

**EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY  
(ECTEL)**

**CONSULTATION DOCUMENT**

**TELECOMMUNICATIONS (Conduct of Public Hearings)  
REGULATIONS**

**1. Introduction**

Consistent with its mandate under the ECTEL Treaty and pursuant to a decision taken on the 24<sup>th</sup> of April 2008 by the Board of Directors of ECTEL, ECTEL is submitting the draft Telecommunications (Conduct of Public Hearings) Regulations, for comment.

The Telecommunications Act provides that the Minister may make regulations for conduct of public hearings. The Telecommunications (Dispute Resolution) Regulations and the Dispute Resolution Manual provide rules with regard to hearings, including fixing dates, times and places of hearing, pre-hearing reviews and admissibility of evidence.

Notably, the Telecommunications (Dispute Resolution) Regulations and the Dispute Resolution Manual focus on the management of the dispute resolution process and do not address the other issues that can be dealt with by initiating a public hearing or setting up a tribunal as provided for in the Act. It is therefore necessary to provide rules to address these other aspects of the Act. The Telecommunications (Conduct of Public Hearings) Regulations were designed to incorporate rules of procedure for the conduct of such hearings.

Administrative tribunals are usually not subject to rigid rules such as Courts. Administrative Tribunals are not Courts and so for the most part, a certain degree of flexibility with regard to process and procedure is expected and a less formal procedure than what pertains in the Court system is more appropriate.

Additionally, although Administrative Tribunals make adjudicative decisions, their mandates often require them to take account of governmental policies and other information which may not be supplied to them by participants of a hearing. Therefore ultimately, a tribunal must be given the power to control its own process. This power is enshrined in the regulations for the conduct of public hearings.

**Consultation Procedure**

In order to carry out this consultation, ECTEL hereby requests the Commission to conduct a national consultation on the proposed draft Telecommunications (Conduct of

Public Hearings) Regulations in accordance with the ‘Consultation Procedure and Timetable’ outlined below.

## **1. Council of Minister’s Approval**

It is ECTEL’s intention to finalize these Regulations after taking into account all comments received in this consultation process. The Telecommunications (Conduct of Public Hearings) Regulations will then be recommended for adoption in the ECTEL Member States when approved by the Council of Ministers.

## **2. Consultation Procedure and Timetable**

This ECTEL submission includes a request to the Commission to conduct a national consultation in the ECTEL Member States on the draft Telecommunications (Conduct of Public Hearings) Regulations.

The consultation period will run from 19th May 2008 and comments should be submitted in writing **no later than** 4:30 pm on 16<sup>th</sup> June 2008 to:

The Managing Director  
ECTEL  
P.O. Box 1886  
Vide Boutielle  
Castries  
St. Lucia  
Facsimile: 1 758 458 1698  
E-mail:[consultation@ectel.int](mailto:consultation@ectel.int)

Reply comments would be from 20<sup>th</sup> June 2008 to 11<sup>th</sup> July 2008 and should be sent to the abovementioned address.

All comments should be clearly marked “Comments on Draft Telecommunications (Conduct of Public Hearings) Regulations Consultation Document”.

### **Disclaimer**

*This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL’s duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.*

## **Explanatory Memorandum**

### **Telecommunications (Conduct of Public Hearings) Regulations**

#### **Citation / Commencement**

Regulations one and two - these regulations contain the usual long title of the Regulations and the date of commencement. These regulations can be subsumed under one regulation. Member Countries will draft according to their individual styles.

#### **Regulation 3**

The interpretation regulation defines key words in the Regulations such as:

- “Application” - this definition is consistent with the provision of section 17 of the Telecommunications Act (SVG) and Section 11 (d) of the Act (SVG).
- “complainant” - this definition is consistent with the definition of complaint under the Dispute Resolution Regulations.
- “documents” - the definition was crafted to include electronic documents in keeping with existing and proposed legislation in the ECTEL Member States for example the Electronic Transactions Act of St. Vincent and the Grenadines.
- “hearing” - is defined with reference to the general powers provision of the Act, reference is made to section 11 of the (SVG) Act.
- “interested person” - has been defined. This person is a person who may not be a party per se but has some interest in the outcome of the hearing. That person must however have a genuine interest in the matter.
- “intervenor” - is also defined. The definition is linked to the substantive provision of the relevant regulation.

- “party” is defined to include applicants, respondents and intervenors.
- “record” is defined to stipulate that the Commission’s business when conducting hearings must be reduced to a written transcript. Of course such a stipulation is important not only for the record keeping purposes of the Commission but also to satisfy the provisions of the Act for review by the Commission and the Court of Appeal where an appeal of the Commission’s decisions is filed.

#### **Regulation 4**

The regulation indicates to the reader that the Regulations govern all public hearings by the Commission. Section 72(2) (f) of the Act provides that the Minister may make regulations pertaining to the conduct of public hearings. These Regulations should therefore cover all public hearings, which may be conducted by the Commission.

Sub-regulation 2 of the regulation provide for the Telecommunications (Dispute Resolution) Regulations to be the prevailing law where the Commission constitutes itself as a Tribunal to hear disputes. The Act recognizes that there is a distinction when the Commission hears disputes and when it holds public hearings to deal with other matters pertaining to its functions. Special rules have been developed with regard to the dispute resolution functions of the Commission. In that regard, the Dispute Resolution Regulations will prevail if there is a conflict.

#### **Regulation 5**

The Commission has been given the discretion to regulate its own proceedings while sitting as a tribunal to hear disputes. This discretion is granted under paragraph 15 of Part 3 of the Dispute Resolution Regulations.

Regulation 5 has been crafted to recognize the provision and gives the Commission the discretion to vary or dispense with the procedure under these Regulations where it is necessary to ensure that the hearing is fair, timely and cost effective.

## **Regulation 6**

Regulation 6 provides a quorum for the Commission at public hearings. The quorum is consistent with the quorum provided for under the Act and Dispute Resolution Regulations.

## **Regulation 7**

This regulation sets out the conditions that trigger off a public hearing. Someone may make an application for a public hearing by filing an application containing the arguments and evidence supporting the application. The regulation also recognizes that complainants who require the Commission's assistance may also apply. However the application for assistance must be in the form prescribed in the Dispute Regulations and the procedure set out thereunder must also be followed.

The Commission must consider requests for hearing in a timely manner. In the case of disputes, the Dispute Resolution Regulations set out the timeframe in which the Commission should review a complainant's request for assistance.

The regulation also provides for a notice of hearing to be published in a newspaper of wide circulation and where applicable on the Commission's website. The Dispute Resolution Regulations provide further duties of notification in the case of disputes. However those duties would be impracticable for these regulations in light of the fact that in some cases there may be no respondent on whom to serve a notice. The approach in the Conduct of Public Hearings regulations is to make the notification procedure as wide and general as possible to ensure far-reaching publication.

## **Regulation 8**

This regulation provides for the form, which applications must take. The applications covered under this regulation are the applications made primarily under these regulations. Applications for assistance made under the Dispute Resolution Regulations are covered by the rules and procedure provided by the Dispute Resolution Regulations and must be

in the prescribed form under those Regulations hence the inclusion of the provision under sub-regulation 2 of the provision.

### **Regulation 9**

Regulation 9 sets out the content of the notice of hearing and parallels the contents of the prescribed form under the Dispute Resolution Regulations. It also makes provision for persons to examine the application at the office of the Commission.

### **Regulation 10**

Pre-hearing conferences are important to ensure that the actual hearing runs as smoothly as possible and is efficient in resolving the matter at hand.

The Commission may hold pre-hearing conferences either on its own motion or upon the request of a party. The Dispute Resolution Regulations also makes provision for a pre-hearing review either on its own motion or at the request of a party. Where the rules conflict with each other, the Dispute Resolution Regulations would prevail. The provision for a pre-hearing conference sets out in detail what would be done at the conference. It is not designed to take the place of the hearing itself but should be used as a tool to assist the Commission and the parties to the hearing clarify issues, correct errors and make agreements.

### **Regulation 11**

The Presiding Officer would generally be the Chairperson of the Commission when he sits with the Tribunal. However the Chairperson may choose not to be the Presiding Officer. The members present and sitting at the Hearing may choose a Presiding Officer to take charge of the proceedings. The Act itself speaks to the composition of the Tribunal but makes no provision as to who would preside at hearings. This regulation seeks to address that issue.

### **Regulation 12**

Regulation 12 addresses intervenors and provides a definition with regard to who can be an intervenor. The regulation gives the Commission the discretion to grant intervenor status to someone seeking that status. The rationale behind allowing intervention is that a judgment or decision of a tribunal may affect the rights of nonparties. Generally, the role of an intervenor is to influence a tribunal in making its decision.

### **Regulation 13**

This regulation addresses parties who are interested in the outcome of the matter being heard by the Commission. This interest should not be frivolous or vexatious. The Commission is given discretion to allow such persons to participate in the hearing in a limited manner. Therefore the Commission has the discretion to permit an interested person to give submissions, address the Commission or tender documents where appropriate.

### **Regulation 14**

Regulation 14 sets out the procedural rules for filing and service of documents and also provides the rules for determining the date of service.

### **Regulation 15**

Parties to a hearing are entitled to retain legal counsel. Counsel may make representation on behalf of a party at a hearing.

### **Regulation 16**

Regulation 16 sets out the procedure to be followed at a hearing and addresses issues such as the opening of the hearing, the order of appearance, and the tendering of evidence.

In case of a hearing of a dispute the provision of sub-regulation 4 is subject to the provisions of the dispute regulations, which stipulates that the Commission is not bound by rules of admissibility. Sub-regulation 5 was inserted to remove any doubt with respect

to how the Commission should deal with the admissibility of evidence when hearing a dispute.

### **Regulation 17**

This regulation makes provision for compelling a witness to attend a hearing to give evidence. It also sets out the procedure for service. The regulation is consistent with section 19 of the Act.

### **Regulation 18**

In many instances the Commission may need to hear from expert witnesses especially where highly technical matters are brought before them for their determination. Regulation 18 provides the procedure for calling expert witness. It stipulates that notice of intention to call an expert witness must be sent to all parties to the proceedings.

### **Regulation 19**

Cross-examination of witnesses and parties to a proceeding are a crucial part of any public hearing. These regulations provide rules for cross-examination and also make provisions for rebuttal, re-examination or re-directing and re-cross examination.

### **Regulation 20**

Regulation 20 speaks to the public nature of hearings by stipulating that all hearings shall be heard in a place that is accessible to the public

### **Regulation 21**

Parties may request information to be treated as confidential. The Presiding Officer hears the application to treat information as confidential and that information must be of a nature that disclosure of that information would cause specific direct harm to the person claiming confidentiality. Where the Commission makes such a determination, the Commission may choose to conduct a hearing in camera.

**Regulation 22**

Public hearings may be recorded for broadcast to the general public. Where this is done, the Presiding Officer has the responsibility to regulate the use and placement of recording devices and broadcast equipment. This regulation provides rules with regard to taping, broadcast and type of equipment authorized for use in the hearing room.

**Regulation 23**

Regulation 23 simply stipulates that the Commission can adjourn proceedings at anytime.

**Regulation 24**

This regulation provides basic provisions for orders and decisions of the Commission. The Act and the Dispute Resolution Regulations also provide additional rules with regard to orders and decisions. This regulation is subject to the Act and the Dispute Resolution Regulations wherever there is conflict, the Act and the Dispute Resolution Regulations shall prevail.

**Regulation 25**

After the conclusion of a hearing the Commission must compile a record of the hearing. Of course records are important for the Commission, which may want to review its own decision in accordance with the provision of the Act. There may be an appeal from the Commission's decision. The record would be integral to the determination of that appeal. It is important that a proper record be kept to facilitate any of those two occurrences, or any other occurrence that may arise, which may require a review of the record.

**Regulation 26**

Regulation 26 makes provision for the Commission to seek ECTEL's advice on questions of law that may arise during a hearing or as a consequence of a hearing.

**Regulation 27**

This regulation recognizes that there may be instances where defects in procedure occur when conducting hearings. Such defects shall not operate to make the hearing invalid or

void. The substance of the proceeding carries far more weight than the procedure itself. This is similar to the “overriding objective” under the Civil Procedure Rules of the Eastern Caribbean Court of Appeal, which places far **greater** weight on substance over form in the interest of justice.

### **Regulation 28**

Reference to the Commission may include the staff of the Commission. For example a provision, which speaks to filing with the Commission, really implies that the staff of the Commission would receive and process the filed document. Sub-regulation 3 allows the Commission to co-opt persons to assist them during the hearing of the Commission. For example the Commission may co-opt a stenographer to take a record of the proceeding during the conduct of a hearing. This is an important provision because the Commission may not have all the human resources necessary for the conduct of the hearing employed with the Commission. The Commission is therefore given the discretion to access that resource from outside the Commission.

**TELECOMMUNICATIONS (CONDUCT OF PUBLIC HEARINGS)  
REGULATIONS, 200[-]**

**ARRANGMENT OF REGULATIONS**

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**[MEMBER STATE]**  
**[SR&O]**

**200[-] No.[-]**

**(Gazetted [date])**

**IN EXERCISE** of the powers conferred by section [-] of the Telecommunications Act, 200[-], the Minister makes the following Regulations:

**TELECOMMUNICATIONS (CONDUCT OF PUBLIC HEARINGS) REGULATIONS 200[-]**

**Citation**

1. These Regulations may be cited as the Telecommunications (Conduct of Public Hearings) Regulations.

**Commencement**

2. These Regulations shall come into force on the date of publication in the Gazette.

**Interpretation**

3. (1) In these Regulations unless the context otherwise require—  
“Act” means the Telecommunications Act No. [-] of 200[-];

“applicant” means a person that applied for the holding of a hearing:

- (a) by or on behalf of a complainant;
- (b) by or on behalf of a telecommunications provider;
- (c) on behalf of the Minister;
- (d) on any matter pertaining to the functions of the Commission.

“complainant” means an aggrieved party who files a statement of complaint under Regulation 4 of the Telecommunications (Dispute Resolution) Regulations 200[-];

“documents” means records made or stored in physical or electronic form and include written, electronic audiotape, videotape, digital reproductions, photography, maps, graphs, microfiche or any other data and information recorded or shared by means of any similar device;

“hearing” means a public hearing provided for under section 11 of the Act.

“interested person” means a person who has an interest in the outcome of an inquiry for a purpose that is neither frivolous or vexatious;

“intervenor” means a person who files an intervention pursuant to regulation [-];

“Minister” means the Minister responsible for telecommunications;

“party” means an applicant , a respondent or an intervenor;

“record” means a written transcript of the hearing including all exhibits and written testimony submitted at the hearing, the findings of fact and conclusions of the Presiding Officer, any facts officially noticed together with the decision or order of the Commission.

(2) Terms used in these Regulations shall have the meanings assigned to them under the Act.

#### **Scope and applicability**

4. (1) These Regulations:

- (a) govern all public hearings before the National Telecommunications Regulatory Commission; and
- (b) apply to a hearing of the Commission when constituted as a Tribunal to hear disputes under the Act and the Telecommunications (Dispute Resolution) Regulations 200[-].

(2) To the extent that these Regulations are inconsistent with a particular regulation of the Telecommunications (Dispute Resolution) Regulations 200[-], the provisions of the Telecommunications (Dispute Resolution) Regulations shall prevail.

## **Power of Commission to Dispense with the Procedure under these Regulations**

5. (1) In accordance with paragraph 15 of Part 3 of the Telecommunications (Dispute Resolution) Regulations 200[-], the Commission when sitting as a Tribunal to hear disputes, may regulate its own procedure.
- (2) At any time during a hearing, the Commission may vary or dispense with the procedure set out in these Regulations where it determines it is necessary to ensure that the hearing is fair, timely and cost effective.
- (3) If the Commission varies or dispenses with the procedure set out in these Regulations, it shall inform the parties without delay and issue direction concerning the procedure to be followed at the hearing.

## **Quorum**

6. (1) Three members of the Commission shall constitute a quorum.
- (2) Where the Commission sits as a tribunal for the purposes of determining matters under section [*Dispute Resolution*] of the Act, the quorum shall consist of the Chairperson and two other Commissioners nominated by the Chairperson for the purpose of participating in a hearing.

## **When to hold a public hearing**

7. (1) A person may prepare and submit argument and evidence in the form of an application to the Commission requesting a hearing on the application.
- (2) A complainant may apply to the Commission for assistance with the resolution of a dispute in accordance with the procedure set out in the Telecommunications (Dispute Resolution) Regulations 200[-].
- (3) The Commission shall:—
  - (a) consider all requests for a hearing in a timely manner;
  - (b) in the case of a dispute, within 10 days of receipt of all materials submitted by the parties review the materials and notify the parties of its decision to sit as a tribunal to hear the dispute.

- (4) Where the Commission proposes to conduct a hearing the Commission shall:—
  - (a) set the application down for hearing at a date and place determined by the Commission; and
  - (b) publish a notice of hearing in a newspaper of wide circulation in [Member State] and where applicable on the Commission's website in accordance with the procedure set out in Regulation 9.
- (5) The Commission may, on its own motion, hold public hearings pertaining to any of its functions under the Act.

### **Applications**

8. (1) An application referred to in Regulation 7(1) shall be made in writing or in an electronic format and shall be addressed to the Chairman of the Commission.
- (2) An application referred to in Regulation 7(2) shall be in the form prescribed in the Telecommunications (Dispute Resolution) Regulations 200[-].
- (3) The application referred to in sub-regulation (1) shall be in a form satisfactory to the Commission and shall:—
  - (a) set forth the name, address and telephone number of the applicant and his agent, where applicable;
  - (b) contain a clear and concise statement of the relevant facts, the grounds of the application and the nature of the order applied for or decision requested;
  - (c) be divided into paragraphs and numbered consecutively;
  - (d) contain a list of any documents that may be useful in explaining or supporting the application;
  - (e) be signed by the applicant;
  - (f) where the application is filed in paper format, be filed with the Commission in duplicate together with a copy of the documents described in paragraph (d).
- (4) Where the Commission is of the opinion that the application referred to in sub-regulation (1) does not comply with sub-regulation (3), the Commission shall

notify the applicant of the deficiencies in the application and the application shall not be considered until it is in a form satisfactory to the Commission.

**Notice of hearing**

9. (1) A notice of a hearing shall state:—

- (a) the day on which the hearing will commence;
- (b) the place where the hearing will be held;
- (c) the nature of the matters to be heard at the hearing; and
- (d) the rights of persons in respect of the hearing, including the time for filing an intervention.

(2) The notice shall be published in a newspaper of wide circulation and where applicable, on the Commission’s website no less than 14 days before the date set for the commencement of the hearing.

(3) Where a notice has been published any person may examine any application listed in the notice at the office of the Commission.

**Pre-hearing conferences**

10. The Commission may, on its own motion, or upon the request of a party direct the parties to attend a conference for:—

- (a) clarifying and simplifying issues;
- (b) admitting facts or verifying facts by affidavit;
- (c) discussing the use of documents of a public nature;
- (d) discussing the procedure to be followed at the hearing;
- (e) exchanging written submissions, exhibits and other material;
- (f) identifying submissions, documents or testimony that contains confidential information;
- (g) identifying who may be given access to confidential information;
- (h) determining the number of witnesses, or time for presenting evidence, rebutting evidence or cross examining;
- (i) discussing the use of electronic communication for the hearing including telecommunications and video conferences; or
- (j) dealing with any other relevant matter.

### **Presiding Officer**

11. (1) The Presiding Officer at a hearing shall be:—

- (a) The Chairperson if willing to preside;
- (b) A Commissioner selected by the members present and sitting at the hearing.

(2) The Presiding Officer shall have authority to:—

- (a) require and administer oaths and affirmations;
- (b) rule upon issues of procedure and admissibility of evidence;
- (c) regulate the course of the hearings, set the time and place of continued hearings, and fix the time for the filing of evidence, briefs and other written submissions;
- (d) permit deviation from the procedural rules of the Commission insofar as compliance therewith is found to be impractical or unnecessary or the change does not prejudice any of the parties; and
- (e) take other actions, on behalf of the Commission consistent with these Regulations and any other applicable law that may be necessary for the orderly conduct of the hearing.

### **Intervenors**

12. (1) An interested person who intends to intervene in a hearing shall file with the Commission and serve on every party a written application for leave to intervene stating:—

- (a) whether the person intends to appear at the hearing; and
- (b) where the person's interest justifies intervenor status;

(2) The application for intervention shall:—

- (a) describe the interest of the intervenor;
- (b) contain a clear and concise statement of the relevant facts and the grounds upon which the intervenor wishes to make an intervention;
- (c) be divided into paragraphs and numbered consecutively;

- (d) set forth the name, address and telephone number of the intervenor or his agent;
  - (e) be signed by the intervenor;
  - (f) contain a list of documents that may be useful in explaining or supporting the intervention;
  - (g) be filed with the Commission together with a copy of the documents described in paragraph (f).
- (3) The Commission in determining whether to grant intervenor status and the opportunity to appear before it, shall provide the parties the opportunity to make representations on whether the person should be granted intervenor status and take into account any other relevant matter including:—
- (a) the nature of the hearing;
  - (b) the issues;
  - (c) whether the person has a genuine interest in the issue;
  - (d) the likelihood of the person being able to make a useful and different contribution to the Commission's understanding of the issues; and
  - (e) any delay to the proceedings.
- (4) The Commission shall notify all parties of its decision with respect to an application for leave to intervene.
- (5) The Commission may direct a party to provide an intervenor with information or evidence that it provided to the Commission prior to the filing of the application for leave to intervene.

### **Interested Parties**

13. The Commission may allow any other interested person to participate in a more limited manner as the Commission may determine.

### **Service of Documents**

14. (1) A document that is required by these Regulations to be served or filed may be served or filed by hand, mail or any other means in which the recipient is capable of receiving it, including electronic format.
- (2) A person who serves a document electronically shall, within 7 days after the date of service, provide a paper copy of

the document to the recipient, unless the recipient waives that right in writing.

(3) A document under these Regulations is deemed to be served, in the case of:—

- (a) facsimile transmission:
  - (i) if it is transmitted on a business day before 4.00 pm, on the day of transmission;
  - (ii) in any other case, the first business day after the day of transmission;
- (b) personal service, on the day of delivery;
- (c) service by mail, when it is deposited in the post office;
- (d) any other electronic means, on the second business day after the day on which it was transmitted.

(4) A document is filed on the day when it is received at the office of the Commission.

### **Representation**

15. A party may be represented at a hearing by legal counsel.

### **The Hearing**

16. (1) The Presiding Officer shall open the hearing by describing in general terms the purposes of the hearing and the general procedure governing its conduct.

- (2) The order of appearance shall be:—
- (a) the applicant;
  - (b) the respondent, where applicable;
  - (c) the intervenors;
  - (d) interested persons; where the Commission determines that an interested person may make representation; and
  - (e) the applicant in reply.

(3) The Commission may accept evidence in person, in writing or in electronic form including by teleconference or video-conference.

(4) Subject to paragraph 12 of Part 3 of the Telecommunications (Dispute Resolution) Regulations 200[-], no evidence may be introduced at a public hearing except in support of documents contained in an

application, statement of complaint, reply, intervention, as the case may be, or in support of documents or material filed in support thereof.

- (5) Notwithstanding sub-regulation (4), where the Commission hears a dispute the provision of paragraph 12 of the Telecommunications (Dispute Resolution) Regulation 200[-] shall apply to the admissibility of evidence.

### **Witnesses**

17. (1) The Commission may upon its own motion or at the request of a party, issue a witness summons to compel the attendance of any person at the hearing as a witness.
  - (2) A witness summons shall bear the name of the Commission, the name of the issuing officer, and shall command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place.
  - (3) Service of the witness summons shall be made by delivering a copy of the witness summons to the person named in it.
  - (4) The person serving the witness summons shall make proof of service by having the person named in the witness summons endorse his name, date and time of service on a copy of the document and shall file the witness summons with the Presiding Officer.
  - (5) If any person refuses to obey a witness summons issued by the Commission under these Regulations, the Commission may apply to a Judge in chambers for an order compelling such person to comply with the requirement of the witness summons and such other relief as the law may allow.
  - (6) A witness shall testify at a hearing under oath or upon affirmation unless otherwise ordered by the Presiding Officer in his discretion.
  - (7) Any costs incidental to complying with a witness summons shall be borne by the party requesting the witness summons.

### **Expert Witnesses**

18. (1) A party who intends to introduce the evidence of an expert witness shall, at least 14 days before the hearing begins serve a notice on all parties to the hearing and shall file the notice with the Commission.
- (2) A party on whom a notice is served and who wishes to use the evidence of an expert to rebut a matter set out in the notice shall at least 7 days before the hearing begins, serve a notice of the expert on all the parties and file the notice with the Commission.
- (3) A notice referred to in sub-regulations (1) and (2) shall include the qualifications of the expert and a full statement of the evidence to be presented.

### **Cross Examination**

19. (1) At the conclusion of the testimony of each party, witness or interested person, the Commissioners, and the parties shall have the right of oral cross-examination.
- (2) Cross examination shall be conducted in the following order:—
  - (a) Commissioners may be permitted by the Presiding Officer to ask questions at any time;
  - (b) the applicant;
  - (c) the respondent;
  - (d) intervenors.
- (3) A person who has concluded his testimony cannot thereafter introduce further evidence except in rebuttal.
- (4) Rebuttal evidence shall be directed only to matters brought out by another person at the hearing.
- (5) All parties shall have the right to redirect and re-cross examine any party or witness on matters brought out in the last examination by any other person.

### **Public Nature of Hearings**

20. All hearings are public and shall be held in a place accessible to the public.

### **Confidential Information**

21. (1) The Commission may, at the request of a party, treat as confidential the following material or information:—
  - (a) financial statement of a party;
  - (b) evidence of financial capacity of any person participating in an application;
  - (c) the names of prospective employees of a party;
  - (d) any other material or information the Commission determines is confidential information.
- (2) Notwithstanding regulation 20, upon application, the Presiding Officer may make an order to conduct hearings in camera.
- (3) A claim for confidentiality made in connection with any material or information shall be accompanied by reasons for the claim of confidentiality, and where it is alleged that specific direct harm may occur from a breach of confidentiality, sufficient details concerning the nature and extent of harm shall be provided.

### **Regulation of Certain Devices**

22. (1) The placement and use of television cameras, tape recorders, microphones or similar devices at hearings may be regulated by the Presiding Officer in accordance with these Regulations.
- (2) The Commission may authorize the tape recording or live broadcasting of hearings by a designated media representative.
- (3) Cameras and microphones shall be placed at pre-determined places in the hearing rooms.
- (4) Only fixed cameras along with lighting equipment, tape recording devices, micro-phones and other approved electronic equipment will be allowed in the hearing room.
- (5) No media interviews or reporting will be allowed in the hearing room.
- (6) All media representative shall comply with the Presiding Officer's directives.

### **Adjournments**

23. The Commission may at any time adjourn any proceeding before it.

### **Orders and Decisions**

24. (1) Subject to section *[Awards]* of the Telecommunications Act, the Commission may approve the whole or any part of an application or grant such further or other relief, in addition to or in substitution for that applied for, as the Commission considers just and proper.

(2) Subject to paragraph 13 of Part 3 of the Telecommunications (Dispute Resolution) Regulations 200[-], the Commission may give orally or in writing the reasons for its orders or decisions.

(3) A decision of the Commission shall be effective on the day on which it is made or on such later date as may be stated in the decision.

### **Closure of Hearing**

25. (1) After final closure of the hearing a record shall be compiled by the Commission.

(2) The record shall be signed by the members of the Commission who participated in the hearings.

(3) Copies of the record shall be made available for purchase at a price to be determined by the Commission.

(4) The record shall also be made available for inspection by the public at a nominal cost to be determined by the Commission.

### **Questions of Law**

26. Where any question of law arises, the Commission may, where appropriate, forward the issue and documentation to ECTEL for its consideration and advice.

### **Obligations based on form**

27. No proceedings shall be defeated by any objection based only upon defects in form.

**Staff of the Commission**

28. (1) Where appropriate, references in these Regulations to the Commission include the staff of the Commission.
- (2) The Commission may require its staff to provide assistance during the conduct of a hearing.
- (3) Where appropriate, the Commission may co-opt any person it considers necessary to assist in carrying out its functions at a hearing.

Made this [-] day of [-] 2008.

Minister of Telecommunications