TELECOMMUNICATIONS ORDINANCE 2004

TELECOMMUNICATIONS (ADMINISTRATIVE PROCEDURE) REGULATIONS 2008

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TELECOMMUNICATIONS ORDINANCE 2004

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(Legal Notice 25 of 2008)

MADE by the Governor under section 64 of the Telecommunications Ordinance 2004. *Ordinance 12 of 2004*

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Telecommunications (Administrative Procedure) Regulations 2008.

Interpretation

2. In these Regulations -

"Director General" means the Director General of the Commission;

"interrogatory" means any request in writing for information or particulars made to a party in a proceeding;

"Ordinance" means the Telecommunications Ordinance 2004; *Ord. 12 of 2004*

"proceeding" means any inquiry, complaint or other proceeding commenced by an application to the Commission or initiated by the Commission of its own motion by a public notice or order;

Scope of application

3. These Regulations shall apply to all proceedings before the Commission in relation to complaints by users.

PART II

GENERAL

Time

4. Whenever a time limit or deadline calculated under these Regulations falls on a Saturday, Sunday or statutory holiday, the time limit or deadline is extended to the next following working day.

Form of documents

5. All applications and other documents made or submitted by any party in connection with any proceeding shall, unless special circumstances otherwise require, be on "letter size" paper.

Consultative procedure

6. (1) The Commission shall give to persons who are or who are likely to be affected by a decision of the Commission an opportunity to make submissions to the Commission, or otherwise consult with such persons in good faith.

(2) The opportunity referred to in subregulation (1) shall, unless otherwise determined by the Commission, be provided by putting out to a public consultation any significant substantive or procedural decision of the Commission that may affect persons.

(3) The objectives of public consultation are to –

(a) obtain input, information and feedback from persons affected by the proposed decision, other stakeholders and the public so as to ensure that consumers have the best telecommunication services possible in terms of choice, quality and value for their money;

(b) acquire substantive information and knowledge from stakeholders, regulatory and industry professionals and other similar regulatory institutions so as to effect an orderly transition to a freely liberalized and competitive marketplace;

(c) ensure that the Commission has investigated all aspects of an issue; and

(d) ensure transparency of decisions of the Commission.

(4) The Commission shall determine the form of the consultative process to take place in respect of any decision proposed to be taken by the Commission depending on the nature of the issue, the number of parties potentially affected by a decision, the impact on the marketplace and the consequences to the consumer. The public consultation may take the form of -

(a) an invitation to affected persons to submit written submissions;

(b) individual meetings with one or more interested parties;

(c) meetings, seminars, and workshops with representative groups and other interested parties;

(d) issuing draft documents containing the preliminary view of the Commission and soliciting comments from the public at large before a final decision is taken; or

(e) a public hearing.

(5) Except in case of an emergency, the Commission shall allow respondents at least four weeks in which to respond to any request for information or draft document issued by the Commission in the course of a consultative process.

(6) The Commission shall publish all responses received and allow participants in the process a further opportunity to comment except such information that is confidential information under the Ordinance or these Regulations.

(7) The Commission shall consider all responses and comments received before making a final decision.

(8) In case the Commission decides to hold a public hearing, the Commission shall prescribe and publish the rules for the hearing having regard to such of the factors listed in subregulation (4).

Directions on procedure

7. (1) Where it deems it appropriate in any proceeding, the Commission may issue directions on procedure, which shall govern the conduct of the proceeding and prevail over any provision of these Regulations that is inconsistent with those directions.

(2) Any person intending to make an application to the Commission may, prior to filing the application, apply *ex-parte* to the Commission for the issuing of directions on procedure relating thereto.

Service

8. (1) Subject to subregulation (2), service of any notice or other document, including a document originated by the Commission, shall be effected by –

(a) personal service, in which case service shall be deemed to have been made on the date of delivery;

(b) facsimile, in which case service shall be deemed to have been made on the date of transmission; or

(c) mail, in which case service shall be deemed to have been made when the notice or other document is deposited in a post office.

(2) In addition to any conditions contained in these Regulations, any document served by facsimile shall include a cover page stating –

(a) the name, address and telephone number of the sender;

(b) the date and time of transmission;

(c) the total number of pages transmitted, including the cover page;

(d) the number of the facsimile machine at which documents may be received; and

(e) the name and telephone number of a person to contact if problems occur in transmission.

(3) Proof of service by affidavit shall, at the request of the Commission, be filed with the Director General in respect of any document required to be served.

Evidence

9. (1) Where under these Regulations evidence may be filed, it shall be by statutory declaration or affidavit.

(2) The Director General may, if he thinks fit, in any particular case, take oral evidence in lieu of or in addition to such evidence and shall allow any witness to be cross-examined on his affidavit or declaration.

Statutory declarations and affidavits

10. (1) Affidavits in proceedings before the Commission shall be filed with the Director General.

(2) Where an affidavit is made as to belief, the grounds on which the belief is based shall be set out in the affidavit.

(3) Any statutory declaration or affidavit filed under the Ordinance or these Regulations shall be made before any officer authorized by law in any part of the Islands to administer an oath for the purpose of any legal proceedings.

(4) Statutory declarations or affidavit made outside the Islands shall be made before a Consul or Notary Public.

Verification

11. (1) The Commission may, at any time, require the whole or any part of any application, answer, intervention or reply or 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.

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

Stay of proceeding

12. Where a party to a proceeding has not complied with any requirement of these Regulations or any direction on procedure issued under regulation 7, the Commission may stay the proceeding until satisfied that such requirement has been complied with or take such other steps as it considers just and reasonable.

Formulation of issues

13. If it appears to the Commission 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 Commission may direct the parties to prepare issues that shall, if not agreed to by the parties, be settled by the Commission.

Questions of law

14. If it appears to the Commission at any time that there is a question or issue of law, of jurisdiction or of practice and procedure that should be decided before a proceeding is continued, the Commission may direct the question or issue to be referred to the Attorney General's Chambers for opinion and the Commission may, pending such decision, order the whole or any part of the proceeding to be stayed.

Conference

15. The Commission may, orally or in writing, direct parties or their solicitor to appear before a member or an officer of the Commission at a specified time and place for a conference or to submit suggestions in writing to the Commission for the purpose of formulating issues and assisting the Commission in the consideration of the simplification of issues, amending an application, answer, intervention or reply for the purpose of clarification or any other matters that may aid in the simplification of the evidence and disposition of the proceedings.

Production of documents

16. (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 or his solicitor and to permit him or his solicitor to make copies thereof.

(2) Any party who fails to comply with a notice given to him pursuant to subregulation (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 Commission that he had sufficient cause for not complying with the notice.

Interrogatories

17. (1) Where in any proceeding the Commission permits interrogatories to be directed to a party, such interrogatories shall be –

(a) addressed to the party;

(b) numbered consecutively, but a series of numbers may be used for interrogatories relating to the same subject-matter;

(c) identified with the name for the party from whom the response is sought, the name in parentheses for the party seeking the response, the date is the date on which the interrogatory was sent, and the number of the particular interrogatory; and

(d) served within the time limit directed by the Commission.

(2) A copy of any interrogatories directed to a party pursuant to subregulation (1) shall be filed with the Director General.

Responses to interrogatories

18. (1) Subject to subregulation (2), where in any proceeding the Commission permits interrogatories to be directed to a party and interrogatories have been served on the party within the time limit directed by the Commission, the party shall-

(a) within the time limit directed by the Commission, provide a full and adequate response to each interrogatory on a separate page or pages, headed as indicated in Form 1 of the Schedule; and

(b) file a copy of the responses with the Director General.

(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;

(c) where the party contends that the information sought is of an unduly burdensome nature, provide a response that sets out the reasons why the provision of such information is unduly burdensome and not necessary; or

(d) where the party contends that the information sought is of a confidential nature, provide a response that sets out the reasons therefor as required by regulation 19(2), and file with the Director General a copy of the response provided.

Confidentiality

19. (1) Where a document is filed with the Commission by a party in relation to any proceeding, such document shall generally not be considered confidential information.

(2) Notwithstanding subregulation (1), the Commission shall consider representations from applicants or other persons submitting information that such information should not be made available to the public or otherwise be disclosed.

(3) Any claim for confidentiality made in accordance with subregulation (2) shall be accompanied by the reasons therefor, and, where it is asserted that specific direct harm would be caused to the party claiming confidentiality, sufficient details shall be provided as to the nature and extent of such harm.

(4) A party claiming confidentiality in connection with a document shall file with the Commission an abridged version of the document to be placed on the public record or his reasons for objecting to the filing of an abridged version thereof

(5) A claim for confidentiality referred to in subregulation (2) shall be placed on the public record and a copy thereof shall be provided on request to any party.

(6) Any party wishing the public disclosure of a document in respect of which there has been a claim for confidentiality may file with the Commission —

(a) a request for such disclosure setting out the reasons therefor, including the public interest in the disclosure of all information relevant to regulatory responsibilities of the Commission and

(b) any material in support of the reasons for public disclosure.

(7) A copy of a request for the public disclosure of a document shall be served on the party claiming confidentiality and that party may, unless the Commission otherwise determines, file a

reply with the Commission 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 requesting public disclosure.

(8) Where the Commission of its own motion requests that a document be placed on the public record, the party claiming confidentiality shall have 10 days to file a reply.

(9) Where the Commission has determined that no specific direct harm would be likely to result from disclosure, or where any such specific direct harm is shown the document shall be placed on the public record.

(10) Where the Commission is of the opinion that, based on all the material before it, the specific direct harm likely to result from public disclosure justifies a claim for confidentiality, the Commission may -

(a) order that the document not be placed on the public record;

(b) order disclosure of an abridged version of the document; or

(c) order that the document be disclosed to parties at a hearing to be conducted in camera.

Subpoenas

20. (1) A subpoena shall be sealed by the Director General with the Commission's seal and may be served in any part of the Islands.

(2) A subpoena may be issued in blank, may be completed by the attorney or party on whose behalf it is issued and may contain the names of any number of persons required to appear before the Commission.

Hearing

21. (1) The Commission 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 Commission thinks reasonable; and

(c) any witness be examined before a Commissioner, an officer of the Commission or any other person appointed by it for that purpose.

(2) Where memoranda of evidence have been furnished prior to the commencement of a hearing, the Commission may permit the introduction of those memoranda as evidence in chief by a witness who —

(a) testifies as to his qualifications; and

(b) confirms that the memoranda were prepared under his direction or control and are accurate to the best of his knowledge and belief.

Examination

22. The Commission has the authority to administer oaths to any witness ordered to do so by the Commission.

Sittings

23. When a hearing is commenced, it shall proceed, as far as may be practicable in the opinion of the Commission, from day to day.

Argument

24. The Commission may, whenever it deems it advisable to do so, order written briefs to be submitted by the parties in addition to or in lieu of oral argument.

Adjournment

25. The Commission may, at any time, adjourn any proceeding before it.

Defects in Form

26. No proceeding shall be defeated by any objections based solely on defects in form.

Amendments

27. The Commission may, on terms or otherwise –

(a) make or allow any amendments in any proceeding; or

(b) order to be amended or struck out any matters that, in the opinion of the Commission, may tend to prejudice, embarrass or delay a fair hearing of the proceeding on the merits, and may order any other amendments as may, in the opinion of the Commission, be necessary for the purpose of hearing and determining the real question in issue between the parties.

Dispensing with procedure

28. In respect of any proceeding, the Commission may, where appropriate, dispense with, vary or supplement any of the provisions of these Regulations.

PART III

COMPLAINTS BY USERS

User's complaints

29. (1) This Part applies to any application or complaint made by a user or a potential user of a licensee or provider of value added services in connection with-

(a) quality of service;

(b) accessibility of service;

(c) the application of one or more provisions of the company's tariffs to the user;

(d) disconnection or reconnection of service or facilities; or

(e) any other matter respecting the relations between the company and the user.

(2) An application or complaint under this Part may be made by mailing or delivering by hand a letter to the Commission identifying the parties concerned, setting out the facts, including relevant correspondence, demonstrating that the applicant or complainant has made a prior attempt to resolve the matter concerned with the licensee or provider of value added services concerned and identifying and requesting the specific relief sought, which letter need not be served on the regulated company.

(3) Where the Commission considers that an application or complaint warrants investigation, it shall forward a copy of the letter received under subregulation (2) or a summary thereof to the regulated company requesting comment, and the company shall reply within 20 days or such longer period as the Commission may specify.

(4) The Commission may deal with the application or the complaint 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 the Commission considers an oral hearing or other form of proceeding warranted.

(5) 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 Commission, and the Commission may, where an interim settlement cannot be reached with the regulated company, issue an interim *ex-parte* order authorizing, requiring or forbidding anything to be done that the Commission would be empowered, on application, notice and hearing, to authorize, require or forbid, but the Commission shall, in such 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.

PART IV

MISCELLANEOUS

Withdrawal

30. (1) An applicant or complainant may withdraw a dispute from determination by the Commission before the Commission makes its final determination, provided that it agrees and settles any costs incurred by the Commission, and, if so required by the Commission, by the respondent and which were occasioned by the request.

Determinations of the Commission

31. (1) Determinations of the Commission made under these Regulations, whether preliminary or final, shall be in writing and state the reasons upon which they are based.

(2) Except where otherwise provided by law, the Commission shall make its written determinations available to the public.

(3) Determinations by the Commission are final and no appeal is allowed except where otherwise provided under law.

SCHEDULE

FORM 1

RESPONSE TO INTERROGATORY

(Full name of party furnishing Response to response) Interrogatory

(date of response)

Q. (reproduce original interrogatory)

A. (set out response)

FORM 2

SUMMONS

RE:

To:

You are summoned and required to attend before The Telecommunications Commission at a hearing to be heard at ..... in the ..... of .....on .....day of ..... 20 .....at the hour of ....o'clock in the .....noon, and so on from day to day until the hearing is concluded, to give evidence on oath touching the matters in question in the proceeding and to bring with you and produce at the time and place (herein set out in detail, materials to be produced)

Dated this day of 20

Corporate Seal of the Telecommunications Commission is hereto affixed by

.....

MADE this 1 day of July , 2008.

RICHARD TAUWHARE, MVO
GOVERNOR

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 64 of the Telecommunications Ordinance 2004.

Regulation 2 defines certain terms used in the Regulations.

Regulation 3 sets out the scope of the Regulations, as applying to all proceedings before the Commission in relation to complaints by users.