

**The Navajo Nation  
Telecommunications Regulatory Commission  
Hearing Procedures**

(a) Definitions:

- 1) *“Commission” means the Navajo Nation Telecommunications Regulatory Commission.*
- 2) *“Matter at issue” means a formal complaint that has been filed in writing with the Commission or a matter on which the Commission wishes to hold a hearing.*
- 3) *“Presiding Officer” means the Chairperson of the Commission, an administrative law judge appointed by the Commission, or other designee of the Commission appointed by the Commission to preside at a hearing.*

(b) Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served at least thirty days before the date of the hearing, except that a hearing may be held without thirty days notice upon recognition of exigent circumstances by the Commission.

(c) Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as the Commission determines is fair.

(d) Failure to Appear – If a party fails to appear, that party shall be in default and may be denied further opportunity to participate in the proceeding. The Commission, in its sole discretion, may dismiss the proceeding or proceed. Subpoenas and Attendance of Witnesses – The Executive Director of the Office of the Commission, the presiding officer, or other person delegated by the Commission, may sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The party on whose behalf the subpoena is issued shall be responsible for service of process and shall pay the person summoned the same fees and mileage that are paid in the Navajo Nation courts. Failure to obey the Commission's subpoena shall be considered contempt.

(e) Conduct of the Hearing --

- 1) Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or other designee of the Commission as provided by law and as the Commission may direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary, trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

- 2) Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or other designee, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a final rule or decision for ratification by the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:
    - a) *Ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;*
    - b) *If a person engages in disrespectful, disorderly, or laconic or other offensive language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;*
    - c) *Take appropriate action, including removal of a participant or counsel from the proceeding, if necessary to maintain order.*
  - 3) Before full Commission -- In hearings before the full Commission, the Commission shall exercise the powers described in Section (e)(2), *supra*, and any others available to it pursuant to applicable law and convenient or necessary to an orderly, just, and expeditious hearing.
- (f) Evidence --
- 1) Generally -- The Commission is not bound by the rules of evidence of the Navajo Nation courts and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public comments are not required to be under oath and shall be weighed accordingly.
  - 2) Language: The hearing shall be conducted in English and only statements made in English shall be entered into the record. For a speaker with little or no English, and who is the complaining party in a proceeding, that person shall be responsible for providing his/her own interpreter. For a speaker with little or no English, and who is not a voluntary party to a proceeding, or who is party to a proceeding at the request of another party, the speaker with little or no English shall be entitled to an interpreter, the costs for which shall be covered by the party causing or requesting that party to be present.

- 3) Exhibits --
- a) *Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other parties or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering party does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.*
  - b) *Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party intends to introduce the exhibit.*
  - c) *Exhibits shall be adequately titled, footnoted as necessary, appropriately formatted, and accompanied by either narrative or testimony which adequately lays the foundation for the exhibit. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, filed on a CD, using a PDF format, unless the presiding officer determines such electronic format is not required.*
- 4) Administrative notice -- The presiding officer may take administrative or official notice of a matter where it is consistent with taking judicial notice under Navajo Nation law.
- 5) Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.
- 6) Settlements --
- a) *Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.*
  - b) *Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.*

- (g) Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written text numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.
- (h) Recording of Hearing and Transcript -- Hearings shall be recorded electronically by the recorder for the Office of the Commission unless another method of recording is approved by the Commission.
- 1) Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.
  - 2) If a party requests that a scheduling conference or technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.
- (i) Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the applicant's or petitioning party's rebuttal.
- (j) Cross-Examination -- Direct examination and cross-examination shall be conducted in accordance with Navajo Nation law and practices for the Navajo Nation courts. The presiding officer may limit the time given parties to present evidence and cross-examine witnesses..
- (k) Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.
- (l) Proceedings in regard to Confidential, Proprietary or Other Protected Information -- Any information which a party claims is confidential, proprietary or otherwise protected shall be disclosed only to the presiding officer *in camera*. The presiding officer shall determine if disclosure of any such information to other fact finders, if any, is necessary for fair adjudication of the case. Any information which is deemed by the presiding officer to be confidential, proprietary or otherwise protected shall be covered by a Protective Order, to be issued by the Commission, and said information which shall thereby be sealed and not made part of the public record. Any release of information covered by a Protective Order of the Commission shall be subject to criminal sanctions and/or fines in accordance with 2 N.N.C. § 91 of the Navajo Nation Privacy Act.