

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 65

IRAQI COMMUNICATIONS AND MEDIA COMMISSION

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003), and having consulted with the Iraqi Governing Council;

Recalling that U.N. Resolution 1483 (2003) called upon the CPA to promote the welfare of the people of Iraq through the effective administration of the territory and to contribute to conditions of stability and security,

Recognizing that open and rigorous debate based upon the free exchange of information is essential to the development of a modern democracy and the holding of free and fair elections in Iraq, and that key to this is unfettered and universal access to a vigorous, professional, free, independent and diverse media;

Further Recognizing that telecommunications plays a major role in the economic development of nations and that creating legal certainty for market entrants will enhance economic growth and stability;

Noting the need to develop effective self-regulatory mechanisms for the media, especially the press, while assuring orderly structuring of a communications infrastructure;

Underscoring that the role of a regulator is to protect public safety and consumer welfare, and that establishing an independent and appropriately staffed regulatory mechanism will be a bulwark in protecting emerging freedoms;

Observing that independence is the key to effectiveness in regulating and promoting a competitive market that benefits consumer and market participants and that independence in this context means freedom from control or undue influence by any regulated entity or market participant; undue partisan political interference or pressure; and influence or conflict of interest by personal incentives such as share ownership in market participants;

Endorsing the commitment to international principles of freedom of speech and of the press as articulated in the International Covenant of Civil and Political Rights and other documents;

Noting that the worldwide trend towards convergence of technology and transmission methods in the communications industry requires clear and comprehensive regulation and that a single regulator for communications will allow for swift and efficient reactions to economic and industry conditions, a necessity in this dynamic and economically crucial sector;

Further Noting that modern and efficient telecommunications and telecommunications-related information services infrastructures are essential to the economic growth and prosperity of Iraq and to the social and economic well-being of its citizens and that:

- (1) The development of such infrastructures requires a predictable and sound regulatory regime that is conducive to attracting investments to these sectors,
- (2) An open and transparent regulatory organization that reflects international best practices will attract private sector investment and promote public confidence and accountability,
- (3) A critical necessity for achieving a modern telecommunications infrastructure is a forward-looking regulatory authority that develops policies that encourage the provision of new technologies and services to the public, and
- (4) A major objective of national telecommunications policy is to make available to all Iraqi citizens modern services at reasonable costs;

Further noting that in order for there to be informed public debate in Iraq it is vital to maximize the availability, quality and professionalism of news and information and that:

- (1) A vibrant broadcasting environment is essential to economic development and a functioning civil society by providing quality public education, current affairs and entertainment programming;
- (2) It is important to facilitate maximum diversity by balancing vigorous commercial and public sectors that provide services at the national, regional and local levels;
- (3) This must be encouraged through clear policy aimed at providing diverse services that benefit all of Iraq's citizens and that ensure conformity with generally accepted standards;
- (4) Regulation in this context should provide for the fullest exercise of freedom of expression as defined by International Convention, must encourage pluralism and diverse political debate and must empower rather than restrain independent and impartial commentary; and,

Acknowledging the vital importance of the transfer of authority to Iraqi governing institutions,

I hereby promulgate the following:

Section 1 Purpose

This Order is designed to:

- 1) Foster plurality of and competition among Iraq's communications and media services, thereby promoting an informed and culturally diverse citizenship that derives maximum benefit in terms of choice, price and quality;

- 2) Protect the interests of the citizens of Iraq as consumers of communications services;
- 3) Establish the framework for full and fair competition among all providers;
- 4) Encourage the evolution of electronic media and communications networks to the greater benefit of all who live in Iraq;
- 5) Ensure that Iraqi telecommunications, broadcast and information services are operated in a manner consistent with public safety;
- 6) Promote and defend freedom of the media and assist the media community in Iraq to develop, strengthen and maintain professional working practices that support the media's role as a public watchdog; and
- 7) Establish an open and transparent regulatory organization that reflects international best practices and will attract private sector investment and promote public confidence and accountability

Section 2 Definitions

- 1) "Broadcasting" means any point-to-multipoint transmission or emission of signals, text, images, audio or video content, or data by wire, optical fiber, radio, or any other electromagnetic means, intended for general reception by all or a portion of the public, *provided*, that the definition of Broadcasting is not intended to include Information Services or Telecommunications.
- 2) "Code(s) of Ethics" means one or more sets of ethical standards governing journalistic behavior and press responsibility.
- 3) "Code(s) of Practice" means one or more legally binding sets of regulations, rules or standards governing the actions of entities licensed to provide communications services regulated by the Commission.
- 4) "Communications" includes telecommunications, broadcasting (including cable television), and information services delivered via telecommunications and broadcasting facilities.
- 5) "Information Services" means the offering of a capability to generate, acquire, store, transform, process, retrieve, utilize or make available information, including voice, data and audio or video content, via telecommunications, including the provision of access to the Internet, *provided*, that the definition of Information Services is not intended to include Broadcasting or Telecommunications.
- 6) "Media" means entities that provide news, information or entertainment to the general public, or on a subscription basis, using means including printed material, film, video,

recordings or communications services.

- 7) "Radio-frequency spectrum" means the range of electromagnetic frequencies that are available for the provision of telecommunications, broadcasting and information services.
- 8) "Telecommunications" means the transmission by wire, optical fiber, radio, or any other electromagnetic means, including but not limited to satellite networks as well as fixed and mobile terrestrial networks, of information of the user's choosing, between or among points of the user's choosing, without change in the content of information sent and received, *provided*, that the definition of Telecommunications is not intended to include Broadcasting or Information Services.

Section 3 Establishment

- 1) There is hereby established the Iraqi Communications and Media Commission ("the Commission") as an independent and non-profit-making administrative institution. The Commission shall be solely responsible for licensing and regulating Telecommunications, Broadcasting, Information Services and other Media in Iraq, and shall be committed to the principles of objectivity, transparency, non-discrimination, proportionality and due process in carrying out its duties.
- 2) The Commission shall be guided by the International Covenant on Civil and Political Rights, Article 19, regarding freedom of expression and attendant duties and responsibilities, and by the relevant Regulations and Recommendations of the International Telecommunication Union and shall adhere to the General Agreement on Trade in Services (GATS).

Section 4 Organization

The Commission shall be comprised of a Board of Commissioners, one member of which shall be appointed as Chair; a Director General; a Hearings Panel; an Appeals Board; an Inspector General; and such advisory boards as the Board of Commissioners or the Director General deems necessary. The Director General may establish any departments or other internal units or subdivisions he/she deems necessary, and staff those departments in a manner that will most efficiently fulfill the Commission's mandate. The Director General shall designate one such department, internal unit or subdivision to act as a point of liaison with the Coalition Forces and Iraqi military. Following consultation with the Iraqi Governing Council (IGC) and the Ministry of Communications, the Administrator of the Coalition Provisional Authority (the "Administrator") shall appoint the initial Chair, two Commissioners, the Director General and the Inspector General, who shall immediately begin operating the Commission. The Administrator shall appoint the remaining Commissioners by 30 June 2004.

1) Board of Commissioners.

- a) The Board of Commissioners shall have nine (9) members, one of which shall be appointed by the Board as the Chair.
- b) The Board shall oversee and receive reports from the Director General, provide strategic and budgetary guidance to the Commission, adopt codes of practice, rules and regulations for broadcasting and telecommunications, finally approve the Commission's budget and define rules of procedure for its operations and those of the Hearings Panel.
- c) The Board shall meet at least once a month and all decisions of the Board of Commissioners shall be made by majority vote, provided that at least six (6) of the members are present and vote. The Chair shall cast the deciding vote in case of tie vote by the Board members on any matter before the Board.
- d) Commissioners shall have senior-level experience in legal affairs, management, business, regulation, engineering, telecommunications, broadcasting, or journalism and shall be individuals of impeccable character.
- e) The Chair shall have an initial term of office of two (2) years, and Commissioners shall be appointed, on an alternating basis, to initial terms of office of two (2), three (3) or four (4) years, in order to ensure staggered terms of office that will promote continuity of experience on the Board. The Chair and Commissioners may be reappointed only once. Subsequent Chairs and Commissioners shall be appointed or reappointed to four (4) year terms of office by the Prime Minister, subject to approval by majority vote of the body vested with national legislative authority.
- f) Commissioners may not hold any executive, legislative or judicial position, whether appointed or elected, at any level of government, nor be an appointed, elected or voluntary official of any political party while serving on the Board.
- g) While serving with the Commission, no Commissioner shall have any financial or business relationship with a telecommunications operator, broadcaster, information services provider or media interest or with any group or association that represents the interests of telecommunications operators, broadcasters, information service providers or media interests.
- h) Commissioners shall be paid a stipend and reimbursed for authorized expenses from the budget of the Commission.

2) Director General.

- a) The Director General shall be the Commission's chief executive officer, responsible for all functions of the Commission, including the preparation and submission of the Commission's budget, except those functions reserved to the Board of Commissioners under this Order. The Director General shall have a term of four (4) years and may be re-appointed only once. The Board of Commissioners shall appoint a successor to the initial Director General following the completion of his/her 4-year term or upon his/her earlier dismissal for cause.
 - b) The Director General shall have senior-level experience in legal affairs, management, business, regulation, engineering, telecommunications, broadcasting, or journalism and shall be an individual of impeccable character.
 - c) The Director General may not hold any executive, legislative or judicial position, whether appointed or elected, at any level of government, nor be an appointed, elected or voluntary official of any political party while serving as Director General.
 - d) While serving with the Commission, the Director General shall not have any financial or business relationship with a telecommunications operator, broadcaster, information services provider or media interest, or with any group, organization or association that represents the interests of telecommunications operators, broadcasters, information services providers or media interests.
- 3) Hearings Panel.
- a) The Hearings Panel shall consider and determine grave and serious breaches of codes and licenses and shall consist of five (5) members, who shall have backgrounds in the legal profession or in relevant fields.
 - b) The Board of Commissioners shall appoint the members of the Hearings Panel, in consultation with the IGC and the Administrator.
 - c) Unless the Director General determines otherwise, evidentiary sessions of the Hearings Panel shall be public and its decisions shall be made public.
- 4) Appeals Board.
- a) A three (3) person independent Appeals Board shall hear appeals of decisions by the Commission, whether rendered by the Director General or by the Hearings Panel.
 - b) The Appeals Board shall consist of a Judge, an attorney with communications regulatory experience and a member with professional or business experience

in the legal profession or the relevant fields. The Appeals Board shall elect one of its members as Chair.

- c) Members of the initial Appeals Board shall be appointed by the Administrator in consultation with the IGC; two (2) for a period of four (4) years and the third for a period of two (2) years. Subsequent appointments to the Appeals Board shall be made by the Minister of Justice or the head of its successor body. Members of the Appeals Board may be reappointed only once.
 - d) Unless determined otherwise by the Chair of the Appeals Board, evidentiary sessions of the Appeals Board shall be public. All decisions by the Appeals Board shall be made public.
 - e) To ensure independence from the Commission, members of the Appeals Board shall be remunerated by the Ministry of Justice or its successor body.
- 5) Inspector General. There is hereby established within the Commission an Office of Inspector General, which shall be appointed and operate in accordance with CPA Order No. 57, Inspectors General.

Section 5 Functions

- 1) The Commission shall manage communications and media licensing processes in Iraq, and shall ensure that the radio frequency spectrum is used in a manner that recognizes the value and scarcity of this resource.
- 2) The Commission shall establish a regulatory regime for telecommunications, broadcasting and information services, by:
 - a) Promulgating a comprehensive statement of Iraqi communications policy as its first order of business, in consultation with internationally recognized experts in the fields of telecommunications, broadcasting and information services;
 - b) Drafting and promulgating rules and regulations that are necessary and appropriate for the competitive provision of telecommunications, broadcasting and information services in Iraq;
 - c) Commencing work on a comprehensive draft law for the regulation of communications in Iraq, within thirty 30 days following commencement of Commission operations;
 - d) Establishing a regime to license telecommunications network operators, broadcasters and providers of telecommunications, broadcasting and information

services, in consultation with the industry;

- e) Establishing license conditions required to ensure compliance with the rules, regulations and mandates established by the Commission pursuant to this order, and monitoring licensees' compliance with said licensing conditions;
- f) Establishing procedures and requirements for the registration of those enterprises that provide information services as deemed necessary by the Commission;
- g) Creating effective and mandatory Codes of Practice governing the actions of licensed entities, with the participation of the industry. At a minimum, the Commission shall draft and implement standards and rules for the following:
 - (1) Interconnection rates, terms and conditions;
 - (2) Competitive provision of telecommunications, broadcasting and information services, including the tariffing of telecommunications services not subject to effective competition;
 - (3) Access to inputs required for deployment of networks and services, including rights of way and pole attachments;
 - (4) Access to numbering resources;
 - (5) Quality of service offered by licensed entities;
 - (6) Fraud and misleading business practices;
 - (7) Broadcasting responsibility;
 - (8) Advertising and sponsorship;
 - (9) Media activities during election periods;
 - (10) Protection of copyrights;
 - (11) Negotiation of network termination charges among carriers, and international settlement rates, pursuant to recommendations of the International Telecommunications Union (ITU); administration of such charges and rates through Network Operations and Billing Support Systems (OSS/BSS);
 - (12) International charging agreements for telecommunications services; and
 - (13) Development and promotion of policies for Universal Access to basic telephone services as deemed necessary by the Commission.

- h) Encouraging freedom of expression and professionalism of the press by working with the Iraqi press community to develop a Code of Ethics for the press and, in consultation with the industry and relevant professional journalists' associations, developing a system to implement the Code through self-regulation. The written press shall not require a license to operate within Iraq;
- i) Planning, managing, allocating and assigning radio-frequency spectrum, subject to the needs of the military, and publishing a radio-frequency usage plan for Iraq;
- j) Establishing and maintaining a license fee system for both broadcasting and telecommunications;
- k) Requiring the disclosure and provision of such information as is necessary for the due performance of its regulatory obligations;
- l) Administering the requirements of all related Orders issued by the Administrator and following the transfer of governance authority to the transitional Iraqi administration, implementing the stated communications policy thereof; and
- m) Coordinating with each of the CPA (or the U.S. Embassy, Baghdad, following the transfer of full governance authority to the Iraqi Interim Government), the Iraqi Ministry of Communications, Ministry of Defence and the Commander of Coalition Forces (or Commander, Multinational Force, following the transfer of full governance authority to the Iraqi Interim Government) regarding any actions that may affect their use of telecommunications, broadcasting and information services or networks and radio-frequency spectrum, to ensure that no such actions interfere with military requirements necessary in the interest of national security.

Section 6 Dismissal Authority

From the transfer of full governance authority to the Iraqi Interim Government until the formation of an Iraqi government pursuant to a permanent constitution, the body vested with national legislative authority may terminate the appointment of the Director General or a member of the Board of Commissioners only upon two-thirds vote. Until such transfer of full governance authority, the Administrator shall have sole authority to terminate the appointment of the Director General or a member of the Board of Commissioners. Such terminations by the Administrator or the body vested with national legislative authority may occur for only the following reasons:

- 1) Incapacity caused by illness;
- 2) Conviction of a crime punishable by imprisonment;
- 3) Conflict of interest, as defined in the Commission's Code of Ethics, including when a member of the household of the person to be removed is an owner, shareholder, or

member of the board, supervisory board or other relevant governing body, or director, president or other manager of any licensee or associate undertaking of any licensee and such conflict of interest is not remedied in accordance with the Commission's Code of Ethics;

- 4) Failure to perform duties pursuant to relevant legislation, internal Commission rules or Contracts of Employment, including, in the case of members of the Board of Commissioners, failure to participate in three (3) or more successive meetings; or
- 5) Violation of the Commission's Code of Ethics or other applicable law.

Section 7 Conflicts of Interest

Neither the Director General, nor any member of the Board of Commissioners, the Hearings Panel or the Appeals Board may work on any matter that will affect (i) his or her personal financial interests, (ii) the financial interests of his or her spouse or minor child, (iii) the financial interests of his or her business partner, (iv) the financial interest of any organization in which he or she serves as an officer, director, general partner, employee, or trustee or (v) the financial interest of any entity with whom he or she has an arrangement for employment or is negotiating for employment. In such situations, he or she may either divest the interest causing the conflict or recuse him or herself from any involvement in the matter. The Director General shall apply this section to the Commission staff, as appropriate.

Section 8 Adverse Actions

- 1) The Board of Commissioners shall develop criteria for determining whether the terms of a media license or other rule or regulation of the Commission have been violated. Such criteria shall provide that either the Director General or Hearings Panel may determine whether a violation occurred, and that the Hearings Panel shall address more serious allegations.
- 2) In cases under the jurisdiction of the Director General, the Director General shall review the facts of the case and if necessary, request additional information from the broadcaster, telecommunications operator or information services provider affected. The Director General shall base his or her decision on this evidence, and shall include in the analysis, whether or not a breach or violation exists and, where appropriate, the level of damage accrued, the seriousness of the offense, and whether mitigating or aggravating circumstances are present.
- 3) In such other cases or in cases of persistent or repetitious violation, the Hearings Panel shall determine whether a violation occurred, in the following manner:

- a) The Director General shall present the complaint to the Hearings Panel. The broadcaster, telecommunications operator or information services provider affected shall have a full and adequate opportunity to reply;
 - b) Upon the evidence and arguments presented, the Hearings Panel shall adjudicate and issue a decision that shall be forwarded to the Director General for implementation. The Hearings Panel's decision must be presented in writing and must conclude whether or not a breach or violation exists; assess, where appropriate, the level of damage accrued and the seriousness of the offense; and address whether mitigating or aggravating circumstances are present.
- 4) If the Director General has reason to believe that an operation poses an imminent threat to the public safety or order, he or she may immediately suspend operations thereof, pending an accelerated review by the Hearings Panel.
 - 5) Decisions of the Commission, whether rendered by the Director General or the Hearings Panel, may be appealed to the Appeals Board. The appellant shall have thirty (30) days within which to appeal a decision of the Commission, whether rendered by the Director General or the Hearings Panel. Any party to the case that wishes to oppose or comment on the appeal must do so within fifteen (15) days of the filing of the appeal. Once this fifteen (15) -day period ends, the Appeals Board may hold a hearing or require the submission of written testimony. The Appeals Board must then render its decision on the Appeal within thirty (30) days after the initial Appeal hearing or submission of testimony.
 - 6) Decisions of the Director General and of the Hearings Panel remain binding and in force, pending the resolution of any appeal by the Appeals Board. The Appeals Board, upon hearing timely arguments from the parties, may uphold, overturn or remand decisions or orders before it to the Director General or the Hearings Panel. Once upheld by the Appeals Board, decisions are final.
 - 7) All decisions, whether made by the Director General, Hearings Panel, or Appeals Board shall be in writing and shall be made available to the public.
 - 8) Any person aggrieved by a rule, regulation, Code of Practice or decision adopted by the Commission may appeal that rule, regulation, Code of Practice or decision to the Appeals Board in accordance with the provisions of this Section.

Section 9 Enforcement

- 1) Except as otherwise specifically provided in this order, the Commission may secure compliance with license terms and conditions, Codes of Practice, and other rules and regulations, by applying and enforcing appropriate and proportionate sanctions including:

- a) Issuing warnings;
 - b) Requiring publication of an apology;
 - c) Requiring mitigation or repair of harm to consumers;
 - d) Imposing financial penalties and placing liens on relevant bank accounts, if the penalties are not paid on time;
 - e) Suspending licenses;
 - f) Seizing equipment for which access into the licensee's premises is granted hereby;
 - g) Suspending operations;
 - h) Closing operations; and
 - i) Terminating or withdrawing licenses.
- 2) The Commission may enlist the support and assistance of Iraq law enforcement authorities, which authorities shall assist in a timely, professional and responsible manner. In addition, the Commission may, consistent with military operational requirements, request the support of Coalition Forces in enforcement efforts, if Iraqi police support is unavailable.

Section 10 Public Accountability

- 1) The Commission shall produce and publish an annual report of its activities and expenditures, and shall provide to the legislature an annual financial audit prepared in accordance with international accounting standards.
- 2) The Chair, the Board of Commissioners and/or the Director General shall appear before appropriate legislative or executive committees upon request, to defend or explain the Commission's activities and reports, and shall otherwise cooperate fully with legislative and executive entities in explaining Commission activities.
- 3) The Chair, Board of Commissioners, Director General, Hearings Panel and Appeals Board shall make available to the public, in full written form, all Commission decisions, rules, guidelines and codes, in an appropriate and timely manner.
- 4) The Commission shall adopt a public consultation process through which the views of government, the regulated industries, citizens and citizen organizations can be solicited with respect to proposed rules, guidelines, codes and policies.

- 5) All decisions of the Board of Commissioners shall be made public.
- 6) The Commission shall develop and adopt a Code of Ethics governing the Commission and its staff. Violations of this Code shall constitute grounds for appropriate disciplinary action.

Section 11 Funding and Compensation

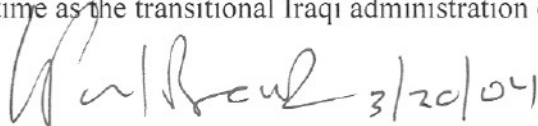
- 1) The Commission shall be funded from the following sources:
 - a) Recurring and non-recurring fees collected from licensees;
 - b) Grants or donations received by the Commission from any source, insofar as they are in conformity with applicable law; and
 - c) Funds appropriated by the U.S. Congress for the relief and reconstruction of Iraq.
- 2) The Director General shall prepare the Commission's annual budget, which shall be submitted to the Board of Commissioners for final approval.
- 3) Funds received by the Commission shall be used in accordance with the Commission's budget as directed by the Board of Commissioners.
- 4) Fines collected by the Commission in the performance of its right to apply enforcement measures shall be remitted to the Iraqi treasury.
- 5) The Commission's budget and use of funds shall be subject to review by both an independent domestic audit institution and an international audit institution annually.
- 6) All mobile cellular licenses issued on or after 22 December 2003 and the operations of the licensees shall be regulated and enforced by the Commission, and the Commission shall collect all license fees associated with the issuance of such licenses. License fees already collected by the Ministry of Communications shall be transferred to the Commission.
- 7) Notwithstanding CPA Order No. 30, Reform of Salaries and Employment Conditions of State Employees, 8 September 2003, employees of the Commission shall be compensated at rates prescribed by the Administrator or, following the transfer of full governance authority to the new Iraqi government, the Prime Minister.

Section 12 Effect on Previous Orders

- 1) Within thirty (30) days following establishment of the Commission, the licensing responsibilities set forth in CPA Order Number 11, Licensing Telecommunications Services and Equipment, shall be transferred from the Ministry of Communications to the Commission. CPA Order Number 11 shall be rescinded thirty (30) days following the effective date of this Order, or upon the Administrator's determination that the licensing responsibilities have been effectively transferred in full, whichever is earlier.
- 2) CPA Order Number 14 regarding Prohibited Media Activity, shall remain in force until the Commission promulgates rules and regulations applicable thereto and the Administrator rescinds that Order, or until the transitional Iraqi administration enacts superseding legislation.

Section 13
Entry into Force

This Order shall enter into force on the date of signature and shall continue in effect until such time as the transitional Iraqi administration enacts superseding legislation.

 3/20/04

L. Paul Bremer III
Administrator