

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

THE KENYA INFORMATION AND COMMUNICATIONS (LICENSING AND QUALITY OF SERVICE) REGULATIONS, 2010

1. Citation.

These Regulations may be cited as the Kenya Information and Communications (Licensing and Quality of Service) Regulations, 2010.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Contact address” means the physical address, telephone number, facsimile number and email address of a licensee or an applicant for licence;

“licence” means a licence issued under the Act;

“Licensee” means a person or an entity licensed by the Commission to provide any communication services;

“Market structure” describes the state of a telecommunications market in relation to competition.

3. Market structure.

(1) The Commission may, from time to time, publish details of the communications market structure prevailing in the country.

(2) The Commission shall, when issuing licences, consider the market structure.

4. Application for licence.

(1) A person who wishes to operate any communication system or provide a communications service requiring a licence under the Act, shall apply to the Commission for a licence.

(2) An application for a licence under these Regulations shall in the manner and form prescribed by the Commission.

(3) An entity applying for a licence under these Regulations shall ensure that its shareholding conforms to the prevailing communications sector policy.

(4) An applicant for a licence shall submit to the Commission—

(a) Registration or identification documents prescribed by the Commission;

(b) The applicant's contact address;

(c) Where applicable, a detailed business plans for the proposed services;

(d) Detailed information relating the proposed system or services to be provided;

(e) Where applicable, information relating to the previous experience in the management of the proposed system or the provision of the services for which a licence is sought; and

(f) Any other information that the Commission may require.

5. Failure to submit documents or information.

(1) Where an applicant fails to submit all documents or information required under these Regulations the Commission shall reject the application and inform the applicant, in writing, of the rejection.

(2) Where the Commission rejects an application due to incomplete or insufficient information, the rejection shall not, except where a tender process is involved, bar the applicant from resubmitting the application.

(3) The Commission shall treat the re-submitted application as a new application.

6. Granting of licences.

Upon the completion of the application process, the Commission shall, if it is satisfied that the applicant has complied with the requirements under these Regulations, issue a licence to the applicant.

7. (1) The Commission may specify the terms and conditions of a licence consistent with the provisions of the Act, Regulations and other relevant circumstances.

License terms and conditions

(2) A licensee shall comply with all terms and conditions of its licence.

8. Notification of change of particulars. A licensee shall—

(a) notify the Commission of its intention to change the name or contact address it filed with the Commission at least thirty days before effecting such change; and

(b) Notify the Commission and the public of any trade or brand name it intends to use at least thirty days prior to using the trade or brand name.

9. Change in shareholding.

(1) A licensee shall ensure that its shareholding complies, at all times with the Government's Communications Sector Policy, published from time to time.

(2) A licensee shall notify the Commission of any proposed change in ownership, control or proportion of shares held in it, at least thirty days before the change is effected.

Provided that—

(a) Any change in shareholding exceeding fifteen per centum of the issued share capital; or

(b) The acquisition by an existing shareholder of at least five per centum of additional shares;
shall require the prior written consent of the Commission and the Commission shall notify the applicant of its acceptance or refusal, stating the reasons for its decision, within thirty days of receipt of the request for consent.

10. Transfer or assignment of a licence.

(1) A licensee shall not transfer or assign a licence granted under the Act without the written consent of the Commission.

(2) The Commission may, when considering an application for the transfer or assignment, consider the same requirements and terms as if considering an application for the grant of a new licence.

(3) The Commission shall communicate its decision on an application for the transfer or assignment of a licence to an applicant within thirty days of receipt of the application and state the reasons for the decision.

11. Renewal of a licence.

(1) A licensee shall make an application for the renewal of its licence in accordance with the procedure specified in each licence.

(2) When considering an application for renewal of a licence, the Commission shall consider the extent of compliance, by the licensee, with the terms and conditions contained in the licence in the previous licence period.

12. Revocation of licences.

(1) The Commission may revoke a licence in accordance with the Act.

(2) Any person who is aggrieved by the decision of the Commission made under this regulation may appeal to the Tribunal within thirty days from the date of the decision.

13. Obligations of a licensee to provide quality of service.

(1) A licensee shall, in addition to the terms and conditions of the licence—

(a) Improve service quality, by identifying service deficiencies and making appropriate changes;

(b) Maintain service quality, while considering environmental and operating conditions;

(c) Avail information to ensure informed subscriber choice of services and licensees;

(d) Improve the operation and performance of interconnected networks; and

(e) Assist in the development of related communications markets.

14. Principles for developing quality of service standards.

(1) The Commission shall, when developing quality of service standards, ensure that—

(a) The parameters related to quality of service are clearly defined and measurable;

(b) Information about the standards relating to quality of service are sufficient, comparable and accessible;

(c) Communications infrastructure and services are compatible with international standards;

(d) Practices increasing the user satisfaction and decreasing user complaints are encouraged;

(e) Discrimination, relating to the quality of the service offered, between similar users is avoided; and

(f) Special needs of disabled users are also considered when developing quality of service parameters.

15. Quality of service standards.

The quality of service standards under these Regulations may be determined based on—

(a) Parameters, defining the applicable quality of service measurements for specific services;

(b) Methods of measuring service performance against predetermined parameters;

(c) Measurable service characteristics of parameters determined by the Commission; and

(d) Any applicable targets for parameters identified by the Commission from time to time.

16. Measurement, reporting and record keeping.

(1) The Commission shall, from time to time, publish a notice in the Gazette prescribing quality of service parameters that licensee are to measure and report on to it.

(2) The notice published under paragraph (1) shall specify measurement and reporting intervals for quality of service parameters prescribed by the Commission.

(3) A licensee shall, for each parameter prescribed by the Commission under paragraph (1)—

(a) Take measurements using the method specified for the parameter;

(b) Compile, summarize and submit the measurements to the Commission, in the prescribed format and within the specified period;

(c) submit any additional information required by the Commission, including details of the times, places and other particulars of the measurements, as the Commission may from time to time direct; and

(d) Retain all quality of service data, including all measurements and related records, for a minimum of twelve months after the reporting period or as the Commission may, from time to time, direct.

17. Inspections and investigations.

The Commission may inspect or investigate matters relating to the measurement of quality of service, of a licensee from time to time to ensure compliance.

18. Publication of reports on measurements of quality of service.

The Commission may publish measurement results or the quality of service reports submitted by licensees.

19. Telecommunications contractors.

(1) The Commission shall, before issuing a licence to a telecommunications contractor under these Regulations, consider—

(a) The applicant's ability to conduct the business; and

(b) The competence of the technical staff undertaking to its works.

(2) A telecommunications contractor shall, when undertaking works ensure, that the work complies with guidelines issued by the Commission from time to time and any other internationally acceptable standards prevailing.

(3) The Commission may revoke the licence of a telecommunications contractor who contravenes paragraph (2).

20. Approvals from other authorities.

Notwithstanding that a licence has been issued by the Commission, a licensee shall bear the responsibility of obtaining the approvals of other Government agencies, local authorities or other relevant authorities that may be required for the provision of the licensed services, installation, placement, laying or maintenance of any facilities on, through, under or across any land.

21. Duty of care.

(1) A licensee shall, when installing its facilities, take all reasonable steps to ensure that it causes as little detriment or damage, and inconvenience to the public, as is practicable in the circumstances.

(2) If a licensee engages in any activity relating to any land under these Regulations, the licensee shall take all reasonable steps to restore the land to the condition it was before the activity began.

(3) A licensee shall, when installing its communications systems, take all reasonable steps to—

(a) Observe international standards and practices;

(b) Protect the safety of persons and property;

(c) Protect the environment; and

(d) Ensure that the activity does not adversely interfere with—

(i) The operations of a public utility;

(ii) Public roads and paths;

(iii) The movement of traffic; and

(iv) The use of land

(4) A licensee shall enter into an agreement with any public utility whose operations are likely to be affected by an activity of the licensee, to provide for the most convenient manner in which the licensee shall engage in that activity.

22. Validity of Provisions.

Where one or more of the provisions of any licence, for any reason becomes invalid or unenforceable, the validity or enforceability of the other provisions of the licence shall not be affected.

23. Transitional provisions.

(1) When the Commission introduces a new licensing framework, a person holding a licence issued under the former licensing framework (in this section referred to as an “old licensee”) shall continue to hold the licence in accordance with its terms

and may migrate to the new licensing framework in accordance with the migration modalities issued by the Commission.

(2) Where a licensee who held a licence before the commencement of these Regulations notifies the Commission that the licensee opts to migrate to a new licence—

(a) The Commission shall issue the new licences to the licensee on terms that do not detract from the rights held by the licensee under the old licence;

(b) The new licence issued by the Commission to the licensee shall be valid for the unexpired term of the old licence or the full duration of the new licence whichever period is shorter;

(c) The old licence shall cease to be valid immediately the new licence, commences; and

(d) The old licensee shall be deemed to have waived the right to the continuation of the old licence and no compensation shall be due to the old licensee in this regard.

(3) Where an old licensee notifies the Commission that the old licensee opts to continue with the old licence—

(a) the old licensee shall be entitled to continue to operate the network or provide the service contemplated and authorized by that licence for the remainder of the term of that licence;

(b) the old licence shall expire at the end of the licence term specified in that licence, and licensee may apply for renewal under the new licensing framework.

24. Miscellaneous offences.

(1) A person who provides any services under the Act without a licence issued by the Commission commits an offence.

(2) A person who commits an offence under these Regulations for which no penalty is specifically provided, is be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Made on the 10th May, 2010

*Samuel Poghisio,
Minister for Information and Communications*