law, including in terms of Order 65 or any regulation made thereunder, or a court order.

Article IX. DELEGATION OF AUTHORITY TO ACT

- (1) Subject to paragraph (2) of this Article, the Board may in writing delegate any power, function or duty of the Commission in terms of Order 65 or any regulation passed thereunder to—
 - (a) any member(s) of the Board of the Commission;
 - (b) the Chief Executive Officer; or
 - (c) any staff member(s) of the Commission.
- (2) The power to make regulations may not be delegated in terms of paragraph (1).
- (3) A power, function or duty of, or delegated to, the Chief Executive Officer may be performed by any other staff member of the Commission authorised by the Chief Executive Officer, except where precluded by the terms of the original delegation.
- (4) Subject to paragraph (5) of this Article, a delegation in terms of paragraphs (1) or (3) —
 - (a) is subject to such conditions as may be determined by the Board or the Chief Executive Officer, as the case may be; and
 - (b) may at any time be amended or revoked.
- (5) The Board or Chief Executive Officer, as the case may be, is not divested of any power, function or duty, or relieved of any duty which it may have delegated in terms of paragraph (1) or (3) and may amend or revoke any Decision made in terms of such delegation, except where any licence will be affected by the revocation or the amendment of the decision.
- (6) Notwithstanding any other provisions of this Article, any person delegated with any power or duty of the Commission must submit a report on the exercise and performance of that power and duty to the Board or the Chief Executive Officer whichever is the delegating authority.

- (7) Notwithstanding the provisions of paragraph (1) of this Article, the Board or the Chief Executive Officer, whichever is the delegating authority, must exercise general control over the exercise of the powers and the performance of the duties of the Commission in terms of Order 65 and any and all Regulations passed thereunder.
- (8) For the sake of clarity, no delegation is required in respect of the functions and procedures of the Hearings Panel or the Appeals Board as these bodies are established and have powers vested in them in their own right by Order 65.

Article X. APPROPRIATE STANDARDS FOR DECISIONS AND ACTIONS

- (1) The ethical and administrative justice standards applicable to decision-making set out in this Article apply to any and all actions by the Board, the Chief Executive Officer, any person(s) duly authorised to act on behalf of the Board or the Chief Executive Officer, the staff of the Commission, the Hearings Panel, and the Appeals Board. The obligations provided for herein are in addition to any others that might be provided in the Commission's Code of Ethics or analogous regulations.
- (2) The Board, the Chief Executive Officer, any person(s) duly authorised to act on behalf of these, the staff of the Commission, the Hearings Panel, or the Appeals Board, as the case may be, must, in taking any action, including a decision not to act, in terms of Order 65 and any regulation or Code of Practice promulgated thereunder:
 - (a) be authorised to do so by the empowering provision, or be acting under a delegation of power authorised by the empowering provision;
 - (b) not be biased, or reasonably suspected of bias;
 - (c) comply with mandatory and material procedures and/or conditions prescribed by the empowering provision;
 - (d) be acting in a manner that is procedurally fair;
 - (e) not take action that is materially influenced by an error of law;

- (f) not take any decision or action:
 - (i) for a reason not authorised by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant considerations were taken into account or relevant ones were not considered;
 - (iv) because of the unauthorised or unwarranted dictates of another person or body;
 - (v) in bad faith, including as a result of a conflict of interest;
or
 - (vi) arbitrarily or capriciously.

- (3) Any affirmative Decision or action taken by the Board or the Chief Executive Officer, the staff of the Commission, the Hearings Panel, or the Appeals Board, as the case may be, must, in addition to the provisions of paragraph (2):
 - (a) be rationally connected to --
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the decision-maker; and/or
 - (iv) the reasons given for it by the decision-maker;
 - (b) be reasonable and justifiable; and
 - (c) be constitutional and lawful.

Article XI. CONFLICTS OF INTEREST

- (1) Any member of the Board, the Chief Executive Officer, any staff member of the Commission, member of the Hearings Panel or Appeals Board, as the case may be, may not vote at, attend, or in any other manner participate in, any meeting or hearing of the Commission, nor be present at the place where the meeting or hearing is held, if —

- (a) in relation to an Application, Petition, or Complaint relating to any benefit or privilege that may be, or has been granted by the Commission, including but not limited to a licence, authorization or approval, he or his family member is a director, member or business partner or associate of, or has an interest in the business of any applicant or party, or of any person making or expected to make representations in relation to the matter to be determined; or
 - (b) in relation to any matter before the Commission, he has any interest which may preclude him from performing his functions as a decision-maker in a fair, unbiased and proper manner.
- (2) If, during the course of any proceeding, there arises occasion to believe that a member of the Board, the Chief Executive Officer, any person(s) duly authorised to act on behalf of the Board, or the Chief Executive Officer, any staff member of the Commission, or member of the Hearings Panel or Appeals Board, has any interest contemplated in paragraphs 1(a) or (b), that person must immediately and fully disclose the nature of his or her interest to the Board, the Chief Executive Officer, the Chair of the Hearing Panel or Appeals Board, as the case may be, and leave the meeting or hearing in question so as to enable the remaining decision-makers to discuss the matter and determine whether or not that person should be allowed to participate in the proceedings. In the case of an action entrusted to a single decision-maker, the proceeding in question must be adjourned until a replacement decision-maker can be designated.
- (3) The disclosure, and the decision taken by the remaining decision-makers in respect of the participation of the person(s) having disclosed a potential conflict of interest in terms of paragraph (2) of this Article must be recorded in the minutes of the proceedings in question and reported to the Inspector-General.
- (4) If a member of the Board, the Chief Executive Officer, or staff member of the Commission, member of the Hearings Panel or

AppealsBoard, or any other person duly authorised by the Commission fails to disclose any interest as required by paragraph (2) or, subject to that paragraph, if he or she is present at, or participates in a meeting to determine a matter in regard to which he or she has a conflict of interest, the relevant proceedings shall be null and void, irrespective of the period of time having elapsed until such failure to disclose a conflict is discovered.

- (5) The Chief Executive Officer, a member of the Board or staff member of the Commission, member of the Hearings Panel or Appeals Board, or any other person duly authorised by the Commission may be guilty of an offence and liable to disciplinary action and/or criminal prosecution upon investigation by the Inspector-General, if he —
- (a) contravenes paragraph (1); or
 - (b) fails to disclose any interest or fails to leave the meeting or hearing as required by paragraph (2).

Article XII. RECUSAL

Any person who reasonably suspects that the Chief Executive Officer, a member of the Board or staff member of the Commission, member of the Hearings Panel or Appeal Board, or any other person/s duly authorised by the Board or the Chief Executive Officer is not complying, or may not comply with the provisions of Article XI, may apply to the Board or the Chief Executive Officer, as the case may be, for that person's recusal from a particular proceeding. The Board or the Chief Executive Officer, as the case may be, must make a decision on the recusal application within seven days and forward a copy of the Decision in the matter to the Inspector-General.

Article XIII. EX PARTE COMMUNICATIONS

- (1) Any member of the Board, the Chief Executive Officer, or staff member of the Commission, member of the Hearings Panel or AppealsBoard, or any other person(s) duly authorised by the Commission to act on its behalf in relation to taking a Decision must

not have Ex parte Communication with a person with an interest in such decision taken, being taken or to be taken.

- (2) Where such communication referred to in paragraph (1) does take place, the person having had such communication, including the Chief Executive Officer, a Board member or staff member of the Commission, member of the Hearings Panel or Appeals Board, or any other person(s) duly authorised by the Commission to act on its behalf in relation to taking a Decision must notify, as appropriate, the Board, the Chief Executive Officer, the Chair of the Hearing Panel or Appeals Board, as the case may be, of such communication and make a copy of such communication available as part of the record of the proceedings, unless it is governed by a confidentiality request.

Article XIV. GIFTS

- (1) No member of the Board, the Chief Executive Officer, or any staff member of the Commission, member of the Hearings Panel or Appeals Board, or any other person(s) duly authorised by the Commission to act on its behalf, may accept any gift from someone with an interest or who may reasonably be thought to have an interest in any Decision taken, being taken, or to be taken by the Commission [with a value greater than 25,000 Iraqi Dinar][of no more than symbolic value].
- (2) A record of all gifts received by the Chief Executive Officer, a Board member or staff member of the Commission, a member of the Hearings Panel or Appeal Panel, or any other person(s) duly authorised by the Commission to act on its behalf, from any persons covered by, and under the circumstances addressed by the provisions of paragraph (1) must be kept in an updated registry kept by the Inspector-General and which is publicly available at the Commission's offices and on its website.

Article XV. ETHICS COMPLAINTS

Without any prejudice to any other remedy available at law, any person with a complaint concerning compliance by the Chief Executive Officer, a Board member or staff member of the Commission, a member of the Hearings Panel or Appeals Board, or any other person(s) duly authorised by the Commission to act on its behalf in terms of the provisions of Articles X through XIV may lay a complaint in writing with:

- (1) the Inspector-General; or
- (2) the Appeals Board, with a complaint concerning non-compliance with the terms of Articles X through XIV in the context of any Commission action considered, in the determination of the Appeals Board, to be harm, sufficient to meet the requirement of being aggrieved within the meaning of Article 8(8) of Order 65.

Article XVI. PUBLIC INFORMATION AND ACCESS TO RECORDS

- (1) Public access to timely and comprehensive information and documentation involving the Commission's activities being essential to ensuring the efficiency, effectiveness, transparency and accountability of the Commission, the Commission undertakes to publish the following information and associated documentation in the Gazette and on the Commission's Website:
 - (a) Regulations or other Forms of Rule-Making:
 - (i) Drafts of the full text of proposed Regulations or other forms of rule-making will be published at least 30 days prior to the date on which submissions of written representations thereon are required to be made by interested parties;
 - (ii) At least 30 day advance notice of oral hearings to be held in respect of any consultation process concerning a proposed Regulation or other form of rulemaking, if the Commission decides to hold such hearings, will be published; such notice must in sufficient detail name the

time, place and duration of such oral hearing, as well as any limitations of time a potential participant needs to be aware of, and

- (iii) within 5 days of their adoption, but in any case no later than 30 days before their effective date, the full text of all final Regulations or other forms of rule-making will be published, along with a reasoned statement summarizing and analysing written representations timely received by the Commission in the matter concerned; alternatively the Commission will timely publish a notice of the decision to abandon the respective rule-making process and its reasons therefor.

(b) Enquiries:

- (i) The Commission will publish a notice of a Decision to undertake an Enquiry at least 30 days prior to the date on which submission of written representations thereon are required to be made by interested parties; such notice will contain a concise statement of the subject matter of the enquiry as well as a prospective assessment of the range of stakeholders that may be affected by it;
- (ii) at least 30 days advance notice of oral hearings to be held in respect of any Enquiry, if the Commission decides to hold such hearings will be published; such notice must in sufficient detail name the time, place and duration of such oral hearing as well as any limitations of time a potential participant needs to be aware of, and
- (iii) the full text of any final report of any Enquiry must be published no later than 5 days after the approval of such final report by the Commission.

(c) Licensing and Approval Processes and Procedures: With respect to any competitive process for the issuance of a

licence or other approval under Part III of this Regulation, the Commission will:

- (i) publish a notice of availability and/or invitation to apply at least 60 days before deadline for the receipt by the Commission of such materials and documents as may be required by such notice in order for a person to be considered an applicant in such licensing or approval process;
- (ii) in any of the following processes, the Commission will publish a notice and summary information at least 30 days before any written representations by interested parties are required to be made:
 - (aa) upon the closing of the application period in relation to a competitive process for the issuance of a licence or other approval, a listing of all applicants; or
 - (bb) in respect to any amendment, disposal, transfer of control or change of a level of beneficial interest requiring Commission approval, renewal, surrender, suspension or cancellation of any competitively-issued licence;
- (iii) likewise, the Commission will provide notice at least 30 days in advance of oral hearings to be held in respect of any matter enumerated in this paragraph (c); such notice must in sufficient detail name the time, place and duration of such oral hearing as well as any limitations of time a potential participant needs to be aware of; and
- (iv) within 5 days of any Commission Decision taken of the processes enumerated in this paragraph (c) and stating the reasons therefor.

(2) The Commission undertakes, subject to the confidentiality provisions of Article VIII, and where applicable, the national security classification of the information concerned, as determined by the Chief Executive Officer, that the following documentation will be made available, either within seven days of receipt thereof by the Commission for materials or information filed with it, or on the day of their issuance, in the case of Commission materials or documents --

- (a) in hard copy for public inspection and copying for a cost-based fee during office hours at the Commission's premises; including a searchable index of the documents held by it; and
- (b) in soft copy form and in a searchable format on the Commission's website,

the following, namely,

- (i) [the names, short resumes and contact details of the Commissioners, the Chief Executive Officer, and senior managerial staff of the Commission];
- (ii) the Commission's annual reports;
- (iii) the Commission's Code of Ethics;
- (iv) the Commission's updated gift register;
- (v) Codes of Practice developed by the Commission;
- (vi) copies of all licences granted by the Commission and the updated licence register, which register is to include: names and contact details of all current licensees, nature of licence(s) held, and date(s) of grant of the licence(s);
- (vii) any and all carrier-to-carrier agreements lodged with the Commission, including but not limited to interconnection agreements, facilities-sharing agreements, reference offers and the like;
- (viii) records of Decisions by the Board, the Chief Executive Officer or persons to whom the Chief Executive Officer has delegated the power to make Decisions, as

well as those of the Hearing Panel and the Appeals Board.

- (ix) records of complaints and referrals to the Hearings Panel;
- (x) records of appeals to the Appeals Board;
- (xi) tariff filings of licensees insofar as these are required to be filed with the Commission under applicable Regulations, licence terms, or other requirement instituted by the Commission;
- (xii) the full record of Enquiry and Rule-making processes, including, in addition to the documentation referred to in paragraph (1), all written submissions and documents as well as summaries or transcripts of oral submissions made during such process; and
- (xiii) the full records of licensing-related processes and procedures, including, in addition to the documentation referred to in paragraph (1), any licensee-related information required to be provided to the Commission from time to time by any licensee.

Part II: Enquiries and Rulemaking

Article XVII. GENERAL REQUIREMENTS

- (1) The following provisions apply to both Rulemaking and Enquiry proceedings by the Commission as provided for in this Part II:
 - (a) Any written submissions made in response to a public notice in terms of Article XVI must be received by the Commission where such submissions –
 - (i) are received no later than close of business of the last day indicated on the public notice; the Commission is under no obligation to accept out of time representations;

- (ii) respond to the topic(s) of the enquiry and/or the proposed rule, as the case may be, on which public input was sought by the Commission; and
 - (iii) identify the party making the submission.
- (b) The Commission may use its discretion to determine whether to hold one or more in-person hearings at which oral representations concerning an Enquiry or Rulemaking may be made to the Commission. Where the Commission does determine to hold such public hearing, and in addition to the provisions of Article XVI concerning notice, such hearings must –
- (i) be open to the public, subject to reasonable security requirements; and
 - (ii) include the Commission providing the means for the creation of a verbatim or summary record of oral representations made and which must be published by the Commission in accordance with the provisions of Article XVI(2)(xii).
- (2) With regard to Rulemaking proceedings only, the Commission is to take notice of written and, where applicable, oral representations made in a final Rulemaking document by providing at least a concise analytical summary of representations made to it in a given proceeding.

Article XVIII. ENQUIRIES

- (1) The Commission may conduct an Enquiry into any matter with regard to —
- (a) the achievement of any the objects of Order 65 and all or any Regulations passed thereunder, including this Regulation;
 - (b) the exercise and performance of its powers, functions and duties in terms of Order 65 and any Regulations passed thereunder including this Regulation.

- (2) Enquiries must comply with the public notice and information requirements of Article XVI to ensure adequate opportunity for public input, including at least one public comment period for written submissions. The following additional requirements apply to notices of Enquiries:
- (a) the notice must indicate the empowering provision of the law;
 - (b) set out the purpose and scope of the Enquiry; and
 - (c) invite any interested person to:
 - (i) make written representations on or before a date specified in the notice; and
 - (ii) indicate in their written representations whether they seek an opportunity to make oral representations to the Commission, if a hearing is to be held.
- (3) The period provided for in subsection (2) may be:
- (a) extended if an Enquiry is of a complex nature, or where substantial research or analysis is required by any interested person; alternatively
 - (b) shortened if an Enquiry is required, in the public interest, to be held on an urgent or emergency basis.
- (4) The Commission may, in its sole discretion, subsequent to the expiry of an initial comment period, provide for a second or subsequent comment period in terms of the provisions of Article XVI.
- (5) Where the Commission determines, at any point of the Enquiry process, to convert an Enquiry into a Rulemaking proceeding by putting forth a proposed Regulation, Code of Practice or analogous rule, the provisions of Article XIX, including an initial notice of proposed rulemaking to alert the public of the conversion of the process into a Rulemaking, with or without a final report of Enquiry, must be followed.

Article XIX. RULEMAKING

- (1) The Commission may initiate a Rulemaking proceeding without any requirement of having first made an Enquiry and may propose Regulations or analogous rules, that:
 - (a) oblige persons and parties properly under the jurisdiction of the Commission; and
 - (b) in respect of any matter contemplated within the achievement of any the objects of Order 65.
- (2) Rulemaking proceedings must comply with the public notice and information requirements of Article XVI to ensure adequate opportunity for public input, including at least one public comment period for written submission. The following additional requirements apply to notices of proposed Rulemaking:
 - (a) the notice must indicate the empowering provision of the law;
 - (b) set out the full text of the proposed Regulation, Code of Practice or analogous instrument proposed to be enacted; and
 - (c) invite any interested person to:
 - (i) make written representations on or before the date specified in the notice; and
 - (ii) indicate in their written representations whether they seek an opportunity to make oral representations to the Commission, if a hearing is to be held.
- (3) The period provided for in subsection (2) with reference to Article XVI may be:
 - (a) extended if a proposed Regulation, Code of Practice or analogous instrument is of a complex nature, or where substantial research or analysis is required by any interested person; alternatively
 - (b) shortened if a Regulation is required, in the public interest, to

be created on an urgent or emergency basis and where:

- (i) the Commission, in its notice of proposed Rulemaking sets out specifically the grounds and rationale for proceeding under such claim; and
 - (ii) proposes to give effect to such urgent or emergency Regulation for only a limited period of time, but in no case more than one calendar year.
- (4) The Commission may, in its sole discretion, subsequent to the expiry of an initial comment period, provide for a second or subsequent comment period in terms of the provisions of Article XVI, but must, where the proposed text of a Regulation, Code of Practice or other rule has changed relative to the original publication thereof, re-publish the full text of same in the corresponding notice.
- (5) The Commission must, no later than 60 days after the closing of the last comment period, publish either the final Rulemaking document or alternatively a notice of abandonment where it has decided not to move forward with a proposed Regulation, Rule of Practice or analogous rule. Other than in cases of abandonment, such final Rulemaking document must –
- (a) set out the final text of the rule being adopted by the Commission;
 - (b) state the first effective date of such rule; and
 - (c) include a listing of parties having made representations, as well as the summary called for under Article XVII(2).

Part III: Licensing & Approval Processes

Article XX. LICENSING PROCEEDINGS

- (1) The Commission may, subject to criteria and processes under such Regulations as the Commission will promulgate from time to time, grant licences and/or approvals, including but not limited to –

- (a) service licences for the provision of various Telecommunications, Information or Broadcast Services;
 - (b) licences to operate equipment and/or provide services, including but not limited to radio services;
 - (c) licences permitting the exclusive or shared used of assigned Radio-frequency spectrum;
 - (d) approvals, permitting the use certain number blocks from the National Numbering Plan or addressing resources within the “iq” ccTLD; and
 - (e) approvals for the use of telecommunications and radio equipment, including type approval.
- (2) The Commission may, under such Regulations as it may promulgate from time to time, distinguish among types of service licences, including at least the following:
- (a) class licences, including registration-based service licenses for Information Services contemplated in terms of Article 5(2)(f) of Order 65;
 - (b) individual licences, which might be issued under such procedural mechanisms as the Commission deems suitable and including but not limited to –
 - (i) non-competitive procedures; and
 - (ii) competitive procedures, including market mechanisms, including but not limited to auctions, and public interest-based or “beauty contest” determination processes.
- (3) With respect to individual licences to be issued through competitive procedures, CMC may create specific procedures, including one-time procedures for particular licences or groups of licences.

Article XXI. REQUIREMENTS FOR PUBLIC CONSULTATIONS IN LICENSING

With respect to individual, competitively-issued licences under a public-interest determination process, the following applies:

- (1) As provided for in Article XVI(1)(c), the Commission must, in the Gazette, give notice of:
 - (a) an impending licensing process, including in such notice an invitation to apply; and/or
 - (b) any renewal, amendment, transfer, surrender, cancellation, suspension or revocation process concerning any licence issued under a competitive public interest process, in which notice the Commission shall invite interested parties to make representation on this process, the licensee and the licensee's performance, to the Commission.
- (2) Interested parties must be invited in the notice specified in paragraph (a) to submit written representations on or before the date specified in the notice, which date may not be less than 30 days from the date of publication of said notice.
- (3) Written representations made pursuant to a notice referred to in paragraphs (a) and (b) must be made available in accordance with the requirements of paragraph (2) of Article XVII on Public Information and Access to records.

Part IV: Investigations

Article XXII. INVESTIGATIONS GENERALLY

- (1) The Commission, acting through the Chief Executive Officer and such persons as he may authorize, may conduct Investigations of any matters concerning or affecting any of the objects of Order 65 and any and all Regulations passed thereunder, as well as any licences, authorizations or approvals issued by the Commission where these concern:

- (a) the achievement of, and compliance with, any the objects, mandates and/or standards of Order 65 and all or any Regulations promulgated thereunder, including this regulation; as well as
 - (b) the compliance, by any person --
 - (i) providing regulated and/or licensable services within the legal purview of the Commission; and/or
 - (ii) holding a licence or authorization by the Commission;
 - with any term of such licence or authorization, Regulation, Code of Practice, reference offer and/or carrier-to-carrier agreement lodged, or required to be lodged with the Commission, or any other binding standard promulgated by the Commission under Order 65.
- (2) The Chief Executive Officer may initiate an Investigation either –
- (a) upon his own initiative, or that of the Board of the Commission, where he, or the Board have reason to believe that there exists a reasonable possibility of non-compliance with respect to any matter set out in subsection (1); and/or
 - (b) Upon the review of a complaint made by any person to him in terms of Article XXV.

Article XXIII. TIMELINES APPLICABLE TO INVESTIGATIONS

The Chief Executive Officer must, within 60 days from the date of conclusion of the Investigation make a finding on the subject matter of the Investigation, including a determination to either --

- (1) close the Investigation for lack of evidence; or
- (2) initiate an adjudicatory proceeding under Part V of this Regulation, commencing with a complaint documenting the substance of the findings of non-compliance arrived at during the Investigation; or

- (3) where a matter is appropriate for judicial determination under the criminal law, refer the matter to the appropriate prosecutorial authorities.

Article XXIV. INSPECTORS AND INSPECTIONS

- (1) The Chief Executive Officer may, for limited periods of time, or with respect to particular matters, delegate his investigatory powers to suitably qualified staff of the Commission or other persons to perform the investigatory functions provided for in this Part.
- (2) Any person who is not in the full-time employ of the Commission and who is appointed as a CMC Inspector pursuant to paragraph (1) must be paid such remuneration as the Commission may determine.
- (3) A CMC Inspector appointed in terms of paragraph (1) must be provided with a certificate of appointment stating that he has been appointed as a CMC Inspector in terms of this regulation signed by, or on behalf of the Chief Executive Officer.
- (4) When a CMC Inspector performs a function in terms of this regulation, he must be in possession of such certificate of appointment and show it at the request of any person affected by the performance of such function.
- (5) A CMC Inspector must, when instructed to do so by the Chief Executive Officer—
 - (a) monitor compliance by licensees with licence terms and conditions and licence exemptions;
 - (b) monitor compliance by licensees with the provisions of Order 65 and all or any Regulations prescribed thereunder, including this Regulation;
 - (c) investigate and evaluate any alleged or suspected—
 - (i) non-compliance by a licensee with its licence terms and conditions, licence exemption, provisions of Order 65 and all or any Regulations and other matters prescribed there under, including this Regulation;

- (ii) breach by a licensee of an agreement between such licensee and its subscribers or between such licensee and other licensees;
 - (iii) failure to provide a service that the licensee is required to provide under the terms of its licence or licence exemption, or in terms of Order 65 and all or any Regulations prescribed thereunder; or
 - (iv) non-compliance with any carrier-to-carrier agreement lodged with, or required to be lodged with the Commission;
- (d) refer all evidence of non-compliance matters to the Chief Executive Officer for consideration and further action;
- (e) refer all Complaints made by customers or licensees against any licensee to the Chief Executive Officer for further proceedings;
- (f) appear before the Chief Executive Officer, or any person authorized by him to conduct an investigation or act as the hearing officer in a subsequent proceeding, as well as before the Hearings Panel when requested by the Chief Executive Officer or the Hearings Panel, including to provide sworn testimony as to matters in his or her personal knowledge and related to any functions carried out in his appointed role;
- (g) question the managers and staff of licensees concerning any matters salient to an investigation and take statements and depositions in this context; and
- (h) co-operate with law enforcement officials when performing his functions.
- (6) Subject to: --
- (a) a warrant issued upon application by the Chief Executive Officer by the appropriate court of law under the provisions of paragraph (8) of this Article;

(b) consent having been granted by a licensee under the terms of a licence or other authorization issued by the Commission;
or

(c) other lawful authorization;

a CMCInspector appointed in terms of paragraph (1) may, in order to carry out his functions under Order 65 and all or any Regulations prescribed thereunder, including this Regulation, at any reasonable time without prior notice enter licensee premises and, without the use of force or coercion—

(a) demand the production of a licence or any other document issued in terms of Order 65 and all or any Regulations prescribed thereunder, including this Regulation;

(b) search such premises or the owner or person in control of such premises;

(c) inspect any book, record or other document found on such premises and make copies thereof;

(d) inspect any radio apparatus, studio, plant, transmitters, apparatus, other equipment or other service facilities on the premises;

(e) inspect anything referred to in the preceding paragraphs which is in the possession of, or used by, or suspected of being in the possession of or being used by, any person in contravention of Order 65 and all or any Regulations prescribed there under, including this Regulation or an applicable licence or authorization;

(f) request the owner or person in control of such premises or any person on such premises who may reasonably be expected to have the necessary information to furnish information regarding a document or thing; and

- (g) seize for further examination or safe custody any document or thing which has, or might have a direct bearing on the alleged non-compliance from such premises.
- (7) A CMC Inspector requesting information from a person in terms of paragraph (6) must, before requesting such information, inform the person in a language that the person understands of—
 - (a) the right to remain silent; and
 - (b) the potential consequences of not remaining silent.
- (8) A CMC Inspector may request, and the Chief Executive Officer may, upon review of the matter, authorize, a request to a court of competent jurisdiction for the issuance of a search warrant for any particular business premises of a licensee. Such requests shall only be authorized by the Chief Executive Officer where --
 - (a) it appears to him that there are reasonable grounds for believing that a document or thing which has a material bearing on the alleged non-compliance or other act referred to in paragraph (6) cannot reasonably be obtained otherwise; and
 - (b) will, or is likely to be in the possession or under the control of any person on the premises for which such warrant is to be requested.
- (9) A CMC Inspector must, immediately before commencing the execution of a warrant issued in terms of paragraph (8) —
 - (a) identify himself to the owner or person in control of the premises referred to in such warrant; and
 - (b) hand to such person a copy of the warrant.
- (10) A CMC Inspector who removes a document or thing from any premises under this section must issue a receipt to the person who is the owner or in possession or in control thereof.
- (11) A CMC Inspector must, at the request of the Board, the Chief Executive Officer, the Hearing Panel or the Appeals Board, and in the

course of any hearing in the context of an Enquiry or Adjudicative Proceeding such as a Complaint or dispute, provide to the Commission, Hearing Panel or Appeals Board, as the case may be, any document or thing which was obtained, copied or confiscated in terms of this article.

Part V: Dispute Resolution and Adjudication

Article XXV. COMMENCEMENT OF COMPLAINT AND RELATED PROCEEDINGS

- (1) The Chief Executive Officer receives, and acts as the Commission focal point for the following filings, to be made in accordance with the provisions of Article IV:
 - (a) Informal Complaints as set out in Article IV(1)(d)(i) made against any person licenced to provide a regulated service or holding an authorization by the Commission;
 - (b) Formal Complaints as set out in Article IV(1)(d)(ii) referring to the same subject matter; or
 - (c) Petitions for Dispute Resolution by persons holding a Commission licence or other appropriate authorization and
 - (i) requesting assistance with negotiations with other holders of licences or other authorization in regard to any matter authorized by Order 65 or Commission Regulations; and/or
 - (ii) arbitration of disputes with other authorized or licenced persons in regard to any matter for which Order 65, a Commission Regulation or any decision thereunder provides a basis for Commission intervention, including but not limited to matters of interconnection, facilities sharing, access to network elements and services under a reference offer or similar matters.
- (2) Upon receipt of any of the above-listed filings, but no later than within 10 days of the receipt of such filing, the Chief Executive Officer must

make an initial assessment in his reasonable discretion based on the claims made in the filings to whether –

- (a) the Complaint or Petition, as the case may be, fulfils the minimum requirements of Article IV; and
 - (b) states a cause of action under or claim to assistance and/or arbitration within the ambit of Order 65 and Commission Regulations or analogous instruments thereunder.
- (3) Where a Complaint or a Petition fulfils these criteria, the Chief Executive Officer must do one of the following:
- (a) With regard to Informal Complaints:
 - (i) initiate an investigation where the matters complained of require further development; or
 - (ii) open a complaint proceeding by giving notice of the Complaint to the party or person complained about.
 - (b) With regard to Formal Complaints, determine, whether the matter complained of requires, in his reasonable discretion, a referral to the Hearing Panel due to the seriousness of the allegation and/or the repetitive or persistent nature of the Complaint being made against a particular party or person in the sense of Articles 7(1) and (3) of Order 65. Upon this determination, he must either --
 - (i) open a Complaint proceeding by causing the party or person complained about to be given notice of the complaint; or
 - (ii) refer the matter to the Hearings Panel and prepare to present the matter to said Panel on behalf of the complainant, and giving notice of such referral to both the party complained about and the complainant.
 - (c) With regard to Petitions for Dispute Resolution, including arbitration or requesting assistance with negotiations among

persons holding a Commission licence or other appropriate authorization:

- (i) ensure that the requesting party has complied with the terms of the underlying Commission Regulation Code of Practice, or other binding standard providing for assistance and facilitation of negotiations and/or arbitration; and, where this is so,
 - (ii) open a corresponding proceeding by causing the respondent party named in the petition to be given notice.
- (4) Where, as a result of an investigation having been concluded in terms of Article XXIII(1)(b), the Chief Executive Officer has determined the existence of non-compliance with law and/or regulations, he must either, using his reasonable discretion:
- (a) open a Complaint proceeding by causing the party complained about to be given notice of the complaint; or
 - (b) refer the matter to the Hearing Panel and prepare to present the matter to said Panel and cause notice to be given to the responding party.

Article XXVI. POWERS TO SUMMON WITNESSES AND PRODUCEDOCUMENTS

- (1) The Chief Executive Officer, the Hearings Panel and/or the Appeals Board may, subject to the provisions of the Constitution and law, for the purpose of an Adjudicative Proceeding under Articles XXVII through XXXV of this Regulation —
- (a) through the person presiding at such proceeding, require from any person such particulars and information as may be reasonably necessary for the case or matter at issue;
 - (b) by notice in writing, addressed and delivered by an authorised person to any person, require such person to—
 - (i) appear before any of the above-named as stated in such notice at the date, time and place specified; and

- (ii) to make a statement; and/or
 - (iii) to submit all the documents or objects in the possession or custody or under the control of any such person which may be reasonably necessary and which have been ordered to be submitted by any of the above-named; and
 - (c) through the person presiding at such proceeding and after explaining the applicable rights under the Constitution and this Article, question any person referred to in paragraph (b) in connection with any matter which may be reasonably necessary and appropriate.
- (2) The Chief Executive Officer, the Hearings Panel and/or the Appeals Board, as the case may be, may retain for a reasonable period as required by the process in question any document or object submitted or required to be submitted.
- (3) A person may have a legal representative or other adviser present when such person appears before, makes a statement to and is questioned by the Chief Executive Officer, the Hearings Panel and/or the Appeals Board as contemplated in paragraph (1)(b).
- (4) The person presiding at such proceeding, may, after hearing representations from any person present at and connected to the case and having regard to—
- (a) any reasonable apprehension of prejudice or harm to the person to be questioned;
 - (b) the rights of reply and rebuttal of any person whose rights may be adversely affected; and
 - (c) whether it is in the interest of the achievement of the objects of the proceeding,

determine that any part of the proceeding be held behind closed doors and direct that the public, or any class thereof, may not be present, provided that, in the case of the Hearings Panel, such a determination has been

confirmed by the Chief Executive Officer in terms of section 4(3)(c) of Order 65.

Article XXVII. PROCEEDINGS BEFORE THE CHIEF EXECUTIVE OFFICER

- (1) The Chief Executive Officer must appoint a hearing officer for specific Adjudicative or Dispute Resolutions proceedings to be held before him. He may undertake this role himself or delegate his powers to a suitably qualified member of the Commission staff for the duration of a particular case or an extended term, provided that:
 - (a) the person designated as the hearing officer is not the same person who conducted any significant aspect of the initial investigation into the particular Complaint to be determined; and
 - (b) such person is not also presently engaged in any other case in a significant role which includes the same respondent party or parties.
- (2) The complaining or petitioning party in proceedings before the Chief Executive Officer shall:
 - (a) in the case of granted petitions for Dispute Resolution be treated as an indispensable party and fully participate in the resolution of the case; or
 - (b) in the case of Complaints being adjudicated wherein the staff of the Commission represents the public interest, the complainant may at his sole election, participate in the case to the extent practicable as determined by the hearing officer.
- (3) With respect to Adjudication proceedings determined by the Chief Executive Officer to be appropriate for hearing before him or a hearing officer appointed by him, he or the hearing officer, as the case may be, should encourage respondent parties to reach a settlement with the Commission on the complaint. The Chief Executive Officer or the hearing officer may, in his discretion, make and accept offers of settlement consistent with basic principles of

justice and proportionality and within the scope of the remedies that may be imposed in proceedings before the Chief Executive Officer under paragraph (4)(a) of this Article. Offers and negotiations of settlement shall be treated as privileged and will not appear on the record, which shall be limited to the terms of the settlement reached.

(4) Adjudicative or Dispute Resolution proceedings before the Chief Executive Officer or a properly authorized member of the Commission staff acting on his behalf under the terms of this paragraph (1) of this Article may provide for the following resolutions:

(a) With regard to Complaints, making orders, including default orders where the respondent party has failed to respond, appear, or defend itself after having received notice:

(i) constituting a warning against any recurrence of the non-compliance determined to have existed;

(ii) prohibiting specific activities or actions having been determined to be non-compliant;

(iii) requiring public apologies to be made and published;

(iv) requiring restitution to be made by the respondent including but not limited to:

(aa) the payment of damages to the complaining party in an amount commensurate with the demonstrable harm suffered as a result of non-compliance; and/or

(bb) specific performance of actions to mitigate or eliminate the harm caused;

(cc) imposing financial penalties payable to the Commission up to an amount of [100 to 200million] Iraqi Dinars. Such penalties may be imposed in addition to the measures ordered in terms of paragraph (iv);

- (v) authorizing the seizure of equipment directly implicated in, and necessary for carrying out the act or acts of non-compliance found to have existed; and/or
 - (vi) transferring, without a final resolution, the case to the Hearing Panel where the scope of the issues, or the need for remedies of a more serious nature so requires.
- (b) With regard to Petitions for Dispute Resolution, making orders:
- (i) on an interim basis, requiring one or both parties to do or abstain from particular actions suitable and appropriate to the matter regarding which Dispute Resolution assistance by the Commission was petitioned for;
 - (ii) on an interim basis requiring the parties to conduct good faith negotiations and narrow the differences between their positions; and/or
 - (iii) imposing such final agreements and/or particular terms thereof, including both price and other terms, on both parties to a Dispute Resolution proceeding as are fundamentally equitable and in keeping with the terms of Order 65, applicable Commission Regulations and Codes of Practice.
- (5) With respect to Adjudication Proceedings specified in this Article, the Chief Executive Officer or a hearing officer designated by him:
- (a) must afford the respondent party or parties a reasonable opportunity to respond to the Complaint in writing; and
 - (b) may, in his discretion, schedule one or more in-person hearings to allow for oral presentations and testimony, or conduct a hearing solely on the basis of written submissions.
- (6) The Chief Executive Officer or his designated hearing officer may, at his discretion, hold a pre-hearing conference for the purpose of giving

direction regarding the procedure to be followed and any other relevant matters as he may consider salient.

- (7) Notwithstanding any other provisions of this Article, the Chief Executive Officer may deviate from the above procedures where, in the public interest, a decision is required to be reached on an emergency or otherwise urgent basis.
- (8) Final Orders concluding Adjudication and Dispute Resolution processes before the Chief Executive Officer must be entered within 30 days from the date of conclusion of the hearing in the case.

Article XXVIII. THE HEARINGS PANEL

- (1) The members of the Hearings Board appointed in terms of Section 4(3)(b) of Order 65 shall appoint one of their number to be the Chairperson of the Hearings Panel appointed for a three-year term of office which is renewable for one additional term only.
- (2) The Chairperson of the Hearings Panel must—
 - (a) manage the work of the Hearings Panel; and
 - (b) preside at hearings of the Hearings Panel.
- (3) A member of the Hearings Panel must be a fit and proper person and must—
 - (a) have suitable qualifications and experience in communications, media, information services, radio-frequency spectrum management, telecommunications, economics, electronic engineering, broadcasting, law, commerce, technology or public policy;
 - (b) be committed to the functions and work of the Hearings Panel and the objects of Order 65 and must not act or behave in a manner that undermines those functions, work or objects;
 - (c) not be an office-bearer or an employee of any party, movement or organisation of a party-political nature;

- (d) not be an unrehabilitated insolvent;
- (e) not be mentally ill or disordered;
- (f) not have been convicted of an offence:
 - (i) after the commencement of the Constitution of the Republic of Iraq 2005 which included a sentence of imprisonment without the option of a fine;
 - (ii) of theft, fraud, forgery, perjury, corruption or any other offence involving dishonesty; or
 - (iii) under Order 65 or any Regulations passed thereunder;
- (g) not be subject to any disqualification, namely, if he —
 - (i) is not a citizen of the Republic;
 - (ii) is not permanently resident in the Republic;
 - (iii) is a public servant or the holder of any other remunerated position under the State;
 - (iv) is a member of Parliament;
 - (v) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
 - (vi) has any family member with a direct or indirect financial interest in any industry regulated by the Commission;
 - (vii) has any business partner or associate holding an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (vi);
 - (viii) has been declared by a court to be mentally ill or disordered; or
 - (ix) has at any time been removed from an office of trust on account of misconduct.

Article XXIX. FUNCTIONS OF THE HEARINGS PANEL

- (1) The Hearings Panel must investigate, consider and determine all matters referred to it by the Chief Executive Officer in terms of Article XXV(3)(b) and XXVII(4)(a)(viii), including allegations of non-compliance with Order 65 or any and all Regulations, Codes of Practice or other rules of a binding nature passed thereunder, including this Regulation, licence conditions, reference offers or carrier-to-carrier agreements lodged with the Commission.
- (2) The complaining party in proceedings before the Hearing Panel shall, in addition to the Chief Executive Officer or his authorized representatives tasked with representing the public interest, including on behalf of the complainant, permit the complainant to act as a co-plaintiff in coordination with the Chief Executive Officer or his representative(s) at the election of the complainant and with the consent of the Chief Executive Officer.

Article XXX. PROCEDURE OF THE HEARINGS PANEL

- (1) Upon referral from the Chief Executive Officer, and before the Hearings Panel hears a matter, it must —
 - (a) make an initial determination if the matter can proceed or if the matter is to be dismissed for:
 - (i) failing to disclose a cause of action;
 - (ii) being vexatious;
 - (iii) being frivolous; and/or
 - (iv) not being in the public interest to entertain;
 - (b) provide written reasons for a determination not to be proceed with the matter in terms of subsection 1(a); and, if it determines to proceed with the matter,
 - (c) provide those person(s) whose conduct is being complained about —
 - (i) with a copy of the complaint or referral; and

- (ii) a notice setting out the nature of the alleged non-compliance;
 - (d) afford the person whose conduct is being complained about a reasonable opportunity to respond to the allegations in writing; and
 - (e) afford the complainant and/or the Chief Executive Officer a reasonable opportunity to reply to such response in writing.
- (2) The Hearings Panel must hear oral representations made by the parties referred to in subsection (1) and must permit such parties to be assisted by a legal representative or other adviser.
- (3) The Hearings Panel may hold a pre-hearing conference for the purpose of giving direction to the parties regarding the procedure to be followed at a hearing and other relevant matters determined by the Hearings Panel.
- (4) Notwithstanding any other provisions of this Article, the Hearings Panel may deviate from the above procedures where, in the public interest, the hearing is required to take place on an emergency or otherwise urgent basis.
- (5) The Hearings Panel may, where the person whose conduct is being complained about, does not, after having received notice, respond, appear or otherwise defend himself, enter a default judgement against him and impose and measures laid out in Article XXXI.

Article XXXI. DECISIONS BY THE HEARINGS PANEL

- (1) The Hearings Panel must make a decision within 30 days from the date of conclusion of a hearing or hearings contemplated in Article XXX.
- (2) When making a decision, the Hearings Panel must take all relevant matters into account, including —
 - (a) the nature and gravity of the non-compliance determined to have occurred;

- (b) the consequences of the non-compliance found;
 - (c) the circumstances under which the non-compliance occurred, including whether an instance of the same or similar non-compliance has previously been adjudicated by the Chief Executive Officer or the Hearings Panel;
 - (d) the steps taken by the licensee or the person complained about, if not a licensee, to remedy the complaint, if any; and
 - (e) the steps taken by the licensee or the person complained about, if not a licensee, to ensure that similar non-compliance will not recur in the future.
- (3) The Hearings Panel may issue one or more of the following orders, in regard to any Adjudicative Proceedings having been heard before it, directing —
- (a) the licensee or the person complained about, if not a licensee, to desist from any further contravention;
 - (b) the licensee or the person complained about, if not a licensee, to pay a penalty to the Commission in respect of such non-compliance or non-adherence, with the Hearing Panel empowered to set the amount of such penalty in an amount commensurate with the harm caused;
 - (c) the licensee or the person complained of if not a licensee, to take remedial or other steps in accordance with Order 65 and all relevant regulations passed thereunder, including this regulation;
 - (d) where a licensee has repeatedly been found guilty of material violations—
 - (i) that the licensee be prohibited from providing the licenced service for a stated period of time, subject to the proviso that a broadcasting or telecommunications service, as applicable, must not be suspended in terms of this subsection for a period in excess of 30 days; or

- (ii) that his licence to provide jurisdictional services be amended, cancelled or revoked; and/or
 - (e) the parties to a dispute to comply with any settlement agreement reached by them, which settlement agreement may be cast as an order of the Hearings Panel.
- (4) The Hearings Panel must provide persons affected by such a decision with written reasons therefor within 30 days of the date of its decision.

Part VI: Review by the Appeals Board

Article XXXII. THE CHAIR OF THE APPEALS BOARD

The chairperson of the Appeals Board, elected by the members of the Appeals Board appointed in terms of section 4(4) of Order 65, must—

- (1) manage the work of the Appeals Board;
- (2) determine rules for the functions of the Appeals Board consistent with the terms of Order 65 and this Regulation; and
- (3) preside at hearings of the Appeals Board.

Article XXXIII. POWERS OF THE APPEALS BOARD AND PARTIES

- (1) The Appeals Board has the power to consider and determine any and all appeals from parties to Decisions of --
 - (a) the Chief Executive Officer and any person duly authorised to take a decision on behalf of him; and
 - (b) the Hearing Panel.
- (2) The Appeals Board further has the power to consider and determine appeals by any person aggrieved by a rule, Regulation, Code of Practice or Decision of the Commission only where:
 - (a) A potential appellant can show that he is directly affected and has, or will suffer demonstrable harm as a result of such rule,

Regulation, Code of Practice or Decision sought to be reviewed to have standing in the matter; and

- (b) the rule, Regulation, Code of Practice or Decision of which review is sought must be effective or become effective within 30 days from the date of a potential appellant's filing.
- (3) The Appeals Board has the power to consider both matters of law within the jurisdictional purview of the Commission and matters of fact.
- (4) Where an appeal has been lodged with the Appeals Panel, any person may file a Petition to intervene in support or opposition to such appellant's case. The provisions of paragraph (2) do not apply to interventions.

Article XXXIV. PROCEDURE OF THE APPEALS BOARD

- (1) A potential appellant under the terms of Article XXXIII may lodge a written appeal with the Appeals Board no later than 30 days after the publication of --
 - (a) a Decision of the Chief Executive Officer or the Hearings Panel as provided for under Article XVI(2)(b)(viii), or
 - (b) a rule, Regulation, Code of Practice or Decision of the Board under the terms of Article XXXIII(2).
- (2) A potential respondent, including both the Commission and any other person having been a party to the Decision being appealed may, within 15 days of the publication of the notice of appeal referred to in subsection (1) on the basis of Article XVI(2)(b)(viii), or within 15 days of having been served with a copy of the appeal, whichever is later, file their intention to oppose the appellant's case.
- (3) A potential intervener in the meaning of Article XXXIII(4) may file a corresponding petition within 15 days of the publication provided for under paragraph (2) in reference to appeal in which he wishes to intervene.

- (4) Before the Appeals Board accepts the case for determination, it must—
- (a) make an initial determination if the matter can proceed or must be dismissed for:
 - (i) failing to state a cause of action under the Constitution, Order 65 and/or any applicable Commission Regulations, Codes of Practice or other binding standards promulgated by the Commission;
 - (ii) inability of the Appeals Board to exercise personal jurisdiction over the appellant;
 - (iii) being vexatious, frivolous; and/or
 - (iv) not being in the public interest to entertain;
 - (b) provide written reasons for a determination not to proceed with the matter in terms of subsection 4(a); and,
 - (c) if it determines to proceed with the matter, require proof of the appellant that the respondent party or parties to the appeal have in fact been served with a copy of the appeal.
- (5) The Appeals Board must afford --
- (a) the respondent party or parties a reasonable opportunity to respond to the appeal in writing; and
 - (b) the appellant party or parties a reasonable opportunity to further reply to such response in writing.
- (6) All parties to an appeal must be permitted to be assisted by one or more legal representatives.
- (7) The Appeals Board may, at its discretion hold a pre-hearing conference for the purpose of giving direction to the parties regarding the procedure to be followed at a hearing and any other relevant matters determined by the Appeals Board.
- (8) The Appeals Board must provide a hearing at which the parties, including intervening parties, if any, will be able to make oral

representations. In addition, the Appeals Board may require or allow the submission of written testimony.

- (9) Notwithstanding any other provisions of this Article, the Appeals Board may deviate from the above procedures where, in the public interest, the hearing is required to take place on an emergency or otherwise urgent basis.

Article XXXV. DECISIONS BY THE APPEALS BOARD

- (1) The Appeals Board must render its Decision within 30 days from the date of conclusion of the hearing(s) contemplated in Article XXXIV. The decision of the Appeals Board must provide a statement of reasons for its decisions therewith.
- (2) The Appeals Board, in its Decision, may issue one or more of the following orders, namely to, in whole or in part —
 - (a) uphold the original Decision of the Chief Executive Officer, the Hearing Panel or the Commission, or the rule, Regulation or Code of Practice promulgated by the Commission;
 - (b) overturn such Decision, rule, Regulation, or Code of Practice; or
 - (c) remand such original Decision, rule, Regulation, or Code of Practice to the Commission, the Hearing Panel or the Chief Executive Officer, as the case may be, with instructions.
- (3) Decisions of the Appeals Board are final and may be reviewed only after exhausting all procedures provided for in these Rules of Procedure.

Part VII: Final Provisions

Article XXXVI. ENTRY INTO FORCE

- (1) This regulation becomes effective 60 days following its publication in the Government Gazette.

- (2) For Licensees of the Commission commencing their provision of jurisdictional services on or after the effective date of this Regulation, the provisions of this Regulation become effective on the day such Licensee begins offering services.