



CHEMONICS INTERNATIONAL INC.

**Electronic Document Submission Title Page**

Contract No.: 278-C-00-02-00210-00

Contractor Name: Chemonics International, Inc.

USAID Cognizant Technical Office: Office of Economic Opportunities  
USAID Jordan

Date of Product/Report: April 2004

Document Title: Proposal for a Regulatory Framework for Dispute  
Resolution Procedures in Jordan  
Final Report

Author's Name: Silvia Vivanco and Mindel De La Torre

Activity Title and Number: Achievement of Market-Friendly Initiatives and  
Results Program (AMIR Program)  
  
ICTI 423.4.1 Internal Procedural II

Name and Version of Application  
Software Used to Create the File: MS Word 2002

Format of Graphic and/or Image File: N/A

Other Information: N/A

**PROPOSAL FOR A REGULATORY FRAMEWORK FOR DISPUTE  
RESOLUTION PROCEDURES IN JORDAN**

Final Report  
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Funded by U.S. Agency for International Development

*This report was prepared by TMG's Silvia Vivanco and Mindel De La Torre, in collaboration with Chemonics International Inc., prime contractor to the U.S. Agency for International Development for the AMIR Program in Jordan.*

## **Data Page**

Name of Component: ICTI

Author: Silvia Vivanco and Mindel De La Torre

Practice Area: N/A

Service Offering: N/A

List of Key Words Contained in Report:

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## **Executive Summary**

The purpose of this paper is to provide options regarding the main issues that must be addressed to create a legal framework on dispute resolution procedures in Jordan.

The successful evolution of the telecommunications market in Jordan from a monopoly system into a fully competitive market requires appropriate regulatory intervention in order to remove barriers to market entry for new operators. This intervention must be decisive in the early stages in order to ensure that market competition has a chance to emerge. Since competition in the Jordanian market is in the early stages of development, there is a need to promote public confidence in the telecommunications regulator. If the TRC is seen as a transparent, independent and viable organization, with the appropriate procedures to adjudicate disputes between telecommunications providers and the public in general, the public's perception of the TRC will be improved. In order to achieve these goals this options paper is organized into five sections with recommendations on the following issues:

1. Disputes among licensed operators
2. Dispute Resolution Procedures
3. Consumer complaints
4. Procedures for users' claims
5. General recommendations regarding institutional capacity necessary to handle dispute resolution

Each of these sections ends with relevant international best practices. The main conclusions and recommendations of this options paper are the following:

**Concerning disputes among licensed operators**, this options paper addresses the **jurisdiction of the TRC to resolve disputes**. On this issue we recommend including a provision in the regulations giving the TRC explicit power to resolve controversies originated by acts or omissions by telecommunications operators that affect the telecommunications market. **On the issue of TRC's divisions to deal with disputes, this paper** presents two options for possible TRC's divisions. In both cases the appropriate offices or divisions dealing with these issues within the TRC should be identified. One option for the TRC is to create within the TRC two offices in charge of dispute settlement. The second option is to create Ad-Hoc Collegial Bodies such as those implemented in Peru or the Dominican Republic. In either case, we suggest implementing a procedure whereby the appropriate TRC division, based on subject matter, participates in the particular dispute resolution case. The TRC and its legal staff should consider which of the two options would function better in the Jordanian legal and commercial framework.

Next, we address the **actual procedures to adjudicate disputes between licensed operators**. In this case we suggest five main stages: presentation of positions including a

## **Proposal for a Regulatory Framework for Dispute Resolution Procedures**

conciliation meeting, an investigation stage, a probationary stage, a resolution stage, and a decision. The entire procedure should not last more than 6 months.

**Regarding consumer complaints**, we support the current TRC's approach of having a consumer affairs area within the TRC where all the complaints can be lodged, due to the following advantages: 1) the telecommunications regulator is best positioned to address problems brought by consumers due to the sector specific technical expertise required; 2) issues brought by consumers are invaluable input for the telecommunications regulator to ensure that telecommunications companies are meeting the needs of the market; and 3) the functions of the telecommunications regulator and dispute resolution body complement each other, making it more convenient and easier for the public to identify a single place to address all of their concerns on telecommunications issues. This paper also describes best international practices on some of the methods the regulators have used to provide customers with access to information, to facilitate lodging of complaints, and overall to improve the communication between the regulator and the general public.

**Concerning procedures to adjudicate consumer complaints**, this paper emphasizes the need for telecommunications providers to implement procedures so users of the services can exercise their rights established in the applicable telecommunications laws and regulations. This section includes a detailed set of recommendations and minimum guidelines for the companies to adjudicate consumer complaints. This paper also includes a recommendation for the TRC to deal with consumer complaints once the user has contacted the telecommunications provider and is not satisfied with the answer.

Finally, we include a set of **general recommendations to improve the TRC's internal capacity to effectively handle disputes and consumer complaints**. These recommendations include: transparent practices for decision making in dispute resolution, establishment of Technical Secretariats, and outreach programs regarding consumer rights.

## **1. DISPUTES AMONG LICENSED OPERATORS**

### **1.1 Definition of the Scope of Issues Subject to Dispute Resolution of the Telecommunications Regulator**

#### **1.1.1 Status**

Concerning the scope of the dispute resolution function, Article 12(a)(11) of the Jordanian Telecommunications Law of 1995 gives the TRC the power to consider inter-licensure disputes and complaints by the users against the licensees, with the exception of disputes having to do with financial obligations resulting from the implementation of valid agreements.

**Option 1:** Leave the function as it is.

**Option 2:** Define more clearly the scope of TRC's jurisdiction on disputes and include a list of examples of the types of disputes subject to TRC's jurisdiction.

#### **1.1.2 TMG's Recommendation Concerning the Scope of Issues subject to Dispute Resolution**

As shown in the International Best Practices section 1.1.3, some countries have chosen to give the telecommunications regulatory authority broad discretion to regulate disputes, while others clearly enumerate the types of disputes that can be brought before the regulator. Because article 12(a)(11) of the Jordanian Telecommunications Law has specifically excluded disputes arising from "financial obligations resulting from the implementation of valid agreements," we suggest creating regulations on dispute resolution that specifically define the types of controversies that fall under the TRC's jurisdiction. This will provide clarity to service providers on the types of disputes that can be brought to the TRC.

We recommend including a provision in the regulations giving the TRC explicit power to resolve controversies originated by acts or omissions by telecommunications operators that affect the telecommunications market. Additionally, the regulations must clearly state that the TRC may initiate dispute resolution procedures on its own motion or by a petition of any interested party, when it determines that the conflicts between operators affect the interests of the users or other companies.

#### **1.1.3 International Best Practices on the Scope of Disputes among Licensed Operators**

##### **1.1.3.1 PERU**

**Disputes between Telecommunications Service Providers:** Peru's regulator OSIPTEL has a General Regulation<sup>1</sup> that provides an example of the issues that can be classified as

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<sup>1</sup> OSIPTEL's General Regulation. DS 008-2001 PCM of February 2001.

## *Proposal for a Regulatory Framework for Dispute Resolution Procedures*

being within the regulator's jurisdiction. OSIPTEL is authorized to deal with the following disputes between companies:

- Disputes related to the non-fulfillment of obligations relating to free and fair competition.
- Disputes related to technical, economic or legal aspects of interconnection.
- Disputes related to right of access to the network.
- Disputes related to tariffs and charges of telecommunications services.
- Disputes related to the right of access to the network, including technical, legal and economic aspects.
- Disputes related to the non-performance of a subscriber contract and the conditions of use of the service in the contract.
- Disputes related to the fulfillment of offers, promotions and products of public telecommunications services.
- Disputes related to the observance of the regulatory framework applicable to users of public telecommunications services.

The administrative adjudication of disputes is mandatory and within the exclusive jurisdiction of OSIPTEL. Administrative proceedings for the settlement of disputes described above are initiated on request by the parties concerned. Exceptionally, OSIPTEL may initiate proceedings ex officio if it finds that conflicts between operating companies are affecting users' interests and those of other companies, in accordance with OSIPTEL's mandated responsibilities.

### **1.1.3.2 CHILE**

**Jurisdiction:** The Telecommunications Law<sup>2</sup> gives the Chilean regulator, SUBTEL, broad jurisdiction to act on all claims between concessionaires, users and persons referred to **any issue** derived from the telecommunications law and regulations.

### **1.1.3.3 VENEZUELA**

**Jurisdiction:** The Telecommunications Law<sup>3</sup> gives the Venezuelan regulator the power to act on its own motion or, upon request of a party, to substantiate and decide the procedures related to presumed infractions of the law and regulations as well as to apply sanctions.

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<sup>2</sup> Law No. 18,168 of October 1982.

<sup>3</sup> Venezuelan Telecommunications Law, published in Official Gazette. N 36, 920. March 28, 2000.

#### **1.1.3.4 BAHRAIN**

**Jurisdiction:** Section 3 of the Telecommunications Law explicitly gives the TRA, Bahrain’s regulator, the power to: “ examine complaints and resolve disputes arising between licensees, subscribers and any other person involved in the telecommunications industry and taking any necessary and proportionate measures in relation to such matter.”<sup>4</sup>

### **1.2 Department within the TRC in Charge of Dispute Resolution**

#### **1.2.1 Status**

Currently the TRC’s Legal Department is in charge of administering dispute resolution procedures. (*Confirm with TRC what is in fact happening in practice*). In addition, Article 12 of the Jordanian Telecommunications Law gives the TRC’s Board the authority to adjudicate disputes between telecommunications service providers and users.

**Option 1:** Leave the procedures under the legal department.

**Option 2:** Create a specialized office or division within the TRC exclusively in charge of administering dispute resolution proceedings that would constitute the first level of administrative review and decision before the disputes are elevated on appeal to the TRC Board.

#### **1.2.2 TMG’s Recommendation on TRC’s Internal Organization to Handle Disputes among Licensed Operators**

There are two options regarding dispute resolution that the TRC should consider implementing. In either case, the appropriate offices or divisions dealing with these issues within the TRC should be identified. One option for the TRC is to create within the agency two offices in charge of dispute settlement. For example, an office specializing in disputes within the TRC’s legal department can analyze disputes and then appeals can be brought before the TRC’s Board as the second and final administrative instance. The members of the Office of Dispute Resolution would be permanent and be considered part of the TRC staff.

The second option is to create Ad-Hoc Collegial Bodies such as those implemented in Peru or the Dominican Republic. These bodies are empowered to take corrective action and to apply appropriate sanctions in each case. Initially, disputes are brought before the Collegial Bodies whose members would be appointed by the TRC’s Board of Directors with the input of the Legal Department. The bodies would be made up of three to five members, who are professionals in dispute resolution procedures. The advantage of Collegial Bodies is that the members do not belong to the regulator’s organizational structure, and the position usually attracts members of academia and the best professionals in the field.

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<sup>4</sup> Promulgated by Legislative Decree No. 48 of 2002.

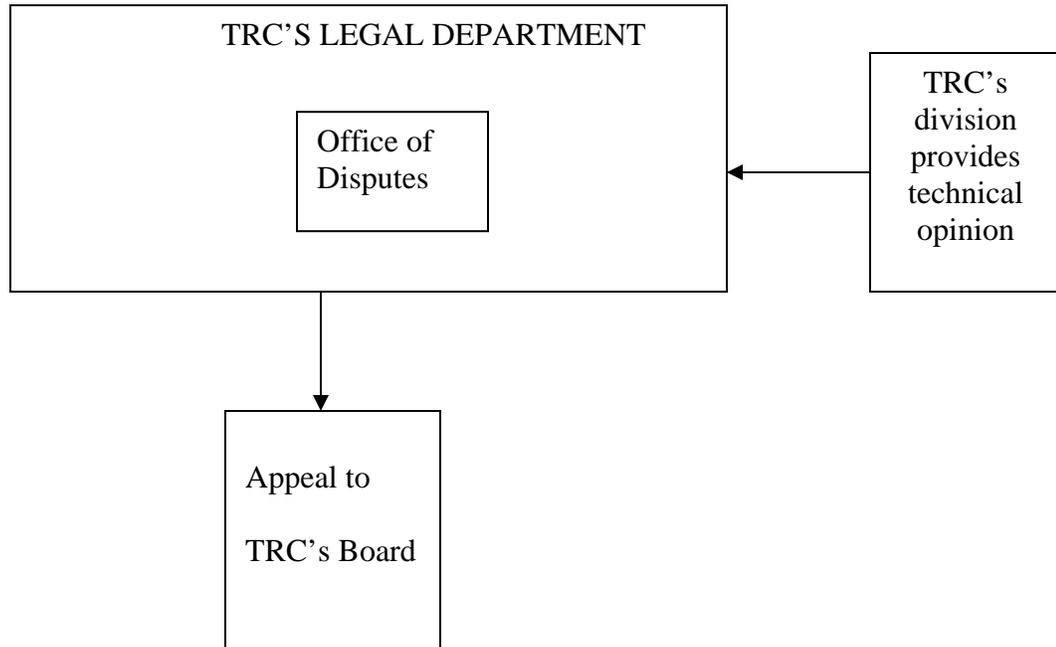
## *Proposal for a Regulatory Framework for Dispute Resolution Procedures*

The advantages of having Collegial Bodies deal with disputes are that these bodies provide checks and balances as well as collegial support for decision makers (i.e., decisions can be thoroughly debated and considered). Often, Collegial Bodies can remain outside political pressures because they are relatively independent. Collegial Bodies are formed for the specific case under dispute, therefore their members are selected according to the expertise required for the particular case. This is relevant since specific types of regulatory decisions require qualified professionals such as economists, engineers, lawyers, accountants, and financial analysts. Also, when high caliber professional skills are not immediately available within the public sector, outside experts can be brought in to provide the expertise required. If the Collegial Body approach recommendation is followed, then it is very important that the selection method of the members of the Collegial Body guarantee their independence. In this regard, we recommend the methods of selection implemented by INDOTEL, the Dominican Republic's regulator, where INDOTEL's Board selects three members from a list of eligible persons for each particular case.

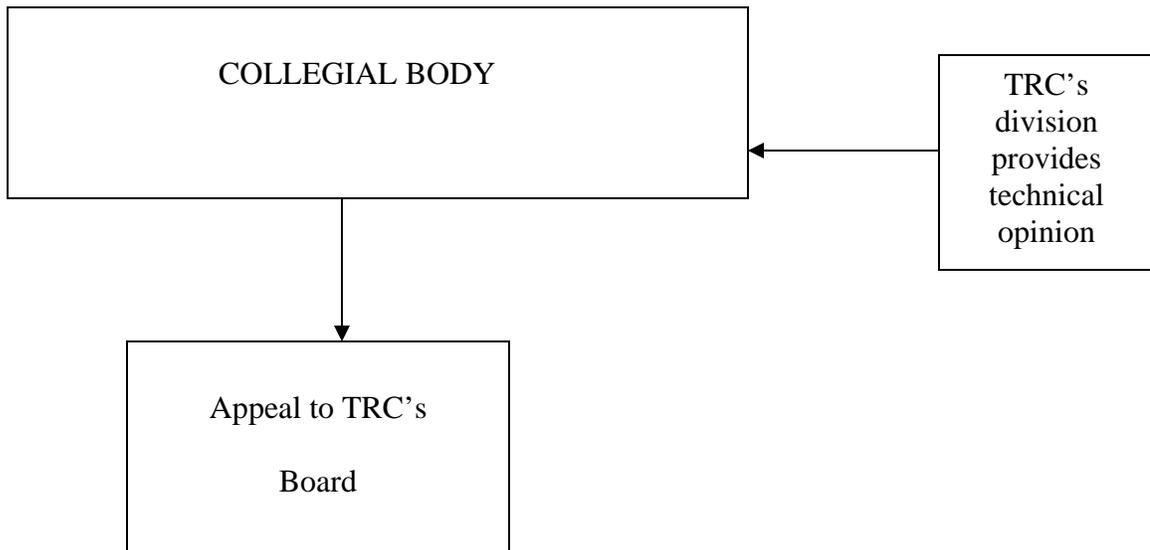
The TRC and its legal staff should consider which of the two options would function better in the Jordanian legal and commercial framework. Additionally, we suggest implementing a procedure whereby the appropriate TRC division, based on subject matter, participates in the particular dispute resolution case. The decision made at the first level may be subject to appeal and the case would be considered in the second instance by the TRC's Board as required by the Jordanian Telecommunications Law. Finally, we suggest that all decisions taken by the regulator be subject to appeal to the judicial system. See the following figure for a diagram on the proposed options.

**FIGURE 1  
RECOMENDATIONS ON TRC'S INTERNAL ORGANIZATION TO  
HANDLE DISPUTES AMONG LICENSED OPERATORS**

**OPTION 1**



**OPTION 2**



### **1.2.3 International Best Practices regarding Administrative Bodies in Charge of Dispute Resolution**

#### **1.2.3.1 PERU**

OSIPTEL has created special bodies to deal with disputes between telecommunications service providers<sup>5</sup>:

**Collegial Bodies:** OSIPTEL has implemented **Collegial Bodies**, which are made up of between three and five members, who may be members of OSIPTEL's staff and other officials or independent professionals who specialize in the matters under dispute. The members of the Collegial Bodies are selected by OSIPTEL's general management from a list of candidates approved annually by OSIPTEL's Board of Directors. Then, for each controversy, the members are selected by OSIPTEL's Chairman from the list previously approved by OSIPTEL. Decisions are made in Collegial Bodies by simple majority. Collegial Bodies meet with a majority of members present and adopt decisions by a majority of those members present. In the event of a tied vote, the Chairman of the Collegial Body has a casting vote. Collegial Bodies deal in the first instance with disputes that fall within OSIPTEL's jurisdiction. Once the specific controversy is resolved, the members of the Collegial Bodies cease functioning, however, they can be called to participate in another controversy. Appeals are submitted to the **Dispute Settlement Tribunal**, whereby administrative proceedings are considered to be exhausted. The Collegial Body's task of settling disputes may be delegated to public or private entities of sound reputation including specialized companies. The Tribunal can then admit and settle any appeals arising from decisions by the delegated entity.

**Technical Secretariat:** The Technical Secretariat is a permanent body which provides logistical and technical support and serves as a link between OSIPTEL's organic structure and the Collegial Bodies formed for each controversy. In cases which involve the violation of telecommunications laws and regulations, the Secretariat acts as a prosecuting body in charge of investigating, and if justified, seeking the imposition of penalties. Within OSIPTEL's structure, the Office of Corporate Relations Management acts as a Technical Secretariat to the Collegial Bodies.

**Dispute Settlement Tribunal:** The Dispute Settlement Tribunal is formed by five permanent members and is the second instance in the dispute settlement procedure in Peru. The members are elected in the following manner: two members are proposed by the Presidency of the Council of Ministers, one member by the Ministry of Economy and Finance, one member by the Ministry of Communications, and one member by the Institute for the Defense of Competition and Intellectual Property. The quorum for meetings is half plus one of the members. The Tribunal decides by simple majority of its members. The Chairman of the Tribunal holds a casting vote in addition to his own vote.

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<sup>5</sup> Resolution No. 010-2002 CD/OSIPTEL. 04.21.02

### 1.2.3.2 UNITED STATES

The Federal Communications Commission (FCC) maintains two bureaus that deal with dispute resolution. The **Enforcement Bureau** handles a range of disputes both between telecommunications service providers as well as consumer complaints. **The Consumer and Government Affairs Bureau** also handles consumer complaints, however, these tend to be more informal in nature.

The **Enforcement Bureau** serves as the primary entity within the FCC designed to manage dispute resolution matters. Its structure includes several divisions as well as regional and field offices across the United States. Each division is charged with managing a specific area with respect to dispute resolution.<sup>6</sup> **The Telecommunications Consumers Division** deals with consumer-specific disputes, such as slamming, unsolicited faxes, as well as dealing with formal complaints filed by consumers against telecommunications service providers. The **Market Disputes Resolution Division** handles complaints between telecommunications providers. The **Technical and Public Safety Division** manages disputes dealing with public safety as well as technical issues pertaining to equipment requirements as well as unauthorized construction and operation. Finally, the **Investigations and Hearings Division** focuses on an array of issues including resolution of disputes dealing with broadcast matters, but also deals with resolution of disputes involving wireless licensees and unauthorized transfers of control. In addition there are regional and field offices which generally provide audit support and conduct inspections of FCC-licensed facilities. The field offices also conduct specific investigations to determine if carriers are complying with FCC rules.

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<sup>6</sup> The Enforcement Bureau was re-organized in October 1999 with four new divisions established, Telecommunications Consumers Division; Market Disputes Resolution Division; Technical and Public Safety Division; and Investigations and Hearings Division. This reorganization was a result of efforts launched in March 1999 by then FCC Chairman William Kennard. The Chairman released a report entitled “A New Federal Communications Commission for the 21<sup>st</sup> Century (*A New FCC*)” that sought to restructure the agency to better serve the public and improve the FCC’s enforcement abilities.

## **2. DISPUTE RESOLUTION PROCEDURES**

### **2.1 Status**

Currently Jordan has procedures in place only concerning interconnection disputes among telecommunications operators, in which case the dispute process is regulated by the TRC's interconnection guidelines. This procedure, however, is applicable only to interconnection disputes between licensed operators.

**Option 1:** Leave disputes between telecommunications operators (other than interconnection) unregulated.

**Option 2:** Create procedures within the TRC to handle disputes that may arise between telecommunications operators.

### **2.2 TMG's Recommendation**

The TRC's office in charge of managing dispute resolution procedures between telecommunications operators should have a set of procedures in place enabling it to determine and adjudicate all kinds of disputes between telecommunications operators (refer to Section 1.1.2 for a recommendation on jurisdictional issues). Additionally, the office should be able to adjudicate controversies that affect the telecommunications market, even if one of the parties is not a telecommunications operator. We recommend following the structure implemented in Peru by OSIPTEL where dispute resolution procedures shall have the following main phases: presentation of positions, investigation (for information gathering and presentation of evidence), probationary phase and resolution.

Dispute resolution procedures should be initiated **ex officio by the TRC or at the request of the interested parties**. For example, the TRC should be able to initiate investigation procedures, if it becomes aware that the documents of a pending case show practices that constitute infractions under the telecommunications legal regime or if such practices affect the public interest.

**The presentation of positions** phase should include the TRC's notification of the complaint to the other party and the submission of each party's responses to the main arguments presented. This phase should not last more than 15 calendar days. The authority in charge of managing the procedures should hold a **conciliation meeting** prior to the initiation of formal dispute procedures whereby it should encourage the parties to reach an agreement.

During the **investigation phase**, the regulatory authority should be empowered to request information relevant to the case, including summoning and examining witnesses, and ordering the production of any books or documents or objects, as it may deem necessary. The TRC should also have authority to request information from other public entities. The power to request information should be broad and should include obtaining relevant

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information from the parties to the dispute as well as from third parties. For example, it can be indispensable to obtain information from other telecommunications companies if the issue requires determining whether or not a company has a position of dominance in the market. This phase should not last more than 30 calendar days.

**The probationary phase** should provide the opportunity for the authority to undertake discovery proceedings including presentation of briefs, written interrogatories and other supplementary documents as well as an opportunity for the parties to present and prove the evidence submitted. Within this phase, we suggest that a session be held with the parties present which would provide an opportunity for the parties to explain orally the issues under dispute. Depending on the complexity of the case, the probationary stage should last between 30 to 60 calendar days. However, if the case is complex, the period can be extended an additional 30 calendar days.

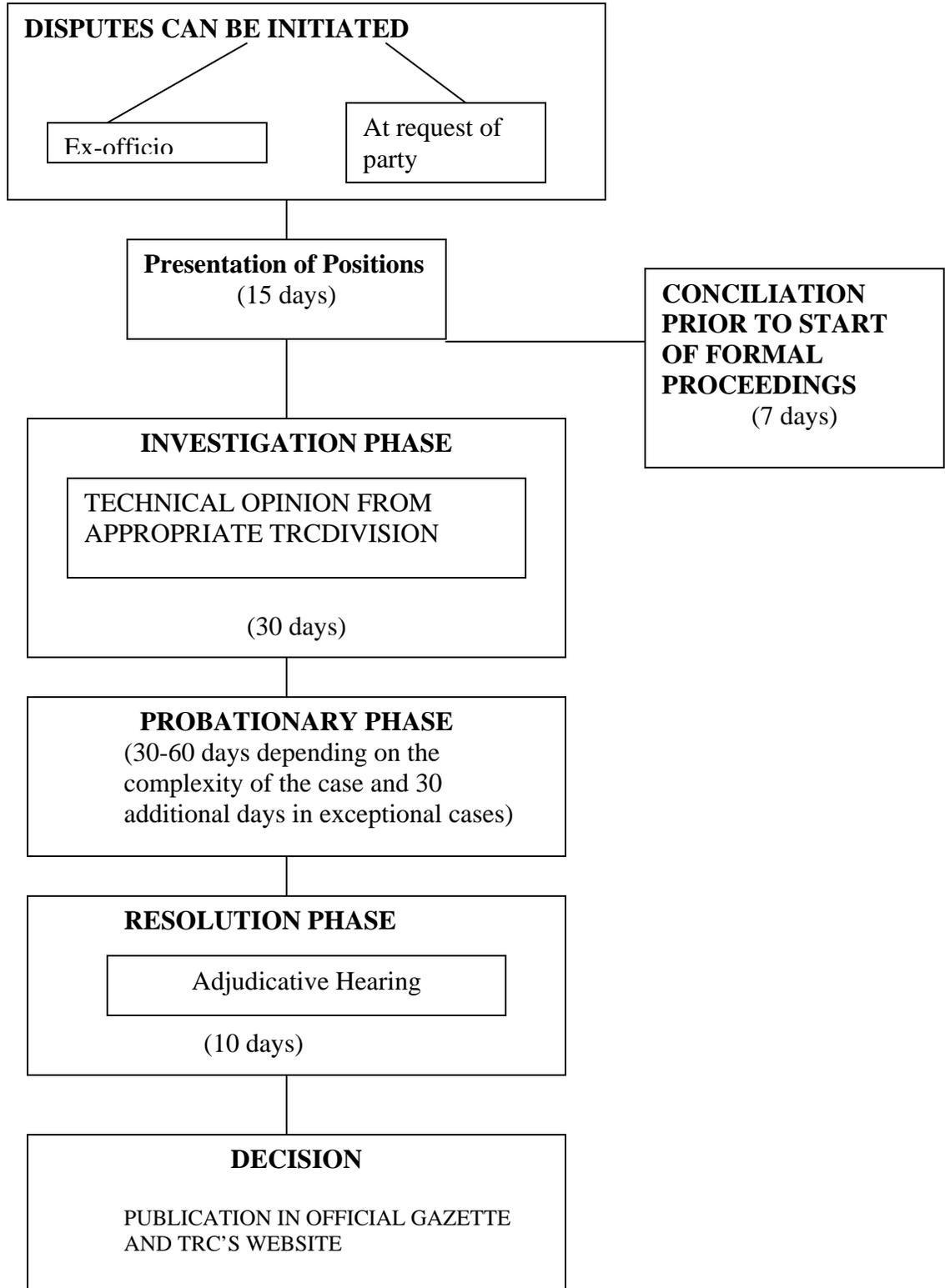
**The resolution phase** is the final stage and should include an adjudicatory hearing whereby the authority issues a formal resolution ending the administrative procedure. All dispute resolution procedures should be free of charge and representation by an attorney should be optional. This phase should last no more than 10 days. The entire dispute resolution procedure should last no more than 6 months.

**Publication of decisions:** Although the Jordanian Telecommunications Law does not require the publication of all TRC decisions, based on best international practices implemented by regulators in the United States, United Kingdom and Peru, among others, we recommend that all decisions that provide an interpretation of general applicability of the telecommunications law and regulations be published. This practice is also recommended and adopted by most EU member countries. EU Directive 2002/21/EC of March 7, 2002 on a common regulatory framework for electronic communications networks and services states “the decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.”

**Arbitration:** During dispute resolution proceedings, the TRC should encourage voluntary arbitration for the resolution of conflicts between telecommunications licensees and between them and consumers. In order to accomplish this goal, the TRC has the following possibilities: a) establish agreements with existing institutionalized arbitration centers or promote the creation of such centers, and b) create an Arbitration Center within the TRC specialized in disputes on telecommunications matters. Given that option b would require staffing and other resources and commitments, we recommend the first approach, until such time when market conditions merit option b.

The following figure illustrates our recommendation described above.

**FIGURE 2  
RECOMMENDATION ON DISPUTE RESOLUTION PROCEDURES**



## **2.3 International Best Practices on Dispute Resolution Procedures**

### **2.3.1 PERU**

#### **2.3.1.1 Types of Procedures**

Resolving controversies between operators administratively in Peru is accomplished through the procedures established by OSIPTEL. They typically begin at the request of the interested party, but exceptionally, OSIPTEL may start the procedure on its own initiative in the event it considers that the conflicts between the operators are affecting interests of users or other operators. Conflicts are considered to affect the interest of users or other operators in the event that they relate to monopolies, or restrictive practices, or agreements caused by a dominant position in the market.

#### **2.3.1.2 Procedures at the Request of an Interested Party**

**Presentation of Positions:** Any company that provides telecommunications services can resort to OSIPTEL, either directly or through its legal representative, requesting OSIPTEL to resolve a controversy or conflict the company may have with another telecommunications service operator. However, parties are obliged to request assistance from OSIPTEL before resorting to the judiciary. The complaint is filed with OSIPTEL and addressed to the Collegial Body. The pertinent evidence must be included and attached to the claim. The participation of an attorney is optional.

Once the complaint has been filed, the Collegial Body gives notice to the other party on the following day. The party against whom the complaint is lodged answers the claim within a period not to exceed 10 business days, counted from the day following the date of the notice of the complaint.

- Defenses can only be proposed within a timeframe not to exceed 5 days, counted from the notification of the complaint to the respondent, the answer to the complaint, or the writs filed by the parties to define their positions or causes of action. The defenses are answered in a single writ, within a timeframe not to exceed 5 days counted from the filing of the defenses when they were proposed. If a defense is considered well grounded, it can be appealed, and such appeal does not suspend the execution of the ruling.
- If no defenses are filed or, if after being filed they have been resolved, the collegial body will set the date and time of the **Conciliation Meeting**, which will take place within a timeframe not to exceed 7 days, counted from the day following the notice of the answer to the complaint, the date of the writs where the parties' positions and causes of action were defined, or the date where the defenses were resolved.

If the parties reach an agreement, in order for it to be effective it must be supported by an administrative resolution, which must be approved by the corresponding Collegial Body

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or by the president of OSIPTEL if the agreement between the parties was made during the second phase (appeal process).

If the parties do not reach an agreement, the member or the members of the corresponding Collegial Body will inform the parties of the date and time of the meeting for the production of evidence, which will take place within a timeframe of no less than 15 days, counted from the date of the Conciliation Meeting.

### **2.3.1.3 Probationary Phase**

Once the conciliation phase ends, the Collegial Body informs the parties of the date and time to initiate the evidentiary hearing which shall start no later than 15 days from the date the conciliation ended. During the evidentiary hearing the Collegial Body determines the issues under dispute according to the pleadings submitted by each party, lists all the evidence, and attempts to prove all the evidence presented. The probationary stage lasts no longer than 60 calendar days. Exceptionally, such term can be duplicated.

**Note:** See Figure 3 for a graphic description of the procedures at the request of the interested party.

### **2.3.1.4 Investigatory Phase for Cases Involving the Violation of Laws or Regulations**

In cases where the issues disputed involve the possible violation of a telecommunications law or regulation, the probationary phase is called the investigation phase, and the procedures are managed by OSIPTEL's Technical Secretariat. The Secretariat is empowered to request from the parties any information it deems relevant as well as information from other government offices such as the National Institute for the Defense of Competition and Intellectual Property (INDECOPI). This phase does not exceed 60 days. It concludes with a report from the Technical Secretariat to the Collegial Body, issuing an opinion on the issues and possibly recommending the imposition of sanctions. Once the report from the Technical Secretariat is received, the Collegial Body notifies the parties, so they can comment and present their allegations.

The resolution that ends the complaint will be issued within 15 days, counted from the date in which the procedure is ready to be resolved. Not all resolutions issued by the Collegial Bodies are published. Only when publication would benefit the public because the issues analyzed could come up again in another resolution, or in order to promote legal certainty, the Collegial Body will recommend that OSIPTEL's Board publish the resolution in the Official Gazette.

**Note:** See Figure 4 for a graphic description of the procedures when there is a possible violation of telecommunications law or regulations.

### **2.3.1.5 Procedures on OSIPTEL's own motion**

OSIPTEL initiates procedures on its own motion for the purpose of investigating and determining violations of the telecommunications laws and regulations, or whenever the public interest or the interest of other operators could be affected by the process or outcome of a controversy. The procedure formally starts by a resolution issued by OSIPTEL's Board. The members of the Collegial Body are also chosen in the resolution.

The parties have a non-deferrable common timeframe of 10 business days to define their positions and causes of action in a writ, and to produce the relevant evidence. The parties are entitled to appeal the resolution of OSIPTEL's Board of Directors that started the procedure by filing either a writ for reconsideration or an appeal.

The Collegial Body sets the date and time of the **Conciliation Meeting**, which must take place within a timeframe not to exceed 7 days, counted from the end of the timeframe within which the parties had to define their positions in writing.

**Note:** See Figure 5 for a graphic description of the procedures at OSIPTEL's own motion.

### **2.3.1.6 Appeal Procedure within the Dispute Settlement Tribunal**

The appeal of a final resolution issued by the Collegial Bodies is presented within a period of 10 days from the day the parties receive notification. The Dispute Settlement Tribunal issues a notification informing the parties of the date and time for the presentation of their oral reports.

All the relevant evidence are presented and are only be accepted in the following cases: a) when it refers to relevant facts that occurred after the evidentiary hearing; b) when the documents are issued after the closing of the evidentiary hearing or if they are documents which could not be available before; or c) when the evidence was presented in the first instance but was not proven.

The Tribunal issues a final resolution ending the administrative procedure no later than 30 days from the date following the answer to the appeal.

Resolutions issued by the Dispute Resolution Tribunal, which generally interpret the meaning of the telecommunications legislation, are legal precedent. Therefore, OSIPTEL's Board of Directors, at the request of the offices in charge of dispute resolution publishes such resolutions in the Official Gazette. Additionally, the Collegial Body can request that OSIPTEL publish resolutions considered important to protect the rights of the users.

### **2.3.1.7 Arbitration**

The telecommunications law and regulations give OSIPTEL the authority to manage arbitration procedures to resolve controversies between telecommunications companies. Specifically, Resolution No. 011-99-CD/OSIPTEL regulates arbitration procedures carried out within OSIPTEL.

OSIPTEL has institutionalized arbitration procedures under the “Center of Arbitration”. The Center is formed by an Arbitration Court, which is in charge of the direction of the Center, the compliance with its functions and establishment of its policies. The arbitration court is composed of three members chosen by OSIPTEL’s Board of Directors for a term of three years and a General Secretariat, which is in charge of enforcing the decisions, ensuring that all procedures are followed, and providing technical and logistical support to the Arbitration Court.

The controversies taken to the Center must be able to be arbitrated under the General Law of Arbitration if the parties agree to take the case to arbitration. ***In these cases, arbitration procedures are an alternative to and exclude all other administrative proceedings.*** The function of administering arbitrations does not pertain exclusively to OSIPTEL and is voluntary for the parties.

The party that wishes to submit a specific conflict to arbitration submits a request to the Center which must contain the following: a) the arbitration agreement, or if there is no previous agreement to arbitrate, both parties must express their intent to submit a specific conflict to arbitration; b) a summary with the description of the controversy, with a detailed description of the claims of the interested parties; c) the monetary value of the controversy, d) the request to name a specific arbitrator to the case; and e) receipt for the payment of the fee.

The services provided by the Arbitration Center of OSIPTEL, as well as the members of the Tribunal, are remunerated. Before the beginning of the arbitration, the parties pay the costs associated with arbitration, according to the amount of the controversy and the costs established by the Center.

The General Secretariat receives the request and sends it to the other party, who has five days to submit an answer. After such timeframe, the General Secretariat requests both parties to attend a hearing to select arbitrators. In this hearing, the General Secretariat attempts to make the parties reach an agreement. If the parties reach an agreement before the initiation of the Arbitration Tribunal, the conciliation agreement is put in writing.

The Arbitration Center maintains an official list of arbitrators, which includes their technical and professional experience, and specialization. The parties can designate arbitrators not included in the Center’s list, as long as the Arbitration Center does not object to them. The Center nominates the arbitrators when they are not selected by the parties.

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If the parties do not reach an agreement, the Arbitration Tribunal is formed by one or three arbitrators, depending on the agreement of the parties in this regard. Each party selects one arbitrator and both parties agree to the third one. If the parties cannot agree on the arbitrators, the Tribunal is formed by a single arbitrator. Arbitrators must be impartial and independent in the exercise of their functions and need to reveal any fact that may affect their impartiality.

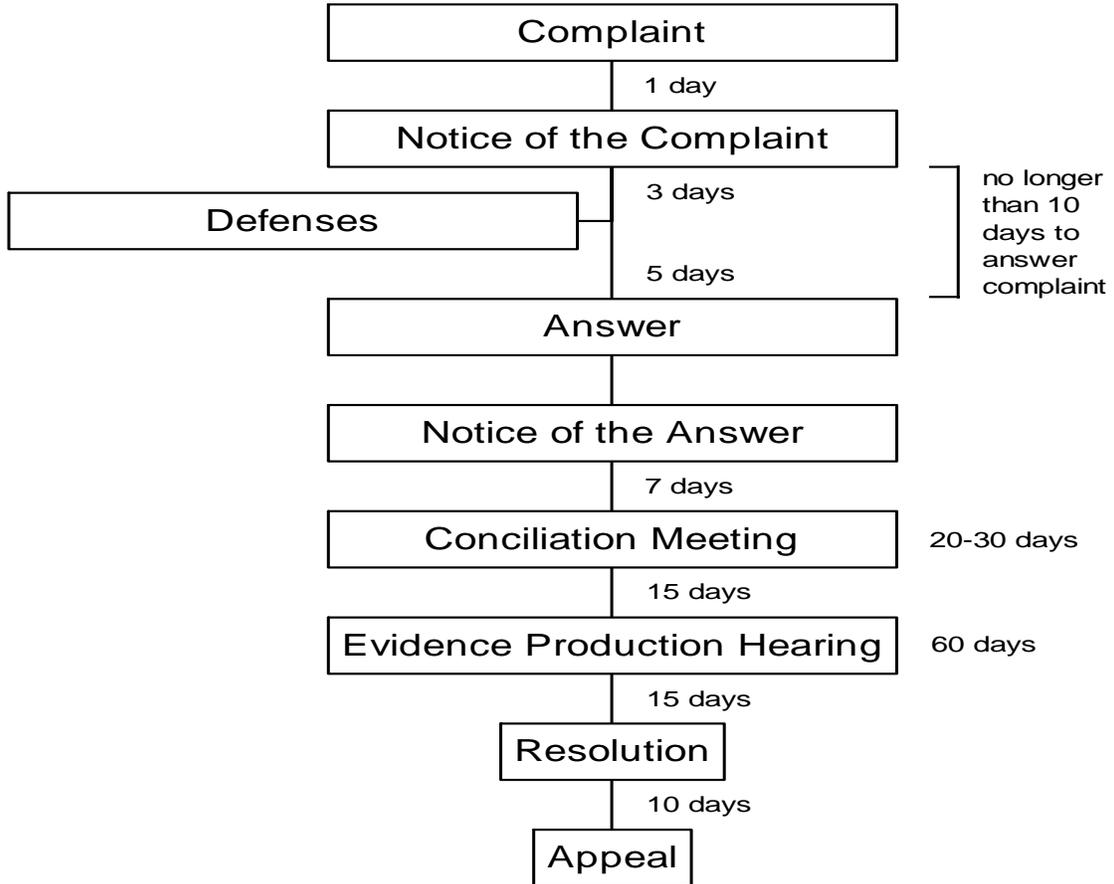
Arbitrators have the power to dictate the necessary procedures to ensure that the arbitration is carried out in line with the principles of swiftness, equity, privacy and procedural efficiency.

The Arbitration Tribunal can hold as many hearings as it considers necessary, and unless the parties have agreed otherwise, the arbitration procedure shall not exceed 90 days. The deliberations of the Tribunal are private and the decisions are made by the majority of the arbitrators present, unless the parties have agreed that all arbitrators must be present in the deliberation sessions and resolutions must be adopted with all arbitrators. The Chairman of the Tribunal has the tie breaking vote.

- The arbitration award is final and cannot be appealed.
- The losing party can challenge the validity of the arbitration award by posting a guarantee (bond) equal to the amount awarded by the Tribunal to the winning party. If the annulment action is found to be unwarranted, the other party will execute the guarantee posted.

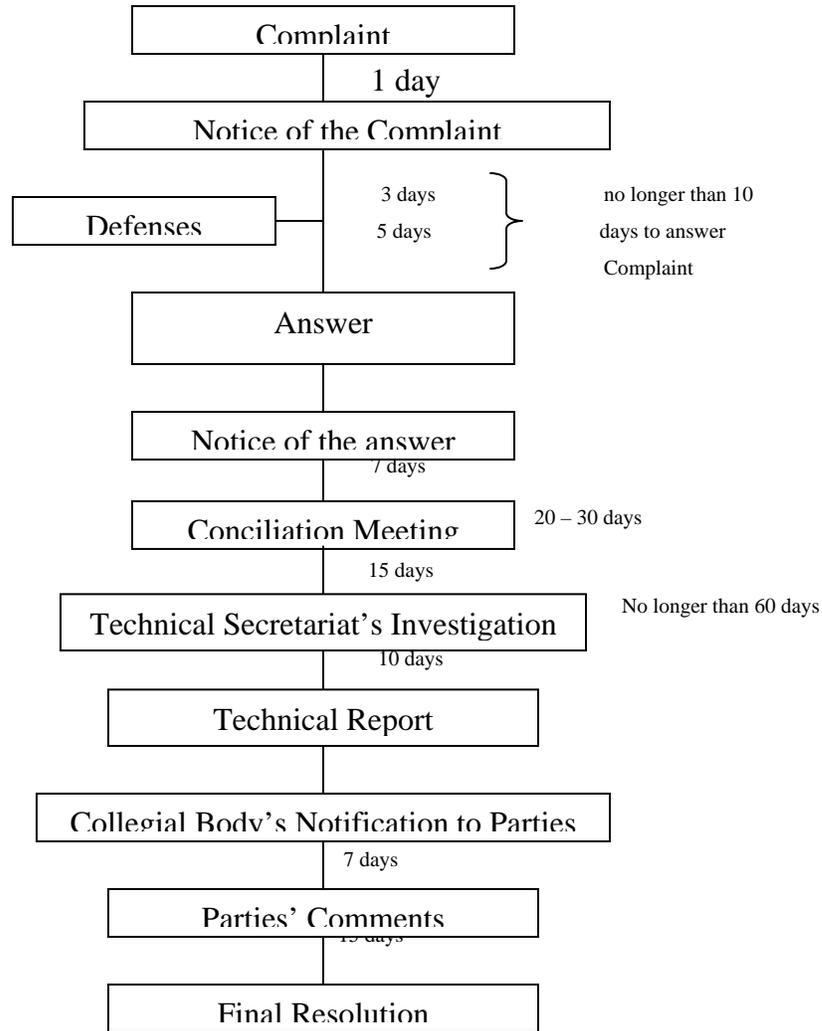
**FIGURE 3**  
**OSIPTEL's Procedures**

A. Procedure at the Request of the Interested Party



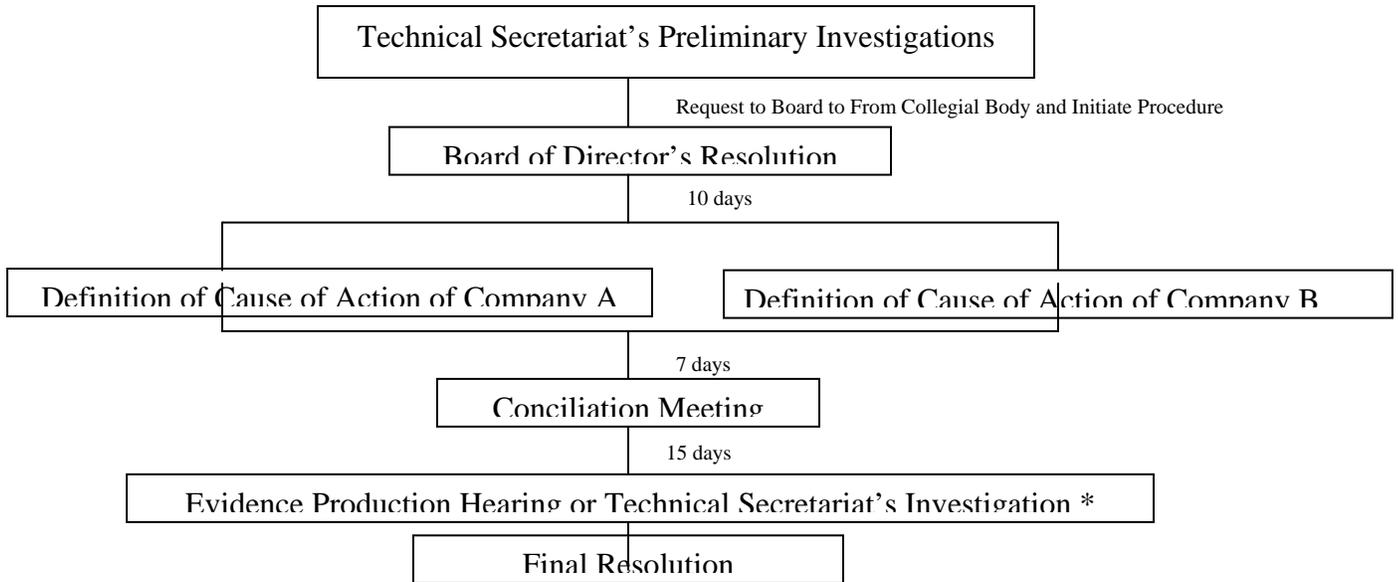
**FIGURE 4**  
**OSIPTEL's Procedures**

B. Procedure at the Request of the Interested Party when there is Possible Violation of Telecommunication Law Regulation.



**FIGURE 5**  
**OSIPTEL's Procedure**

C. Procedure at OSIPTEL's Own Initiative.



\* The procedure in Figure 4 is applicable here provided there is a possible violation of telecommunications laws/regulations.

## 2.3.2 UNITED STATES

### 2.3.2.1 Types of Procedures

The Federal Communications Commission (FCC) is the primary organization responsible for enforcement of the provisions of the Communications Act and the FCC's implementing rules. The FCC has the authority to investigate possible rule violations and to take enforcement action, if warranted. The FCC itself does not have the authority to take criminal action against those who violate the Communications Act. The FCC refers cases warranting criminal prosecution to the U.S. Justice Department.

The FCC can deal with a variety of procedures with respect to disputes. It is generally the case that a violation comes to the attention of the FCC through complaints that are filed by another licensee, a competitor, consumer, or some other interested party. These may be “formal” or “informal” complaints. **Formal complaints** are required to contain specific information detailing the violation and be prepared as a formal filing. **Informal complaints** can be filed in letter format. In both cases, complaints must detail the name of the party who may have violated the rule, location where the company or licensee operates, the specific rule alleged to have been violated and should describe the circumstances surrounding the alleged violation.

With respect to formal complaints there are two approaches that may be taken:

The first approach is to notify the Enforcement Bureau in an informal manner by contacting the staff of the Investigations and Hearings Division and providing as much factual information concerning a potential violation. There is value in having materials to document actions or even sworn affidavits to be offered as testimony. Additionally, it is helpful to identify provisions of the Communications Act of 1934 or of the FCC's rules that may have been violated. Overall, specificity is necessary to ensure that the Enforcement Bureau can effectively evaluate a claim to determine if enforcement action is needed.

A second approach is to file a formal Section 208 complaint, which would allege a violation of the local competition provisions of the Telecommunications Act of 1996. However, before filing a Section 208 complaint the FCC advises that the parties contact the staff of the Market Disputes Resolution Division of the Enforcement Bureau to attempt to resolve the matter by mediation. In many cases, the staff of the Division will bring in both parties to discuss the dispute and attempt to facilitate a private settlement acceptable to both even before the filing of a formal complaint.

If a formal complaint is filed, substantial factual support must be provided including sworn affidavits. The Enforcement Bureau has established an “Accelerated Docket” also referred to as the “Rocket Docket,” which is applicable to selected formal complaints. This procedure may lead to a mini-trial complete with testimony sponsored by witnesses subject to cross-examination. Under the accelerated docket, a written staff-level decision must be issued within 60 days from the filing of the complaint. In addition, procedures in

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the accelerated docket require that there be staff-supervised pre-filing settlement discussions between the parties. The goal is to try and resolve the dispute without the need to file a formal complaint.

Finally, under Section 403 of the Telecommunications Act of 1996 the FCC has broad authority to initiate investigations regarding a carrier's compliance with a statute or the FCC's rules.<sup>7</sup> The Commission has the discretion to determine whether and what it will investigate, as well as the manner and time period of the investigation.

### **2.3.2.2 Procedures to Investigate Complaints**

In conducting investigations, the FCC's Enforcement Bureau often writes a letter of inquiry to the company in question seeking information regarding compliance. This may be in the form of interrogatories that must be answered under oath. It may also include a request for documents. Such a letter is an information-gathering tool. It is not an "indictment" and does not reflect a judgment by the staff that any violation has in fact occurred.

In addition to the inquiry process, the FCC may conduct field inspections of FCC-licensed facilities. In these instances, violation of the FCC's rules may arise during the course of a field inspection. Inspections are often conducted as a result of a specific complaint that may be filed, such as an interference complaint which may warrant an investigation to determine and identify the source of any interference.

Finally, the FCC can utilize an administrative subpoena to gather as many details as possible based on an initial complaint received. In such cases, a subpoena is often used in conjunction with a complaint that may likely lead to criminal prosecution.

Upon completion of the information-gathering process, the Commission exercises its discretion on how to proceed. In some circumstances, the response to the inquiry may lead the Enforcement Bureau to conclude that enforcement action is not warranted. If the facts indicate a potential violation of law, the agency may initiate enforcement action. Often this takes the form of a notice of "apparent liability for forfeiture". In extreme cases, the Enforcement Bureau may recommend to the Commission that it initiate hearing proceedings to revoke a license or authorization.

### **2.3.2.3 Local Competition Complaints**

With respect to local competition matters, under Section 208 of the 96 Act, any person can file a formal complaint with the FCC against a common carrier (wireline, wireless, or international) citing a violation of the Communications Act or the FCC rules.<sup>8</sup> The FCC adjudicates such a complaint to determine if such conduct is deemed unlawful. If a

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<sup>7</sup> Telecommunications Act of 1996 ,Section 403.

<sup>8</sup> *Id.*, Section 208.

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complaint is found to be unlawful, the FCC will then determine whether it is necessary to award monetary damages or permanent injunctive relief.

### **2.3.2.4 Appeal Procedures**

The appeal procedures with respect to carrier complaints are similar to the appeal process within the FCC in general. A petition for reconsideration or an application for review of an order can be filed with the FCC or an appeal can be filed with the courts. The difference with dispute matters as compared to other issues the FCC deals with is that actions take by the Commission decide liability first and then take additional action on damages to be awarded. If the FCC determines liability but has yet to award damages, the decision is not final. However, this is rare. If the FCC does not find liability, a proceeding is closed and appeals may be filed.

### **2.3.3 UNITED KINGDOM**

#### **2.3.3.1 Types of Procedures**

The new EU Framework Directive establishes a new framework for the regulation of electronic communications networks, services and associated facilities throughout Europe. These Directives entered into force on April 24, 2002.<sup>9</sup> Member States have 15 months in which to implement the provisions into national legislation and to bring all regulation into line with the new Directives. The Directives must be implemented in all Member States by midnight on July 24, 2003 (15 months plus one day after entry into force).

The Directive sets out the obligation of National Regulatory Authorities to resolve disputes within the shortest possible timeframe and in any case within four months, except in exceptional circumstances.

The United Kingdom has implemented the EU Framework Directive through the regulator, the Office of Telecommunications (Ofcom). Formerly known as Oftel, it was created on August 1, 1984 as a result of the UK Telecommunications Act of 1984. The head of Oftel is referred to as the Director General and that office oversees three directorates: regulatory policy, compliance and business support. The regulatory policy directorate is responsible for developing telecommunications policies. The compliance directorate is charged with ensuring that telephone companies meet their obligations under existing telecommunications laws and regulations. Finally, the business support directorate oversees the general operation of Ofcom and is not focused on a specific policy matter.

#### **2.3.3.2 Procedures Addressing Disputes Among Licensed Operators**

Ofcom's dispute resolution activities among licensed operators have traditionally focused on complaints about anti-competitive behavior. Ofcom also deals with disputes arising

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<sup>9</sup> Directive (2002/21/EC) on a Common Regulatory Framework, April 24, 2002.

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under the Interconnection Directive.<sup>10</sup> Disputes resolved by Ofcom will not be limited to those issues dealing with interconnection but can cover any dispute about regulatory obligations and/or any dispute between different providers of communications and or associated facilities.

Ofcom does not have any specific set of requirements for the amount of information and evidence that has to be included in a complaint. Generally, submissions refer to entire contracts as being the subject of a dispute.

Additionally, disputes between operators generally deal with issues concerning access to networks for provision of service. It is often the case that commercial negotiations over access can reach an impasse due to discrepancies on availability of products, as well as availability of related products, terms and conditions, pricing structures and service level agreements.

As part of the new process under the EU Directive, Ofcom publishes a statement on the scope of each dispute. Any issues that have been included in the submission, but where commercial negotiations have not taken place, or there has not been a reasonable attempt by one party to engage another in the negotiations, will not be included in the statement of scope and will not be addressed by Ofcom.

### **2.3.3.3 Summary of changes to Ofcom's dispute resolution procedures**

The following chart reviews the changes that Ofcom will have implemented to address dispute resolution in light of the EU Directive. Ofcom began to institute some of the procedural changes in April 2003 on an interim basis to ensure that the new policies were fully and effectively implemented by midnight on July 24, 2003, which was the statutory obligation under the Directive.

<b>Pre-existing procedures</b>	<b>Interim Procedures April 1, 2003</b>	<b>New Procedures As of July 25, 2003</b>
<ul style="list-style-type: none"><li>• No mandatory form for a request to resolve a dispute</li><li>• Rejection of a request to resolve a dispute</li></ul>	<ul style="list-style-type: none"><li>• Mandatory format and content for a request to resolve a dispute</li><li>• Requires tighter scrutiny of submissions</li></ul>	<ul style="list-style-type: none"><li>• Mandatory format and content for a request to resolve a dispute</li><li>• Oftel to reject inadequate submissions</li></ul>
<ul style="list-style-type: none"><li>• Scope of dispute considered as part of the investigation</li></ul>	<ul style="list-style-type: none"><li>• Oftel published the scope of the dispute</li></ul>	<ul style="list-style-type: none"><li>• Oftel publishes the scope of the dispute and only deviates from this scope in exceptional circumstances</li></ul>

<sup>10</sup> Directive 2002/21/EC on a Common Regulatory Framework, released April 24, 2002.

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<ul style="list-style-type: none"> <li>• Issues of major policy addressed via dispute resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Issues of policy normally dealt with in market reviews or own initiative investigations</li> </ul>	<ul style="list-style-type: none"> <li>• Issues of policy normally dealt with in market reviews or own initiative investigations</li> </ul>
<ul style="list-style-type: none"> <li>• Current dispute procedures limited to interconnection</li> </ul>	<ul style="list-style-type: none"> <li>• Current dispute procedures limited to interconnection</li> </ul>	<ul style="list-style-type: none"> <li>• New dispute procedures cover all types of disputes including disputes about the use of spectrum</li> </ul>
<ul style="list-style-type: none"> <li>• No use of Alternative Dispute Resolution (ADR)</li> </ul>	<ul style="list-style-type: none"> <li>• No use of ADR</li> </ul>	<ul style="list-style-type: none"> <li>• Use of ADR for disputes between parties that are not dominant</li> </ul>
<ul style="list-style-type: none"> <li>• Informal approach to information gathering</li> </ul>	<ul style="list-style-type: none"> <li>• Normal practice to use formal powers which include Oftel sending a draft of an information request and allowing five business days for comment on the relevance of the information required, or the addition of other relevant data that may be available.</li> </ul>	<ul style="list-style-type: none"> <li>• Normal practice to use formal powers</li> </ul>
<ul style="list-style-type: none"> <li>• No time limit set for information gathering</li> </ul>	<ul style="list-style-type: none"> <li>• Move to make a decision on the best information available on a target date</li> </ul>	<ul style="list-style-type: none"> <li>• Move to make a decision on the best information available on a target date</li> </ul>
<ul style="list-style-type: none"> <li>• Competition bulletin published quarterly</li> </ul>	<ul style="list-style-type: none"> <li>• Competition bulletin a web based document is updated as cases open and close</li> </ul>	<ul style="list-style-type: none"> <li>• Competition bulletin a web based document is updated as cases open and close</li> </ul>
<ul style="list-style-type: none"> <li>• 28 day public consultation</li> </ul>	<ul style="list-style-type: none"> <li>• 10 day consultation only where a change to a current arrangement between carriers is required</li> </ul>	<ul style="list-style-type: none"> <li>• 10 day consultation only where a change to arrangements is required</li> </ul>
<ul style="list-style-type: none"> <li>• 6 month deadline for taking steps to resolve a dispute</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory deadline of 6 months to resolve a dispute, however Oftel will aim to resolve interconnection disputes within 4 months</li> </ul>	<ul style="list-style-type: none"> <li>• 4 month deadline for resolution of dispute</li> </ul>

**2.3.3.4 Current Procedures**

**Formal Complaints:** Ofcom has noted that there is a difference between what constitutes a formal complaint and a dispute. A formal complaint includes a clear

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identification of failed obligation or a case of abuse under the Competition Act of 1998. A formal complaint must also provide factual evidence supporting the allegation made. Accompanying the complaint must also be a statement by an officer of the company, preferably a CEO, stating that care has been taken to verify the evidence submitted.

**Informal Complaints:** Informal complaints are those complaints that are often associated with residential customers. Generally, these types of complaints would concern a problem a consumer was having with a telephone provider. The process for resolution of this type of an issue is reasonably straightforward. To begin with, consumers should contact their service provider in an attempt to resolve the matter swiftly and satisfactorily. All service providers have procedures for handling complaints from customers. If a complaint has not been handled properly in the opinion of the customer, and the complaint has been outstanding for 12 weeks, or if the provider has indicated to the customer that the complaint has reached a deadlock, an alternative dispute resolution scheme can be considered.

An alternative dispute resolution (ADR) scheme is one avenue for consumers to consider if their complaint has not been adequately dealt with or resolved.

**Dispute Resolution:** Ofcom's role with respect to dispute resolution is limited to resolving disputes concerning electronic communication networks and services, as well as spectrum matters.

Ofcom will only consider resolution of a dispute between parties when all avenues of commercial negotiation have failed. Ofcom has indicated that it will not accept complaints about issues that are best dealt with as a dispute and where an attempt has not been made to resolve the issue via commercial negotiations. Moreover, Ofcom will not open a dispute until the scope of the dispute is clear. Once the scope is established, Ofcom will not deviate from this scope. Furthermore, Ofcom will work to ensure it understands fully the complaints being raised. However, if Ofcom uncovers any indication of anti-competitive behavior, it will not consider itself bound by the scope of the complaint and will seek to resolve the matter fully.

Typically, any request for the provision of access and requests for modifications of terms and conditions of such access, including pricing, should, according to Ofcom, be addressed by commercial negotiation between the relevant parties. It is only when these negotiations fail that Ofcom is expected to intervene to resolve the dispute.

**Timeframes:** Once Ofcom agrees to work on a complaint or dispute, it will attempt to resolve the matter as quickly as possible. In the case of disputes, Ofcom will issue resolution within four months. The timeframe for resolution of investigations dealing with the Competition Act must occur within six months if there is a determination made that there has been no infringement under the Competition Act. If an infringement has been found, a resolution must be issued within 12 months.

### **3. CONSUMER COMPLAINTS**

#### **3.1 Administrative Bodies Adjudicating Disputes on Consumer Issues**

##### **3.1.1 Status**

Article 12, Section 11 of the Telecommunications Law gives the TRC jurisdiction to consider complaints **submitted to the Board by the users against Licensees**, as well as inter-Licensee disputes, and to take the necessary action concerning them; with the exception of disputes having to do with financial obligations resulting from the implementation of valid agreements. With regards to the TRC's institutional capacity, the agency has an office of consumer affairs, which is in charge of handling users' complaints.

**Option 1:** Create an administrative office, different and independent from the TRC to handle all consumer complaints.

**Option 2:** Utilize the current TRC's office of consumer affairs for specific consumer functions and to publicize these capabilities to encourage and facilitate the exercise of consumers' rights.

##### **3.1.2 TMG's Recommendation**

The examples included in Section 3.1.3 illustrate the types of administrative bodies that can be created within the regulator or implemented independently from the regulator to deal with consumer complaints. We support the current TRC's approach of having a consumer affairs area within the TRC where all the complaints can be lodged, due to the following advantages:

- 1) The telecommunications regulator is the best positioned to address problems brought by consumers due to the sector specific technical expertise required;
- 2) Issues brought by consumers are invaluable input for the telecommunications regulator to ensure that telecommunications companies are meeting the needs of the market;
- 3) The functions of the telecommunications regulator and dispute resolution body complement each other making it more convenient and easier for the public to identify a single place to address all their concerns on telecommunications issues.

At this time, due to the current stage of transition of the telecommunications environment in Jordan, we discourage the creation of a different administrative agency to handle the dispute resolution process, mainly due to the possibility of creating unnecessary complexity in the dispute resolution process. A separate agency can potentially cause delays as well as increasing the amount of resources required. However, as the market matures and grows in Jordan, the TRC may want to consider in the future, the

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establishment of an independent entity charged with resolution of telecommunications disputes, such as an independent Office of the Ombudsman as has been developed in the UK. This might serve to free up resources at the TRC and provide a central clearinghouse outside of the TRC to manage the consumer complaint process.

### **3.1.3 International Best Practices on Types of Administrative Bodies to deal with Consumer Complaints**

#### **3.1.3.1 BRAZIL**

Within Anatel, the following offices are in charge of managing and adjudicating consumer complaints:

The **Office of Consumer Affairs** handles consumer complaints sent by e-mail, letters, or through Anatel's call centers. Complaints about service providers must be sent first to the relevant company, which is required to contact the user in five days. Complaints about Anatel are sent to the specific area of the agency being complained about. The Office has the following functions<sup>11</sup>:

- Assist the parts of the agency in relation to the matters of defense and protection of users' rights;
- Receive, respond and channel internally and externally, complaints, requests or comments of users of telecommunications services;
- Implement and expand methods and procedures for the relationship between the agency and users of telecommunications services;
- Manage the Consumer Care Center.

The **Citizen Rooms** provide a communication channel between Anatel and Brazilian society. Interested parties can use the Citizen Rooms to submit license requests for the provision of a variety of services, and file complaints on services. The rooms provide unrestricted and ready access to Anatel's public database, each room is equipped with computers, a printer, fax, scanners, a telephone, VCR, as well as a staff of attendants to provide information related to Anatel's activities. Any party can conduct online searches of the Agency's reports, contracts, decrees, resolutions, standards, and decisions as well as have access to all telecommunications legislation.

**Committee for the Protection of Telecommunications Service Users:** Anatel has also created several strategic Committees, which are intended to develop studies, proposals and recommendations on specific matters. The Committees act as Advisory Bodies to the Board of Directors. One of them is the **Committee for the Protection of Telecommunications Service Users** whose purpose is to assist the Board of Directors in the exercise of the Board's functions concerning consumer protection. The following Anatel staff are members of the Committee:

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<sup>11</sup> Article 132 of Anatel internal regulations, Resolution No. 107/99.

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- Advisor to Anatel, who acts as the Chairman of the Committee;
- Chief of the Consumers Affairs office, who acts as the Secretary of the Committee;
- The Executive Superintendent;
- A member of the Legal Advisor's office;
- One member of the Superintendency for Public Services;
- One member of the Superintendency for Private Services;
- One member of the Superintendency for Mass Communications Services.

The Committee has the permanent participation of the following members: a representative of the Department of Consumer Protection of the Secretary of Economy; a representative of users of fixed telephony services; a representative of users of mobile services; a representative of users of mass communications services; a representative of users of other telecommunications services; and entities representing telecommunications service providers.

The Committee meets quarterly and can hold extraordinary meetings when needed. The Chairman of the Committee can invite participation of representatives of different segments of society directly affected by the application of legislation related to the defense of consumers' rights.

The Committee has, among others, the following functions:

- Assist Anatel's Board in its relationship with the National System of Consumer Defense.
- Give Anatel's Board a variety of directives regarding consumer rights.
- Procedures for prevention of consumer rights violations.
- Advise the Board concerning mediation, arbitration, and decisions needed for the solution of conflicts between economic agents and users of telecommunications services.

The **Board of Directors**, the highest administrative body within Anatel, is in charge of issuing decisions through resolutions, judgments, acts, orders, public consultations, and administrative rules. The deliberations of the Board of Directors are made through "hearings," "meetings" and "deliberative sessions."

**Hearings are** conducted to resolve conflicts between economic agents, as well as between them and consumers or users and providers of telecommunications services. Hearings are only held when conflicts require mediation, arbitration or a specific decision by the Agency. Hearings are conducted with at least three Directors and the General Counsel. The hearings are public and can be recorded.

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**Meetings** are held to conduct deliberations about Anatel's internal matters.

**Deliberative sessions** are held to obtain the votes of the Board members on a particular issue without having a meeting. Conflicts between economic agents, as well as between them and consumers or users and providers of telecommunications can also be subject to deliberative sessions. The library of the Agency maintains a list of the deliberative sessions underway indicating their subject, timing and status.

### **3.1.3.2 PERU**

The **Administrative Tribunal for the Settlement of Users Claims (TRASU)** is the competent authority to adjudicate from an administrative standpoint the claims filed by users of public telecommunications services. TRASU is part of OSIPTEL's organization but is fully independent in its rulings. TRASU is the last administrative review for users' claims and is made up of six members. The members of TRASU are elected by the Board of Directors of OSIPTEL based on a proposal submitted by OSIPTEL's Chairman. The members of TRASU can be members of OSIPTEL's staff, or professional experts on matters related to a claim. Each member is remunerated.

TRASU has one or more substitute members in case of absence or impediment of the permanent members. The Chairman and Vice Chairman are elected for a period of one year. TRASU is composed of various panels of three judges established by OSIPTEL, according to the complexity of the case.

The following are TRASU's functions:<sup>12</sup>

- Resolve claims and appeals submitted for its consideration, as to matters within its competence;
- Propose to OSIPTEL's Managing Council the modification of the procedures to deal with users' claims, and those related to violations and sanctions, which as to matters within its exclusive jurisdiction, will help develop the relationship between users and operators in a fair and equitable manner;
- Approve the contents of forms and other methods to be used, in order to allow the expeditious resolution of claims and appeals submitted for its consideration;
- Other matters entrusted to it by OSIPTEL's Managing Council.

TRASU has jurisdiction over:

- a) Revision of decisions concerning users claims issued by telecommunications operators;
- b) Claims or appeals against decisions issued by the operators in connection with claims filed against the operator's administrative procedures to resolve claims;

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<sup>12</sup> Resolution 010-2002 CD/OSIPTEL (21.04.02)

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- c) Appeals against decisions issued in the first instance, in the case of claims related to quality of service problems.

TRASU includes a Technical Secretariat, which serves as a link to OSIPTEL's structure. The Technical Secretariat has the following functions, among others:

- a) Process matters submitted for the consideration of TRASU;
- b) Keep a filing and control record for claims submitted for the consideration of TRASU;
- c) Provide TRASU with necessary logistical and technical support as well as coordinating with other functional and administrative bodies of OSIPTEL;
- d) Conduct research, studies and technical projects requested by TRASU, for the latter to have the necessary elements of judgment to issue its resolutions;
- e) Make any inspection that TRASU may deem convenient.

### **3.1.3.3 COLOMBIA**

The Colombian Regulator (CRT) has the function to provide information to customers regarding telecommunications services. However, the authority to adjudicate disputes between telecommunications operators and customers has been delegated to the Superintendencia de Servicios Públicos Domiciliarios (**Superintendency of Domestic Public Services-SSPD**). This is an administrative body independent from the telecommunications regulator, created by the Colombian Constitution in 1991, to exercise the functions of supervision, inspection and oversight of entities that are providers of all public services such as energy, gas, and telecommunications services. **The SSPD** receives appeals filed by users and subscribers after they have already filed directly with the telecommunications operator. The SSPD is also in charge of imposing sanctions on all providers of public services.

### **3.1.3.4 UNITED STATES**

The FCC is organized into several bureaus, one of which is the **Consumer and Governmental Affairs Bureau**. The Bureau was established in 1999. It provides information to the general public on a range of consumer matters including understanding charges on telephone bills, alerting the public to telephone-based scams, providing basic information on cellular and mobile services, as well as dealing with broadcasting matters. The function of this bureau is largely consumer education, however, it does handle **informal** complaints by consumers. **The Telecommunications Consumer Division** within the **Enforcement Bureau** handles the management of **formal** consumer complaints. This Division also serves as the central point of contact for consumers, providing education and information as to consumer rights and how to understand billing practices.

Informal complaints generally tend to deal with minor disputes affecting wireline common carriers and wireless providers that tend to be smaller in scale and more

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specifically related to telephone billing disputes, which may not have been favorably resolved for a consumer. These complaints are usually resolved relatively easily and do not require any major policy changes on the part of the carrier. On the other hand, the **Telecommunications Consumer Division** handles consumer complaints that deal more specifically with slamming, unsolicited faxes, marketing disputes, telemarketing and operator service disclosures.

### **3.1.3.5 UNITED KINGDOM**

Ofcom has a strong commitment to its consumers in dealing with complaints and problems that may arise. In January 2003, **the Office of the Telecommunications Ombudsman (Otelo)** was established to handle consumer complaints concerning telecommunications services. It is independent from Ofcom. Otelo is formed by: an Ombudsman; two Senior Managers; a Member Board composed of seven members (five nominated by member companies and two appointed from the independent council members); and a Council (formed by six members). The services of Otelo are voluntary, that is, companies may sign up to be part of the services offered. Otelo reviews and seeks to resolve consumer complaints against companies that have signed up as a member of the service. The independence of Otelo is guaranteed by the Council whose main role is to appoint the Ombudsman and manage the service in accordance with the Annual Business Plan and Budget.

All Public Communications Providers (PCP) can be members of Otelo. A PCP is any company which provides an electronic communications network or service to members of the public or small businesses (this includes natural persons or companies who offer, supply or provide any of the core services or products, including fixed voice telephony, mobile voice telephony, fax and associated or supplementary services including voice mail and call forward as well as services and/or products provided to the disabled community, including access to text relay services and free directory services). At the present time, Otelo's current members cover more than 96% of the fixed line telephone market, over 55% of the mobile telephone market and 33% of the ISP market.

The role of Otelo is to consider complaints against member companies where the complainant and the company have been unable to reach an agreement. Where appropriate, the Ombudsman will investigate complaints, and in doing so, will listen to both sides of the story and look at the facts to decide if a formal or informal solution is best and whether the member company must take any action for the consumer's benefit.

Otelo has a formal Terms of Reference document, which details the range of telecommunications services that are covered, and what Otelo can and cannot do.<sup>13</sup>

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<sup>13</sup> Terms of Reference, Council of Telecommunications Ombudsman Service, United Kingdom, see <http://www.otelo.org.uk>. The specificity of what the ombudsman can and cannot do is detailed in the Terms of Reference, noting further that the Ombudsman has an absolute discretion to decide whether a complaint is within the Ombudsman's jurisdiction.

#### **4. PROCEDURES FOR USERS' CLAIMS**

##### **4.1 Status**

Article 52 of the Jordanian Telecommunications Law requires “everyone licensed to offer a public telecommunications service to set up a special section for receiving complaints of beneficiaries and subscribers and shall strive to avoid the causes of the complaints, if they are related to the standard, quality or method of service.” Additionally, Article 54 gives the TRC the authority to decide complaints and adopt the decision it deems proper. In accordance with these legal provisions the TRC’s has implemented minimum guidelines for consumer complaints which are published in the TRC’s website:

- All providers of public telecommunications services must establish an office to deal with complaints.
- Consumers can only contact the TRC after they have contacted the service provider and are still unsatisfied.
- The TRC requires copies of the correspondence between the user and the operator in order to process claims.
- Users can access the TRC website, which directs customers to lodge their complaints personally by regular mail or e-mail.
- If the TRC receives a group complaint that suggests an omission on the part of the licensee, a dispute between the licensee and beneficiaries as to the standard of service or a breach of the license terms and conditions, the TRC investigates the grounds of the complaint and takes the decision that it deems proper. This decision is final and binding to the licensee.
- The Chairman of the TRC and any other person authorized by him in writing shall have the right to enter to conduct searches when there is suspicion that activities contrary to the Telecommunications Law and regulations are being conducted.
- TRC’s employees authorized to seize violations are considered as judicial police officers.

No further details on the internal TRC procedures to handle the complaints, the types of complaints, terms to issue resolutions are provided by current TRC regulations or guidelines.

- **Option 1:** Leave the procedures as they are today.
- **Option 2:** Issue regulations on consumer complaint procedures that will provide guidelines for consumers and the TRC personnel to follow when dealing with consumer complaints.

#### **4.1.1 TMG's Recommendation Concerning Procedures to Adjudicate Consumer Complaints**

The provision of public telecommunications services requires that the government guarantee the existence of the means and procedures so users of the services can exercise their rights established in the applicable telecommunications laws and regulations. All procedures to be used by customers must comply with the minimum safeguards applicable to all administrative procedures such as respect for due process, efficiency, and transparency. Their timeframes must be defined and the procedures must be implemented with the view of causing the least cost to the users of telecommunications services. Thus, we recommend that the TRC implement the following guidelines regarding user claims:

- The primary responsibility to handle telecommunications users' claims is for the company providing the telecommunications services, since the companies have all the relevant information concerning the service and therefore are naturally better able to handle the claims. The company's procedures dealing with the user's complaint regarding service should be the initial administrative review of the user's claim, before intervention by the regulator.
- Persons with standing to submit a claim should include not only those individuals who have a contractual relationship with the company provider of the service, but also the actual users of the service. The users can demonstrate their standing by, for example, submitting the invoice of the service being discussed and proof of residence. Additionally, we suggest that users' associations also be given standing to submit claims on behalf of the users. (*Note: The TRC should confirm if the Jordanian Legal Regime allows for representation of users by associations in legal proceedings in general.*)
- The intervention of an attorney in the user's claim should not be required since this would oblige the user to incur further expenses and would discourage claims. The user, however, should have discretion on whether or not to use an attorney.
- The companies' procedures should be simple, transparent and easy to utilize and the companies and the TRC should make all the relevant information concerning claim procedures available to the user. The procedures should not be subject to any fee. The telecommunications company should not condition the process of a claim with the payment of the object of the claim. Moreover, the company should not suspend the provision of services in order to decide the claim.
- All the information concerning the procedures and the right to submit claims should have to be publicly available in a complete manner and located conspicuously at the company's offices.
- When the company decides against a claim, it should include in its communication to the user a paragraph informing the user of his right to appeal and the timeframe he/she has to do so.

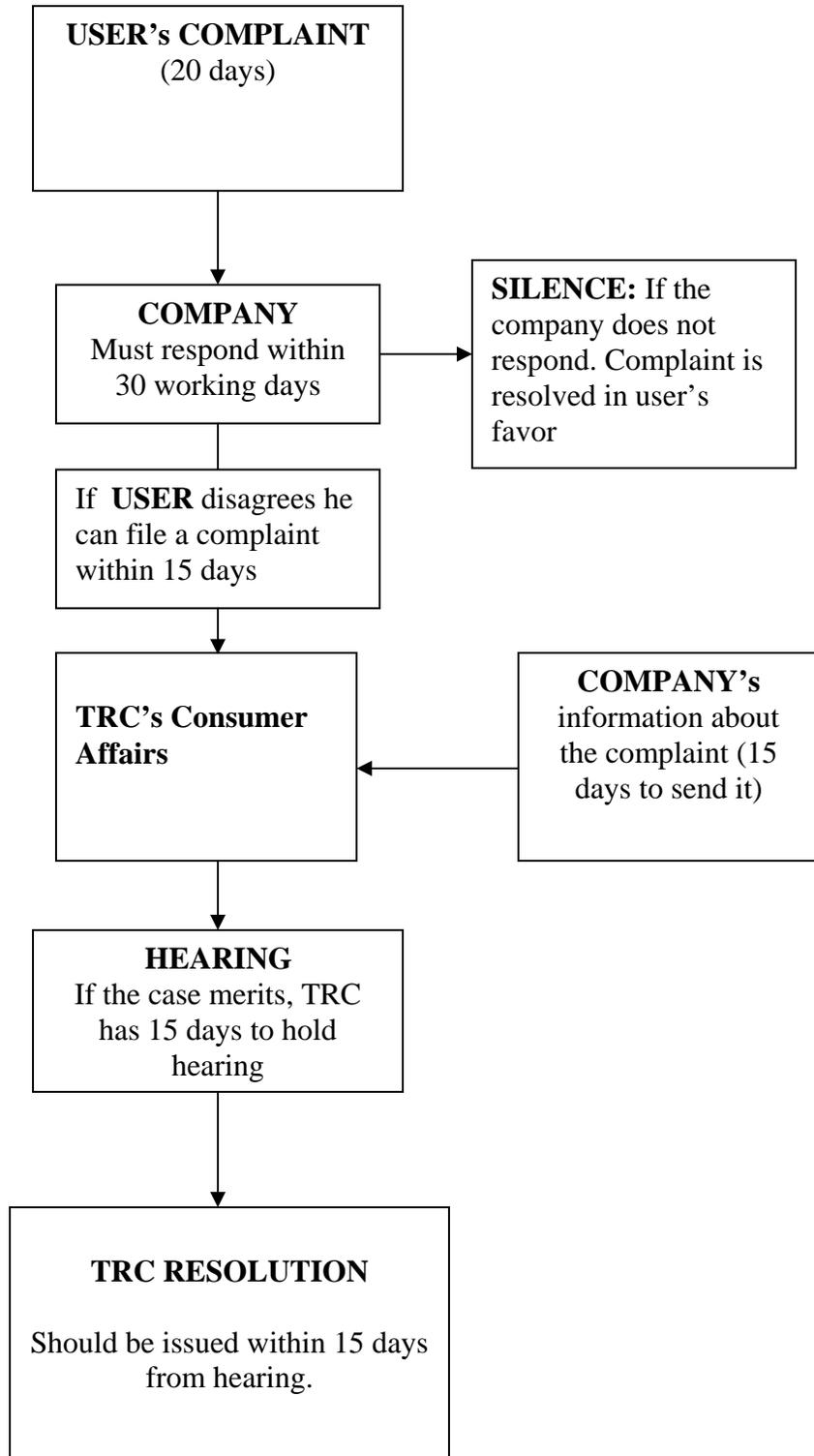
## *Proposal for a Regulatory Framework for Dispute Resolution Procedures*

- All service providers should have to file with the regulator a copy of their internal procedures to handle users' claims. The service provider should establish an office or unit exclusively in charge of handling these procedures.
- Service providers should establish a system of registration of claims, in order to organize all on-going claim procedures and make available to users information about their individual claims. Each claim should be given a file number, and all evidence and pertinent documents should be duly numbered and be included in the file.
- Employees of a company cannot refuse to process a claim. The requirements to submit claims should be minimal, and whenever the company or the regulator notices a lack of information or deficiencies in the request made by the user, it should communicate this to the user, and give him an opportunity to provide the missing information or correct the mistake made. If the user does not provide the information the claim can be dismissed.
- The regulator should issue model formats for all companies containing the minimum information required from the user for the processing of claims. However, customers should be able to submit a claim by a simple letter or by phone. In these cases the service providers shall ask the user all the pertinent questions to obtain all the information needed. The user should be given a code number to identify and follow up on this claim.
- We suggest the application of a rule similar to the Peruvian and Colombian positive administrative silence to encourage the company to issue a decision regarding a claim in a timely fashion. Under this rule the user would have his claim accepted by the company on his terms whenever the company does not respond within the timeframe established in the regulations.
- All resolutions issued by the company and the regulator should have to include a clear explanation of the rationale for decision, as well as the legal basis and a clear indication of the evidence supporting the decision.
- Users should be able to submit claims by phone, personally or in writing. Operators must have a fax number, e-mail and physical address available for users to file their claims. Users shall have up to 20 working days from the date of the problem to submit their claims to the company.
- Quality of service claims should be handled independently. For example, the company must have an adequate mechanism to handle repairs and specific customer service personnel and offices adequately trained to deal with these types of claims. We recommend that the TRC establish a general framework and give the providers of telecommunications services the freedom to create and manage their own internal procedures to handle quality of service issues. The TRC should establish general guidelines for companies and should only intervene when the service provider does not perform its service and repair obligations to the satisfaction of the customer.

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- In case of disagreement with the company's response, the user shall have up to 15 days to file his complaint with the TRC.
- The TRC should notify the company's consumer complains department, which should provide all the information required to the TRC to investigate such complaint. The company shall have no more than 15 days to submit the information relevant to the company.
- If the case merits it, the TRC should be able to hold a hearing whereby the parties can verbally explain their arguments.
- The TRC should have up to 30 working days to evaluate the claim and issue a decision. Depending on the complexity of the case such term can be extended for an additional period of 30 days.

**FIGURE 6**  
**RECOMMENDATION ON CONSUMER COMPLAINT PROCEDURES**



#### **4.1.1.2 International Best Practices on Procedures for Users Claims**

##### **4.1.1.2.1 CHILE**

Subtel, the regulator in Chile, has issued regulations establishing the following procedures to resolve user complaints regarding telecommunications services.

Telecommunications service providers shall respond to claims submitted by users. The claims must deal with the telecommunications law, plans and technical requirements whose compliance is monitored by Subtel.

The user has 20 days from the date he learned of the occurrence of the problem to submit his claim to telecommunications providers. In the case of billing issues, the date of the invoice is considered the date the person knows of the problem.

Telecommunications companies must have special forms designed for the submission of complaints available to the public. Such forms must contain the following: 1) number of the complaint; 2) identification of the claimant; 3) domicile where he should be notified; 4) date of the claim; 5) service provider; 6) description of the claim; 7) telephone number related to the claim; 8) amount; 9) background related to the claim; and 10) signature of the claimant.

Telecommunications companies must open a **Register of Claims** where all claims must be registered in chronological order. Every complaint file must contain at least the complaint form submitted by the user and all supporting documents and the company's answer to the complaint. The files must be made available to the regulator at least during six months after the complaint was filed. The company must provide an answer within 15 days from the time that the claim was received. The answer shall accept, or partially or totally reject the claim, and shall provide a timeline for final solution of the situation.

The answer to the claim must be sent directly to the claimant by certified mail addressed to the domicile of the claimant and must be signed by one or more persons duly authorized by the company for this purpose.

Telecommunications service providers must have a list of officers authorized to deal with customers' complaints, which shall be filed with the regulator. This list must be kept up to date at all times and can be modified at any time. One of the officers of the company must be named Claims Coordinator, who is the person who interfaces with the regulator.

Even if the company determines that the claim is justified, the service provider is allowed not to issue any response, in which case after 15 days from the date the claim was submitted, the claim will be considered accepted by the company. In case of disagreement with the response provided by the company, the claimant can appeal to Subtel, within 10 days after receipt of the notification. The document filed with Subtel must contain at least the following: a) a copy of the claim submitted to the company; b)

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the registration number given to the claim by the company; c) a copy of the company's response; and d) a brief description of the facts.

Once the claim is received, Subtel will notify the Claims Coordinator (within the company) and within 5 days the company must submit the answer given to the user and any other evidence relating to the claim. Subtel can receive testimony and other evidence on its own motion or at the request of the parties. The Chief of the Legal Department at Subtel hears testimony. Subtel decides the issue within 20 days from the date the company's answer was received.

### **4.1.1.2.2 PERU**

OSIPTEL's Procedures for handling user claims are as follows:

**Filing of claims with public service operators:** Every company engaged in the provision of telecommunications services must establish an expeditious way to respond to service claims lodged by users. Users have up to two months after the expiry date of the invoice or the occurrence of the problem to submit a claim with the service provider. Quality of service claims can be submitted as long as the problem exists. Users are entitled not to pay for the item they are complaining about, although they are obliged to pay whatever part is not within the complaint.

The service provider has 30 days in which to access the claim and then up to 10 working days to notify the user of the outcome of his claim. If no reply is received within the **Positive Administrative Silence**<sup>14</sup> deadline (40 working days), users may appeal to the Administrative Tribunal for the Settlement of User Claims (TRASU).

**Appeal for Reconsideration of a Decision:** All users are entitled to appeal for reconsideration of the decision issued by the service provider. The user must submit a new piece of evidence in order to file an appeal for reconsideration with the service provider. The appeal for reconsideration can be filed within 15 business days from the notice of the resolution that ended the claim procedure. The appeal for reconsideration is not a pre-requisite for the submission of an appeal to TRASU. Service providers reviewing cases of billing, installation, activation, and suspension or cut-off of service must decide requests within 30 days. Requests for review of quality of service issues, lack or tardiness in the delivery of invoices are decided in three days.

**Complaints:** The user may lodge complaints with the service provider regarding its decisions in the following cases:

- a) When there are procedural defects for failing to handle the matter.
- b) Failure by the service provider to comply with its decisions.
- c) To apply the Positive Administrative Silence rule.

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<sup>14</sup> Positive Administrative Silence: Procedure whereby the silence or lack of response of an administrative agency is interpreted in favor of the person who requests the action.

## *Proposal for a Regulatory Framework for Dispute Resolution Procedures*

- d) Any other infraction committed while the claim is being processed.

A complaint can be filed by the user during any stage of the administrative process and it can be filed after the notice of the decision ending the process. Notwithstanding the user's right to take his case to the judicial system, the user has up to 22 months, after the expiration of the timeframe during which the operator should have served notice of a decision, to file a complaint requesting the application of the Positive Administrative Silence rule.

If the company agrees with the user, it shall apply the Positive Administrative Silence rule in his favor; however, if the company believes the rule is not applicable, it shall take the case to OSIPTEL's TRASU, which will make a final determination on the application of the rule. The service provider has no more than 10 days to take the complaint to TRASU, which must decide the claim within 20 days counted from the time it is filed with the service provider. TRASU will issue a final decision determining whether the claim is inadmissible, well grounded or groundless.

**Appeals:** If the user does not agree with the reply from the company, he may submit an appeal to the company giving the reasons why he does not agree with the reply received and asking for the claim to be brought before TRASU, which will issue a final ruling. Appeals will be resolved by TRASU if the answer of the service provider is unfavorable to the user who disagrees with the rationale in the decision issued by the operator.

The timeframe for submitting an appeal is 15 working days from the notice of the contested decision issued by the operator. The appeal implies that TRASU must analyze the legal validity and suitability of the supporting arguments of the disputed decision. The service provider has the legal obligation to file the appeal with TRASU within 10 days from the time the customer submits his appeal. TRASU has 30 working days to assess the claim, but depending on the complexity of the case (ie. for cases concerning quality of service or lack of delivery of service, invoices must be resolved in 15 days), it can extend the time for an additional 20 days. TRASU has up to 10 working days to notify the user of the outcome of the appeal procedure.

In its final resolution TRASU can:

- a) Revoke the operator's original decision and order the operator to solve the problem that gave rise to the claim.
- b) Confirm the original decision and order the user to abide by the evidence produced and/or explanations given by the operator.
- c) Confirm in part and revoke in part the original resolution.

Any appeal filed by a user for consideration by TRASU must comply with the following requirements:

## *Proposal for a Regulatory Framework for Dispute Resolution Procedures*

- a) Name, address and ID number of the relevant user. If the appeal is filed by the user's legal representative, then the identification data of the legal representative must also be included as well as proof of his authorization of representation.
- b) Description of the claim, and if applicable, date of issuance of the invoice where the amount claimed has been invoiced or the number of the contract disputed with the service provider.
- c) Clear and concise request to the TRASU; and
- d) Place, date and signature.

The General characteristics of the procedures applied by TRASU are that:

- 1) Any appeal for reconsideration of a decision, complaint or appeal addressed to TRASU is to be filed with the operator, which is obliged to provide TRASU with a docket number for processing purposes.
- 2) If the operator fails to refer the appeal to TRASU within the mandated deadline, the user can provide TRASU with a copy of the acknowledgment of the receipt of the appeal by the operator, and can attach supporting documents.
- 3) Once the documents in 1) and 2) have been filed, TRASU through the Technical Secretariat, will give the service provider three business days to refer the docket to TRASU.
- 4) Unless the operator proves that its failure to submit its docket to TRASU is due to causes out of its control, TRASU should consider that the arguments put forward by the user are actually true.
- 5) The filing of a complaint will suspend the execution of the contested decision, which will be subject to the resolution to be finally issued by TRASU.
- 6) While the process has not been resolved by TRASU and the user has paid the unclaimed portion of the obligation, the operator cannot suspend the service or terminate the subscriber's contract, unless such a measure is legally admissible as a result of events not related to the subject matter of the claim.
- 7) In all cases before TRASU, the operator will be entitled to present its allegations or arguments in support of its position. The operator will have to issue its opinion regarding each of the events referred to in the appeal filed by the user.
- 8) TRASU's arguments will be made known to the user, in order for the latter to answer the allegations within five days, counted from the date of the notice, with the risk that if the events are not denied or objected to, they will be considered actually true.
- 9) The parties must be notified of the resolutions issued by TRASU within five days, from the date of issuance. TRASU is authorized to sanction operators that fail to comply with its resolutions or administrative processes related to claims.
- 10) TRASU is authorized to penalize those users who recklessly exercise their procedural rights, in which case the court can either issue a warning or impose a monetary fine.

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11) At any stage in the procedure and until such time as TRASU issues its final resolution, the user and service provider can reach an agreement by conciliation, arbitration, or other method.

12) If one of the parties disagrees with TRASU's final resolution, it can take its case to the judicial system.

**Quality of Service Procedures:** Quality of Service issues refer to the inadequate functioning of the network, bad communication, noise, and interference, among others. The veracity of the information provided to the user is also considered a quality of service issue, including not informing the users about the status of their claims.

OSIPTEL considered it necessary to have a different procedure, abbreviated and accelerated for quality of service claims, which due to their nature require rapid and expedient solutions. Resolution No. 015-2002-CD/OSIPTEL regulates the procedure for quality of service as follows:

1. The user shall report the problem to the operator in writing, personally or by phone. He must be given a docket number to identify his claim.
2. After the problem is reported, the company has four calendar days to solve it with one additional day in case the user is not on the premises for repairs.
3. If the timeframe expires and the problem is not resolved, the user can file his initial claim with the service provider. The company has three working days to solve the problem and up to 10 working days to notify the user of the result.
4. If the user considers that the response to the claim is inadequate or insufficient, he has the right to submit an appeal.
5. An appeal can also be submitted if the quality of service problem reappears within 30 days from the date in which it was solved.

### **4.1.1.2.3 ARGENTINA**

The Argentine regulator has created an office in charge of receiving and managing users' claims. The office is the **Customer Assistance Center (CAU)**. This center receives complaints for problems with telecommunications in general and provides advice to users regarding their rights and obligations.

**Complaint Procedures:** To initiate a complaint before the CAU, the user must have already filed a complaint with the service provider. For complaints regarding telephone service, the regulations for users of basic telephony establish the following:

- Claims are divided into the following categories: billing issues, claims due to breakdowns and other claims.

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- Customer contracts must include a statement, which shall explicitly indicate that the Comision Nacional de Comunicaciones(CNC) is the body enabled to administratively resolve all user's claims.
- The user requests the intervention of the CNC up to 30 days from the time the operator responds or when the response period expires if the operator did not answer the complaint.

**For claims regarding billing issues**, amounts included in the invoice can only be claimed against the provider 60 days after the date that payment is due. If this period expires and the service provider does not respond to the claim, then the claim is considered accepted by the service provider. Once the claim is submitted, providers cannot interrupt the provision of service during the period that it is being investigated.

If the client submits a claim concerning billing, the service provider gives information in writing about the details of the amount invoiced. If the invoice is correct, the client pays the part not collected plus any charges incurred during the time the claim was being challenged, from the due date of the original invoice. If the client does not agree with the claim or the service provider does not answer in the mandated period, the client is able to request the intervention of the regulator.

**Claims due to defects in quality of service and service breakdowns** must be dealt with within three days. When the claim is submitted, the provider assigns it a number, which is used as proof of the initiation of the claim. Service providers are obliged to keep a register with all the claims received, which shall include the following: phone number; date; and type of service breakdown for which the claim was made.

The service provider must resolve all other claims within 15 working days. If the user is not satisfied or the provider does not answer the complaints within the period, the user can request the intervention of the CNC through the CAU (Customer Assistance Center). The CNC has created this office where users can personally submit all complaints and receive assistance regarding their rights and obligations.

The user can request the intervention of the CAU within 30 days from the answer of the provider or the date of expiration of the period to answer the claim if it was not answered. Service providers are obliged to submit to the CAU, within 20 days from CAU's request, all the information they have about the claim.

If providers do not submit all the relevant information, the CAU will resolve the claim with the information it has on file. CAU is empowered to order that the operator not suspend service or rehabilitate the service. CAU will decide the appropriate action on a case-by-case basis.

Service providers are obliged to make a book of complaints available to the public in each of its offices open to the public. The CAU will sign and number each of the books. In cases where customer service can only be made by phone, the call must be free of charge. All customer service offices must display a visible sign showing that a book of

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complaints is available, including a chart with all public service tariffs and a copy of the CNC's General Regulations of Customers of Basic Telephony Service.

Service providers are obliged to keep the information related to all types of claims for two years, from the time the claims were resolved, except all claims concerning breakdowns, which shall be kept at least 180 days in the register of technical breakdowns of the telephone service for each client.

The CAU has forms available to the public to facilitate the filing of complaints. There are specific forms for breakdowns, claim forms for billing issues, claim forms for commercial attention issues and a general form for all other claims. The user must indicate in his claim the following information: number of the claim given by service provider; date of the claim; whether or not an answer to the claim was given by the service provider and date of the answer.

In order to process a claim, CAU must have received from the user the documents required by the regulations. From the time the claim is submitted, it is under the jurisdiction of the CNC's CAU, which is in charge of administering the case until the CNC issues a response favorable to either party. After the CAU has received a claim, it submits the claim to the service provider so that it can prepare its defense.

If CAU ascertains that the service provider was in non-compliance with the regulations, the claim becomes a file and receives a new number, so that appropriate sanctioning procedures can be initiated.

### **4.1.1.2.4 BRAZIL**

The drafters of the Brazilian Telecommunications Law considered consumer rights to be a high priority. Article 3 of the Telecommunications Law enumerates consumer rights such as the right to quality of service, non-discrimination, the right to petition Anatel against a service provider, and to be reimbursed for any damages incurred by violations of consumer's rights. Anatel became the first telecommunications regulatory agency in the world to receive an ISO-9001 certification, an internationally accepted technical standard for managing all processes that affect an organization's ability to meet customer requirements for a quality service or product.

**Filing a consumer complaint with Anatel:** Anatel has implemented the “**Citizen Rooms**” equipped with computers, printers, fax machines, scanners, telephones, TV sets, and VCR's. In these rooms consumers can file complaints regarding service providers. Call Centers are another means by which the public and Anatel can communicate. The public can complain via a toll free call to the **Call Centers**, which are open 24 hours a day, including Sundays and holidays.

Once a claim is received, it is channeled to the Office of Consumer Affairs. Depending on the subject matter, the claim will be sent to the particular Supertintendency, which oversees the specific issue of the claim for a decision.

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Anatel's Board of Directors, with the assistance of the Committee for Consumer Protection, is empowered to issue decisions between consumer and service providers.

The regulations give Anatel the authority to require service providers to adopt specific actions, including repairing damages caused to the users due to deficiencies in the provision of the services.<sup>15</sup>

### **4.1.1.2.5 COLOMBIA**

Colombia has received the quality of service certification ISO-9001 (2000) for all its processes, which means that the Colombian Regulator (CRT) complies with the requirements of the international standard NTC ISO-9001 (2000). Under the user's claim procedures for Colombia regulated by Chapter VII of Resolution No. 575 of 2002, all users of telecommunications services have the right to submit petitions to companies providers of public telecommunications services.

All public telecommunications service providers must establish an office to receive petitions and complaints and to process and respond to questions and requests submitted by users. The telecommunications regulations in Colombia differentiate among "requests," "complaints" and "claims."

- **A request** is defined as any request made by the user to the company providing the telecommunications service.
- **A complaint** can be submitted due to: a) the manner and conditions in which the service is provided; b) the conduct of an employee of a telecommunications service provider.
- **A claim is** a request to the company to review the invoicing of the service. The company cannot request that the user pay the invoice in order to process the claim. A claim must be submitted one day before the due date of the invoice.

A complaint is a request with the purpose of requiring a service provider to review the billing of a service. The service provider cannot require that the user pay the invoice in order to process a user's complaint. The complaint must be submitted to the company providing the service at least one day before the due date of the invoice.

All requests, complaints and claims must be sent to the service provider orally or in writing with a clear description of what is being requested or complained about. At the moment the request is received, the service provider must assign a number to each user, so the appropriate follow up of the case can be done. The company has 15 working days to respond to the user, but it can extend this period from 10 to 30 additional days. In this case, the company must explain the reason for the extension of time to the user.

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<sup>15</sup> Anatel's internal regulations, Resolution 107/99 (Art. 64).

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Once a complaint is submitted, three events can occur:

- If the company does not answer the request in the aforementioned period, then the “Positive Administrative Silence” rule is applied, which means once the period has expired, the request or complaint will be resolved in favor of the user. In this case, the service provider must acknowledge the request of the user within 72 hours. If the company does not recognize the validity of the claim, the user can go to the CRT’s Superintendency of Public Services, which initiates the appropriate investigations;
- If the answer does not satisfy the user’s expectations, the user has five days to file the appeal and the subsidiary appeal with the Superintendency of Public Services;
- The company’s answer is satisfactory and the case is closed.

To file an appeal with the company:

- The user submits an appeal to request that the service provider review a decision related to the provision of service or execution of a contract. The user does not need an attorney to submit an appeal.
- The appeal is submitted within five days of the date the user was notified of the service provider’s decision. The appeal is filed with the office of petitions and complaints of the company.

An appeal can be submitted with a company for the following reasons:

- a) Unjustified denial of a contract to provide services.
- b) Suspension of services.
- c) Termination and service interruption.
- d) Unfavorable decision of the user’s complaint concerning billing issues, when a complaint is decided unfavorably to the user.

Service providers have the duty to inform users of upcoming procedures, the relevant time period, and make available to the public the appropriate forms for their presentation. If a user submits an appeal with the company at the same time, the user must file an appeal with the general manager or the legal representative of the company, who must submit the appeal to the Superintendency of Public Services. This means that if the service provider decides the claim against the user, the appeal must be sent by the service provider automatically to the Superintendency of Public Services to analyze the background and make a decision.

Appeals against a company’s decisions to resolve billing complaints must be filed within five days of the date the user learned of the decision. Claims against decisions must be filed within five days and the appeal is adjudicated by the Superintendency of Public Services.

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**Arbitration:** The regulations consider arbitration as a medium to resolve controversies between a telecommunications company and any other party to a telecommunications service contract. If these disputes are unable to be resolved by applying the provisions of the contract, the dispute will be subject to the decisions of two arbitrators (lawyers). The arbitrators shall be chosen by the parties or the Superintendency of Public Services or the Chamber of Commerce of the jurisdiction where the service is provided. The decision will be issued in Spanish and the arbitral tribunal will be established in the municipality of residence of the user of the service.

### **4.1.1.2.6 UNITED STATES**

**Procedures Concerning Consumer Complaints:** A consumer may file a complaint with the FCC electronically, by fax, via mail, or over the phone. The complaint must include specific information including names and telephone numbers of the company representatives contacted, the dates that a consumer spoke with these representatives, and any other information that would help process the complaint. When filing a complaint electronically, a consumer must complete a specific form prepared by the FCC dealing with general telephone company complaints. These general complaints can address wireline, wireless, cable, broadcasting, as well as telephone accessibility matters.

A consumer may simply be seeking refunds or credit from the carrier and the FCC can handle resolution without pursuing any further legal action. This kind of complaint is considered an informal complaint and can be easily and quickly resolved by the FCC.

In terms of further action that the FCC can take on behalf of consumers, this involves using a wide range of tools to ensure that the actions of companies are lawful and reasonable. The FCC may direct the parties to undertake a **negotiated settlement**, whereby the parties convene and negotiate a reasonable resolution that may often involve the awarding of damages. Additionally, the FCC can resolve the matter through a **policy settlement**, whereby the carrier is required to make changes to or modify its current policies that may have caused the complaint. This approach is more likely in the case where there have been several similar cases filed by consumers against a specific policy or approach taken by the carrier.

The range of consumer complaints handled by the FCC includes not just disputes over rates and charges, but it covers other issues as well: slamming; unsolicited faxes; telemarketing; unfair marketing practices; and operator services disclosures.

### **4.1.1.2.7 UNITED KINGDOM**

Consumers may bring complaints against **the Office of the Telecommunications Ombudsman (Otelo)**<sup>16</sup> members and seek resolution from the Ombudsman. The Ombudsman may refuse to accept the complaint if there is no reasonable prospect for success, recovery or redress, or if a matter may be significant enough to require arbitration or would be better dealt with by the courts. Additionally, Otelo will not

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<sup>16</sup> See definition of Otelo at Section 3.1.3.5.

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resolve disputes concerning inside wiring or cable, in essence, services that are not provided by member companies.

Once a complaint is accepted, the Ombudsman may require the member company to submit appropriate documentation. The member can request that this information be treated as confidential. Once the Ombudsman reaches a decision, it is not treated as final until the member company and the complainant agree to accept the conclusions. If either party does not accept the Ombudsman's conclusion, then a final decision will be offered further detailing the reasons for the decision.

The main goal of the Ombudsman is to achieve a mutually acceptable settlement of a complaint. If this does not occur, or if the complaint is withdrawn, the Ombudsman can conduct a more formal investigation.

The Ombudsman can impose a number of remedies on the member company including requiring a rule of law change, providing a service or product to the complainant, providing an apology or explanation to the complainant, requiring a monetary award, or any combination of these remedies.

Ofcom does offer a significant amount of guidance to consumers with respect to the management of complaints, specifically with respect to minor billing issues or repair delays. In large measure, the expectation is that most consumer complaints that are substantial will be dealt with by Otelo. The more informal kind of complaint, such as those dealing with a minor consumer dispute concerning billing and costs of calls can be addressed to the regulator. Ofcom also deals with a range of complaints that includes issues such as numbering, privacy, and repair delays.

In the UK, consumers may contact Ofcom directly with a complaint. Ofcom will provide an acknowledgement of the letter within one working day of receiving the complaint and explain that a full reply to a consumer complaint will be prepared by Ofcom within four working days. Additionally, Ofcom has prepared several consumer guides to provide guidance on the complaint process and in particular how consumers can raise issues with the phone company directly in order to resolve the matter themselves.

## **5. GENERAL RECOMMENDATIONS REGARDING INSTITUTIONAL CAPACITY NECESSARY TO HANDLE DISPUTE RESOLUTION**

In the previous sections, we have provided examples of different organizational structures adopted by highly regarded regulators in countries such as Brazil, Bahrain, Colombia, the Dominican Republic, Peru, the United States, and the UK, to deal with disputes among licensed operators and consumer complaints. Based on such experiences, we present the following general recommendations to the TRC to establish the internal capabilities necessary to resolve such disputes.

### **5.1 Transparent Practices for Decision Making in Dispute Resolution**

Decision-making in the context of dispute resolution can be difficult. Interested parties may promote and lobby in support of different outcomes, thus, in order to guarantee transparency and impartiality of the regulator's decision-making process concerning dispute resolution, we suggest the implementation of strategies used by regulators such as Anatel, whose Board has implemented **public sessions** when deciding disputes. The public can participate in these sessions in which three Board members and the Chief of the Legal Department participate. The sessions can also be held in private and be limited to the parties to the dispute, if privacy rights could be violated by opening the session to the public. Eight days before the session, Anatel publishes the invitation to the session in the Official Gazette, which contains the subject matter under dispute, the names of the parties and other relevant information. The parties to the dispute are given 15 minutes per issue to defend their arguments. The votes deciding the controversy are public and each Board member provides his vote giving supporting rationale orally or in writing.

### **5.2 Establishment of Technical Secretariats**

This is a method of administrative support for the decision making bodies. Technical Secretariats deal with implementation and compliance with internal procedures, serve as liaison between the parties to the dispute and the decision making body, as well as liaison between the permanent offices of the regulator and ad-hoc Collegial Bodies. In summary, the Technical Secretariat acts as a clerk in all the adjudicative proceedings initiated before the particular decision making body and provides all the logistical support needed by them. For example, it is in charge of matters such as issuing certified copies of documents from open files, notifying the parties of all the notifications related to the proceedings, maintaining and keeping the files of all cases completed, receiving all the information and writs provided by the parties and notifying the parties of the decisions made by the Collegial Bodies.

### **5.3 Outreach Programs Regarding Consumer Rights**

We encourage the TRC to engage in educational activities to help create a culture of citizen's participation, which often needs to be built up in developing countries. A good example of these types of activities is the program implemented by the Dominican

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Republic's regulator (INDOTEL), to educate users of public telecommunications services. As part of this program, the regulator's staff visits schools, universities, and other academic institutions giving presentations on the rights and obligations of users of telecommunications services and the mechanisms available to them to lodge complaints with authorities. Presentations are then followed by question and answer sessions. This practice is beneficial for consumers of public services, traditionally provided by government monopolies, which usually do not provide adequate means to encourage and channel consumer complaints. Other ways of dissemination of information are informational campaigns through mass media such as TV, radio, and newspapers.