

LEGAL NOTICE NO.

**THE KENYA INFORMATION AND COMMUNICATIONS ACT, 1998
(No. 2 of 1998)**

IN EXERCISE of the powers conferred by sections 27, 38 46K and 66 of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Commission, makes the following Regulations-

**THE KENYA INFORMATION AND COMMUNICATIONS (DISPUTE
RESOLUTION) REGULATIONS, 2010**

Citation. **1.** These Regulations may be cited as the Kenya Information and Communications (Dispute Resolution) Regulations, 2010.

Interpretation. **2.** In these Regulations, unless the context otherwise requires-

“consumer” any person who uses communication services or products offered by a licensee;

“dispute” means any matter that is in contention between a licensee and another, a consumer and a licensee, where one or both parties is aggrieved by the conduct of the other and the parties have failed to reach an amicable resolution after due effort has been made;

“licensee” means any person who has been licensed under the Act;

Powers of the Commission. **3.** The Commission shall have power to resolve disputes between-

- a) a consumer and a service provider;
- b) a service provider and another service provider; or
- c) any other persons as may be prescribed under the Act.

(3) The Commission may, for the purpose of resolving any dispute hold hearings, inquiries and investigations, it considers appropriate in the discharge of its functions under the Act.

(4) The Commission shall not emphasise on technicalities or rules of procedure in resolving disputes filed under these regulations and may waive any rule or requirement where necessary.

Initiation of Proceedings.

4. (1) A party to a dispute may, within sixty days of the occurrence of a dispute, notify the Commission and any adverse party of the dispute, in writing.

Provided that where a notification is made orally or in any other form, the Commission may reduce the notification in writing and the notification shall, if signed or attested by the complainant, be considered to be a written notification for the purposes of these Regulations.

(2) The Commission shall not seek to resolve a dispute under these Regulations unless it has been notified of the dispute in writing and has been requested by either of the party or both parties to intervene.

(3) A party shall notify the Commission of a dispute under paragraph (1) by the presenting to the Commission a letter or Memorandum of Complaint together with the prescribed fees.

(4) The letter or Memorandum of Complaint shall set out concisely, the grounds of complaint and the facts upon which the complaint is based on, and shall be accompanied by documentary evidence supporting the complaint.

(5) The letter or Memorandum of Complaint shall be signed by the party presenting it if the party is an individual, and where the party is a corporation, by an agent or authorized officer of the corporation.

(6) The Commission shall acknowledge the receipt of a letter or Memorandum of Complaint, in writing.

(7) The Commission may decline to accept a letter or Memorandum of Complaint that-

- (a) does not raise any issue, under the Act;
- (b) does not conform to the provisions of the Act or directions given by the Commission;
- (c) is trivial, frivolous or vexatious;

- (d) is defective or which is presented otherwise than in accordance with these Regulations or the directions of the Commission; or
- (e) has been filed with any other authority or body that has jurisdiction to hear and determine the dispute.

(8) The Commission shall, before declining to accept a letter or Memorandum of Complaint, give the complainant an opportunity to be heard.

(9) The Commission shall not decline to resolve for the reason of defects in the pleadings or in the presentation, without giving an opportunity to the person filing the complaint to rectify the defects within the period the Commission specified for that purpose.

(10) Where the Commission has declined to resolve a dispute, it shall notify the parties to the dispute, in writing, stating the reasons for declining.

Response to the Complaint.

5. (1) Where the Commission accepts to resolve a dispute, it shall, within seven days of receiving a notification, notify the party against whom the complaint was made and serve the party with the letter or Memorandum of Complaint.

(2) The party against whom a complaint has been made shall, within twenty-one days after being notified of dispute under paragraph (1), file with the Commission and serve the complainant with, a response signed by that party, or where the party is a corporation by agent or authorized official of the corporation.

(3) The Commission may invite the complainant to file a reply to the response within a specified time.

Withdrawal of dispute.

6. (1) A complainant may, at any time before the dispute is heard, withdraw the letter or Memorandum of Complaint by notifying the Commission, in writing.

(2) The Commission shall, where a complainant withdraws a letter or Memorandum of Complaint make such orders relating to costs as it considers fit.

Hearing of disputes.

7. (1) The Commission may, for the purpose of resolving a dispute, hold such hearings, inquiries and investigations, as it may consider appropriate

(2) The Commission shall not place undue regard on technicalities or rules of procedure and may waive any such rule or requirement when it considers it appropriate.

(3) The parties to a dispute shall set the date for the hearing of a dispute within fifteen days from the date of the filing of the last response or any reply to the response.

(4) Save where the parties otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the dispute.

(5) The Commission may determine a dispute on the basis of the documents filed by the parties or oral evidence given before it.

(6) Where the Commission considers it necessary or expedient, it may direct the parties to file written submissions upon such terms as the Commission considers fit.

(7) Where in the course of resolving a dispute a matter arises that in the opinion of the Commission requires certain expertise or competence, the Commission may call upon any person who possesses the expertise to sit with the Commission as an assessor.

(8) At the hearing, the complainant shall open its case by stating the grounds of the complaint and may support it by relevant evidence.

(9) A party to a dispute shall, unless the party has the consent of the Commission, not rely on any grounds other than a grounds stated in the letter or Memorandum of Complaint or adduce additional facts or documents that were not referred to in the letter or memorandum of complaint or copies of the documents were not annexed to the letter or Memorandum of Complaint.

(10) The complainant shall close its case by making oral or written submissions and at the close of the complainant's case, the party against whom a complaint has been made may make submissions supported by relevant evidence.

(11) The complainant shall be entitled to reply to the submissions of the party against whom a complaint has been made and not raise new issues.

(12) The Commission may examine the parties and their witnesses when hearing a dispute.

(13) A witness called and examined by the either party may be cross-examined by the other party and after being cross-examined, the witness may be re-examined.

(14) The Commission may, at any time before making any orders relating to a dispute, require a party or any other person whom the Commission considers competent, to adduce documentary evidence or produce any material, specimen or product that the Commission may consider necessary for the determination of a dispute.

(15) The Commission may adjourn the hearing of a dispute for the production of further evidence or for other good cause, on such terms as it may determine.

(16) Where on the date of hearing any of the parties or their authorized representative does not appear when the dispute is called for hearing, the Commission may dismiss the dispute for non-appearance or proceed ex-parte.

(17) Where a dispute is dismissed in default or decided ex-parte an aggrieved party may file an application within fourteen days from the date of such dismissal, for review of the order given, and the Commission may review the order if it is satisfied that there was sufficient cause for the non-appearance.

(18) No party to a dispute shall communicate, outside the hearing of the matter, with any member of the Commission with regard to matters or issues which are the subject matter of the dispute.

Decision of the
Commission.

8. (1) The Commission shall make its decision in writing, stating reasons for the decision, within thirty days from the date of conclusion of the hearing.

(2) The decision of the Commission shall be dated and signed by the members of the Commission who participated in the hearing and determination of the dispute.

(3) The Commission shall cause to be made a record of the proceedings of the hearing of the dispute and include that record, together with a copy of the decision, in a document to be certified and signed by the presiding officer of the Commission as a true and correct record of the proceedings and the decision.

(4) The Commission shall forward a certified copy of the document described in paragraph (3) to each party.

(5) The Commission may, given the urgency of a dispute or for other justifiable reason, issue temporary preservation orders and reliefs pending the hearing and determination of the dispute.

(6) Any party dissatisfied by the decision of the Commission may Appeal to the Appeals Tribunal established under Section 102 of the Act within fifteen days of the decision.

(7) The decision of the Commission shall be binding until subsequent orders are made by the Tribunal or the determination of the Appeal.

General Provisions.

9. (1) The Commission may on application by either party, extend the time appointed by these rules for the performance of any act or taking of any proceedings upon such terms or conditions, if any, as may appear to the Commission to be just and expedient

(2) Records of proceedings, except those parts which for reasons specified by the Commission are confidential or privileged or otherwise should not to be disclosed to any person, shall be open to inspection by any person after conclusion of the hearing, subject to such person complying with the terms as the Commission may prescribe from time in regard to time, place and manner of inspection and payment of inspection fees.

(3) The Commission may publish in the Kenya Gazette and other media, its decision on disputes it has heard and determined.

(4) Nothing in these Regulations shall prevent the parties from reaching an agreement and withdrawing the dispute by submitting the negotiated agreement to the Commission for approval.

(5) The Commission may make orders relating to costs as it considers appropriate.

Made on the, 2010.

SAMUEL POGHISIO,
Minister for Information and Communication.