



Guidelines on Rules and Procedures For Conduct of Public Hearings By Malawi Communications Regulatory Authority (MACRA).

1.0 Introduction

As part of promoting inclusive decision making in line with its mandate to carry out consultations under section 202 of the Communications Act No. 34 of 2016, the Malawi Communications Regulatory Authority (MACRA) (herein after referred as the 'Authority') intends to introduce public hearing on regulatory issues under its consideration. The Authority shall make the decision to hold a public hearing on a case-by-case basis, where the urgency of the matter in question permits and after considering that this is appropriate on justified grounds particularly with regard to the extent and seriousness of the issue.

1.2 Aim

These Guidelines therefore, aim to provide a clear framework to guide the Authority and relevant stakeholders on the conduct and procedure of these public hearings.

1.3 scope

These guidelines shall relate to all public hearings conducted by the Authority in line with its mandates under the Communications Act No. 34 of 2016, Electronic Transactions and Cybersecurity Act, No.33 of 2016 and any relevant laws.

2.0 Public hearings by The Authority

2.1 For the purposes of these guidelines, a public hearing shall mean a forum to which the public is invited to express its views, guided by a pre-defined set of questions, on issues related to the Authority's ICT mandates under the Communications Act, E-transaction and Cyber Security Act and any other relevant laws.

2.2 Public hearings provide the Authority a channel to hear the public's views and concerns and take them into account in its decision-making, particularly where options for regulatory actions are likely to impact the public.

2.3 Public hearings constitute consultations for consideration by the Authority and the Authority reserves to make a final determination on any matter subject to a public hearing after due considerations of all relevant factors related to the subject matter including; technical submissions from Management, international best practice, emerging trends, and relevant policy considerations.

3.0 Purpose of a Public Hearing

3.1 The primary purpose of a public hearing is to solicit public views on matters under its mandate as part of the Authority's inclusive decision making process where the Authority is considering a regulatory intervention on such matters.

3.2 Where the Authority elects to conduct a public hearing, it shall form part of its initial information gathering stage and shall be undertaken before making a final decision on a matter under consideration.

3.3 The Authority shall develop a consultation paper prior to any public hearing.

4.0 Who Can Attend a Public Hearing

4.1 The Authority shall open public hearings to all members of the public. However, for organizational reasons, participants will be required to register in advance.

4.2 The Authority shall endeavor to make available, different modalities of participation to ensure high public access to the public hearing.

4.3 In determining the target audience for a public hearing, the Authority shall be guided by the subject matter under consideration.

4.4 Licensees or persons with interest on the subject matter shall have the opportunity to present their view(s) to the participants of the public hearing.

4.5 Media organizations who wish to cover the public hearing may attend as observers. The Authority shall make special arrangements to allow wider media coverage of the public hearings. However, if media representatives do wish to be physically present at the public hearings, they shall be required to register in advance.

5.0 Applicable Language

5.1 The Authority shall conduct all public hearings in English.

5.2 Notwithstanding clause 5.1 above, any party or person who is unable to present in English but wishes to contribute in a local language, shall be required to indicate this in their registration to attend a public hearing. In such event, the Authority may provide translation services, if feasible.

6.0 Decision and Considerations for Holding a Public Hearing

6.1 A decision to hold a public hearing shall be taken by the Authority on a case-by-case basis, depending on the urgency of the matter in question and on other justified grounds, particularly with regard to public interest.

6.2 When making a decision on whether or not to hold a public hearing, the Authority shall consider the following:

- a) Feasibility to hold a public hearing in light of the urgency of the matter;
- b) Nature and extent of public interest concerns;
- c) Potential impact of proposed regulatory interventions on the sector;
- d) International best practices; and
- e) Any other consideration deemed necessary.

6.3 The Authority shall ensure that –

- a) The decision to hold a public hearing is reflected by a resolution;
- b) Sufficient time, not less than 30 days is given to organize the public hearing; and
- c) The decision to hold a public hearing including its justifications is announced and published on its website.

7.0 Announcement of a Public Hearing

- 7.1 The announcement to hold a public hearing under clause 6.3 (c) above, shall be published on the Authority's website and in two widely circulated newspapers and shall include:
- a) A summary of the subject of concern;
 - b) A list of specific questions on which information from the public is sought during the public hearing;
 - c) Information on date and time of the public hearing;
 - d) Information on the location of the public hearing;
 - e) Information on how to register for the public hearing;
 - f) Registration information, including the deadline by which participants can register to attend the hearing as speakers or observers;
 - g) Information on how to ask for translation services into English in case of attendance as a speaker;
 - h) Detailed information on how to follow the live broadcast of the public hearing;
 - i) Authority's contact email address and phone number;
 - j) Information about any other available modalities of accessing the public hearing i.e. live-broadcast/web stream, if applicable; and
 - k) Any other information deemed necessary.

8.0 Participation in Public Hearings

8.1 The Authority shall ensure availability of different modalities of accessing the public hearing to ensure wider participation by the public.

8.2 Members of the public may participate actively as speakers, or as observers.

8.3 Any member of the public who wish to attend a public hearing as a speaker shall submit their request in advance, by the deadline specified in the Authority's announcement of the public hearing.

8.4 Participation requests specified in clause 8.3 above, shall be sent in writing to the Authority in the manner prescribed in the announcement notice and shall include the following information:

- a) Name of the individual/party;
- b) Category (i.e. whether the person is speaking as a licensee, ICT professional, an academic, consumer, civil society or a representative of any relevant sector/stakeholder irrespective of whether the person speaks as an individual or a representative of an organization);
- c) Affiliation (i.e. name of the organization/pharmaceutical company the individual represents), if applicable;
- d) Contact information (postal address, e-mail address, telephone number);
- e) A brief outline of the planned intervention, specifically how it addresses the questions on which the Authority is seeking public opinion and the estimated amount of time requested for the presentation;
- f) Preferred mode of participating at the meeting i.e. in person or via online available facilities; and
- g) Any other information deemed necessary.

- 8.5 Speakers may contribute in person or via online facilities provided by the Authority where feasible.
- 8.6 Requests for participation as an observer at the public hearing shall be sent to the Authority and however, these requests shall only be accommodated subject to availability of space.
- 8.7 Where a person intends to observe or follow proceedings of the public hearings via live streaming, there shall be no need for registration.

9.0 Review of Requests to Speak at the Public Hearing

- 9.1 The Authority reserves the right to review requests to speak at a public hearing.
- 9.2 Notwithstanding clause 9.1 above, the Authority shall endeavor to accommodate all requests to speak at a hearing. However, it may decline a request to speak at the public hearing if the outline of the planned intervention addresses a matter that is not *prima facie* related to the subject matter of the public hearing.
- 9.3 The Authority shall group speakers according to their category or group specified in accordance with clause 8.4 (b) and shall allocate time to each category, giving priority to civil society representatives, such as consumers, ICT professionals and academic research groups or organizations, particularly those relevant to the subject matter.
- 9.4 Where the number of requests within a category cannot be accommodated during the time allocated, the Authority shall endeavor to encourage teaming up of representatives of the relevant category and the Authority shall facilitate these efforts.
- 9.5 If the number of requests still exceeds the allocated time, the Authority shall review the requests and decide on the list of speakers, taking into account elements such as the most relevant speakers with regard to the questions to be addressed at the public hearing or the geographical spread of the speakers.
- 9.6 The Authority shall in advance of the hearing issue written communication confirming those who have been admitted as speakers as well as those who couldn't be accommodated with reasons why their requests could not be accommodated. However, any individual who has not been accommodated as a speaker may prior to the public hearing submit to the Authority a written statement for consideration.

10.0 Allocation of Time to Speakers

- 10.1 The time the Authority allocates to each speaker shall be dependent upon the number of requests received.
- 10.2 The Authority shall aim to allocate a maximum of 10 minutes per person. However, if a large number of requests have been received to attend the public hearing as speakers, the Authority may reduce the time allocated for each speaker or extend the duration of the public hearing.

11.0 Publication of Submitted Information

- 11.1 The Authority shall publish on its website, information including supporting documentations submitted by speakers or participants before or during the public hearing with the exception of any personal data.

11.2 Any person who seeks to have information submitted to the Authority classified as confidential, shall indicate the same at the time of submission of the relevant information.

12.0 Draft agenda and list of speakers

12.1 The Authority shall prepare a list of speakers and a draft agenda for the public hearing, stating the time allocated to each category of speakers, grouped by category, and each speaker within the category. The Authority shall publish these documents on its website in advance of the public hearing.

13.0 Cancellation/Postponement of Public Hearing

13.1 The Authority may cancel a public hearing if circumstances emerge that impact on the feasibility of holding it or justifies its cancellation.

13.2 The Authority shall announce and publish any cancellation of a public hearing as early as possible, with justifications for such cancellation.

13.3 The Authority shall not be liable for any expenses incurred as a result of cancellation.

13.4 In some situations where it is not feasible for the Authority to conduct or reschedule a public hearing, the Authority may opt to conduct a less formal public hearing and announce on its website the modalities for receiving written contributions.

13.5 The less formal public hearings envisaged in clause 13.4 above may include:

- a) a panel of experts on a subject discussing the subject matter with or without a question and answer period;
- b)

14.0 Conduct of a Public Hearing (During the Hearing)

14.1 Public hearings shall be conducted as part of meetings of the Committees of the Authority, with attendance of the relevant Authority Committee members.

14.2 The public hearing shall be chaired by the relevant Committee Chairperson or his/her representative and he or she shall be assisted by Authority staff on any administrative and organizational issues. For the purposes of this provision, relevant Committee chairperson shall be determined according to the Committee under the Authority who has the jurisdiction over the subject matter under consideration.

14.3 The Committee Chairperson in collaboration with Authority staff shall be responsible for the preparation and the conduct of the public hearing and shall take appropriate measures to ensure that the public hearing runs effectively and efficiently.

15.0 Opening statements by the Chairperson

15.1 The Chairperson shall make an opening statement at the beginning of the public hearing which shall include:-

- a) state the purpose of the public hearing;
- b) outline the order of the day;
- c) outline the ground rules for the meeting; and
- d) any other information deemed necessary.

15.2 Upon making the opening statement, the Chairperson shall invite a representative of Authority staff to provide an overview of the proceedings including the main issues and questions on which public input is sought.

16.0 Role of Chairperson During Public Hearing

16.1 The Chairperson shall moderate the public hearing including:

- a) giving the floor to the speakers;
- b) ensuring fairness in the manner in which the hearing is conducted;
- c) determining the order of presentation of interventions by the speakers;
- d) ensuring that speakers adhere to allocated speaking limits as set in the agenda;
- e) ensuring that interventions are limited and relevant to questions asked by the Authority on the subject matter;
- f) enforcing applicable ground rules; and
- g) undertaking any action necessary for the proper conduct of the hearing.

16.2 Before a speaker makes any intervention during the hearing, the Chairperson shall require a speaker to:

- a) do brief self-introduction and clearly state their name and the organization/category the speaker represents;
- b) declare any interests related to the subject matter, where applicable. The interests declared shall be minuted in the records of the public hearing; and
- c) do any other as directed by the Chairperson.

16.3 The Chairperson shall alert a speaker to wind up at least two minutes before the expiry of the allocated time. If the allocated time ends before a speaker has concluded his or her intervention, the Chairperson shall require him or her to wind up and if the speaker still fails to conclude his or her intervention, the Chairperson may order that the microphone be turned off or take any action deemed necessary.

16.4 Without prejudice to the generality of the powers of the Chairperson, s/he reserves the right to stop a speaker intervention during the hearing in any of the following circumstances:-

- a) where the intervention is not addressing the questions asked by the Authority;
- b) where the speaker is not adhering to the general ground rules set for the hearing; and
- c) where the speaker conducts him or herself in any manner deemed inappropriate for the hearing.

16.5 Where necessary, the Chairperson or Authority staff members present, may seek clarification from the speaker on any issue raised during his/her intervention.

17.0 Concluding the hearing

17.1 Before concluding the hearing, the Chairperson shall:-

- a) Ask Authority staff representative to present a summary of the interventions made during the public hearing;
- b) open the floor to all participants in the room for additional statements on the points made during the public hearing where time permits; and
- c) explain the way forward.

18.0 Records of the Hearing Proceedings

- 18.1 The Chairperson shall ensure that a record or report of the hearing proceedings is produced by Management which shall include:-
- a) the list of speakers and all other participants including their affiliation;
 - b) any declaration of interest made, if applicable;
 - c) any supporting documentation presented by speakers during the hearing;
 - d) a summary of the conclusions of the hearing; and
 - e) any other information deemed necessary.
- 18.2 The Authority shall have the report of the hearing proceedings above stated, published on its website.

19.0 Public Hearing Findings as Recommendations to the Authority

- 19.1 The conclusions or findings of the public hearing on their own shall not constitute the final decision of the Authority on the subject matter but shall form part of the recommendations that the Authority shall consider when making a final determination on the relevant matter.
- 19.2 The Authority shall publish any final decision it makes relating to a matter that was subject to a public hearing which shall include all issues that it considered when making its final determination.